

**DISCUSSION PAPER No. 229**

## **Advancing the impossible?**

**PROGRESS OF THE JOINT AFRICAN, EUROPEAN AND  
INTERNATIONAL RESPONSE TO THE MIGRATION CRISIS IN LIBYA**

**MIGRATION**

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### **SUMMARY**

Italy's hard-line policy on migration under the new government has sparked renewed controversies about the conditions for migrants and asylum seekers trapped in Libya. The challenge of ending detention and human rights abuses, while reducing migrant flows, has been part of the EU and African policy discourse and actions for the past year since this issue took centre stage at the last AU-EU Summit of November 2017. The urgency of addressing the desperate situation of irregular migrants in Libya particularly gained momentum following the release – shortly before the Summit – of the CNN report on 'slave auctions' in Libya. This paper looks at the work of the joint Task Force established last November by the European Union, the African Union and United Nations to tackle this difficult situation.

The joint Task Force has set three broad objectives: 1) evacuating migrants and asylum seekers from Libya 2) improving conditions for migrants and asylum seekers in Libya, and 3) addressing the smuggling networks. We conclude that this joint response has been fruitful and has achieved some of the objectives set during the AU-EU Summit of 2017. However, there remain ample political and practical challenges. The level of engagement from the African countries of origin and the EU remains insufficient to counter mounting pressures. Some European policy actions supporting interception seem to have even been counterproductive: the complexity of Libya makes it almost impossible to find a lasting solution to migration across the Mediterranean involving this transit country.



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All errors and misinterpretations are those of the author alone.

## Acronyms

AU	African Union
BBC	British Broadcasting Company
CNN	Cable News Network
DCIM	Department for Countering Illegal Migration
DG DEVCO	Directorate-General for International Cooperation and Development
DG HOME	Directorate General for Migration and Home Affairs
ECDPM	European Centre for Policy Development Management
EEAS	European External Action Service
ETM	Emergency Transit Mechanism
EU	European Union
EUTF	European Union Emergency Trust Fund for Africa
GNA	Government of National Accord
HoR	House of Representatives
IOM	International Organisation for Migration
LPA	Libyan Political Agreement
NGO	Non-governmental organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
PC	Presidential Council
SAR	Search and Rescue Activities
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
VHR	Voluntary Humanitarian Return

## Introduction

Italy's current hard-line policy on migration under the new government - including the handover of search and rescue responsibility to the Libyan Coast Guard - has sparked renewed controversies about the situation of migrants and asylum seekers trapped in Libya. Migrants intercepted at sea are returned to detention centres along the Libyan coast, where they will not be formally registered and lack basic necessities. The question about how to address the situation of migrants in Libya and how to end detention and human rights abuses, while reducing migrant flows, has been part of the European and African policy discourse and actions for the past year.

The migrant situation in Libya took centre stage at the last AU-EU Summit held in Abidjan in November 2017. This was not only due to the high political importance that especially European Member States attach to the issue of smuggling of migrants within Africa and towards Europe. The release of the CNN footage on 'slave trade' in Libya shortly before the Summit further accentuated the urgency of addressing the desperate situation of irregular migrants. Although the human rights situation and information about abuses in the North African country were known before,<sup>1</sup> the CNN report drew international media and popular attention and thus triggered a 'new' political impetus.<sup>2</sup>

The final Joint Declaration of the AU-EU Summit emphasised the importance of looking for long-term solutions to address this challenge by underlining the need *"to address the root causes of irregular migration and forced displacement"* and *"to promote a [...] multidimensional approach to migration that takes place in a safe, orderly and regular manner."*<sup>3</sup> At the same time, officials agreed to take urgent and immediate measures to provide protection to migrants stranded in Libya's detention centres. During the Summit, a tripartite meeting took place between the representatives of the AU, EU, and the UN and leaders of Chad, France, Germany, Libya, Niger who decided on an emergency Voluntary Humanitarian Return (VHR) operation to evacuate from Libya migrants held in official detention centres run by the UN-endorsed Government of National Accord (GNA)<sup>4</sup> wishing to go home. The AU, EU, and the UN decided to establish a Joint Task Force to primarily coordinate the repatriations but also to survey on the implementation of other shared objectives on migration management agreed during the Summit.

This discussion paper explores AU-EU cooperation on dealing with the situation of migrants and asylum seekers in Libya since the Abidjan Summit of November 2017. It aims to provide an overview of the key actions undertaken by the Joint Task Force and the progress made as a result of this joint response. It further aims to disentangle some of the difficulties and practical challenges faced when addressing the migration situation in Libya.<sup>5</sup> After presenting the general migration context in Libya in section (1), the paper will briefly introduce the key objectives of the trilateral cooperation that were agreed during the Summit in section (2). Subsequently, section (3) will reflect on the progress achieved and on the key challenges in relation to the shared management of the situation as well as to finding sustainable long-term solutions in Libya. The concluding section (4) will present the outcomes of the strengthened cooperation between the AU and the EU and discuss some implications for their future cooperation on migration.

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<sup>1</sup> See for example: IOM (2017c).

<sup>2</sup> The reports sparked protests before Libyan embassies in several countries, urging the state of Libya to investigate and counter the alleged slave auctions.

<sup>3</sup> AU (2017a).

<sup>4</sup> The GNA was created out of the UN-brokered Libyan Political Agreement (LPA) in December 2015. According to the LPA, the GNA needs to be endorsed by the Tobruk-based House of Representatives (HoR), but this has not yet happened. The Government of National Accord is currently headed by Fayeze al-Sarraj who is also Chairman of the Presidential Council (PC) which has been based in Tripoli since 30 March 2016.

<sup>5</sup> The methodological approach for this paper consisted of desk research (of key official documents and existing literature) and a few key informant interviews.

## 1. Libya's migration turmoil

Following the CNN reports about 'slave trade' in Libya, the North African country has come under international pressure to investigate allegations and bring those responsible to justice. A number of African Heads of State - such as those of Mali, Burkina Faso, and Niger- summoned Libyan ambassadors demanding the Government of National Accord –as the only internationally recognised government- to take actions to stop the slave trade in the country.<sup>6</sup> The Nigerian President Mahamadou Issoufou even demanded the International Court of Justice to start an investigation in Libya on the slave trade.<sup>7</sup> The United Nations Security Council (UNSC) urged the UN-backed government to respect its human rights obligations under international law.<sup>8</sup> The GNA responded by promising to launch an investigation to look into the allegations of slave trade in the country. Yet, as the following brief overview of the current situation of instability, fragmentation, and absence of the rule of law in Libya demonstrates, the Libyan authorities to a large extent lack power and authority to thoroughly put an end to violations of migrants' rights happening across Libya. Moreover, the involvement of some European countries in blocking departures from Libya is believed to have influenced power dynamics in the North African country, further shaking the country's stabilisation and reinforcing the migrants' suffering.

### ***The proliferation of migrant smuggling***

Libya's political transition since the fall of Muammar Gaddafi has been a tumultuous journey, impeded by a myriad of factors including weapon circulation, political divisions, and weak state institutions. These mixed factors facilitated territorial fragmentation, which was used by Libyan and foreign armed groups to indulge in "*illicit activities in all impunity*".<sup>9</sup> Militia groups that control specific territories and logistical assets use the state of lawlessness in the country and employ "*the threat of violence to regulate commodity flows for profit*".<sup>10</sup> In this complex environment, migrant smuggling is only one facet of pervasive illicit activities that are increasingly interlinked. The migrant smuggling business has critically grown in Libya since the demise of the Gaddafi regime: the end of the regime's central control over the distribution of illicit sectors among certain families, tribes, and groups resulted in increased and unrestrained competition over control and influence.<sup>11</sup> In this process, the flow of migrants turned into a source of income for groups inside and outside Libya.<sup>12</sup>

### ***A snapshot of Libya's migrant population***

Migrants in Libya are scattered all over the country, lack access to basic services, and struggle to find job opportunities, which accentuates their vulnerability. The International Organisation for Migration (IOM)'s Displacement Tracking Matrix of March 2018 identified more than 662,000 migrants in Libya from 38 nationalities: 65% of them come from sub-Saharan countries, 28% from North Africa, and 7% from the Middle East and Asia.<sup>13</sup> The top four nationalities are: Egypt (17%), Niger (16%), Chad (12%), Sudan (10%), and Ghana (9%).<sup>14</sup>

Not all migrants present in Libya wish to continue the journey onward to Europe as the country also continues to attract migrants seeking jobs in Libya. This is clearly exemplified by the number of Egyptian migrants in Libya. While Egyptians represent one of the largest migrant groups in Libya, their significant

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<sup>6</sup> Penney (2017).

<sup>7</sup> Cascais (2017).

<sup>8</sup> UN (2017).

<sup>9</sup> Harchaoui (2018).

<sup>10</sup> Harchaoui (2018).

<sup>11</sup> Eaton (2018).

<sup>12</sup> Karasapan (2017).

<sup>13</sup> IOM (2018c).

<sup>14</sup> IOM (2018c).

presence in the country could be explained by Egypt's long-standing migration relationship with Libya, as many continue today going back and forth between both countries.<sup>15</sup> This is also why the composition of migrants in Libya is not reflected in the breakdown of arrivals in Italy: despite accounting for the majority of migrants in Libya, Egyptians represented only 1,3% of arrivals in Italy between January and July 2018.<sup>16</sup>

In addition to the foreign migrant population, the continued fighting in Libya has implication for Libyans who were forced to move inside and outside the country. According to the UNHCR, Libya counts an estimate of 165,478 internally displaced people.<sup>17</sup> At the same time, the worsening security situation in the country and lack of access to medical and basic services has pushed more Libyans to take the perilous journey to Italy: in 2017, 1,234 Libyan nationals fled to Italy - an increase by 39% compared to 2016.<sup>18</sup>

### ***The tragedy of migrants***

Several reports highlight the tragedy of migrants in Libya, including their mistreatment, torture, extortion, forced labour, sexual violence, and, as became more widely-known, the slave-trade like auctions.<sup>19</sup> Most dramatically, abuses of migrants' rights occur not only at the hands of militia in unofficial detention centres – whose number remains unknown – or at the hands of smugglers and traffickers during the journey. Accounts of abuse and violations of migrants' rights have also been reported in official detention centres that are controlled by the GNA. Migrants held in official detention centres lack access to basic necessities and stay in generally inhuman conditions.<sup>20</sup> While Libya established the Department for Countering Illegal Migration (DCIM) in early 2012<sup>21</sup> – operating under the Ministry of Interior – to deal with migration issues and manage the official migrant detention centres, the detention system remains highly flawed and contributes to deepening the suffering of the migrants. When fighting broke out in Tripoli between armed groups in late August 2018, hundreds of detainees found themselves trapped for days in these detention centres without food or care.<sup>22</sup>

While the issue of detention centres has generated much attention from human rights organisations, GNA-controlled detention centres hold only a tiny minority of migrants in Libya, estimated to be 1 or 2% of all migrants in Libya.<sup>23</sup>

The legal environment in Libya is one of the fundamental obstacles to improve the situation for migrants. Libyan law continues to criminalise irregular migration and does not provide for the protection of migrants' rights. As a result, the detained migrants cannot challenge the legality of their arbitrary detention nor have access to any legal support.<sup>24</sup> The poor qualification of staff overseeing the management of the detention centres further compounds the problem.<sup>25</sup> The UN Human Rights Chief described Libya's detention

<sup>15</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>16</sup> UNHRC (2018a).

<sup>17</sup> UNHRC (2018b).

<sup>18</sup> Libya Protection Sector (2018). Libyan arrivals by sea in Italy reached 204 during the month of January in 2018 in comparison with 25 during the same period of the last year (IOM 2018b).

<sup>19</sup> Al Jazeera (2017) and Ratcliffe (2017).

<sup>20</sup> OHCHR (N.d.).

<sup>21</sup> Under Qaddafi, many immigration detention centres were managed by the Passport Investigations Department under the General People's Committee for Public Security. These centres held thousands of persons suspected of being irregular migrants, even including refugees, while others were kept in other regular prisons across Libya. The Passport Investigations Department was largely replaced by DCIM in early 2012. See OHCHR (2016).

<sup>22</sup> Human Rights Watch (2018).

<sup>23</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>24</sup> OHCHR (N.d.).

<sup>25</sup> IOM official at an Expert meeting. Brussels. June 2018.

system as “broken beyond repair”, urging for the need to find alternatives to the entire system rather than trying to remedy conditions in these official centres.<sup>26</sup> The complex situation in Libya makes it very difficult to reach a long-term and sustainable solution that would involve this current transit country. Europe, Africa, the UN, and the GNA are out of good options in Libya. The calls to find alternatives to the system of detention and other measures seeking to improve conditions for migrants in Libya are merely an attempt take small steps and to find some workable solutions in a very tricky context.

### ***The involvement of the EU and its Member States***

The flow of migrants through the Mediterranean has become a major concern for Europe. Migration now stands as the top political priority in Europe, shaping both internal and external politics. Internally, migration increasingly plays a key role in deciding electoral outcomes, leading to the rise of populist parties in several European countries. In Germany, disagreement over the handling of the migration question has threatened to dismantle the governing coalition. Moreover, amidst dwindling EU solidarity and the battle for power between pro-EU and nationalist parties, what is currently at stake is the EU’s system of open borders and the future of the Union. This tense domestic context has triggered a mounting pressure on EU leaders to curtail the migrant flows - even if numbers of irregular migrants have decreased. In terms of external politics, migration is dominating negotiations on external resources in the EU’s upcoming seven-year budget.<sup>27</sup>

This context has propelled the EU and its most affected Member States – mainly Italy – to step up cooperation with Libyan authorities to stem migrant flows from Libya. During the EU’s Malta Summit of February 2017, the EU Heads of States or Government adopted the Malta Declaration<sup>28</sup> which outlined a number of measures to address migration in the Mediterranean mainly by disrupting the smugglers’ business model, supporting the development of local communities in Libya, and improving reception capacities and conditions for migrants in Libya.

During the Summit, the EU further supported Italy’s new deal with the UN-endorsed Libyan Government of National Accord (GNA) to cooperate on border management and to enhance the capacities of the Libyan Coast Guard. Generally supported by the EU, Italy has developed a multi-dimensional strategy to deal with migration through Libya and stepped up its work with the GNA.<sup>29</sup> The key objective is to stop boats from leaving Libya or to intercept them and return them to their point of departure, *inter alia* through allegedly collaborating with armed groups carrying out the pushback.<sup>30</sup> Italy’s plans and actions raised concerns from different parties, including the Council of Europe Human Rights Commissioner, who noted the risks of inhumane treatment of migrants following their return to Libya.<sup>31</sup>

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<sup>26</sup> OHCHR (N.d.).

<sup>27</sup> Veron & Knoll (2018).

<sup>28</sup> European Council (2017).

<sup>29</sup> Toaldo (2017).

<sup>30</sup> Most recently, the new Italian government has gone one step further and has threatened pushback from international waters or even after a boat carrying migrants has landed in an attempt to put pressure on the EU and its Member States to show more solidarity on taking in new arrivals.

<sup>31</sup> Deutsche Welle (2017).

While Italy's new approach successfully led to a dramatic drop in the arrival numbers in Europe from a total of 181,436 in 2016 to 119,369 in 2017 ( a drop of 34%)<sup>32</sup>, it has not come without consequences for the transit country and the situation of migrants. Involving militias – that used to be implicated in human smuggling – in managing smuggling hotspots eventually disrupted “*the power balance among armed groups and sparked local conflict*” in the city of Sabratha, a key smuggling hub on the North-West coast.<sup>33</sup> According to UNHCR reports, the clashes in Sabratha resulted in the displacement of 3,000 Libyan families and more than 10,000 refugees and migrants.<sup>34</sup> Besides, they led to a hike in the number of migrants in detention centres controlled by the government from 7000 in mid-September to 19,000 in early November,<sup>35</sup> which implies overcrowding and worse conditions for the migrants in these centres. Past research predicted such ramifications of short-term measures to curb the flows which would only play “*into the hands of the very same armed groups at the heart of the problem*” and foster destabilisation in Libya.<sup>36</sup> Concluding such agreements with smuggling groups further carries the risk of disrupting existing power balances in the country by increasing the political leverage of these groups.<sup>37</sup> Empowering armed criminal groups and acknowledging them as official state groups and partners fosters impunity. This has implications for state building in the country as it makes “a durable peace harder to achieve”.<sup>38</sup>

It is in this context that the joint response agreed at the 2017 AU-EU Summit is being implemented and which shapes its possible outcomes and challenges. Before looking more closely at the implementation of the European and African actions agreed at the Summit, the following section (2) will briefly outline the main objectives and components of the trilateral agreement and the Joint Task Force.

## 2. Objectives of the joint AU-EU-UN cooperation

During the 2017 Abidjan Summit, the AU and the EU decided to step up efforts to tackle the situation of refugees and migrants in Libya. In order to ensure coordination with the UN agencies dealing with the situation in Libya, a joint AU-EU-UN Task Force was set up. This Task Force coordinates the trilateral cooperation efforts.<sup>39</sup> The GNA and African countries of origin and transit were also meant to play a key role in implementing the measures jointly agreed during the Summit.

Facilitating voluntary return and finding durable solutions for refugees emerged during the Summit as an immediate and urgent focus of the Task Force. A clear division of tasks between the involved actors has been agreed to achieve this goal, as will be detailed below. As for the other two objectives, improving conditions for migrants and refugees and addressing smuggling networks, the Task Force iterated the need for joint work and a coordinated approach in order to progressively reach the desired results.

<sup>32</sup> So far this year, 19,500 have reached Italy between January and July 2018. See UNHCR (2018a).

<sup>33</sup> Eaton (2018) p. 13.

<sup>34</sup> UNHCR (2017a).

<sup>35</sup> OHCHR (N.d.).

<sup>36</sup> The Global Initiative against transnational organised crime (2017).

<sup>37</sup> Torelli (N.d.).

<sup>38</sup> Howden (2018).

<sup>39</sup> The work of the task force is coordinated by the African Union Liaison Office for Libya, based in Tunis.

## 2.1. Facilitating the voluntary return of migrants and finding durable solutions for refugees

The facilitation of voluntary return essentially targets migrants held in government-controlled detention centres and wishing to return home.<sup>40</sup> This would be achieved through scaling up the IOM's Voluntary Humanitarian Return (VHR) programme.<sup>41</sup> It was equally decided to work with the UNHCR on evacuating from Libya 1,300 persons who could potentially be eligible for asylum.<sup>42</sup> These two measures represented the immediate focus of the Task Force. While the IOM and the UNHCR are the implementing partners working on the ground, in order to accelerate the operations:

- The GNA committed to facilitate access of international organisations and consular officials of countries of origin to the detention centres and allow evacuation airplanes to land in Libyan airports.
- The AU's role consisted in maintaining contacts and exchanges with its Member States to provide consular services to identify their nationals in Libya and issue their travel documents in order to expedite the repatriation procedures.<sup>43</sup>
- The EU committed to offer financial support for return and reintegration efforts by committing to fund 15,000 voluntary returns. The EU further promised to support the UNHCR's Emergency Transit Mechanism (ETM) - by which the organisation works on evacuating refugees and asylum seekers with a view of offering them resettlement- with a minimum of 1,000 resettlements by February 2018.<sup>44</sup> The EU, along with its Member States, further committed EUR 100 million to speed up and support the work of the IOM and the UNHCR on the ground allowing them to continue to scale up the operations.<sup>45</sup>

## 2.2. Improving conditions for migrants and refugees in Libya

The Joint Task Force aims to work with the Libyan government on progressively finding alternatives to the system of systematic detention. At the same time, it seeks to implement a comprehensive and systematic registration system at disembarkation points and in detention centres to ensure safety and traceability of all migrants and refugees. This also includes ensuring unlimited access for International Organisations and NGOs to official detention centres to improve the conditions for migrants there and ensure release of vulnerable people.

## 2.3. Addressing the smuggling and human-trafficking networks

According to the joint Task Force, tackling the smuggling and human-trafficking networks requires providing international support for the GNA to bring the perpetrators of human rights violations to justice. The agreement seeks to achieve this through better police and judicial cooperation and freezing assets of convicted smugglers. Addressing smuggling would mean cooperating with key origin, transit and

<sup>40</sup> In the first meeting of the Task Force, the objective was to return 20,000 in six weeks. See African Union Peace and Security (2017). Between 28 November and the second meeting of the Task Force on 14 December, 3100 migrants were assisted to return home. During this second meeting, the Task Force fixed an objective of repatriating 15,000 migrants by February 2018 (EEAS 2017).

<sup>41</sup> "The VHR programme was launched in 2016 as part of the EU-IOM Joint Initiative on Migrant Protection and Reintegration with funding from the European Union Emergency Trust Fund for Africa (EUTF) in Libya and other countries in Africa." See IOM (2018g).

<sup>42</sup> EEAS (2017).

<sup>43</sup> IOM (2017a).

<sup>44</sup> EC (N.d.).

<sup>45</sup> EEAS (2017).

destination countries in the area of justice and law enforcement to strengthen exchange of information, build capacity and counter the culture of impunity. Furthermore, the parties agreed to coordinate positions in Addis, New York and in Geneva to promote African, European and international initiatives aiming at reducing demand, disrupting the supply chain and bringing perpetrators to justice.

Generally, many of the measures that were agreed during the Summit feed into the European Commission's action plan revealed in July 2017 to support Italy and curb migratory flows along the Central Mediterranean Route.<sup>46</sup> However, the accentuated popular and political attention to the situation of the migrants in Libya that coincided with the AU-EU summit helped step up these measures and implement them with the hope of stronger involvement of the African Union and its Member States, mostly countries of origin and transit.

### 3. Implementing the joint response

Both African and European officials seem to agree that the 2017 AU-EU summit created a new momentum in their cooperation on migration. At least for the EU, the Joint Task Force seems to have marked a turn towards a more balanced and true partnership.<sup>47</sup> Following the impromptu Valletta Summit of 2015, relations between the EU and the African Union concerning migration have been somewhat strained. The setting-up of the Joint Task Force thus signalled progress towards improving the relationship. In the following, we discuss the outcome of this joint cooperation by looking at the results of the agreed measures up until the present as well as the major challenges in implementing its three objectives.

#### 3.1. Evacuating migrants and asylum seekers from Libya

##### 3.1.1. Voluntary repatriation of migrants

###### ***Progress on repatriation following the Abidjan Summit***

The shift in AU-EU migration cooperation helped to swiftly achieve some of the objectives set by the Joint Task force. The goal of repatriating - by February 2018 - 15,000 migrants who were held in official detention centres in Libya and wanted to return home<sup>48</sup> was achieved by 1 March 2018 with 15,391 being repatriated by the IOM. While the EU funded most of the returns (10,113), a number of African countries of origin have also contributed to financing return operations (Niger (3, 119), Nigeria (2, 140) and DRC (19)).<sup>49</sup> In 2017, the IOM in total managed the repatriation of 19,370 migrants from Libya to their countries of origin, the majority of whom come from Nigeria, Gambia, Guinea Conakry, and Mali.<sup>50</sup> These numbers reveal a significant progress in comparison with the year 2016, when only 2775 migrants in detention

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<sup>46</sup> The EU action plan mainly consists of: enhancing coordination of Search and Rescue Activities (SAR); stepping up action to improve Libya's border management capacities for controlling sea and land borders; increasing efforts to reduce pressure on Libya and fight smuggling and human trafficking through reinforcing and accelerating work with the IOM, a commitment to launch new resettlement pledges, and working with countries of origin and transit to prevent movement of people to Libya; achieving progress on the return of irregular migrants present in Europe; and delivering on relocation commitments of Member States to relocate migrants from Italy. See EC (2017).

<sup>47</sup> According to a statement by a European Commission DEVCO Official at a public event in Brussels. March 2018.

<sup>48</sup> AU (2017b).

<sup>49</sup> Interview with a European Commission DG HOME Official. Brussels. April 2018.

<sup>50</sup> IOM (2018d).

were returned home.<sup>51</sup> Scaling up repatriation helped bring down the number of detainees in official detention centres from around 20,000 in October 2017 to nearly 4000 in March 2018.<sup>52</sup>

Expediting the repatriation process targets migrants held in official detention centres wishing to go home but who are unable to receive support to do so. The return operations also sought *inter alia* to alleviate the pressure on detention centres that became more crowded since fewer migrants were able to cross the Mediterranean as a result of the Italian policy in Libya.<sup>53</sup> These repatriation efforts have focussed on known official detention centres as a starting point because they are easily identifiable and most accessible. Reaching out to migrants held in unofficial centres largely under the control of militia or to those subject to forced labour and other forms of violence across the country remains however far more challenging.

The voluntary nature of the Assisted Voluntary Return programme has been contested. Some observers argue that return has become more of a necessity than a choice for the migrants given their situation in Libya, which then can explain the shift by humanitarian organisations in Libya towards using the notion of “evacuation” of migrants.<sup>54</sup> However, the clashes in Sabratha also have resulted in more migrants wishing to return home rather than stay in Libya,<sup>55</sup> which means that there is an increasing demand for return and this demand requires to expedite the pace of return operations.

#### ***Practical measures towards expediting the repatriation process***

The acceleration of the return procedures has been made possible through the concerted efforts of different parties, who managed - to some extent - to overcome existing barriers.

First, the IOM played a key role in implementing the voluntary return - even before the trilateral cooperation was agreed during the AU-EU Summit.<sup>56</sup> Facilitating any voluntary return assistance for the stranded and vulnerable migrants necessitates access to consular services as the vast majority of migrants do not possess valid travel documents.<sup>57</sup>

Before agreeing on setting a trilateral cooperation during the Summit, the success of repatriation had been limited because the key involved parties –Libya and the countries of origin- were caught up in a blame game. On the one hand, the GNA had urged countries of origin to step in and help catering for their nationals inside detention centres and repatriate them, usually explaining that slow repatriation procedures were often caused by slow responses from the migrants’ origin countries. On the other hand, origin countries had cited multiple reasons behind delays and their lengthy procedures including concerns about the presence of some terrorists among the returnees, governance issues in Libya, and absence or limited presence of their embassies and consular staff in Libya due to instability in the country.

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<sup>51</sup> IOM (2017a).

<sup>52</sup> IOM (2018e).

<sup>53</sup> This was the result of what happened in Sabratha, with armed groups assuming the role of pushback and preventing boats from leaving Libyan shores. Returning all intercepted migrants to the detention centres led to overcrowdedness and worse conditions for the detainees.

<sup>54</sup> Loschi, Raineri & Strazzari (2018).

<sup>55</sup> Lewis (2017).

<sup>56</sup> The implementation of the IOM’s EU-funded voluntary return scheme for migrants from Libya to countries of origin started in 2016.

<sup>57</sup> Written response by IOM. May 2018.

Since early 2017, the IOM tried to find practical solutions on the ground to facilitate repatriation, which makes it fair to say that much of the background for enhanced efforts following the AU-EU Summit was laid by the IOM's work.<sup>58</sup> The IOM facilitated the repatriation procedures through cutting down usual procedures for screening migrants.<sup>59</sup> In the short term, the IOM has been working to ensure the establishment of basic coordination mechanisms between the consular authorities present in Libya and the capitals in countries of origin.<sup>60</sup> The IOM's work thus helped implement the joint agreement that was reached during the AU-EU summit on scaling up return operations.

Second, the AU's role in ensuring the implementation of the agreement was central as it stepped up dialogue with its Member States and mobilised them to cooperate more swiftly on repatriating their nationals.<sup>61</sup> *"This change would have not been possible without the political will in Africa"*,<sup>62</sup> ascribed to the momentum created through media and public outcry over the migrant situation in Libya. This strong engagement from countries of origin could have been further triggered by the -at least avowed- proactive attitude and support offered from some African countries whose nationals are not the most affected by the migration situation in Libya like Morocco and Rwanda.<sup>63</sup>

### **Challenges to repatriation**

Despite the progress made on repatriation following the AU-EU Summit of 2017, many challenges remain towards scaling up return operations from Libya. A number of difficulties have not been completely resolved following the Summit, and scaling up IOM's VHR operations continues to face several operational challenges.

First, the IOM continued to experience delays in reaching consular services needed to carry out repatriations since many countries still do not have a consular representation to issue travel documents in Tripoli.<sup>64</sup> The IOM seeks to address this issue in the longer term *"by exploring possibilities to provide more systematic support to reinforce consular procedures, increase coordination between the capitals and the embassies/consulates, and enhance cooperation between countries of origin"*.<sup>65</sup> The IOM is also working on developing online consular services that would cover remote areas in Libya, where stranded migrants wishing to go home do not have access to consular services.<sup>66</sup> These online services should be an effective way to reach migrants who find themselves in remote areas and who are unable, for financial or security reasons, to reach the capital city to seek assistance to go back to their countries of origin.

The AU could play a critical role in pushing the African countries of origin for a more lasting pro-active cooperation and engagement on returning their nationals from Libya. The AU could further mobilise countries that have offered to host migrants and asylum seekers - like Rwanda - to follow up on their offers and move towards implementation.

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<sup>58</sup> Interview with a DG HOME official. Brussels. April 2018.

<sup>59</sup> Lewis (2017).

<sup>60</sup> Written response by IOM. May 2018.

<sup>61</sup> Interviews with officials from the EEAS and DG HOME. April 2018.

<sup>62</sup> Interview with an EEAS official. April 2018.

<sup>63</sup> Morocco offered to provide air transport services to return migrants home while Rwanda offered to give refuge to around 30,000 migrants trapped in Libya but not wishing to go back home. The Rwandese offer foresees the involvement of several Rwandese agencies to plan the transport and accommodation of migrants. The specifics of the Rwandan offer - including exact numbers- are to be discussed with the African Union.

<sup>64</sup> Written response by IOM. May 2018.

<sup>65</sup> Written response by IOM. May 2018.

<sup>66</sup> Written response by IOM. May 2018.

Second, in order to be able to leave Libya, migrants do not only need consular services from their countries of origin, but they also need an authorisation to leave the country by the Libyan government.<sup>67</sup> Obtaining these exit visas to facilitate the return operations has constituted a practical challenge. The IOM has been working with the UN-backed government to try to accelerate the issuance of exit visas and lift the high visa fees required by the State of Libya to release migrants out of detention centres.<sup>68</sup>

Third, the security conditions in Libya have further constrained implementation: The IOM experienced difficulties with transporting migrants to be returned home from assembly points out of Tripoli to the nearest airport in and out of Tripoli during and after the scale up operation, mostly due to security considerations. For instance, the airport in Tripoli was closed for a number of days due to clashes between armed groups, which substantially delayed the VHR operations.<sup>69</sup>

Fourth, the evacuation of migrants from Libya helps reduce the number of individuals subject to human rights violations and provides alternatives for those stranded in Libya. Yet returning significant numbers of migrants in a short span of time to the countries of origin can pose several challenges for the countries of origin and for international organisations working on the ground. For the countries of origin, these return operations represent a challenge in terms of the need to provide jobs and opportunities for returnees.<sup>70</sup> The limited capacities of the governments in the countries of origin to offer alternatives to irregular migration puts the returnees in a very vulnerable situation: the returned migrants remain not only jobless but also traumatised due to the failure of their journeys towards seeking a better life and due to the suffering they are likely to have encountered on the route to Europe. In some countries, the returnees are also subject to harsh judgement from their societies who view migrants as a source of hope and income for their families and stigmatise those who return empty-handed.<sup>71</sup>

While policymakers are well aware of these challenges posed by return and include reintegration support in the voluntary return scheme, there are still practical challenges for international organisations in terms of providing timely and adequate support for reintegration. The IOM supports the returnees through providing immediate assistance –such as medical care and hygiene kits-, training, referral, and small support packages.<sup>72</sup> The IOM's work however can be sometimes curtailed due to the migrants being traumatised, illiterate, or living in remote areas.<sup>73</sup> In November 2017, a group of Gambian returnees attacked the IOM offices due to their dissatisfaction with the support they received upon their return.<sup>74</sup> The IOM aims to deal with the situation in the future by building a complete support structure in West Africa whereby those returned will be registered and can then be immediately referred to services.<sup>75</sup> Moreover, the start of IOM's work on establishing a registration and profiling process to better understand

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<sup>67</sup> According to the Libyan law, entry, stay, or exit without a valid visa is illegal and could be punishable with imprisonment. OHCHR (2016).

<sup>68</sup> Written response by IOM. May 2018.

<sup>69</sup> Written response by IOM. May 2018.

<sup>70</sup> Euractiv (2018) and interview with a Gambian minister: Mirbach von (2018).

<sup>71</sup> The example of the Gambia illustrates this. While there are several stories of Gambians who are thankful for their return from Libya, returning home ashamed of their failure, with financial debts, and with no prospects of finding a job drives many of them to stay in the capital rather than return to their place of origin. Lacking concrete solutions on how to best help the returnees have a new start in Gambia drives concerns among the government and NGOs. Concerns also relate to the possibility of some migrants returning not only traumatised but also radicalised, even though there have been no security incidents recorded so far by this population. Unpublished ECDPM research on the smuggling of migrants in West Africa (2018).

<sup>72</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>73</sup> Euractiv (2018).

<sup>74</sup> Euractiv (2018).

<sup>75</sup> IOM official at an Expert meeting. Brussels. June 2018.

the profile of the returnees could be effective in terms of ensuring that reintegration support is adapted to the needs of the returnees and to those of their communities and thus making return more sustainable.<sup>76</sup>

Amid hardening European Member State policies on reception of migrants with Italy and Malta refusing the disembarkation of ships in their ports, there will be a growing need to repatriate the vulnerable migrants from Libya to their home countries. With the handover of the responsibility for search and rescue operations to the Libyan Coast Guard<sup>77</sup>, the numbers of migrants in detention centres is very likely to swell in the future,<sup>78</sup> similarly to the rise in the number of detainees in these centres following the clashes in Sabratha in November 2017.

Regarding this, African countries need to step in and cater for their nationals inside Libyan detention centres while working towards their return to their countries of origin and providing alternatives to deter the returnees from setting again on the treacherous journey. The Joint Task Force could usefully play a coordination role and help ensure the follow-up on different initiatives of African and other countries that offer support for repatriation. An example is the initiative launched by Qatar to support the repatriation of African Migrants in Libya. Besides, both African and European actors need to work jointly on finding solutions for asylum seekers who may not be able to go back to their countries of origin, such as those fleeing Eritrea.

### **3.1.2. Offering resettlement for refugees**

While the repatriation operations discussed above targeted mainly migrants fleeing difficult economic conditions and whose cases are handled by the IOM, in the following the focus is on efforts to evacuate from Libya asylum seekers who would be eligible for asylum under international law as they are fleeing conflicts and civil wars. The evacuation of this group of asylum seekers from Libya is handled by the UNHCR.

While several reports indicate that the majority of migrants travel to or migrate through Libya in pursuit of economic opportunities,<sup>79</sup> the UNHCR registered 51,519 refugees and asylum seekers in Libya by March 2018. Providing resettlement for refugees -especially those identified in detention centres- was one of the key immediate objectives of the Joint Task Force. Following the Summit, joint efforts have helped fulfill the UNHCR's commitment of evacuating 1,300 refugees from Libya by early 2018.<sup>80</sup> Between September 2017 and 6 April 2018, the UNHCR evacuated 1,342 refugees and asylum seekers out of Libya, with 312 sent to Italy, 10 to Romania, and 1,020 persons sent to Niger. The group sent to Niger were accommodated at the UNHCR's Emergency Transit Mechanism in Niamey until their cases are processed and are permanently resettled elsewhere.<sup>81</sup> Finding resettlement places for refugees could entail a waiting period and lengthy procedures to process the asylum applications and receive approval from host countries.<sup>82</sup> This is why asylum seekers are temporarily hosted in a safe environment in Niger rather than leaving them in an instable and unsafe environment.

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<sup>76</sup> IOM (2018a).

<sup>77</sup> Cuddy (2018).

<sup>78</sup> The increase in the number of detainees in detention centres is a result of the growing role of the Libyan coast guard in the interception of migrants at sea and returning them to Libya. The returned migrants are automatically placed in these detention centres, see IOM (2018f).

<sup>79</sup> Altai Consulting & IMPACT Initiatives. (2017) or IOM (2017b).

<sup>80</sup> EEAS (2017).

<sup>81</sup> UNHCR (2018b).

<sup>82</sup> Interview with DG HOME official. Brussels. April 2018.

However, the acceptance of Niger to ‘temporarily’ host asylum seekers during the processing of their claims and resettlement procedures has led to tensions. The slow resettlement procedures that have not kept up with the pace of evacuations from Libya have led the government of Niger to suspend the evacuation programme in March 2018 for two months before accepting again to continue accepting asylum seekers in May. The absence of a predictable and reliable resettlement process for asylum seekers temporarily hosted in Niger carries several risks. First, it threatens the ability of asylum seekers in need of international protection - either those hosted in Niger or those who remain stranded in Libya - to have access to a due individual assessment of their asylum applications. Second, the slow resettlement process could lead Niger to block evacuations from Libya once again, trapping vulnerable people in deplorable conditions in Libya.

Last September, the UNHCR launched a call for 40,000 resettlement places for refugees located in 15 countries along the Central Mediterranean route.<sup>83</sup> In April 2018, UNHCR indicated having received 10,500 pledges for resettlement places of which close to 7000 have been submitted by EU Member States. However, the level of commitment to resettlement remains insufficient. More cooperation on addressing the situation of these refugees would be needed from European countries by implementing resettlement schemes and from African actors by discussing with willing African countries on accepting additional refugees. The AU for instance could enhance its consultations with its Member States and identify countries that would be willing to accept refugees and broadly push for more international solidarity on refugee protection.

### 3.2. Improving conditions for migrants and refugees in Libya

While the repatriation of migrants and finding durable solutions for refugees are critical in terms of providing support for the most vulnerable, many migrants will continue to stay in Libya’s detention centres.<sup>84</sup> These migrants will need protection and an improvement of their conditions and treatment both at disembarkation points and in detention centres. Given the above described dysfunctionality of Libya’s detention system, the IOM and the Office of the High Commissioner for Human Rights (OHCHR) have for long advocated for ending arbitrary detention of all migrants and for finding alternatives to government-controlled detention centres in order to provide protection and improve conditions for migrants and refugees in Libya. The Joint Task Force took forward these objectives, and engaged in consultations with the Libyan authorities on finding alternatives to the system of arbitrary detention.

#### 3.2.1. The quest for large-scale alternatives to detention in Libya

What the Joint Task Force aspires to achieve is to close existing government-controlled detention centres and put in place larger-scale alternatives to the current system of closed detention. According to the IOM, one of their preferred alternatives would be the establishment of ‘open centres’ and safe houses that could mainly ensure improving access to rights and services for migrants, adopting a protection-sensitive approach during rescue at sea, improving conditions inside detention centres, and respecting the principle of non-refoulement.<sup>85</sup> A change towards a more open system aims at improving conditions and providing better protection for migrants.<sup>86</sup> Separating women from men in detention has also been a

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<sup>83</sup> These countries are: Algeria, Burkina Faso, Cameroon, Chad, Djibouti, Egypt, Ethiopia, Kenya, Libya, Mali, Mauritania, Morocco, Niger, Sudan and Tunisia.

<sup>84</sup> While scaling up repatriation procedures following the AU-EU Summit succeeding in bringing down the numbers in official detention centres to 4000 in March 2018, recent reports hint to a new increase in the numbers of people held in these detention centres. This increase is due to the return of migrants intercepted at sea to Libya and placing them in these centres.

<sup>85</sup> Written response by IOM. May 2018.

<sup>86</sup> Written response by IOM. May 2018. and OHCHR (N.d.).

constant request of the IOM.<sup>87</sup> While the existing detention centres are solely managed by the GNA with limited access for international organisations and limited power to change anything, ‘the open centres’ – as foreseen by the joint Task Force – would be co-managed by the GNA and international organisations in Libya, mainly the IOM and the UNHCR.

The proposed new system would be temporary, but according to an official of the European Commission Directorate General for Home Affairs (DG Home) it is essential to move in this direction. First, because the numbers of migrants in Libya are “just too big”; and second, because of worsening conditions in the overcrowded detention places.<sup>88</sup> To this end, consultations have started with the GNA on finding a large-scale alternative to detention than the current closed centres and creating a more systematic registration process for migrants. While finding alternatives to detention in Libya is a priority in order to provide protection for the migrants, these proposals are likely to encounter several political and practical challenges.

### **Political challenges**

Politically, the GNA has not shown a favourable stance on establishing ‘open centres’. While the internationally-backed government has agreed to setting a transit and departure facility in Tripoli for people in need of international protection in November 2017<sup>89</sup>, talks with the GNA on establishing ‘open centres’ – as introduced above – have not been smooth. Joint advocacy efforts have led the GNA to close 25 small official detention centres this year showcasing it as a first step of cooperation towards a change in the system. However these centres had actually not been in operation.<sup>90</sup> At the same time, the key detention centres that continue to host substantial numbers of migrants remain in operation.<sup>91</sup> It has thus not advanced the objective of ending the system of detention..

The Libyan government is concerned that the ‘open centres’ would act as a pull factor and attract more migrants into the small country of 6 million inhabitants.<sup>92</sup> While the Libyan government has an increasing interest in finding a solution to the migration issue, it perceives that establishing ‘open centres’ as an alternative to the current detention system could lead to migrants staying in these centres for prolonged periods since it remains uncertain whether countries of origin would be willing to cooperate on returning their nationals.<sup>93</sup> Such uncertainties about the future of migrants to be hosted in such ‘open centres’ could stem from current difficulties in working with countries of origin on repatriation. Senior officials of the GNA repeatedly expressed their rejection of settling migrants in Libya and ‘open centres’ are perceived as a first step towards such a reality.<sup>94</sup> Most recently, head of the GNA Fayez al-Sarraj stated that Libya rejects establishing big migrant centres on its soil, even when offered financial assistance from the EU.<sup>95</sup> These proposals are also perceived as mere attempts to “revive the pre-2011 status of Libya as a country

<sup>87</sup> William Lacy Swing, director general of the UN Migration Agency. See Swing (2018).

<sup>88</sup> Interview with a European Commission DG HOME official. Brussels. April 2018.

<sup>89</sup> This facility, supported by the Italian government, will facilitate the transfer of thousands of vulnerable refugees to third countries. This seeks to speed up the process of finding solutions in third countries, especially for unaccompanied and separated children and women at risk. These solutions could be resettlement, family reunification, evacuation to UNHCR-run emergency facilities run by the UNHCR in other countries, or voluntary return. See UNHCR (2017b).

<sup>90</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>91</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>92</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>93</sup> This is why the EU aims to tweak Language – wording to make it more presentable- and use the word “facility” with GNA to mitigate these concerns and avoid using more controversial terms like “camp”.

<sup>94</sup> Sarraj has emphasised during a visit to Tunisia in December 2017 that while his government is committed to mobilising all efforts to put an end to the suffering of migrants in Libya, they oppose any proposals that could lead to settling migrants in Libya. See Alwatan news (2017).

<sup>95</sup> Reuters (2018).

that has always hosted migrants".<sup>96</sup> The arrival of sub-Saharan Africans in Libya is not a recent phenomenon as Libya used to host significant numbers of migrants flocking to the country in pursuit of job opportunities. However, it is not possible to replicate this migration pattern today as "Libya stands in the middle of an economic and monetary crisis".<sup>97</sup>

Concerns about migrants remaining bottled up in Libya are not exclusive to the GNA, as such fears were voiced by the GNA's rival, Field Marshal Khalifa Haftar commander of the Libyan National Army. Haftar was very critical of the GNA's cooperation with Italy on migration, and previously stated that solving the migration issue should not involve Libya's shores as blocking departures from Libya will only lead to migrants staying in the country. The GNA may be likely to want to avoid another point of contention in the relationship with its rivals in the east.

While according to the joint Task Force, international organisations should play a key role in managing the 'open centres', the GNA refuses the involvement of foreign personnel in managing such facilities in Libya.<sup>98</sup> According to Mohamed Bishr, head of the Department for Countering Illegal Migration, while the EU provides support for the migrants in Libya through international organisations, what would be more interesting from their perspective is for the EU to offer this support directly to the Libyan state.<sup>99</sup> This suggests that the GNA has no interest in dismantling the detention system, but it is rather interested in keeping this system in place and receiving support to do that, which is exactly the opposite of what the Joint Task Force seeks to achieve. At the same time, any discussion on providing direct financial support to the GNA and its migration authority would be highly controversial regarding instances of collusion- as was revealed in some cases- between armed violent militia and officials managing government-controlled detention centres.

Political resistance from the GNA on closing the detention centres also stems from the fact that detention is a whole system run by a governmental authority - the Department for Countering Illegal Migration as introduced earlier in the paper. Dismantling it could potentially interfere with the interests of groups who benefit from the management of these centres. It could spur dissatisfaction and anger directed towards the GNA, which already has limited authority and is struggling to assert its legitimacy as a national actor.<sup>100</sup> Given the political risks involved, the Libyan government thus seems to have no willingness to cooperate on finding large-scale alternatives to the current system of detention.

### ***Practical challenges***

Even if the GNA was in favour of establishing such 'open centres', a number of practical concerns related to implementation on the ground would need to be overcome, if the IOM and the UNHCR take larger responsibilities for co-managing 'open centres'. Practically, guaranteeing safety for migrants and respect of their rights is challenging in an often ungoverned and unstable environment. This would put international organisations tasked with guaranteeing a minimum of migrants' rights in centres within Libya in a difficult position given the overall situation in the country. Libya lacks a suitable legal and institutional framework to provide protection for migrants and ensure respect of human rights more broadly. The situation is further complicated by the sheer number of irregular migrants in Libya and the fragile

<sup>96</sup> Interview with Jalel Harchaoui, researcher at Paris 8 Université. May 2018.

<sup>97</sup> Interview with Jalel Harchaoui, researcher at Paris 8 Université. May 2018.

<sup>98</sup> Wintour (2018).

<sup>99</sup> Ica Lybia (2018). In this press statement, Bishr explains why in his view, direct support to the Libyan state would be justified. He notes that the role of international organisations is restricted to curing some simple diseases, but DCIM officials are the ones who need to deal with the more complicated cases. According to him, sometimes urgent medical help for migrants is needed at late hours at night when it is not possible to reach international organisations. At the same time, DCIM alone does not have the capacities to deal with the migrants' needs.

<sup>100</sup> IOM official at an Expert meeting. Brussels. June 2018.

governance and security situation in the country. The absence of rule of law in Libya would make it very challenging for the IOM or the UNHCR to ensure the security of these centres and protect the thousands of migrants that would be hosted inside.

While the idea of the Task Force is to rely on the role of the UNHCR and the IOM in co-managing the 'open centres' to offer human rights protection to the migrants, it would be challenging to ensure security of the centres and their surroundings on the ground. The attack on Libya's electoral commission in Tripoli in May 2018 was only a reminder of the GNA's limited capacities and ability to provide security even in the areas under its control. The event further cast doubt on the GNA's actual ability to protect polling stations and ensure the successful organisation of the upcoming elections later this year. Such a domestic volatile context marked by violence and instability puts into question whether 'open centres' and alternative systems for hosting migrants are able to guarantee any protection for migrants stranded in Libya in the long-term.

These different political and practical challenges to create large-scale alternatives for detention demonstrate that such an objective is far from being feasible, at least in the near future. The volatile situation in Libya and the inability of the UN-backed government to address the security situation in the country implies that establishing facilities in Libya in the form of 'open centres' to host migrants would carry challenges in terms of ensuring the migrants' rights during their stay in the country.

While fully aware of these challenges, international organisations push for finding such alternatives in order to achieve minimum protection for the migrants in Libya, as the presence of migrants in the country will continue to be a reality. Above all, should the Joint AU-EU-UN Task Force reach an agreement with the GNA on setting such safe 'open centres' in Libya, this should not be used as a justification to send people back to Libya.

### **3.2.2. The quest for small-scale alternatives to detention in Libya**

While there has not been any registered progress in terms of consultations with the GNA on finding large-scale alternatives to detention, the IOM has made progress in implementing small-scale alternatives to detention for the most vulnerable individuals, such as the 'host family system'.<sup>101</sup> Yet, the identification of vulnerable migrants eligible for alternatives to detention - such as elderly migrants at risk, pregnant women, or unaccompanied and separated children- and how they are released from detention remains a challenge as these individuals are released on an *ad hoc* basis based on negotiations between IOM staff, consular authorities and the authorities managing the official detention centres. What the IOM seeks to achieve is a more systematic way of releasing the most in need.<sup>102</sup>

The controversial conditions of GNA-controlled detention centres combined with the very little prospects of finding large-scale alternatives to the detention system has created a dilemma for international actors in terms of how to best deal with the existing detention centres. Regarding the current situation, improving conditions in official detention centres has become the only viable means to offer assistance to detained migrants. In addition to pursuing the small-scale alternatives to detention, international organisations work on providing only basic services in the centres such as providing food and health care, building showers and toilets, and offering capacity building for officials, but without contributing to expanding the physical

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<sup>101</sup> While there is no specific definition of "the host family system" online, the idea is to place vulnerable migrants with families that can take care of the migrants until a more long-term solution is found for the migrants.

<sup>102</sup> Written response by IOM. May 2018.

space to host more migrants.<sup>103</sup> The Joint AU-EU-UN Task Force seeks to achieve this through scaling up the presence of international organisations in Libya.

### 3.2.3. The quest for safe places outside Libya

The complex situation in Libya and the difficult discussion with the GNA have implications for the broader debate on possible solutions to the migrant situation beyond Libya. The IOM and the UNHCR have called for building on the ongoing trilateral cooperation between the EU, the AU, and the UN to establish a region-wide cooperation on receiving migrants. The call for this region-wide approach for dealing with the disembarkation of migrants became more prominent since the Libyan Coast Guard obtained its own search and rescue zone. This has generated much criticism regarding recent accounts of violations of human rights perpetrated at the hands of some members of the coast guard.<sup>104</sup>

As Libya cannot be a safe place to return migrants to and southern European countries are no more willing to allow rescue boats to disembark at their ports, the UNHCR and the IOM emphasise the importance of a new collaborative approach to better manage the disembarkation of people rescued at international waters by bringing them to a safe location “*in the EU, and potentially elsewhere too.*”<sup>105</sup> These ideas have more concretely seen the light during the EU Council Meeting on 28 June 2018 where the EU Commission unveiled a proposal to develop and implement regional disembarkation platforms in third countries while also working towards establishing “controlled centres” in EU countries. According to the EU, the disembarkation platforms in third countries could be established in close coordination with the interested third countries, the IOM, and the UNHCR, and these platforms seek to “ensure a truly shared regional responsibility on replying to the complex migration challenges”.<sup>106</sup> However, it is unlikely that both agencies would take a role in operating such platforms in third countries outside the EU and have noted that their involvement would be limited to providing support to host states of such platforms.<sup>107</sup>

So far, the EU has revealed some initial details on how the regional disembarkation platforms would work in practice, though many remain missing.<sup>108</sup> Essentially, this proposal seeks to immediately send people that are intercepted at sea to “a place of safety” in a third country while ensuring compliance with international law.<sup>109</sup> Following the disembarkation, the migrants would be “registered, screened, and receive assistance based on their specific needs”.<sup>110</sup> Then, the cases of these migrants will be processed, and adequate “differentiated solutions” would be offered. Durable solutions, including resettlement, will be found for those in need of international protection. Those fleeing harsh economic conditions and who are not eligible for international protection would be returned to their countries of origin.

However, these objectives of finding resettlement for refugees or repatriating migrants are likely to face the same obstacles that have been faced in Libya and Niger, as discussed earlier in the paper. There are likely to be questions about how to distribute those needing international protection among EU Member States, which means that establishing these regional disembarkation platforms will not overcome the

<sup>103</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>104</sup> For instance, in one incident, the Libyan Coast Guard was accused of leaving behind three people at sea after intercepting a migrant boat: The Guardian (2018).

<sup>105</sup> UNHCR (2018c).

<sup>106</sup> European Commission (2018a).

<sup>107</sup> UNHCR and IOM (2018).

<sup>108</sup> More practical details on choosing where to establish these reception facilities, coordinating and arranging the disembarkation operations are not yet cleared, and will most likely depend on consultations with the third country.

<sup>109</sup> According to the EU, “disembarkation in a third country is possible if the search and rescue is carried out in the territorial sea of that country by its coast guard or by other third country vessels. If the search and rescue occurs in international waters and involves an EU State’s flag vessel disembarkation can still take place in a third country, provided that the principle of non-refoulement is respected.” European Commission (2018b).

<sup>110</sup> European Commission (2018a).

challenge of enhancing solidarity among EU Member States on dealing with the migration challenge.<sup>111</sup> Besides, keeping the migrants and asylum seekers for extended periods in the third countries could still entail legal challenges as they could find themselves in “potentially unsafe conditions”.<sup>112</sup>

So far, pursuing the objective of establishing such regional disembarkation platforms has been critical for the EU. First, this arrangement would outsource the task of processing new migrant arrivals and alleviate pressure on the southern European countries that are no more willing to allow disembarkation for rescue boats. Second, setting these platforms could constitute an alternative to the difficult discussions with the GNA on finding large-scale alternatives to detention. Third, creating these regional platforms in more stable countries with fewer risks of human rights abuses would be less controversial than seeking solutions through Libya. Fourth, this proposal seeks to preempt the risk of a new hike in irregular migration across the Mediterranean.

Seeking to address potential concerns about hosting these platforms among third countries, the EU commits to develop measures that would mitigate the risk of creating pull factors. These measures would include for example enhanced border management and targeted communication to clearly convey that resettlement will not be available to all those in need of international protection. In return for cooperation on hosting these facilities, the EU commits to cover related costs and promises to offer “tailor-made and targeted packages” and to enhance his political, operational, and financial support for the interested countries. Despite EU promises to provide generous packages for the interested countries, North African countries have not shown any readiness on hosting these disembarkation platforms.

Egypt has recently strongly emerged as a likely candidate to host a disembarkation platform, increasingly praised for its success in almost completely ending migrant departures from its coast.<sup>113</sup> The North African country has been the target of several visits from EU and Member State officials. According to Austrian Chancellor Kurz, Egypt is the first country in North Africa to show readiness to deepen talks with the EU.<sup>114</sup> However, last June, the Egyptian foreign Ministry announced that it rejects this concept, and that this stand is based “on an utter rejection towards isolating or rejecting migrants”.<sup>115</sup> It seems that Egypt has not changed its stand on the issue, though not much has been revealed on the results of these talks. For some EU politicians, the prevailing of the practical and legal challenges with regional disembarkation platforms as well as the difficulty of finding partners has led EU politicians to more strongly emphasise the role played by third countries in reducing departures in the first place. During the recent EU leaders Summit, Austrian chancellor Kurz noted that disembarkation platforms “are not essential to solve the problem of illegal migration.” Instead, he praised Egypt as an example in dealing with irregular migration.<sup>116</sup> Beyond securing its own borders, Egypt could also have a significant influence with armed groups in neighboring Libya, which is of critical importance for the EU.<sup>117</sup> The EU will continue to push for a solution that involves North African countries through increased diplomatic efforts, for instance as shown by the initiative to organise a summit with the League of Arab States Summit in February 2019.

In sum, the quest for an alternative to the system of detention in Libya will continue. As the work of the Joint Trilateral AU-EU-UN Task Force has been extended after its mandate came to an end in May 2018, it is critical to look at the contradictions between the objectives of the Task Force and the policy of cracking down on departures from Libya. While the Task Force seeks to enhance protection and improve

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<sup>111</sup> Maiani (2018).

<sup>112</sup> Maiani (2018).

<sup>113</sup> Lotfi (2018).

<sup>114</sup> Egypt Today (2018a).

<sup>115</sup> Egypt Today (2018b).

<sup>116</sup> Eder (2018).

<sup>117</sup> Cook (2018).

conditions for migrants, sending intercepted migrants by the under-equipped and under-trained Libyan coast guard back to Libya only risks to further deteriorate the situation in detention centres. By sending migrants back to Libya, more migrants would be subject to random detention as the policy in Libya has not changed and is unlikely to do so soon.<sup>118</sup>

As the situation of migrants in detention centres is very likely to deteriorate, the AU and African countries of origin need to step up their work to deal with this dilemma and provide protection for their nationals stranded in Libya, not only those in detention centres but also those living and working in Libya. Reports of migrant exploitation and forced labor in Libya are not uncommon. African countries who have embassies in Libya need to mobilise them and take a more proactive role in following up on the release of their nationals from detention centres and intervening to advocate for their best interest.<sup>119</sup> As for those countries without diplomatic representation in Libya, it will be critical to coordinate more swiftly with the IOM to send consular officials to Libya when needed to process the cases of their nationals.

### 3.3. Addressing the smuggling networks

Tackling the smuggling networks is the third key objective identified by the Joint Task Force. This would be achieved through conducting investigations, bringing the perpetrators of human rights violations to justice, and freezing assets of convicted smugglers. In order to achieve this, better police and judicial cooperation is needed between the GNA - as the only internationally recognised government in Libya - and external partners, including neighbouring countries and the EU.

#### 3.3.1. Positive steps towards tackling migrant smuggling in Libya

Some steps were taken towards combating smuggling networks. The Attorney General in Libya announced in March 2018 an arrest warrant for 205 Libyans and foreigners involved in migrant smuggling, a list that includes people who are members of the Libyan security apparatus and were managing official detention centres. Beyond mere smuggling of migrants, the accusations include human trafficking, torture, murder, and rape.<sup>120</sup> Some reports indicated that the list even includes officials from embassies of African countries based in Libya.<sup>121</sup> The investigations were conducted jointly between Libya and Italy after both countries agreed on setting a crime-fighting cell in late 2017. While issuing this list is important in terms of identifying individuals suspected of being involved in smuggling activities and fighting impunity, the following factors will be important as to whether these people will be arrested, and if arrested, whether they will eventually be prosecuted.

#### 3.3.2. Challenges to dismantling smuggling groups

While partnering with the GNA seems to be the only viable entry point to combat smuggling networks, the state of instability and fragmentation in Libya impedes a fruitful cooperation with the internationally recognised government on smuggling. For the GNA, dismantling the smuggling business would require adequate authority and capacities. However, next to the fact that the GNA only controls small parts of the country's territory, it also has only limited authority in the parts that it does formally control. Moreover, the legitimacy of the GNA continues to be questioned inside Libya itself as the country remains torn between multiple centres of powers.<sup>122</sup>

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<sup>118</sup> McVeigh (2018).

<sup>119</sup> IOM official at an Expert meeting. Brussels. June 2018.

<sup>120</sup> BBC (2018).

<sup>121</sup> Carmichael (2018).

<sup>122</sup> For an overview of the key actors in Libya, see: Fitzgerald & Toaldo (N.d).

On top of the lack of control and power that the GNA has over territory even within the capital, matters are complicated by an overlap between armed militia and state security groups in many instances. While the Department to Counter Illegal Migration (DCIM) is charged with overseeing the official detention centres, in some cases militia groups have taken the de facto control in official centres formally under the tutelage of the DCIM. For instance, a local militia group called Nasr Brigade controls the supposedly government-controlled detention centre in Zawiya.<sup>123</sup> Existing linkages between armed militia involved in smuggling and the Libyan coastguards are not uncommon either.

Most recently, the UN Security Council added Abd al Rahman al-Milad who was heading the regional unit of the Coast Guard in Zawiya to its list of individuals subject to UN sanctions.<sup>124</sup> Milad, along with members of the Coast Guard in Zawiya, was involved in violence against migrants, including sinking migrants' boats using firearms, as claimed by the UN Panel of Experts.<sup>125</sup> He also collaborated with other migrant smugglers who provided him with coverage and protection to engage in illicit activities related to smuggling and trafficking of migrants. Thus, the blurred line between the state and the militia in Libya fosters impunity and challenges the rule of law. As one Libyan researcher puts it, "even if they put names in lists, this is not going to change things on the ground".<sup>126</sup> Besides the fact that the GNA lacks power and capacities to address smuggling, this reported collusion as well as the entrenchment of smuggling in the local economy could make the GNA reluctant to properly address the smuggling issue. After all, the GNA wants to avoid a disruption of power balances which are beneficial to its survival.

Nonetheless, last June, the GNA signed a quadripartite agreement on border control with Sudan, Chad, and Niger to fight all forms of cross-border crime. A ministerial meeting was further launched in Khartoum in August to coordinate this cooperation.<sup>127</sup> While the results of this cooperation are yet to materialise, this agreement could signal the GNA's increasing interest in addressing smuggling, which seems to be at least partly a result of international pressure. As noted earlier, the GNA has limited authority in Libya, and this is particularly true in the tribal areas in the south of the country where the smuggling activities concentrate,<sup>128</sup> which raises challenges with regards to achieving border control and tackling migrant smuggling.

Past EU initiatives in the field of Security Sector Reform and support to border management in Libya's South have faced several challenges that can provide lessons for future initiatives. This includes institutional fragmentation, limited authority of the GNA, and inadequate analysis of Libya's border economy, which has led to limited, if any, progress on reforming the security sector in the country.<sup>129</sup> Most importantly, excluding local actors not associated with the GNA from any attempt to manage the southern borders is likely to be counterproductive because this could exclude actors who have significant authority or territorial control.<sup>130</sup> Recent research stresses the importance of engaging and including all varied groups vying for influence in the south in efforts aimed at addressing irregular migration and smuggling to avoid the risk of sidelining the needs and concerns of these groups.<sup>131</sup>

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<sup>123</sup> Eaton (2018).

<sup>124</sup> UN (2018a).

<sup>125</sup> UN (2018b).

<sup>126</sup> Interview with Jalel Harchaoui, researcher at Paris 8 Université. May 2018.

<sup>127</sup> The four parties agreed on forming a Joint Operations Centre that will undertake Joint operations and patrols and further agreed on judicial cooperation. The Joint Operations Centre would be hosted in Chadian capital of N'Djamena.

<sup>128</sup> See for example: Atilgan, Ertl & Engelkes (2017).

<sup>129</sup> Loschi, Raineri & Strazzari (2018).

<sup>130</sup> Loschi, Raineri & Strazzari (2018).

<sup>131</sup> al-Arabi (2018).

There are clear differences that underpin the functioning of smuggling networks in Libya's southern, central and coastal regions, which is why a one-size-fits-all approach to addressing smuggling in Libya is unlikely to yield positive results.<sup>132</sup> With its trilateral cooperation, the Joint Task Force could support the new cooperation initiative between Libya and its neighbours but also strive towards building a holistic approach to tackling migrant smuggling that is adapted to different realities on the ground and which does not sideline the concerns of local communities.

## 4. Conclusions

The international attention and outcry following the release of media reports on slave trade-like auctions in Libya triggered political reactions and a joint response from the AU, the EU, and the UN. Since then, the coordinated approach of these three actors has been fruitful and has achieved a number of the jointly set objectives during the AU-EU Summit of 2017. Progress – though with varying degrees – has been accomplished regarding the repatriation of migrants to their countries of origin, the provision of protection to asylum seekers, small-scale alternatives to detention, the improvement of living conditions in official detention centres, and the identification of individuals involved with the smuggling networks. Besides, this cooperation has somewhat reinvigorated the strained relations between the AU and the EU on migration following Valletta.

Despite several shortcomings, the Joint Task Force signals a positive change in terms of coordinating approaches between European and African actors and revamping their migration cooperation. This is also illustrated by the extension of the mandate of the Task Force. Some EU officials are hopeful that this recent cooperation could spur stronger political engagement and consistent work with pan-African institutions and African countries on migration issues.<sup>133</sup> There remains however concrete and ample political and practical challenges with regards to advancing the jointly-agreed objectives as outlined in this paper. While the current emergency measures are important, a solution for migration across the Mediterranean is not likely to be reached through the points of transit given the complexity of the Libyan context.

On the European side, the Italian policy focus on blocking departures from Libya has been highly controversial as it has undermined progress on the objectives identified in the joint cooperation between the AU, the EU and the UN. While this trilateral cooperation seeks to alleviate pressure on detention centres and enhance the migrants' living conditions there, the crackdown on departures from Libya at the hands of the Libyan Coast Guard risks aggravating human rights violations against migrants and exacerbating inhumane conditions in the detention centres. Providing protection for migrants and asylum seekers in Libya is a priority for the Joint Task Force. This is why it is important for the EU and its Member States – next to resolving the tensions between current containment policies and its own values – to further facilitate a reliable and predictable resettlement process for asylum seekers temporarily hosted in Niger. This would usefully go hand in hand with continuous support for the Voluntary Humanitarian Return programme as well as the support for sustainable reintegration policies for the repatriated migrants developed in consultation with partner countries' authorities.

While working with countries of origin on return and reintegration is one of the key and important measures in managing migration, the EU's broader response to migration could include reforming legal access to the EU. In order to make use of different policy tools to address migration, the EU needs to

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<sup>132</sup> al-Arabi (2018).

<sup>133</sup> Statement by an EU official at a public event in Brussels. March 2018.

develop credible legal channels for migration that extend benefits to different levels of skills as a long-term policy to accommodate demands for mobility and reduce the market for smuggling and human trafficking. These legal pathways for mobility need be aligned with different needs and offers of the labor market in Europe, including those offers requiring low- or middle-skilled workers.

On the African side, despite notable progress, the level of engagement from African countries of origin and their role in providing protection for their nationals in Libya and repatriating them remains insufficient to counter mounting pressures. The AU could usefully continue to push African countries of origin for a more lasting pro-active cooperation and engagement – that extends beyond the high momentum created during the AU-EU summit- on supporting the voluntary return of their nationals from Libya. The AU could also try to mobilise countries that have offered to host migrants and asylum seekers to follow up on their offers and move towards implementation.

African governments whose nationals are escaping difficult economic conditions need to step in and cater for their nationals inside Libyan detention centres while working towards improving outlooks for returnees. Countries who have embassies in Libya should take a more proactive role in following up on the release of their nationals from detention centres and intervening to advocate for their best interest using their diplomatic channels. Those without a diplomatic representation in Libya could establish a more swift coordination with the IOM in order to provide support for repatriation. This includes sending consular officials to Libya when needed to process the cases of their nationals. Finally, the repatriated migrants encounter several challenges to an efficient and lasting reintegration in their societies after return. Beyond blueprints, governments in the countries of origin need to work towards providing alternative opportunities based on careful understanding of people's aspirations upon return and in relation to migration, so that the renewed need for embarking on dangerous journeys may be offset.

In sum, both European and African actors need to ensure more coherence in their approaches and to meet rhetoric with action. As the Cotonou agreement expires in 2020, the EU-Africa relations are on the path of being renegotiated. The EU and the AU have in the past developed a number of frameworks for joint action, yet successful implementation of jointly agreed plans on tackling migration has been limited for several reasons, including for differences in priorities; approaches; and capacities for dealing with migration. Nevertheless this critical moment could offer an opportunity to reshape EU-Africa relations and negotiate comprehensive agreements on migration, based on mutual interests and a true partnership.

The recent engagement from African countries of origin on migration however also shows that there is an increasing awareness of the need to address this issue, and this could trigger a new approach to dealing with this question. The African Union has recently revised its migration policy framework and adopted a free movement protocol. Besides, the AU has agreed – following a Moroccan proposal – to establish an AU observatory for Migration and Development in Rabat that would help better understand African migration, anticipate patterns, and act on migration challenges. These African initiatives will need to be reflected in AU-EU cooperation; which ideally helps support their implementation in order to establish a lasting and genuine joint cooperation.

### **List of interviews**

Interview with an official from the European Commission DG HOME. Brussels. April 2018.

Interview with an official from the European External Action Service (EEAS). Brussels. April 2018.

Interview with IOM (received as a written response). May 2018.

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