

Position paper on return**Human rights and human dignity at the centre in return policies****Introduction**

The very complex and sensitive question of the return of migrants has gained **impetus in the media** and in the political agenda following the 2015 peak of asylum applications in the EU. This incurred interest especially considering the increased flow of migrants entering the EU irregularly due to the complexities and limitations of their entering and remaining legally. In turn, this has prompted **policy makers** to claim that the **credibility of the EU's asylum system depends on an effective return policy**, meaning that the number of people actually being returned needs to increase¹.

This **tough stance on return** effectively courts public opinion that tends to negatively view migration with the aim of taming dangerous populist movements on the rise across the continent. Currently, the **EU migration policy and that at country level systematically emphasises the need to boost returns**, including through **enhanced detention**. Return is thus being used as a **policy tool** to control and **tackle irregular migration** even if there is no evidence that increased return rates decreases irregular migration. Simplistic policies and arguments are thus resulting in eluding human rights violations and instead contributing to increased destitution resulting from poorly designed return policies.

The popularity of return is nevertheless not new. Since the beginning of the construction of a common EU asylum and migration policy, return has featured at the top, closely intertwined with the fight against irregular migration. To facilitate returns, trade-offs and **enhanced EU cooperation with countries of origin** and transit has been ongoing for many years. The focus on irregular migration and on return has dwarfed **other aspects of migration policies, especially legal migration**. Politicians were too busy strengthening “Fortress Europe” to develop policies to facilitate legal means to get to the EU, in order to work, study, or reunite with family members. **Similarly, expanding safe and legal pathways to Europe** for people in search of protection, such as humanitarian visas and corridors, or community sponsorship have been neglected, forcing people to resort to smugglers and human traffickers, **fuelling irregular migration further** instead of stopping it.

At EU level, the **2008 return directive**² sets out common standards and principles on return. The European Commission published a **new action plan**³ and **recommendations**⁴ to Member States in 2017 on how to best implement the return directive in view of **boosting returns' implementation**. Member States are urged to make the most of the **flexibility** offered by the return directive, including through downplaying safeguards and expediting the asylum procedure by rationalising legal remedies. One of the most contentious recommendations is to resort to **detention** more often to counter the risk of people **absconding** subject to a return decision. Several civil society organisations (CSOs) and international organisations have denounced a

¹ De Bono Daniela (2016), Returning and deporting irregular migrants: not a solution to the “refugee crisis”, *Human Geography*, Volume 9, Number 2.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>.

³ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf.

⁴ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

downward levelling of safeguards and guarantees that may result in severely damage human rights protections⁵.

In this context, it is of utmost **importance for Caritas Europa to spell out what our position** is on several aspects linked to return and to provide **recommendations to Member states and to the EU** to ensure that the implementation of return does not turn a blind eye to human rights, rather than any form of **return is done in a dignified and humane manner**.

The actions of Caritas Europa's members on return

Caritas Europa is a network of 49 Caritas organisations present in 46 European countries, which makes it one of the major social actors in Europe. We strive to **promote the human rights and dignity** of all human beings and to provide support to the most vulnerable people. The EU values of **solidarity and responsibility sharing are central in our work on migration**. Many of our members' staff and volunteers are working on a daily basis to support the rights and basic needs of migrants. This has enabled them to build up extensive experience in regard to Europe's asylum and migration policies and practices. This includes, for example, legal support in asylum and family reunification procedures or the provision of basic services, food and shelter. Caritas members are in contact with migrants along different stages of their migratory journey, and the **question of return is often present in one way or another**.

Several Caritas members are involved, as countries of emigration or immigration, in the implementation of **Assisted Voluntary Return and Reintegration programmes (AVRR)**. This entails pre-departure counselling (i.e. Caritas Austria, Belgium, and Germany) or post-arrival assistance (i.e. Caritas Armenia, Russia, Georgia, and Ukraine). In addition, Caritas Europa, Austria, and Belgium as well as Raphaelswerk (an affiliate of Caritas Germany) are members of the **European Reintegration Support Organisations Network (ERSO)** that links local actors at the pre and post departure stages of the return process⁶. While Caritas **always favours voluntary return over forced return**, some of our members also provide support to returnees who are forcibly returned since forced return has a very detrimental psychological impact and Caritas' role is to serve those in need. In addition, many Caritas members also provide support to migrants living in **situations of limbo**, who are facing destitution and extreme vulnerability, often as a result of having an undocumented status, but yet are unable to be removed due to insecurity in the countries of origin or administrative hurdles. Finally, Caritas members visit migrants held in **detention centres** in order to monitor their wellbeing, and the respect of their fundamental rights.

In terms of advocacy, **Caritas Europa** previously published **position papers in coalition with other NGOs**, emphasising the need for governments to respect fundamental rights in return policies⁷. At global

⁵ Civil society organisations: new EU Commission plans on returns and detention will create more harm and suffering, 3 March 2017, <https://www.ecre.org/new-eu-commission-plans-on-returns-and-detention-will-create-more-harm-and-suffering/>, IOM, UNICEF et al. Joint press release: New European Union returns policies put children at risk: <http://www.ohchr.org/Documents/Issues/Migration/JointStatementNewEUPolicies3Mar2017.pdf>.

⁶ ERSO was created in 2009 in order to collaborate with partners in origin countries to capitalise on the existing experiences and competences. The exchanges with local partners during the preparation to return before departure and after departure are very important to ensure a successful reintegration: <http://www.erso-project.eu/>.

⁷ Christian group (2006), "comments on EC proposal on return directive" http://www.ccme.be/fileadmin/filer/ccme/75_PRESS/2006/2006-03-13_Chr_Com_-_on_EC_proposal_for_Return_Directive.pdf.

Caritas Europa et al (2005), Common principles on removal of irregular migrants and rejected asylum seekers: <http://www.ngo-platform-asylum-migration.eu/wp-content/uploads/2014/09/Common-principles-on-removal-lay-out.pdf>.

level, Caritas Europa and its European members compose one of the seven regions of the Confederation of **Caritas Internationalis**⁸, which consists of over 160 national members around the world. Most of our members are dealing practically with **the sensitive and complex question of return** at various degrees and have developed considerable **hands-on experience**. Like the European Union, our Caritas network is varied and spans a wide range of perspectives and experiences depending on the national context, which reinforces our strength and added value and has enabled us to develop this position paper.

Caritas Europa's concerns

Core principles and safeguards

A number of **human rights instruments and Conventions** have been ratified by Member States and must be implemented in the field of migration and asylum, including that which concerns return. These include among others the Geneva Refugee Convention, the EU Charter of Fundamental Rights and the European Convention on Human Rights. In addition, an abundant body of **jurisprudence** of the **European Court of Justice (ECJ)** and the **European Court of Human Rights (ECHR)** has clarified the way by which such provisions should be implemented. **The EU Return Directive refers to safeguard and human rights principles**, which include, for example, carrying out return in a humane and dignified manner, respecting the principle of non-refoulement⁹ and the best interest of the child, the right to a fair and efficient asylum procedure and legal remedies, or giving priority to voluntary departure over forced return. While these provisions and principles are welcomed, the EU return directive has been criticised for watering down safeguards by adjusting to the lowest common denominator.

The asylum and return procedure, particularly deportation, can have a **huge detrimental medical and psychological impact on individuals**, particularly during the pre-departure phase when the threat of deportation and the erosion of access to social rights weigh heavily on peoples' shoulders. Migrants often experience mental health disorders, social detachment, isolation and destitution. The acute sensitivity of return reinforces the necessity to **ensure that basic rights, principles and safeguards are respected and implemented**. Caritas Europa is concerned that the **implementation of the existing human rights legal framework** is, unfortunately, **uneven, and clearly deteriorating** in most countries, leading to blatant abuses of human rights witnessed on a daily basis. Our members observe the following:

- Asylum applicants do not always have access to a **fair and efficient asylum procedure**, which includes information communicated in a language they understand, the right to appeal within a sufficient timeframe, and procedural safeguards. This can lead to the infringement of the **non-refoulement** principle when people are sent back to a country where they face a risk of persecution or inhumane treatment. This is particularly concerning for **hotspots** in Greece and Italy, as research¹⁰ has shown that **fair and efficient asylum procedures** are lacking and discrimination is rampant, as some groups are denied access to the asylum procedure based on their nationalities. In the hotspots, reception centres have

⁸ <http://www.caritas.org/>

⁹Non-refoulement prohibits the return of persons to a country in which they would face a real risk of ill-treatment, such as torture and inhuman and degrading treatment, or where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. Its definition may apply to a person who is refused access to vital medical treatment, as the hindrance itself would amount to persecution.

¹⁰ECRE (2006), The implementation of the hotspots in Italy and Greece, <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>

often amounted to de facto detention centres, lacking special facilities for vulnerable groups and children and appropriate legal remedies.

- The right to **safety and security** might be infringed upon during the return procedure and **violence** is often disproportionately used during **forced removal operations**. **Collective push packs** at EU borders, entailing human rights abuses happen on a regular basis¹¹.
- **Erosion of rights and safeguards under the “safe country of origin” and “safe third country” concept is also rampant**. Applications of asylum seekers from countries of origin or transit deemed “safe” receive less favourable procedural treatment and are subjected to accelerated procedures and shortened periods for appeal. This puts them at risk of being returned to unsafe places.
- **Safeguards for vulnerable people, including victims of human trafficking, sick and traumatised people as well as the best interest of the child** are regularly neglected during the return procedure.
- In some Member States, **punitive measures** are implemented to boost return such as cutting access to accommodation and the provision of basic essential services for migrants not cooperating during the return procedure, which results in **increased risk of destitution**¹².

Detention flying high

The use of **detention to prevent the risk of absconding and to facilitate the implementation of a return decision** has increased in most Member States, fuelling the **negative perception** of migrants. We are concerned about the European Commission urging Member States to further resort to detention in its 2017 action plan on return, which on top of being immoral is inefficient. Several studies show that detention does not improve return rates and is very costly in comparison to other alternatives, such as bail, supervision, reporting, or holistic case management¹³. UNHCR equally urges the use of alternatives¹⁴. Detention is an **extreme and damaging measure** and should only be used as a **last resort**. It should fulfil **several conditions** in terms of judicial review and civil society monitoring, as is detailed in the recommendations section.

Caritas is deeply concerned that detention is often systematically used as a **deterrent to irregular migration** and as a **migration management tool**, further **criminalising migration**¹⁵. Many Member States are **abusing the concept of absconding** foreseen by the EU return directive to justify detention. In some cases, migrants, including vulnerable people, minors¹⁶ and victims of trafficking, are detained in horrendous conditions, in prison-like facilities, without access to entitled rights for an indefinite period of time. Families, for instance, are often divided and placed in separate detention centres, generating huge stress and psychological damage, especially for the children. Hence, the best interests of the child are often not being factored in.

¹¹Oxfam (2017), A dangerous game, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf.

¹² EMN (2016), The return of rejected asylum seekers: challenges and good practices, <http://emn.lt/wp-content/uploads/2016/07/emn-studies-00-synthesis-report-rejected-asylum-seekers-2016.pdf>.

¹³ <https://idcoalition.org/publication/view/there-are-alternatives-revised-edition/>.

¹⁴ See UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, April 2006, <http://www.refworld.org/pdfid/4472e8b84.pdf>.

¹⁵PICUM (2015), Position paper on EU return directive, http://picum.org/picum.org/uploads/publication/Final_ReturnDirectiveEN.pdf.

¹⁶ <https://endchilddetention.org/impact-2/>

Detention centre legally challenged in Italy

The Bari Tribunal (Apulia Region) recently condemned the Italian Presidency of the Council and the Interior Ministry to pay 30,000€ to the municipality as an indemnity for the presence of a detention centre (which in the meantime has been closed). The judges detail that the detention centre was not a suitable tool to ensure assistance, protection and dignity of migrants. The court found that the inhumane and degrading treatment endured by detainees in the detention centre amounted to damaging the hospitality of the municipality, which should be compensated by a financial indemnity. In spite of the numerous reports that have documented the deplorable detention and unsanitary conditions in Italian detention centres, the Italian government continues to promote these¹⁷.

Entry ban as a punitive tool

In line with the EU return directive, Member States can issue a **return ban valid for up to five years** along the effective return. Through this tool, politicians aim to **disincentivise irregular migration and to avoid later re-emigration**. According to a study by the European Migration Network (EMN), the majority of Member States automatically impose entry bans in cases of forced return, and issue them on a case-by-case basis in the event of voluntary return¹⁸.

The use of entry bans raises serious concerns on several grounds. It is considered by many legal experts as a **double penalty** that can impede people in search of protection to apply for asylum and can breach the non-refoulement principle. It consists of a **punitive measure** against irregular migration and contributes to the **logic of criminalisation of migration**, whereas one of the few options to apply for asylum is often to enter the EU irregularly since legal entry channels are cruelly lacking¹⁹. Furthermore, the entry ban can be **permanent** when it has been established that the person poses a **serious threat to national security and public order**. Yet, because this concept is often vaguely defined in national law, it can lead to abuses when people receive a permanent entry ban for minor infractions. In addition, the return directive requirement to issue re-entry bans and to issue return decisions in writing, stating the reasons and the legal basis for the decision, is frequently not being implemented.

Living in limbo

Many Caritas organisations are providing basic services, legal and psychological support to migrants with an undocumented status, who are **living in a limbo situation** in a country, **neither returned nor provided with a legal status** or access to service provision. This may be attributed, for example, to the reluctance of the administration of the migrant's country of origin to deliver travel documents and to cooperate with the host country to implement the return. This limbo situation **beyond the control of the migrant** can last for several years and often **pushes people into poverty and destitution** as they are often denied access to work, to social benefits, to housing, health care, education and justice, without any perspective of regularisation.

¹⁷ http://bari.repubblica.it/cronaca/2017/08/11/news/bari_cie_danneggia_l_immagine_della_citta_-172837185/.

¹⁸ EMN (2014), "Good practices in the return and reintegration of irregular migrants": http://emn.it/wp-content/uploads/2015/07/emn_study_reentry_bans_and_readmission_agreements_final_december_2014.pdf, p.6.

¹⁹ PICUM (2015). Position paper on EU return directive, http://picum.org/picum.org/uploads/publication/Final_ReturnDirectiveEN.pdf.

Unfortunately, the EU Return Directive fails to compel Member States to issue a temporary residence permit when return is impossible, leaving it at the discretion of each Member State²⁰. In many countries, the number of people stuck in this untenable situation is growing daily and governments are often **turning a blind eye** to the situation and failing to clarify the migrants' status. This fuels the black labour market, where exploitation is rampant. This unsustainable and degrading situation leads Caritas members to **advocate for the regularisation of such migrants' status**.

Externalisation of migration management

EU policy makers appear extremely eager to speed up returns, **step up collaboration and strike deals with transit and neighbouring countries** at all costs. The **EU-Turkey statement**²¹ is the most emblematic example of this trend. With this deal, for every migrant returned from Greece to Turkey, a refugee is to be resettled from Turkey to an EU country. Similarly, **close collaboration has been ongoing with Libya** in order to stem migration from Sub-Saharan Africa to Italy. This is evident by the vast financial support, training and materials being provided by the EU and Italy to Libyan authorities in order to improve border control and search and rescue operations.

This trend to externalise migration management to border countries is **highly worrying from a human rights perspective**. The EU-Turkey deal has stranded migrants in Greece in horrendous living conditions²². Ongoing cooperation with Libya, accompanied by a smear campaign against NGOs' active in search and rescue operations, has resulted in migrants' boats being returned back to Libya, where chances are real that they will be detained in prison-like migration centres, raped, tortured and mistreated, or even sold as slaves, as it has been widely documented²³.

Long-term solutions and safe and legal routes, rather than quick fixes are needed to counter irregular migration and human trafficking and smuggling. Caritas Europa underscores that the **fight against irregular migration should not be achieved at the expense of human rights and EU values**.

Readmission agreements and partnerships with third countries

One of the main obstacles in enforcing return is establishing the **nationality** of the returnee and the **lack of administrative cooperation** by the country of origin to deliver adequate travel documents²⁴. Third countries' reluctance to collaborate on return can be explained by the huge part remittances play in some countries' economies. To facilitate return, Member States and the EU have been negotiating **readmission agreements** with strategically important **transit and origin countries** of migrants for years. These agreements, often negotiated behind closed doors, can include clauses that facilitate the **deliverance of documents to returnees in exchange of offering incentives for third countries**, such as visa facilitation, trade facilities and development aid. EU readmission agreements with Albania, Armenia, Ukraine, Turkey and Cabo Verde are, for example, in vigour and negotiations are ongoing with Tunisia, Morocco, Algeria and Nigeria.

²⁰ EU return directive, preamble 12.

²¹ <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

²² <https://www.hrw.org/news/2017/12/21/greece-urgent-need-move-asylum-seekers-islands>.

²³ <http://www.msf.org/en/article/libya-open-letter-european-governments-are-feeding-business-suffering>, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22039&LangID=E>, <http://edition.cnn.com/2017/11/17/africa/libya-slave-auction-investigation/index.html>.

²⁴ ECRE (2005), "The way forward, Europe's role in the global refugee protection system", https://www.ecre.org/wp-content/uploads/2016/07/ECRE-The-Way-Forward-Towards-Fair-and-Efficient-Asylum-Systems-in-Europe_September-2005.pdf, p.19.

In parallel, a regulation on the establishment of a **European travel document** for the return of “illegally” staying third-country nationals entered into force in December 2016²⁵ to replace the “European laissez-passer” that was not accepted by many third countries. This sort of document issued exclusively by EU Member States enables the **deportation of a person without identification by the country of return**, so without the person being issued a consular travel document. This is highly problematic since similar documents have previously been used to return foreigners without ascertaining their nationality²⁶. Consequently, several migrants have been expelled to a country that was not their country of origin, which is clearly in violation of minimum standards on protection and legal aid.

To overcome complex and time-consuming negotiation with third countries, EU countries also resort to **high-level political dialogue and pressure** to strike **more flexible and operational deals**. The **migration partnership framework**²⁷ launched in 2016 that aims at cooperating with transit and origin countries on migration management is emblematic in that regard. **Focus countries**, such as Mali, Nigeria, Niger, Senegal and Ethiopia are urged to cooperate in the fight against irregular migration by facilitating readmission. Through this approach, the EU is stepping up efforts to manage migration flows by **using development aid as positive and negative incentives to get the buy-in of third countries** on migration management and border control. There is a risk of development cooperation being made **conditional** on the cooperation of the partner countries in the areas of return, readmission and reintegration of their nationals. But this would clearly be in breach of the EU's Lisbon Treaty, which states: “Development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty”.²⁸

Similarly, we are concerned that instruments, such as the EU **Emergency Trust Fund for Africa**²⁹ established in November 2015, although mostly funded by the **European Development Fund**, are being **used for migration management purposes** to contain people where they are and are diverting funds to migrant-producing countries. Countries that do not “supply” migrants, but are equally in need from a development perspective, are thus at risk of not receiving adequate funding and investment due to a shift in EU development funding for migration management purposes.

Caritas Europa strongly opposes the instrumental use of development cooperation aid to fulfil EU’s migration strategic agenda. In line with **article 208**³⁰ of the **Lisbon Treaty and the aid effectiveness principles**, cooperation aid should be used to fight poverty where needed in line with the beneficiary country’s plans and objectives, independent of the donor country’s strategic interest.

Return to conflict countries

In their impetus to speed up returns, EU Member States want to increase returns to **conflict and fragile countries**, such as **Afghanistan or Iraq**. As part of the asylum procedure, some Member States analyse if an **internal protection alternative** (meaning another supposedly “safe” area of the country of origin) is available where the applicant could be returned to in order to seek protection.

²⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1953>.

²⁶ <http://www.aedh.eu/The-European-travel-document-Yet.html>.

²⁷ http://europa.eu/rapid/press-release_IP-16-2072_en.htm.

²⁸ See Caritas Europa’s blog on the topic, <http://www.caritas.eu/blog/development-aid-cannot-serve-the-purpose-of-migration-control>.

²⁹ https://concordeurope.org/wp-content/uploads/2018/01/CONCORD_EUTrustFundReport_2018_online.pdf?997099&997099

³⁰ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-5-external-action-by-the-union/title-3-cooperation-with-third-countries-and-humanitarian-aid/chapter-1-development-cooperation/496-article-208.html>.

Afghanistan is an emblematic case. Since 2015, countries such as Sweden, Germany, Norway and Finland have adopted stricter rules towards Afghan asylum seekers, leading to a **drop in protection rates** by 50% in Norway and 30% in Finland between 2015 and 2016. The average European recognition rate dropped from 67% in 2015 to 56.7% in 2016³¹. It is also worth highlighting that the **recognition rate for Afghan asylum seekers varies greatly** from one country to another, which consequently fuels dangerous travel within Europe, often at the hands of human traffickers and smugglers. While it is getting **harder** for Afghan asylum seekers **to receive protection**, many people are put under tremendous **pressure by Member States to “voluntarily return” to Afghanistan**.

According to recent studies, several Member States such as France, the United Kingdom, the Netherlands, Norway, Sweden, Germany and Finland have negotiated **return agreements or Memorandum of Understanding** with Afghanistan to speed up readmission and returns³². At EU level, the “**Joint Way Forward on migration issues**”³³ between the EU and Afghanistan was adopted in October 2016 to facilitate the fight against irregular migration and to speed up return, including through voluntary return. Used as a flexible readmission agreement, it allows the emission of **EU travel documents**, if the Afghan government has not issued its own documents, within 4 weeks after the request has been initiated by a Member State. Several Afghan politicians and experts denounced the fact that this arrangement is putting pressure on the government to speed up returns in exchange of receiving badly needed development aid³⁴. The latest EU strategy on Afghanistan reaffirms the EU’s objective to tackle irregular migration, human trafficking and smuggling as well as to increase return³⁵.

In the meantime, **the UN declared mid-2017 that civilian deaths were at record high in the 16-year war**, with Kabul remaining the most affected city in the country³⁶. Between 2009 and 2016, nearly 25,000 civilians had been killed and over 45,000 injured. The country currently counts around 2 million internally displaced people (IDPs)³⁷. Globally, Afghan refugees are the third largest refugee population in the world after Syrians and Palestinians and most of them are hosted by Iran and Pakistan³⁸. A totally illogical and dangerous trend is unfolding right now: **while the security situation is deteriorating incontestably, returns from Europe to Afghanistan have nearly tripled**. Between 2015 and 2016, the number of Afghan citizens returned by European countries (especially from Germany, Greece, Sweden, UK, and Norway) to Afghanistan passed from 3,290 to 9,460³⁹. Several organisations thoroughly documented through personal testimonies the horrendous situation to which people are returned, exposing them to great danger and in the worst cases to death⁴⁰.

³¹ Eurostat, “Asylum Decisions in the EU: EU Member States Granted Protection to More than 330 000 Asylum Seekers in 2015,” 20 April 2016, <http://ec.europa.eu/eurostat/documents/2995521/7233417/3-20042016-AP-EN.pdf/>.

³² ECRE (2017), “EU Migration Policy and Returns: Case Study on Afghanistan”; <https://www.ecre.org/wp-content/uploads/2017/11/Returns-Case-Study-on-Afghanistan.pdf>, Amnesty International (2017), Forced back to danger. Asylum-seekers returned from Europe to Afghanistan, <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>, p.35-36.

³³ https://ec.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf.

³⁴ <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>, p.37.

³⁵ <http://www.consilium.europa.eu/media/23921/st13098en17.pdf>.

³⁶ https://unama.unmissions.org/sites/default/files/17_july_2017_-_extreme_harm_to_afghan_civilians_continues_as_suicide_attacks_worsen_latest_un_report_shows_english.pdf

³⁷ <https://unama.unmissions.org/protection-of-civilians-reports>, p. 3.

³⁸ UNHCR (2017), Global report 2016, http://reporting.unhcr.org/publications#tab-global_report.

³⁹ Data is from the 28 EU Member States as well as Iceland, Norway, Liechtenstein and Switzerland. Eurostat, last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

⁴⁰ <https://www.ecre.org/wp-content/uploads/2017/11/Returns-Case-Study-on-Afghanistan.pdf>, <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>.

Caritas Europa is concerned that people can be returned to unsafe conditions, where their life and integrity is at risk, and infringement of Art. 3 ECHR⁴¹ is possible, breaching the principle of non-refoulement. In addition, the complex and long migration journey that Afghan people have embarked upon – many having lived in Iran or Pakistan for several years before reaching the EU – means that they can be returned to a country where they do not have any family members or social network at all. On top of the disastrous psychological effect such return can have, it also risks putting people at the mercy of terrorists and insurgents, due to the scarcity of jobs and income-generating activities. **Monitoring mechanisms to trace back returnees and ensure that their safety and reintegration are guaranteed are lacking.**

Voluntary return

In 1979, the International organisation for migration (**IOM**) introduced the first **Assisted Voluntary Return and Reintegration (AVRR)** programmes as a component of migration governance to support migrants willing to return voluntarily to their country of origin. In 2016, IOM counted 98,403 beneficiaries⁴². Caritas always favours voluntary return and several Caritas organisations are collaborating with their national governments and IOM to carry out AVRR with the aim of assisting returnees. In its practice, **Caritas Europa supports voluntary return programmes that are prepared in a trusting environment**, with no time pressure. This seeks to allow for **proper pre-departure counselling and preparation** that puts the **wellbeing of the person at the centre** and enables migrants' proper reintegration in the country of return.

Unfortunately, the **line between forced and voluntary return is sometimes blurred**. For example, to what extent is voluntary return genuinely voluntary when the only alternative available is forced return and a removal order, or when states might apply coercive measures - including coercive detention - if someone doesn't undertake the necessary administrative steps to implement return⁴³. This excerpt from the EC action plan on return is highly problematic in that regard: "Irregular migrants are more likely to accept voluntary return packages if they know that the only other alternative is forced return as staying irregularly would not be an option any longer"⁴⁴. The **European Migration Network (EMN)** itself recognises the thin line between forced and voluntary return: "It is important to note, however, that there is **no clear boundary between Voluntary and Forced Return**, since there are different understandings of these terms by the Member States and it sometimes depends on the legal status of a returnee. Whether return can truly be considered as voluntary, if the consequence of not returning is to be subject to Forced Return procedures, is another consideration"⁴⁵.

Caritas Europa is concerned by the conditions facing people who sometimes sign up for voluntary return⁴⁶. Testimonies of people being detained and/or mistreated until they finally bow to voluntary return is unacceptable. In some circumstances, the asylum or the family reunification process is extremely messy, slow and complicated and reception conditions are so inadequate that migrants **resort to voluntary return out of despair and not out of choice**. It is also worth highlighting that voluntary return is not always assisted and

⁴¹ Prohibition of torture.

⁴² IOM (2017), Assisted voluntary return and reintegration 2016 key highlights,

https://www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-2016-Key-Highlights.pdf.

⁴³In Austria for example, since November 2017, if a person does not return or go to the embassy herself/himself in order to receive the necessary documents, he/she can be fined and detained.

⁴⁴ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf, p.7

⁴⁵ http://www.emn.at/wp-content/uploads/2017/01/EMN-Study_Return-Migration-2007.pdf, p.4.

⁴⁶ This paper does not cover people who go back to their origin country by their own means and without any assistance. These people can be very vulnerable and also need support.

some returnees are compelled to resort to “voluntary return” to avoid deportation. Several European governments also withdraw social support and benefits to failed asylum seekers as an incentive to have them enrolled on a voluntary return programme, increasing the risk of people falling into **destitution**⁴⁷. For Caritas Europa, **a number of conditions** (that we will elaborate further) **need to be met to ensure that voluntary return is the fruit of an informed decision**, empowering the beneficiary to start a new life and leading to a fulfilling **personal reconstruction** in the return country.

The more than ten years of experience of **Caritas Ukraine** shows, for instance, that well-conceived voluntary return programmes with good pre-departure counselling and a tailor-made approach are much more successful than when returnees are not adequately prepared for reintegration. In the first case, beneficiaries eagerly co-operate and get involved in the design of their return project, increasing the likelihood of a successful reintegration upon return and decreasing re-emigration rates. **Qualitative pre-departure counselling** hugely contributes to a conscious choice for return and allows for a smooth reintegration afterwards. Testimonies from those who have returned on a voluntary basis with the support of other Caritas organisations are described below.

Testimony on AVRR from Caritas Armenia

Aram is 50 years old. He left Armenia (Armavir region) to Belgium alone in 2013 to treat his cancer. After undergoing surgery and receiving medical examinations in Belgium, Aram decided to return to Armenia to join his family in 2016 with the support of Caritas Belgium through the AVRR project.

Within the AVRR project, necessary medicine was provided and medical check-ups were organised regularly for him. A vehicle was purchased to support a small business of fruit and vegetables delivery from his garden to the market. Although, Aram has cultivated his garden and has organised the business with great support of his family during the first six months after his return, the income wasn't enough to cover the medical expenses and basic needs after the support programme ended. So, Aram applied and received a non-interest loan within the Armenian Caritas Migration and Development Revolving Fund to develop his business.



He established dry fruits production nearby his garden, which created a good opportunity for him to transform his business from cultivation and sale in the local market into cultivation, production and export to Russia. Now Aram and his family are happy, as Aram is relatively healthy, they are together and have sustainable income.

⁴⁷ ECRE (2005), The way forward, https://www.ecre.org/wp-content/uploads/2016/07/ECRE-The-Way-Forward-Towards-Fair-and-Efficient-Asylum-Systems-in-Europe_September-2005.pdf

Testimony on voluntary return from Belgium to Senegal (Caritas Belgium)



H. arrived in Belgium in 2010 for personal reasons. He applied for asylum and since then, he lived in different reception centres (mainly government-run Fedasil centres). After his asylum application had been rejected several times, he decided in 2014 to go back to Dakar (but not in Kaolack, his region of origin) in order to open a small grocery store.

Once back in Senegal, contrary to his original plan, H. moved to Kaolack, in the South of Senegal. He took over the shop of a friend to whom he is paying back the shop loan every month. In two months, he will pay off his debt and be able to increase his income and benefits. He used the reintegration budget to buy additional goods for his boutique with members of Caritas Kaolack. They organised several field visits to ensure that H. was not encountering any difficulties in starting his activity. Thanks to the opportunity, H. was given to take over a shop that already existed, his boutique is more furnished than other shops in Kaolack that were launched with the same budget (2,200 euros).

Now, 6 months after his return to Senegal, H. complains about the quality of his fridge and the arrangement of his boutique (the roof is in bad conditions), but for the start, he is coping quite well. Most importantly, he manages to meet his family's needs, which is his priority.

When Caritas International Belgium visited H. in 2015, he did not have more than 2 minutes to dedicate to them, due to the high number of customers. He is lucky not to have too much competition in the surroundings, which allows him to rely on loyal customers. Despite the difficulties that he still encounters, H. does not regret the choice he made to come back to his home country and he hopes to improve his living conditions and his small business in the future.

Conclusion and Caritas Europa's recommendations

Caritas does not dispute the states' legitimacy to implement return decisions once an applicant has exhausted all legal means and remedies to stay legally in a country. Nevertheless, **the credibility of the asylum system should never be judged in terms of the number of people being returned**. Asylum law exists as such, embedded in the Geneva Convention and its rights and guarantees should not be diluted in the name of boosting returns. Migrants who never applied for asylum and who are involved in a return procedure should equally see their **human rights and integrity respected**. Return, being a very sensitive and complex issue, should never be reduced to populist slogans, as is currently done by many politicians willing to appear tough on migration. Henceforth, **Caritas Europa recommends** policy makers to implement the following recommendations when legislating on and implementing return.

Human rights principles and guarantees should prevail

- **Basic safeguards and human rights principles** guaranteed in the EU return directive, such as carrying out return in a **safe, humane and dignified way** must be implemented by Member States, including in transit, border or airport zones and during Frontex operations. Member States are encouraged to enforce **more favourable provisions**, as feasible under the directive (article 4).
- **Collective expulsion and push backs** must be prohibited.
- **Basic rights** such as access to health care and education should always be granted, independent of the stage of the return procedure or the individual's status.
- Asylum applicants should have access to a **fair and efficient asylum procedure** with the necessary safeguards and **legal remedies** before a final return decision is issued, including in hotspots. Asylum applications should be examined on an **individual basis** not based on nationality, even if a person comes from a so-called "safe country" of origin or "safe third country".
- Every person should have the right to a **suspensive appeal** against removal and deportation orders before an independent judicial body and with sufficient time to appeal. Interpreters, access to free legal aid and legal representation during the whole process of detention and removal should be provided by law. **Return decisions** should not be issued together with **removal orders**, as it does not leave time for legal remedy.
- People should never be returned to a country where they would be at **risk of persecution (non-refoulement)**; a careful assessment of the situation in the return country should be systematically carried out.
- **Vulnerable people**, such as pregnant and nursing women, elderly persons, children, victims of trafficking, and sick people should be treated with special attention according to their needs and should also be protected against **removal**. A proper **assessment in the first stages of the procedure** should be made to identify the existence of vulnerability and then attend to it⁴⁸.
- Mechanisms of **early detection and identification of human trafficking victims** as well as specific training ensuring human rights protection should be put in place to target border guards and civil servants working at EU borders⁴⁹.
- **Seriously ill people** (e.g. suffering from HIV/AIDS, renal failure, cancer, and hepatitis) should not be removed unless it is guaranteed that they can get access to appropriate treatment and medical care in the

⁴⁸ http://www2.erso-project.eu/fileadmin/user_upload/X/ERSO_SURE_Manual.pdf

⁴⁹ European Convention on action against trafficking in Human Beings and as proposed in the opinion of the EU expert group on trafficking.

return country⁵⁰. All sick returnees should be provided with adequate medicines for the period needed once returned to avoid their treatment being interrupted abruptly.

- The **best interest of the child** should prevail. Children and unaccompanied minor migrants should be assigned a **guardian**, and should **never be detained or forcibly returned**. In case of return, they should only be sent back when it is safe and in their best interest, after having ensured that the rights they enjoy under the UN Convention on the Rights of the Child will be guaranteed in the country of return. Member States should implement the safeguards and guarantees for the return of children reinforced in the **EC communication “The protection of children in migration for children”**⁵¹. In line with the **Council of Europe** recommendations, the use of invasive **medical exams for age assessment** should be reduced to a minimum and has to remain a measure of last resort⁵².
- **Family unity should be strictly respected** in the return process.
- Removal should not automatically be accompanied by a **re-entry ban**, and/or a recording in the Schengen Information System. If used, a re-entry ban should be **proportionate** and issued on a case by case basis, providing for a right to appeal and clear procedures for withdrawing or suspending an entry ban.
- **Guarantees during mandatory return**: The use of **force** should be no more than absolutely necessary, proportionate and must only be used as a last resort. Forced removal must be carried out with respect to the **right of life and mental and physical integrity** and medical experts should be made available during the return process.
- An **independent monitoring mechanism** should be created to ensure migrants’ **fundamental rights** are respected in all stages of return procedures.

Detention as a last resort measure

- Detention should only be a **last resort** measure, **reasonable and proportionate**. It should not be systematically used as a migration management tool to prevent **absconding**. Detention violates several human rights principles and contributes to the criminalisation of migration.
- **Alternatives** to detention should be implemented as they have proven to be cheaper, more cost-effective and respectful to human dignity than detention⁵³.
- The length of detention should be **as short as possible** and should never be indefinite. The European Commission should refrain from inciting Member States to extend the detention duration.
- **Procedural safeguards and legal remedies** should be clearly enshrined in national law and in internal detention centres regulations. The administrative detention period must be limited to instances where migrants are awaiting effective removal⁵⁴. Free legal, medical, psychological and social assistance should

⁵⁰ “Real access” means “accessibility” as defined in UN Committee on Economic, Social and Cultural Rights - CESCR General Comment no.14, article 12 (Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions Non-discrimination, physical accessibility, economic accessibility (affordability) and information accessibility).

⁵¹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

⁵² <https://rm.coe.int/age-assessment-council-of-europe-member-states-policies-procedures-and/168074b723>

⁵³ These include bail, supervision, guarantee, regular reporting, holistic case management, community assessment and placement model: <https://idcoalition.org/publication/view/there-are-alternatives-revised-edition/> According to the current Return Handbook, the benefits of alternatives to detention include “*higher return rates (including voluntary departure), improved cooperation with returnees in obtaining necessary documentation, financial benefits (less cost for the State) and less human cost (avoidance of hardship related to detention)*”. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf

⁵⁴ ECJ Case C-357/09 PPU Said Shamilovich Kadzoev (Huchbarov) v. Bulgaria.

be guaranteed, as well as the right to be visited by families, NGOs and representatives of faith communities.

- Detention centre regulations should also provide detainees with freedom of movement within the centre, as well as norms of security and hygiene.
- Judicial authorities and independent **control mechanisms** should be allowed to oversee the condition of detention. Detention should be reviewed by a judge once per month to ensure the proportionality of detention.
- Migrants should be detained in **special facilities** and never in prisons with common criminals.
- **Children and unaccompanied minor migrants** should never be detained as it goes against the best interest of the child⁵⁵. In cases of detention, children should never be separated from their families but the entire families should be accommodated in special facilities. If unaccompanied, children should be accommodated in special facilities and assigned a guardian. Their psychological, medical, social and physical well-being, including their education and development should be looked after.
- **Vulnerable people should never be detained** and special facilities and care should be in place to meet their needs.
- **Asylum seekers** should not be detained because they entered a country irregularly.

A people-centred approach in voluntary return

- **Voluntary return should always prevail** over forced return.
- Voluntary return should be **tailor-made, context specific**, and involve a process that allows for an **informed decision** with true choices, including the right by which to choose the moment to return.
- Withdrawing **social benefits and basic rights** should not be used as an “incentive” towards “voluntary” return.
- **Assisted voluntary return and reintegration programmes** should put **people’s wellbeing** at the centre in all the different steps of the return and **medical support** should be ensured. **Vulnerable beneficiaries** must have specific accompaniment.
- **ERSO**⁵⁶ should be an example of **best practice**, especially its specificity to link pre-departure with post arrival phases. The following elements should all be implemented: impartial pre-departure counselling, information on reintegration policies in the country of origin, tailor-made reintegration assistance and monitoring after return.
- **Pre-departure counselling** should be carried out by impartial and trusted professional social services staff using a humane and individualised approach, taking into account the fact that voluntary return is a difficult decision, often entailing shame and depression. An adequate timeframe to prepare the return is needed.
- **Close collaboration with local NGOs** is needed and mechanisms of **information exchange** between the host and return country should be established, both between states’ migration services and NGOs. Economic reintegration activities, such as vocational trainings, business support and other income generating activities, should be applied, tailored to the context of the return country. Such reintegration activities should be explored to ensure a true ownership of the project by the beneficiary toward achieving adequate results.

⁵⁵ UN Conventions on the rights of the Child Article 37(b).

⁵⁶ <http://www.erso-project.eu/>.

- **Risk assessments** of the conditions in the country of origin and a **follow-up monitoring mechanism** are needed to ensure that return does not endanger the returnee's life, particularly in the context of fragile and conflict countries.
- In case of returning people under **medical treatment**, necessary medical follow up is needed to ensure that life-saving treatment will not be interrupted once returned (e.g. cancer, hepatitis C).
- In case of **voluntary return of minors** (accompanied or unaccompanied) reintegration support should be adapted to meet the real need of the children and to ensure that the best interest of the child is implemented⁵⁷.
- In case of voluntary return of **unaccompanied minors**, the relevant stakeholders in the host countries and countries of origin, such as, legal guardians, have to be involved.

Collaboration with third countries not at any cost

- **Development aid** should not be made conditional on collaborating with the EU on migration management and return. According to article 208 of the Lisbon Treaty and development aid principles, aid is aimed at eradicating poverty in developing countries and should be allocated according to their **priority needs** towards achieving the **Sustainable Development Goals**, not being instrumentalised to fulfil EU's migration objectives.
- Cooperation aid should not be used as a bargaining chip to put pressure on third countries to sign **readmission agreements**. The implementation of **readmission agreements should fully respect** human rights.
- Member States should refrain from using **European travel document** given its lack of transparency and the risk of returning people to a country that is not theirs.
- The EU and its Member States should not turn a **blind eye on human rights** when they collaborate with countries of origin and transit, such as Turkey, Libya or other African countries in order to speed up return.
- **Cooperation on return with fragile and conflict countries, such as Afghanistan** should not be at the expense of migrants' safety. People should never be returned to unsafe places where their life would be at risk. Structured monitoring mechanisms must be implemented to ensure that returnees have reintegrated in a safe and sustainable way.
- Migrants should not be returned to a **transit country**, unless the person explicitly gives his/her consent.

Towards ending the limbo situation

- When people find themselves in a limbo situation where they cannot be returned due to a situation beyond their control, their **legal status should be regularised** as quickly as possible.
- States should not cut off migrants from accessing social benefits and basic services, such as health and education; otherwise they risk falling in a status of **destitution** and extreme vulnerability and poverty.

⁵⁷ This includes cooperation on family tracing, supporting child protection systems, helping to address unaccompanied minors needs, adapting reception centers and ensuring access to educational systems.