



# Who Can Be Sustainably Reintegrated After Return?

## Using post-return monitoring for rights-based return policies



### Executive Summary

This policy brief addresses people's post-return vulnerabilities and protection needs beyond refoulement and demonstrates that returns can both exacerbate existing, as well as create new vulnerabilities.

In Objective 21 of the Global Compact for Migration, states commit to facilitate safe and dignified return and ensure that reintegration of migrants upon return is sustainable. In this respect, the policy brief asks two questions: Which factors exacerbate existing or create new vulnerabilities after return and thus preclude the sustainability of reintegration? What responsibilities emerge from these vulnerabilities for states that implement returns?

The brief answers these questions on the basis of fieldwork carried out between 2016 and 2019 with people forcibly returned from European countries. Relying on this empirical material, the policy brief argues that rights-based return policies need more robust vulnerability assessments and more extensive monitoring of people's access to rights and well-being after return.

Return policies are only effective if they are sustainable. Yet, which return trajectories can lead to sustainable reintegration? This is a question which policymakers and practitioners have so far shied away from.

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## Introduction

Return of migrants in an irregular situation - the European Union (EU)'s policy term for expulsions or deportations - is one of the key priorities for both the EU and its member states. Every year EU countries issue around 450.000-500.000 return decisions to people on their territory (Eurostat, 2020). Despite the high numbers of people subject to removal orders, there is little evidence about what happens with migrants, their families and communities after a forced or an otherwise obliged return.<sup>1</sup> States do not systematically collect information about the economic, social and cultural human rights situation of returned people.

Under the EU Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter Return Directive), states should ensure an effective forced-return monitoring system (art.8(6)). Monitoring mechanisms in place, however, cover only aspects of the return process, such as the use of force before and during a deportation flight. They do not extend to reception and identification proceedings for deportees at airports of arrival (Amnesty, 2017, 43- 62), let

alone more long-term post-return dynamics after arrival.

At the global level, policymakers have promoted the idea that returns should result in sustainable reintegration. In Objective 21 of the Global Compact for Migration, for example, states commit to facilitate safe and dignified return and to ensure that reintegration of migrants upon return is sustainable. The International Organization for Migration (IOM) defines reintegration as sustainable "when returnees have reached levels of economic self-sufficiency, social stability within their communities, and psychosocial well-being that allows them to cope with (re)migration drivers" (IOM, 2017).

The policy goal of sustainable reintegration has achieved across the board consensus, as well as heavy financial investments by, for example, the EU.<sup>2</sup> This may be explained by the relative open-ended definition of sustainability (Marino and Lietaert, 2019), as well as the corresponding challenges of rigorous scientific enquiries into the impact of reintegration assistance (Pasche, 2014). Consequently, investigations into the impact of financial investments into return and sustainable reintegration have focused on the programme and project, rather than the policy level.

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<sup>1</sup> For the purpose of this policy brief, a "forced" return refers to a deportation. When individuals decide to comply with a return because they received a removal order or are

for other reasons already in detention, these returns are referred to as "obliged" (Newland and Salant, 2018).

<sup>2</sup> See for example, <https://migrationjointinitiative.org/>

Studies and evaluations of reintegration assistance programs, for example, are emerging, but rarely take a rights-based approach.<sup>3</sup> In addition, studies of reintegration assistance are, by definition, based on interviews and surveys with those returnees who indeed received reintegration assistance. Not all returnees, however, are eligible for assistance, and even those who are might face in practice very real access barriers to this assistance.<sup>4</sup> Finally, frameworks for sustainable reintegration were initially developed in the context of voluntary returns, not accounting thus for the different degrees of pressure, obligations and force that some returnees are subjected to prior to return (Newland and Salant, 2018).

This policy brief seeks to address the knowledge gap about people's vulnerabilities and rights after return and to connect this gap with ongoing policy discussions about sustainable reintegration. The objective of this policy brief is to investigate the impact of return on people's vulnerabilities in general and their enjoyment of social and economic rights in particular. On the basis of empirical research data from Nigeria and Mali, the authors of the brief demonstrate that returns can both

exacerbate existing, as well as create new vulnerabilities upon return. Consequently, not every return can lead to sustainable reintegration. The policy brief asks two questions in the light of these findings: which factors exacerbate existing and create new vulnerabilities after forced return? And what responsibilities emerge from these vulnerabilities for states that implement returns? In conclusion, the authors of the brief argue that rights-based return policies need more robust vulnerability assessments and more extensive monitoring of people's access to rights and well-being after return.

## **Pre-return vulnerability assessments and rights-based post-return monitoring**

Following the principle of *non-refoulement*, firmly established in international law, states are prohibited from sending anyone to a risk of inhuman or degrading treatment upon return. Rejected asylum seekers can, for example, face severe risks in connection to their asylum applications submitted in EU countries (Pirjola, 2019) and victims of human trafficking can fear

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<sup>3</sup> For examples of rights-based return monitoring, see for the case of Turkey (Amnesty International, 2019) and (Alpes et al, 2017); for the case of Afghanistan (Amnesty International, 2017) and (Refugee Support Network, 2016); for the case of Sudan (Amnesty International, 2016, 46- 51) and (Waging Peace, 2012); for the case of the DRC (Ramos, 2019) and (Alpes, 2019), and for the case of monitoring in

relation to the Geneva Convention in general, (Pirjola, 2019).

<sup>4</sup> For numbers to document the scale of possible access barriers for eligible returnees for return operations from, for example Libya and Niger, see (Alpes, 2020).

retaliation from their traffickers upon return (Paasche et al, 2018, 34-51).

This policy brief focuses on the risk of violations of another set of returnees' rights, namely economic and social rights. Forced and obliged returns have a direct impact not only on the physical integrity, safety and freedom of expression of the returnees, but also on their access to food, healthcare, education, decent working conditions and adequate housing and sanitation. These rights are recognised under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which all EU states are party. Pursuant to the ICESCR, states recognise the right of everyone to work (art.6), social security (art.9), adequate standard of living (including adequate food, clothing, and housing) (art. 11), enjoyment of the highest attainable standard of health (art.12), and education (art. 13).

Return policies have created an accountability gap with respect to people's enjoyment of both civil and political rights, as well as social and economic rights. There is an imbalance between the scope of influence of states that issue and enforce removal orders and the way in which their legal responsibility is defined. There is thus a need to explore afresh the

extraterritorial human rights obligations of returning states.

As the ICESCR is silent on questions of territoriality and jurisdiction, a group of leading human rights experts<sup>5</sup> adopted a set of principles on extraterritorial obligations in relation to economic, social and cultural rights in 2011 - the so called Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.<sup>6</sup> The Maastricht Principles are a guiding instrument that seeks to clarify the content of states' extraterritorial obligations to realise economic, social and cultural rights, with a view to advancing and giving full effect to the object of the UN Charter and international human rights instruments. As the Maastricht Principles do not have a specific accountability mechanism, proper compliance with the provisions needs to be ensured through domestic judicial and international judicial or non-judicial mechanisms.

Principle 13 of the Maastricht Principles is particularly relevant to the discussion on states' duty to ensure that return does not aggravate existing or create new vulnerabilities. Under this principle, states are obliged to avoid causing harm, which means they should refrain from acts and omissions that create a real risk of nullifying

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<sup>5</sup> Amongst the experts were the UN Special Rapporteur on the right to food, Amnesty International, attorneys and lawyers from human rights institutes and academia.

<sup>6</sup>[https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23).

or impairing the enjoyment of economic, social and cultural rights extraterritorially.<sup>7</sup>

The empirical data of this policy brief documents that forced and obliged returns create real and foreseeable adverse effects on economic and social rights of individuals beyond the borders of the returning state. Hence, according to the Maastricht Principles, in order to avoid causing harm, states should refrain from returns which create such a risk. To anticipate harm after return, a thorough risk assessment of people's vulnerability to such harm becomes indispensable.

The obligation to carry out risk and vulnerability assessments prior to return can also arise in the framework of states' obligations under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). In some circumstances, denial of economic and social entitlements may violate states' obligations under these instruments. In line with *D. v. the UK* and *N. v. the UK* before the European Court of Human Rights (ECtHR), for example, expulsion of a seriously ill person where adequate care and medication in the receiving country are lacking may in exceptional circumstances

amount to ill-treatment prohibited under art.3 of the ECHR (ECtHR, 1997, para.53-54; ECtHR, 2008, para.42).<sup>8</sup>

Furthermore, extreme poverty and substandard living conditions might come within the ambit of the prohibition of inhuman or degrading treatment under art. 3 of the ECHR and art.7 of the ICCPR. When poverty and living conditions attain a minimum level of severity, returns would violate state's obligations under these provisions. In *M.S.S. v. Belgium and Greece*, for example, an asylum applicant was left in extreme poverty in Greece, unable to cater for his most basic needs, like food, hygiene and shelter. He lived in a park and relied on the charity of other individuals in order to receive food. The hardship he faced reached the level of degrading treatment prohibited under art.3 of the ECHR. The Court ruled that not only Greece violated this provision, but also Belgium because it transferred the applicant back to Greece and hence exposed him to degrading living conditions after return (ECtHR, 2011, para.252-263 and 366-368).

More recently, the Human Rights Committee (HRC) adopted a similar stance in the case of *O.Y.K.A v. Denmark*, concerning the attempted

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<sup>7</sup> The responsibility of states is engaged where such nullification or impairment is a foreseeable result of their conduct and such conduct is not justified by uncertainty about its potential impact.

<sup>8</sup> More recently, the ECtHR explained that these "exceptional cases" refer to removal of a seriously ill person upon which, although not at imminent risk of dying, he would face a real risk, on account of the absence of

appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid, and irreversible decline in his health resulting in intense suffering or to a significant reduction in life expectancy, see ECtHR, *Paposhvili v. Belgium*, 41738/ 10, GC, (December 13, 2016), para. 183.

return of the applicant back to Greece, from which he had fled. Similar to the applicant in *M.S.S*, the applicant in *O.Y.K.A* had lived on the streets in Greece and had not received any assistance from authorities prior to coming to Denmark. Returning him to Greece would have exposed him to the same conditions he had fled from and would have thus violated Denmark's obligations under art. 7 of the ICCPR (HRC, 2017, para.8(10)-(12) and 9).

In the light of these obligations, it becomes necessary for states to implement rights-based post-return monitoring. People who suffer from exacerbated or new vulnerabilities are less likely to be able to build up new life projects necessary for their "sustainable reintegration" in countries of nationality. Financial investments into reintegration assistance would thus not be able to achieve declared policy objectives.

This brief explores in turn pre-existing vulnerabilities of returnees that are exacerbated by returns, new post-return vulnerabilities that relate to returnees' profiles, and finally new post-return vulnerabilities that relate to return procedures. The policy brief is based on testimonies and observations of return outcomes gathered from people who were returned from EU member states to Nigeria and Mali. Vulnerabilities are intersectional, meaning that different factors play together, resulting in people potentially suffering from rights violations. Consequently, returnee's

testimonies often relate to more than one intersectional factor that exacerbates existing or creates new vulnerabilities after return. It is nonetheless useful to regroup research findings by simplified factors so as to structure potential policy responses.

*Research Data - Return flows and policies from Europe to Nigeria and Mali:*

Building on prior research since 2013 on post-return dynamics in Cameroon, the Democratic Republic of Congo, Turkey and Pakistan, this policy brief is based on 16 open-ended semi-conducted qualitative interviews with individuals forced to return from Europe to Nigeria and Mali. The brief focuses on the situation of deportees in urban areas, namely Bamako, Lagos and Benin City. The brief includes three additional interviews with forced returnees from Europe to Niamey (Niger) and Kinshasa (DRC), conducted during field research in respectively 2016 and 2019. Amongst the 16 return trajectories from Europe, two interviewees accepted their return after having received removal orders by Italian and Belgian authorities. In the other 14 cases, deporting countries were France (4x), the U.K. (4X), Germany (2X), the Netherlands (2x), Belgium (1x) and Estonia (1x). The researcher met returnees through introductions by NGOs in deporting and receiving countries, academics, local researchers, activists and journalists. Whenever possible, interviews were scheduled in the homes or neighbourhoods of returnees to allow the researcher to make first-hand observations.

Nigeria and Mali are among the 10 top countries of origin of irregular migrants in the EU (European Commission, 2017b). The countries, however, have

historically engaged very differently with the EU and its member states regarding the readmission of their citizens. While Nigeria has been negotiating a readmission agreement with the EU since 2016 and is part of the EU's Common Agenda on Migration and Mobility, Mali has been more reluctant to engage in such cooperation. It has merely made a joint migration declaration in 2016 and negotiates Standard Operating Procedures (SOPs) on the identification and return of persons without an authorization to stay. At the bilateral level, Nigeria has readmission and migration control agreements in force with Austria (2012), Switzerland (2003), Ireland (2011), Italy (2011), Spain (2011), and Memoranda of Understanding with Finland (2015), Italy (2017) and the U.K. (2004 and 2016). Nigeria also deploys two liaison officers to Italian authorities with Frontex' funding to facilitate the identification of nationals without residence permits on Italian territory. Mali, in contrast, only has an immigration agreement with Spain (2009) and ongoing negotiations with France. Both countries closely collaborate with the IOM for the return of their citizens from Libya and Niger.

In 2018, Mali received most returnees from France (275) and Spain (95). Nigeria readmitted the majority of its citizens in 2018 from the U.K. (1,360), Austria (485) and Germany (470), but also from France (130), the Netherlands (110), Denmark (95), Finland (90) and Sweden (85).

## Pre-existing vulnerabilities exacerbated by return

According to the European Commission, states should consider the needs of vulnerable persons at all stages of the return procedure, as part of the assessment of the individual circumstances of each case (European Commission, 2017a). Under the EU return regime, the category of vulnerable people include children, single parents with children, pregnant women, people with disabilities, elderly, and victims of torture, rape and other forms of violence (Returns Directive, Art.3(9)). Currently, the Returns Directive does not provide for specific rules in regard to assessments of vulnerabilities. The ongoing recast process of the Directive may remedy this gap. The draft report prepared by the European Parliament (LIBE Committee), for example, explicitly provides for a vulnerability assessment as an integral part of all national return management systems. The Parliament proposed relying on a concept of vulnerability that moves away from categories of people, but rather looks at a multitude of factors that increase the risk of vulnerability. These factors include individual, community, household, structural, and situational factors (European Parliament, 2020, Amendments 13 and 34). This amendment is much needed as it allows for a deeper understanding of how vulnerabilities play out in practice before, during and after return.



The experiences of Faith and her children<sup>9</sup>, for example, are a glaring example of how return can aggravate existing vulnerabilities of deportees due to a complex set of factors. After having lived in the Netherlands for nine years, based on three consecutive temporary permits for victim of human trafficking, Faith was deported with her four children (aged 1, 4, 6 and 7) in 2016. Upon her deportation, Faith got separated from her partner and her four children from their father. Upon arrival, the whole family became temporarily homeless. Due to the deportation process, Faith also lost money and belongings.

On the day of her deportation flight, Faith arrived without contact numbers of family members in Nigeria and the police did not give her the emergency travel documents through which Nigerian authorities had established her identity. "I was in the street. After three hours, it's there that I find a man - a pastor - who took me to Oyo State where I'm now living. The man took me to a house. I was scared, but I didn't have any choice."

The man turned out to be a real pastor, not a swindler or trafficker. After media attention and persistent lobbying by herself, Faith received a reintegration support package from the IOM to open a shop, as well as an electric generator from a private foundation in Nigeria. Even though the IOM paid for the school fees for her

four children for two years, the shop was not able to generate the resources necessary for rent, food, health care and schoolbooks for her family. Per term, schoolbooks cost 35.000 Naira for the four girls (86 Euro). After the end of the two-year support for school fees, Faith now needs to pay an additional 54.200 Naira per term for school fees for the four girls (125 Euro). In Faith's words: "If you don't have money in Nigeria, you will not go to school."

People's pre-existing vulnerabilities are exacerbated by return particularly when the individuals lack meaningful social networks in countries of nationality. This can happen when people are deported to places they have not lived in before, or if people had experienced traumatic experiences that had separated them from family networks prior to migrating abroad. In the case of Prudence, for example, the combination of her pregnancy with her forced removal meant that she became a single mom without access to formal social protection in a city where she had never lived before in her life. At the time of the interview, Prudence was sheltered temporarily by the aunt of the father of her unborn child. She did not have a job, national ID or a home of her own. Cut off from her family of origin in the East of the country ever since she had been raped by army officers following the arrest of her then partner, Prudence was worried for how long the father of

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<sup>9</sup> All names are pseudonyms.



her unborn child, who remained in Belgium, would financially support her and the child in Congo.

With respect to post-return dynamics, authorities also need to take into account how pre-existing non-life threatening health conditions will evolve without access to health care after return. Even though Sey's health issues were already known prior to his deportation, he was deported and left without medical care after return. Consequently, his conditions deteriorated after return due to lack of medical attention. Left in pain, Sey was unable to afford the required operation in Mali. Only one year after his deportation, Sey learned about a health care program of the Malian state for particularly vulnerable people from the authors' research assistant. Because of how the Malian state works in practices, access to the programme only became possible because our research assistant kindly agreed to mobilize his own family contacts.

Sey's existing vulnerabilities were harshly exacerbated by his return also because he was deported after an extended part of his life in France. He had left for France at the age of 27 and was deported 17 years later, at the age of 44. After his deportation, Sey did not have a social network to fall back on in Mali. During his 17 years abroad, his mother and sister had passed away and his father had moved to Liberia. While Sey has more distant family in the

village, he had never lived there before in his life.

At the time of the interview, Sey was sheltered at the work site of a friend but did not have a stable form of accommodation. Commenting on his respective situation in France and Mali, he said: "Over there I could eat more easily because I had friends and flat-mates who when they had money also had food. Here this is not the case here. Here I have to spend days on end without eating."

Social policies and public health care are typically weaker in many countries of nationality to which people are returned. If social security for health care exists at all, access is de facto conditional on connections, as formal bureaucratic processes in general do not function in transparent manners. These social connections are typically absent if a person is deported after years, or sometimes decades, abroad.

Social connections that vouch for a person's trustworthiness are also necessary to be able to find employment or get a rental contract after return. In addition, access to formal employment also requires a proof of address in Nigeria and access to housing requires upfront payment of several months of rent in both Mali and Nigeria. Hence, structural challenges for all citizens in Mali and Nigeria are exacerbated by returnees' weaker social networks due to their prior and often extended periods of absence.

The weakness or strength of people's social networks in countries of nationality should be part of vulnerability assessments prior to return. Deporting countries should also consider not just existing social policies in countries of nationality, but also real impediments to services and entitlements that returnees will likely face upon return. Such barriers are typically stronger for those who are returned after long periods abroad and for those who have other pre-existing vulnerabilities.

### **New post-return vulnerabilities relating to returnees' profiles**

Some vulnerabilities of returnees are not visible prior to the return operation, but emerge only after the return. Returns can create new vulnerabilities for certain profiles of migrants in particular. For example, people might not be vulnerable in Europe but will become so upon deportation to their country of nationality if they do not have families or social networks there, have not spent a significant number of years in their country of nationality (and might thus lack the necessary language skills for basic survival), or had been internally displaced beforehand. Deporting countries should take these specific returnee profiles into consideration when both issuing removal orders and deciding whether and how these removal orders are to be implemented.

### **People with stronger ties in countries of residence than in countries of nationality:**

Deportations create new vulnerabilities when concerned individuals have stronger and more meaningful social networks in their country of residence than in their country of nationality. In the case of Michael, for example, his deportation was not a return, but a complete removal from anything he had known in his former life. He had only lived in Nigeria until the age of two. Nonetheless, he was deported in 2014 at the age of 26. "It's a big change. In the U.K., I had my house, my car, my job." Michael described his deportation in the following way: "I had no Nigeria experience. I didn't even know whom to call. All the people I knew were from Birmingham." At the time of the interview, Michael was sleeping rough in the facilities of the football stadium of Lagos.

Roland, too, was deported by British authorities after having spent most of his childhood in Europe. The UK deported him as a minor, at the age of 17, after 10 years in the U.K., even though he no longer had family in Nigeria. After his deportation, Roland initially stayed with a fellow deportee whom he had met on the plane and who was deported following a criminal conviction. After having eventually been chased from this home, Roland went to learn plumbing and slept on the respective construction sites where he was working: "I had to sell my phone because I was staying for two days without

seeing food.” “Someone has to put you forward because you don’t know the system.”

People who are deported despite strong ties in countries of residence face severe adaptation challenges and acute protection concerns. Besides getting used to a new environment, returnees also have to face the stigma that can come with being a deportee. In Nigeria, for example, potential employers will suspect deportees of trying to emigrate, creating thus a fear that deportees will sell their businesses or run away with money. If returnees have a foreign accent, this can make it hard to hide that they have been returned or deported, thus further increasing the risk of social isolation. As Michael explains: “I tell people that I go and come. They think that I’m just like a traveller...I learned Pidgin after the deportation – and the hard way.”

Sometimes people are returned to countries of nationality despite not being able to speak necessary local languages. Alain, for example, was deported to the DRC although he does not speak French or Lingala. At the age of 24, he was deported after 13 years in the U.K. He had only lived in the DRC until the age of two and then later between the age of 8 and 11. His emergency travel document had been issued by Congolese authorities in Kinshasa and only indicated his name. His profession, date of birth, sex, civil status and address were all left empty. British authorities nevertheless accepted to deport Alain with the *laissez passer* in question.

Upon arrival at the airport of Kinshasa, Alain was only able to communicate with the police officers because a Congolese national deported from India was in the office at the same time and able to translate from French to English. To this day, he does not yet have a national ID.

### **People without meaningful ties in countries of nationality:**

Even when people subject to a removal order do not have meaningful social ties in countries of residence, they still may not have social networks in their country of nationality either. It is therefore important to also consider, prior to a deportation, the person’s prior migration trajectories and the social context in the country of nationality.

Amadou, for example, was deported from Germany to Niger although he had only spent a fraction of his childhood in that country. Born in Niger, Amadou had lived in Libya from the age of 13 to 23 (1998 – 2011); in Italy from the age of 23 to 24 (2011- 2013) and in Germany from the age of 24 to 27 (2014- 2017). He speaks Hausa, Arabic, English, but no French. At the time of the interview, Amadou was not sleeping rough in Niamey thanks to funds that his fiancée and friends in Germany were sending him every month. The wedding with the German national was still under preparation – but now under new

and more challenging administrative and geographical circumstances.

### **People who were internally displaced in countries of nationality:**

Individuals who had been internally displaced people (IDPs) prior to their travels to Europe will face renewed vulnerability upon a forced return to their country of nationality where they might still not be able to return to their actual places of origin. Hama, for example, was deported by Germany in 2016, but had already been an IDP in Mali since 2012. Reflecting on his second arrival to Bamako, Hama shares: "I'm alone in Bamako since my deportation. Since 2016, I've not gone to the North. I'm not in contact with my family. I'm not sure whether they are alive. When the rebels came to our village, they killed a lot of people." At the time of the interview, he had found shelter in the tents of a group of fishermen near the Niger river. The fishermen allowed him to eat for free.

### **New post-return vulnerabilities relating to return procedures**

New vulnerabilities after return can also emerge as a direct or indirect result of return procedures. Subject to the aforementioned duty to avoid harm, sending countries should reduce protection concerns after deportation by, at the very least, adequately preparing individuals prior to returns, limiting prior

detention periods and strengthening the effectiveness of legal remedies prior to a deportation proceeding.

### **Returns despite pending appeals in countries of prior residence:**

Deportations of people who still have pending appeals in Europe not only weaken the justice system, but also create harm for people after the deportation in several ways. Michael, for example, had an indefinite leave to remain in the U.K. and was working as a security officer at football matches while simultaneously studying for a national diploma in business management. When the police interrupted a gathering with friends at his house, he did not immediately explain to the police that one of his friends had brought a young girl with him to his apartment - a girl whom he did not know. The girl was a minor and Michael was subsequently charged with "holding a minor" against her will in his apartment. The criminal case affected his residence status. His appeal for both the abduction charge and his deportation order were still pending, when he got deported. "If I was still in the country, it would have been a lot easier to get a statement from the girl that I had not abducted her."

At the time of the interview, Michael was still waiting for his appeal and thus hoping to be able to return to the UK. Not wanting to give British authorities any reason to deny bringing

him back home after the closure of his criminal court case, Michael is careful to avoid any signs of integration in Nigeria. "Even if I found a small job selling fruit, then they [the British authorities] might say I've settled." Comparing his detention and deportation to Nigeria, Michael reflects that deportation is worse than the prison situation. "I don't know whether I'll be stuck here for life. In the prison, I just had to do my time and then I could go out again."

### **Returns after sustained periods of pre-removal detention:**

Long-term pre-removal detention creates vulnerabilities and decreases people's capacity for starting a new life after deportation. Roland, for example, had been detained for over a year in the U.K. prior to his deportation flight to Nigeria. In an informal conversation with another interviewed deportee, who had also been in pre-removal detention in the U.K., Roland described his first months after his deportation: "I always stayed inside - maybe because of the place of detention where I had been in the U.K. [...] I had gotten used to being inside. I found it hard to go outside."

### **Loss of belongings, money or phone contacts during return procedures:**

Hastily implemented return processes mean that people lose belongings, money or savings in the former country of residence. In this study, six of 13 interviewees from Europe raised these

issues as a concern. The resulting lack of financial resources upon arrival becomes all the more acute when returned individuals or families do not have friends or family in the capital city of the country to which they are being returned. Deporting people without their belongings also means that they do not have mobile phones or laptops on them to be able to make phone calls to people they know (whether in Europe or the country to which they were deported).

A Nigerian man narrated to me the following: "Two weeks after I got deported, I used the internet cafe to look for my mum on Facebook. When I found her, she didn't have friends or family in Nigeria anymore. My grandmother died in 2011. That was the last person in Nigeria. My mum's sister and my own sister are in the U.S. [...] My Mum was scared and told me to go to a Church. I went from church to church. Through church people I was able to make a call. [...] For two months, I went up and down. Then there was a pastor who actually listened to my story. He agreed that my Mum could send money to him for me."

### **Statelessness and lack of identity papers after arrival:**

When people with removal orders do not have valid passports, they can face access problems to identity documents after return and in the worst-case scenario statelessness for several

reasons related to return procedures. First, returnees need to be in possession of their birth certificates when they apply for passports or ID cards after return. Return procedures hence need to allow for sufficient time for returnees to access these prior to the return flight.

Second, the risk of statelessness after return is particularly high when deporting states resort to issuing identity documents to non-nationals because countries of origin refused to issue identity documents. These so-called European Laissez Passers override the sovereignty of countries of nationality and do away with an important safeguard against the return of individuals to countries of which they might not be nationals.

Also, police officers of the deporting country, airline staff and police authorities at airports of arrival do not hand over these travel documents to the concerned individuals upon arrival of the deportation flight. Acceptance by police officers into the territory of a country, however, does not mean that civil registry authorities will issue proof of identity and nationality post-arrival.

In addition to risks of statelessness, a lack of ID after the deportation flight also means that returned people are unable to open a bank account or receive money transfers from friends and family abroad. For those deported individuals or families without social ties in their country of nationality, lack of ID thus creates an

additional barrier to accessing food and shelter. As one Nigerian deportee explained: "The pastor helped me to open a bank account. I didn't have proof of address, nor did I have an original form of ID. Now my mum can send me money."

It is hence essential for return procedures to rely on identity documents that are issued by respective countries of nationality, to hand over travel documents to returnees upon arrival, and to ensure that people have ample time to access other civil registry documents, such as birth certificates, prior to a return flight. Access to birth certificates is particularly important for children who have been born in the country that deports them.

### **Concluding thoughts: Not every return can lead to sustainable reintegration**

Forced and obliged returns can both exacerbate existing and create new vulnerabilities. Whether returns create new vulnerabilities depends on both the profile of the individual who has received a removal order and elements of the return procedure. Individuals will become vulnerable upon return, for example, if they do not have social networks in countries of nationality, do not speak the respective language necessary for living in countries of nationality, or have been internally displaced in their respective country of nationality. Individuals will also become

vulnerable upon return if deportations are implemented despite pending appeal procedures, without time to pick up belongings, civil registry documents, money or phone contacts, or without being provided with identity papers upon arrival. These research findings demonstrate which return measures are not in line with Objective 21 of the Global Compact on Migration and Principle 13 of the Maastricht Principles.

Pursuant to Objective 21 of the Global Compact on Migration, states have committed to facilitating sustainable reintegration. Return trajectories where individuals and their families face exacerbated or new vulnerabilities after return, however, cannot result in sustainable reintegration. Return procedures, hence, require an assessment prior to returns of whether reintegration can be sustainable for an individual and his or her family. Not every return can lead to sustainable reintegration.

In a post-return context, reintegration support packages can respond to some aspects of returnees' needs and vulnerabilities after return. Such support, however, cannot dispense from a thorough assessment of vulnerabilities that are exacerbated or created by the return itself, and specific return procedures in particular. There is a need for further research into which vulnerabilities after return cannot be addressed by reintegration support packages at the program and project level and which need to be

addressed at the policy level. Sustainable migration policies cannot rely on financial investments into reintegration assistance alone. Rather, they need to include a broader set of tools at the policy level, such as the creation of legal pathways and regularisation channels.

Under Principle 13 of the Maastricht Principles, states should avoid causing harm with respect to people's socio-economic rights as spelled out in the ICESCR. The empirical evidence of this policy brief documented how returns may result in individuals being deprived of access to socio-economic rights. In order to avoid causing harm, states should refrain from returns which create such a risk. To this end, a thorough vulnerability assessment should be carried out to identify any existing and potentially new vulnerabilities of the individual which may impede their enjoyment of social and economic rights upon return.

In the light of the above findings, effective human rights monitoring must not only cover the conditions and circumstances of the return process, but also the situation and individual circumstances after arrival (Alpes and Nyborg Sorensen, 2016). States can use insights from rights-based post-return monitoring to draft periodic reports assessing situations in



countries of origin<sup>10</sup> and improve pre-removal vulnerability assessments, return procedures and post-return reintegration assistance.

## Policy Recommendations

Based on empirical data collected with forced returnees from the EU, this policy brief identifies five sets of recommendations in relation to socio-economic human rights in general, return decisions, return procedures, vulnerability assessments and rights-based post-return monitoring.

In general, states should consider medium- and long-term socio-economic impact of return on the person who they seek to deport. Before returning a person, they should ensure themselves that the person can realistically be expected to have meaningful access to shelter, health care, social assistance and education. Unless meaningful access to socio-economic rights can be guaranteed to the person, they should refrain from returning the person.

To facilitate meaningful access to socio-economic rights, states should:

- offer emergency shelter and at least basic material support upon return

- facilitate access to health care mechanisms and provide information on social services in countries of nationality
- ensure that deported children are able to enjoy their right to education (Art. 13 ICESCR) and family unity and are not deprived of food, clothing and shelter (Art. 11 ICESCR).

In order to avoid creating new vulnerabilities for specific categories of returnees, sending states should refrain from returning people who:

- have no families or social networks or do not speak the language of the country of nationality
- have not spent a significant number of years (at least 10) in their country of nationality
- have effective family ties in countries of residence
- have spent a significant period of time (at least ten years) in the sending country
- lack identity documents from their country of nationality or do not have nationality of the destination country
- had been internally displaced beforehand.

In order to ensure that return procedures do not render returnees vulnerable upon return, sending states should:

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<sup>10</sup> See for example, British Home Office, (Jan. 2020), Country Policy and Information Note Democratic Republic of Congo: Unsuccessful asylum seekers, Version 4.0.

- inform individuals about the return process and allow them to contact relevant people and to assemble their belonging (including civil registry documents and savings)
- ensure that if detention is judged necessary to preclude absconding, it is maintained for the shortest period necessary to enforce return
- avoid enforcing the return order as long as appeal procedures are ongoing
- ensure that returnees have the identity documents and financial resources to travel from airports of arrivals to actual places of origin in the country.
- are able to also access necessary identity documents to avoid statelessness
- have immediate health care needs addressed after arrival.

In line with the draft proposal by the European Parliament, the return procedure should include a thorough vulnerability assessment which:

- identifies and addresses potential vulnerabilities of people facing return
- leads to tailored support through individualised case-management
- assesses multitude of factors influencing the person's vulnerability, including individual, community, household, structural, and situational factors.

Deporting states should extend human rights monitoring of returns to cover also the arrival phase at the airport in countries of origin and to verify amongst others whether deportees:

- do not face detention and violations of their physical integrity upon arrival



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