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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

الزيارة إلى النيجر

تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين**

موجز

أجرى المقرر الخاص المعني بحقوق الإنسان للمهاجرين، السيد فيليبي غونزاليس موراليس، زيارة إلى النيجر في الفترة من ١ إلى ٨ تشرين الأول/أكتوبر ٢٠١٨ بغرض تقييم القوانين والسياسات والممارسات والاتفاقات التي اعتمدها النيجر ونفذتها فيما يتعلق بالهجرة وأثرها على حقوق الإنسان للمهاجرين من النساء والأطفال والرجال. وفي هذا التقرير، يحيط المقرر الخاص علماً بما تجده النيجر من تحديات متعددة، داخلية وخارجية، في إدارة الهجرة، ويلاحظ أن النيجر اعتمدت مجموعة من التدابير، في السنوات الأخيرة، مدفوعةً في المقام الأول بشواغل أمنية ونتيجةً لاتفاقات أبرمتها مع بلدان المقصد. وقد أدت هذه التدابير إلى تجريم الهجرة غير النظامية وإلى تعزيز مراقبة الحدود بغية الحد من الهجرة إلى الشمال ومنعها، وفي ذلك انتهاك لمبدأ حرية التنقل في الجماعة الاقتصادية لدول غرب أفريقيا (إيكواس)، فضلاً عن القواعد والمعايير الدولية لحقوق الإنسان، حتى في سياق اتفاقات السماح بالدخول مجدداً وإعادة المهاجرين إلى بلدانهم الأصلية. ويوصي المقرر الخاص، في جملة ما يوصى به، بأن تعتمد النيجر استراتيجية شاملة من أجل هجرة آمنة ومنظمة ونظامية تكفل تنفيذ الاتفاق العالمي من أجل الهجرة الآمنة والمنظمة والنظامية وخطة التنمية المستدامة لعام ٢٠٣٠، وتجعل حقوق الإنسان للمهاجرين في صلبها. وسيكون التعاون مع الجهات الفاعلة الرئيسية، مثل البلدان المجاورة والجماعة الاقتصادية لدول غرب أفريقيا والاتحاد الأوروبي والأمم المتحدة، أمراً أساسياً في تلك العملية.

* يعتمد موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعتمد باللغة التي قُدم بها وباللغة العربية فقط.

** أتفق على نشر هذا التقرير بعد تاريخ النشر المعتاد لظروفٍ خارجة عن سيطرة مقدمه.



Annex

Report of the Special Rapporteur on the human rights of migrants on his visit to the Niger

I. Introduction

1. The Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to the Niger from 1 to 8 October 2018 at the invitation of the Government. The objective of the visit was to assess the laws, policies, practices and agreements adopted and implemented by the Niger with respect to migration management and border control and their impact on the human rights of migrant women, children and men. The Special Rapporteur also examined the role played by other States and regional and international organizations with regard to migration. During the visit, he met with high-level representatives of the Government, including the Minister of the Interior and the Minister of Justice, representatives of the general directorate for civil status, refugees and migrants, the general directorate responsible for human rights, the national commission and the national agency to combat smuggling and trafficking in persons, and the National Police. In Niamey he met with representatives of the National Human Rights Commission and civil society organizations. He also met with members of the United Nations country team, representatives of the diplomatic community, the European Union Common Security and Defence Policy mission in Niger, and representatives of local and international non-governmental organizations (NGOs). In Agadez, the Special Rapporteur met with the Governor, representatives of the regional directorate for humanitarian action and crisis management, the regional directorate for the advancement of women and children, the regional directorate for civil status, refugees and migrants, the regional prosecutor, the regional director of the police, the regional office of the National Human Rights Commission and international NGOs.

2. The Special Rapporteur met with migrant women, children and men, asylum seekers and refugees. In Agadez, he visited an International Organization for Migration (IOM) transit centre for migrants, a camp of Sudanese asylum seekers and a ghetto. In Niamey, he visited an IOM transit centre for unaccompanied migrant children and met with asylum seekers at the Office of the United Nations High Commissioner for Refugees (UNHCR) country office.

3. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government and for its readiness to engage in an open dialogue on the human right situation of migrants. He thanks the United Nations country team for their support and assistance and also all the migrant women, children and men, asylum seekers and refugees who met with him.

II. Background on migration: a brief overview

4. The Niger is a landlocked country between sub-Saharan Africa and the Maghreb. It has an area of 1,267,000 km² and a 6,355 km border shared with seven countries. The Niger is a country of origin (for Nigeriens who migrate to countries of the subregion and the Maghreb), of transit (for migrants from West African countries who migrate to the Maghreb and Europe) and of destination (for nationals of the Economic Community of West African States (ECOWAS)). For decades, migration has been a natural phenomenon in the Niger, and migrants are part of its society. In the framework of the Protocol to the Treaty Establishing the Economic Community of West African States relating to Free Movement of Persons, Residence and Establishment, Nigeriens have migrated to Western African countries to study and work, and have received Western African migrants as part of

their workforce. Eighty per cent of the migration in West and Central Africa is internal to the region.¹

5. With a population of 17,138,707,² the Niger faces multiple development, security and humanitarian challenges. It is at the bottom of the human development index³ and is ranked twenty-fourth in the 2018 Ibrahim Index of African Governance. Conflicts in Libya and Mali, and more recently in Burkina Faso, and attacks by Jama'atu Ahlis Sunna Lidda'Awati Wal-Jihad (Boko Haram) in Chad, the Niger and Nigeria have created security and humanitarian crises, resulting in population movements, including internally displaced person crises on the borders with Mali and Nigeria.⁴ Faced with this fragile security context, the Niger devotes 15 per cent of its national budget to security.⁵

6. In recent years, particularly after the fall of the regime of Muammar Gaddafi in Libya in 2011, the Niger has become a major transit country for migrants travelling north and to the Mediterranean.⁶ More recently, especially since 2014, the Niger has become a transit and destination country for migrant persons expelled from Algeria and those forced to return from Libya. These returns have put a lot of pressure on the Niger, which according to many interlocutors has become "a permanent transit centre" and "the southern border of Europe" as a result of migration policies adopted in the Niger and by third countries, with serious consequences for the human rights of migrants and raising questions as to the effectiveness and sustainability of such policies.

III. Normative and institutional framework on migration and border management

A. International legal framework

7. The Niger has ratified all the core international human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has also ratified the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol). The Niger is also a State party to the Convention relating to the Status of Refugees and the Protocol thereto, and the Convention relating to the Status of Stateless Persons. It has also ratified all the fundamental International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). Hence, the Niger has an obligation to translate its international obligations into national legislation, policies and practices.

¹ Fransje Molenaar and Floor El Kamouni-Janssen, *Turning the Tide: The Politics of Irregular Migration in the Sahel and Libya* (The Hague, Netherlands Institute of International Relations Clingendael (Clingendael Institute), 2017), p. 2.

² National Institute of Statistics, census of 2012.

³ The Niger ranked 189 in 2018. See <http://hdr.undp.org/en/countries/profiles/NER>.

⁴ The Special Rapporteur on the human rights of internally displaced persons reported 129,015 internally displaced persons in Diffa Region as at 31 October 2017 (A/HRC/38/39/Add.3, para. 17).

⁵ Security spending claims a critical proportion of public expenditure in the Niger. See International Monetary Fund (IMF), "Niger: second review under the extended credit facility arrangement, and request for modification of a performance criterion", IMF Country Report No. 18/166 (Washington, D.C., 2018). See also www.jeuneafrique.com/mag/531887/politique/le-niger-face-au-defi-du-cout-de-la-securite/.

⁶ Conservative estimates suggest that since 2000 some 100,000 migrants have passed through the Niger each year, with 2017 possibly forming a peak at 330,000 migrants. Fransje Molenaar, *Irregular Migration and Human Smuggling Networks in Niger* (The Hague, Clingendael Institute, 2017), p. 4.

B. Regional legal and policy framework

8. The Niger is a party to the African Charter on Human and Peoples' Rights, the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa and the African Charter on the Rights and Welfare of the Child.

9. The Niger is a member of ECOWAS and the West African Economic and Monetary Union. The Revised Treaty of the Economic Community of West African States (arts. 3 (2) (d) (iii) and 59 (1)) and the Treaty on the West African Economic and Monetary Union (art. 4 (c)) establish the freedom of movement of persons, goods, services and capital of the citizens of its member States within the territory of the community, as well as the right of residence and establishment. The 1979 Protocol to the ECOWAS treaty relating to Free Movement of Persons, Residence and Establishment abolishes the visa and entry permit requirement for ECOWAS citizens for a period not exceeding 90 days (a valid travel document and international health certificate suffice); beyond that period, ECOWAS citizens are required to obtain a residence permit (art. 3). The Protocol also establishes the framework for the expulsion of any citizen of a member State (art. 11).

10. Considering that the free movement of persons and migration management are key to regional integration and development processes, the ECOWAS Commission has promoted the ECOWAS Common Approach on Migration and Development and has formulated a regional migration policy. In addition, it adopted the ECOWAS Gender and Migration Framework and Plan of Action, 2015–2020, to encourage regular and safe migration for men and women.

C. Bilateral agreements

11. The Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part (Cotonou Agreement) constitutes the framework for cooperation between the Niger and the European Union. Article 13 of the Agreement addresses migration, to be the subject of in-depth dialogue within the framework, reaffirming existing obligations in international law to protect human rights and eliminate all forms of discrimination (art. 13 (1)). This provision grants third-country nationals who reside legally on their territories rights and obligations comparable to those of their citizens (art. 13 (2)). It also refers to the prevention of irregular migration and the possibility of concluding bilateral agreements for readmission and return of nationals as well as of third-country nationals and stateless persons. The European Union is to provide adequate assistance to implement these agreements (art. 13 (5)). Reportedly, the Niger has adopted non-standard readmission agreements with the European Union.⁷ The Special Rapporteur expresses concern over the lack of transparency and accountability of these agreements, which might be in breach of international human rights norms and standards.

12. Based on article 13 of the Cotonou Agreement, the European Union has developed two cooperation agreements to which the Niger is associated, in the context of the Euro-African Dialogue on Migration and Development (Rabat Process) in 2006 and the Valletta Summit on Migration of 2015. The multi-annual cooperation programme of the Rabat Process aims at strengthening States' capacities, including those of the Niger, to reintegrate forcibly returned migrants. The Valletta Action Plan focuses on cooperation with countries of origin to impede the departure of migrants and favour returns, and cooperation with transit countries to close migration routes.

13. The Cotonou Agreement is due to expire in February 2020, and consultations and negotiations were launched in 2018 for a new agreement.⁸ Negotiations among European Union member States faced difficulties due to a lack of consensus on the issue of migration,

⁷ Abdoulaye Hamadou, "La gestion des flux migratoires au Niger: entre engagements et contraintes", *La Revue des Droits de L'Homme*, No. 14 (2018), p. 11.

⁸ See http://europa.eu/rapid/press-release_MEMO-18-5903_en.htm.

especially the readmission of migrants.⁹ As for the African, Caribbean and Pacific Group of States, the Group wishes for the future agreement to take better account of migration between countries of the Group and to prohibit the use of development aid as a means of negotiating border controls or returns to the country of origin.¹⁰ The European Parliament recommended that the new agreement provide for the management of regular migration to counterbalance the importance given to the fight against irregular migration.¹¹

D. Global Compact for Safe, Orderly and Regular Migration and the 2030 Agenda for Sustainable Development

14. The Government of the Niger was actively involved in the consultations and negotiations on the Global Compact for Safe, Orderly and Regular Migration. The Niger was a strong advocate for combating the smuggling of migrants, trafficking in persons and contemporary forms of slavery. At the Intergovernmental Conference to Adopt the Global Compact for Migration, held in Marrakech, Morocco, on 10 and 11 December 2018, the Minister of the Interior highlighted government efforts to implement compact objectives, including objective 9 (through the adoption of Law No. 2015-36 on the Illicit Smuggling of Migrants), objective 11 (by managing 6,000 km of borders with a mobile police force) and objective 21 (by facilitating the return, readmission and reintegration of migrants, with support from IOM).

15. The Special Rapporteur commends the Niger for endorsing the adoption of the Global Compact for Migration at the General Assembly on 19 December 2018 and encourages it to ensure the implementation of the Compact at the national level, for example, through the adoption of a comprehensive national strategy for safe, orderly and regular migration.

16. A significant aim of the Global Compact for Migration is to leverage the potential of migration for the achievement of all the Sustainable Development Goals. Similarly, the 2030 Agenda for Sustainable Development makes a central reference to migration under Goal 10 (to reduce inequality within and among countries). Target 10.7 to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

E. National legal, policy and institutional framework

1. National legislation and policies

17. The Constitution of 2010 (art. 42 (2)) and the Labour Code of 2012 (Law No. 2012-45 of 25 September 2012) protect the rights of migrant persons and their families. Law No. 97-016 on Refugee Status of 20 June 1997, and Decree No. 98-382/PRN/MI/AT of 24 December 1998 for its implementation, establish the conditions and procedure for the determination of refugee status, as well as the rights of refugees and asylum seekers.

18. On 26 May 2015, the Niger adopted the Law on the Illicit Smuggling of Migrants. The law's aim is threefold: to prevent and combat the smuggling of migrants (with penalties from 2 to 10 years of imprisonment); to protect the rights of migrant victims of smuggling (e.g., ensuring their right to compensation); and to promote and facilitate national and international cooperation to prevent and combat the smuggling of migrants.¹²

⁹ See www.euractiv.com/section/development-policy/news/negotiations-on-the-post-cotonou-agreement-stumble-on-migration/.

¹⁰ See www.europarl.europa.eu/legislative-train/theme-europe-as-a-stronger-global-actor/file-towards-post-cotonou.

¹¹ Ibid.

¹² The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, defines smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (art. 3 (a)).

19. Five years before the adoption of the Law on the Illicit Smuggling of Migrants, and after the ratification of the Trafficking in Persons Protocol in 2004, the Niger adopted Decree No. 2010-86 of 16 December 2010 to Combat Trafficking in Persons, the first major step adopted by the country to protect migrants from exploitation, ensuring the rights of victims to legal representation, an interpreter and the protection of their private life and identity (arts. 38, 40 and 43).¹³

20. As a follow-up to the Valletta Summit, the Niger has engaged in a process for the elaboration of a strategy to combat irregular migration, which has not yet been adopted.¹⁴ The Economic and Social Development Plan for 2017–2020 addresses the issue of migration, focusing on its negative consequences, thence the need to address it from a security perspective. At the Marrakech conference on the Global Compact for Migration, the Minister of the Interior stated that the Niger was in the process of elaborating a national policy on migration, which would incorporate the objectives of the Global Compact for Migration and the Sustainable Development Goals.

2. National institutions

21. The Cabinet of the Prime Minister is in charge of the political direction on migration, in close collaboration with the Ministry of the Interior. Within the latter, the national surveillance directorate – which reports to the general directorate of the National Police – and the directorate of border coordination are responsible for migration issues, including border management and migration regulations. In 2007, the Government set up an interministerial committee, chaired by the Ministry of the Interior, to develop a national policy on migration. On 16 June 2016, this interministerial committee initiated discussions for the design of the national strategy to combat irregular migration. Additionally, the national consultation framework for migration, which brings together relevant actors working on migration-related issues (e.g., the Ministry of the Interior and development partners), is tasked with assisting the Government in identifying challenges and responses to migration management, and in particular irregular migration.

22. Within the Ministry of the Interior, a national commission is in charge of determining applicants' eligibility for refugee status in the Niger. The general directorate for civil status, refugees and migrants provides secretariat support to this commission, ensuring the legal and administrative protection of refugees and asylum seekers. UNHCR participates as an observer in the deliberations of the commission, and the decisions of the latter can be appealed before the Ministry of the Interior and other competent jurisdictions.

23. The Ministry of Justice is another key actor in migration-related issues. In accordance with the decree against trafficking in persons of 2010, the national commission and the national agency to combat trafficking in persons, tasked with adopting and ensuring implementation of policies and programmes for the prevention of trafficking in persons, were created within the Ministry. Pursuant to the Law on the Illicit Smuggling of Migrants, both bodies are also in charge of coordinating the fight against the illicit smuggling of migrants. The national agency to combat trafficking in persons manages a special fund for the compensation of victims. In March 2018, the Niger organized a meeting to coordinate the fight against illicit smuggling of migrants and trafficking in persons, in which 13 African and European States participated and which resulted in the establishment of a coordination mechanism.

¹³ The Trafficking in Persons Protocol defines trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (art. 3). Consent, exploitation and transnationality are the elements that distinguish the crimes of smuggling and trafficking: the smuggling of migrants involves migrants who have consented to the smuggling; trafficking involves the exploitation of the victim; and smuggling is always transnational while trafficking can also be internal. See www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html.

¹⁴ National strategy to combat irregular migration, draft of December 2016.

24. The National Legal and Judicial Assistance Agency was created in 2011 to make legal and judicial assistance available to vulnerable people and facilitate universal access to justice. The Agency maintains a presence in the capital and all regions, and is tasked with contributing to the development and implementation of the national policy on legal and judicial assistance.

25. In 2017, the National Human Rights Commission became fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and opened regional offices in the Diffa, Tillabéri and Agadez Regions. In 2016 the Commission started actively monitoring the human rights situation of migrants, for example visiting ghettos of migrants in transit in Agadez and conducting an investigation into violations of the human rights of migrant persons on the road from Niamey to Gao, Mali.

IV. Migration management and its impact on the human rights of migrants

A. Introduction

26. The Niger faces multiple challenges in the management of migration, some external, such as pressure from destination countries or threats to security in the Sahel region, and others internal, for example perceived threats to public order and national security and lack of implementation of national laws, due partly to insufficient knowledge, awareness and means of local authorities, especially police and judges.¹⁵

27. In recent years, the Niger has adopted a series of legislative, policy and practical measures as part of its migration management, led primarily by security concerns. These measures are predominantly repressive, at the expense of the human rights protection of migrants, and are in violation of the State's international and regional obligations, such as respect for the principles of non-refoulement and of freedom of movement in the ECOWAS region.

28. The present chapter of the report focuses on the main measures adopted by the Niger in this context. Such measures include the criminalization of irregular migration, the strengthening of border control to curb and prevent all movement to the north, readmission agreements for migrant victims of collective expulsions and returns of migrants through the IOM-assisted voluntary return programme.

B. Irregular migration

29. One of the key measures adopted by the Niger with respect to irregular migration is the Law on the Illicit Smuggling of Migrants. The law allegedly is an attempt to prevent loss of life in the desert, combat activities of smugglers of migrants and respond to pressure from destination countries to halt migration to the north. According to Nigerien authorities and IOM data, the implementation of the law has resulted in a significant decrease in the number of migrants who move north to Algeria, Libya and the Mediterranean.¹⁶ The implementation of the law has also had a significant impact on the migration industry in Agadez Region, which formerly played a pivotal role in migrant journeys to North Africa

¹⁵ See Hamadou, "*La gestion des flux migratoires au Niger*".

¹⁶ From 333,891 in 2016 to 43,380 in 2018, according to IOM data provided during the visit of the Special Rapporteur, and based on monitoring trends collected in Arlit and Séguédine.

and Europe and was a key migration nexus in migration flows transiting the West African region.¹⁷

30. The Special Rapporteur notes with concern that the law has many weaknesses and fails to comply with international human rights norms and standards. It criminalizes the activities of those who facilitate the irregular entry, stay and exit of migrants, including those who procure or possess fraudulent travel or identification documents and transport passengers without valid travel or identity documents (art. 20). By effectively prohibiting private companies in Agadez from transporting migrants regardless of their status, the law shifts the responsibility of migration management to private actors. Furthermore, the law allows the detention of migrant victims of illicit smuggling, without even clarifying the grounds for such detention (art. 30).¹⁸ It lacks clarity as to who is the victim and who is the perpetrator – confusing both, which results in the criminalization of migrant victims of illicit smuggling. Despite the purported aims of the law (art. 1), it adopts a punitive approach to migration, is contrary to the ECOWAS principle of freedom of movement and prioritizes the repression of irregular migration over preventative measures against the illicit smuggling of migrants and at the expense of the protection of their human rights.

31. During his visit, the Special Rapporteur heard numerous concerns about flaws and challenges in the implementation of the law, such as its misguided interpretation and implementation by law enforcement officials and judges, a lack of coordination among State actors and insufficient work on prevention and awareness-raising. Furthermore, as the Special Rapporteur observed at meetings with public authorities, smuggling is often confused with trafficking offences, which leads to the further criminalization of migrants. The Special Rapporteur regrets that the decree on trafficking in persons has been overshadowed by the implementation of the Law on the Illicit Smuggling of Migrants, to the detriment of the rights of migrants, including victims of trafficking, and their protection.¹⁹ Consequently, he recommends that the Niger adopt a law on trafficking and standard operating procedures for its implementation, and that it strengthen national mechanisms for victim identification and referral, as an effective means to enhance the protection of victims, in compliance with international human rights norms and standards.

32. The implementation of the law on smuggling has resulted in a de facto ban of all travel north of Agadez, in violation of the principle of freedom of movement of ECOWAS nationals within the region. This has pushed migrants into hiding, rendering them more vulnerable to abuse and human rights violations and making it more difficult for them to gain access to assistance and protection services. During his visit to Agadez, the Special Rapporteur collected accounts of migrants, including unaccompanied migrant children, who live in very poor conditions in migrant ghettos. They only dare to go out at night to avoid being stopped by the police. Their homes have been raided, and they are subjected to arbitrary arrest and extortion. Obtaining access to food, shelter and health is extremely difficult for these migrants – especially due to fears of being detected by the police – although a few NGOs try to assist them with health care. Pushing migration underground has also had a negative impact on NGOs and other actors' ability to reach and assist migrants.

¹⁷ See Samuel Hall, *Selling Sand in the Desert: the Economic Impact of Migration in Agadez*, study commissioned by IOM Niger (Nairobi, 2017); and Anette Hoffmann, Jos Meester and Hamidou Manou Nabara, *Migration and Markets in Agadez: Economic Alternatives to the Migration Industry* (The Hague, Clingendael Institute, 2017).

¹⁸ Under the 2015 Law on the Illicit Smuggling of Migrants hundreds of people have been arrested and convicted, and hundreds of vehicles have been confiscated in Agadez. Hamadou “*La gestion des flux migratoires au Niger*”, p. 7, and Hoffmann, Meester and Nabara, *Migration and Markets in Agadez*, p. 25.

¹⁹ The Special Rapporteur on trafficking in persons, especially women and children, has noted that the main challenges common to all transit countries relate to a recurrent confusion between trafficking and smuggling, and an inadequate legal framework and standard operating procedures or their correct implementation, which contribute to the non-identification and misidentification of victims and possible victims of trafficking in transit to their destination (A/HRC/38/45, para. 33).

33. Despite the harassment, intimidation and human rights violations, most of the migrants whom the Special Rapporteur met had not given up their plans to migrate. For them, the law has made migration riskier, longer and more expensive, and subject to more human rights violations. Indeed, according to various sources, the law has not stopped or decreased migration, but instead has pushed it underground and diverted the migration routes from the Niger to the north, through Chad and the Sudan, or to the Western Mediterranean route.²⁰ In this respect, the Special Rapporteur observes that official and IOM data do not reflect the number of migrants who move on shifting routes as a consequence of tighter controls.²¹ The recourse of migrants to riskier routes also raises questions as to the effectiveness of the law as a means to protect the life of migrants and prevent deaths in the desert. The implementation of the law has also had an adverse impact on the economy of Agadez Region, as it has affected all commercial activity related to migration.²²

34. The Special Rapporteur recalls that migration is not a crime and migrants in irregular situations should not be treated as criminals or deprived of their liberty and security. Migrants are human beings entitled to human rights, irrespective of their migration status. Consequently, the Special Rapporteur urges the Niger to amend the Law on the Illicit Smuggling of Migrants and to make it compliant with international human rights norms and standards as well as the ECOWAS principle of freedom of movement.

C. Border management

1. Cooperation on border management

35. The Niger is considered by the European Union as a strategic country to combat irregular migration towards Europe, even though traditionally migration in the Niger, as part of migrations in West and Central Africa, has been predominantly regional, temporary and circular, with a lesser percentage of migrants aiming to migrate to Europe.²³ Consequently, the Niger has received considerable funding for border management and migration control, turning it into a virtual external border of the European Union.

36. The Niger is the main beneficiary of the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa: by December 2018 it had received €247.5 million, among other things to assist return and reintegration of migrants, create economic opportunities in transit zones (such as Agadez Region) by proposing durable alternatives to an economy based on irregular migration and combat criminal networks and smuggling of persons by strengthening justice and security sectors and border management.²⁴ Furthermore, the Niger has received €716 million for the period 2014–2020 from the European Development Fund for security, governance and peace-building projects, among other things. In total, the Niger has received over €1 billion in European Union development assistance for 2014–2020.²⁵

37. The Niger is also a priority country in the European Union Strategy for Security and Development in the Sahel.²⁶ In the context of the externalization of border management by the European Union through third countries such as the Niger, the European Union Common Security and Defence Policy mission in the Niger plays a prominent role. In 2015,

²⁰ See Jérôme Tubiana, Clotilde Warin and Gaffar Mohammad Saeneen, *Multilateral Damage: The Impact of EU Migration Policies on the Central Saharan Routes* (The Hague, Clingendael Institute, 2018).

²¹ The lack of comprehensive and reliable data on migration, including internal and irregular migration, has been highlighted by the Government as one of the gaps to be addressed. See the national strategy to combat irregular migration, p. 15.

²² See Hall, *Selling Sand in the Desert*.

²³ Molenaar and El Kamouni-Janssen, *Turning the Tide*, p. 2. According to data provided by IOM during the visit of the Special Rapporteur, 90 to 95 per cent of migration in West and Central Africa is internal to the region.

²⁴ See https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/niger_en.

²⁵ See https://ec.europa.eu/europeaid/news-and-events/european-union-stepping-cooperation-niger_en.

²⁶ See https://ec.europa.eu/europeaid/countries/niger_en.

the European Union changed the objective of the mission to include the prevention of irregular migration. Hence, in the framework of development cooperation and the strengthening of security and military capacities of the Niger, the European Union has included the fight against irregular migration, for example linking development cooperation to the control and readmission of migrants.²⁷

38. Although key State officials stressed that the objective of reducing migration towards the north is mainly a national policy decision, the Special Rapporteur noted the role and the responsibility of the European Union in that regard. Indeed, several sources acknowledged that migration management in the Niger was heavily influenced and guided primarily by the demands of the European Union and its member States to control migration in exchange for financial support. In that respect, the Special Rapporteur recalls that States should refrain from making development aid conditional on migration management, especially when the latter leads to human rights violations (see A/HRC/38/41).²⁸

2. Readmission agreements

39. In 2014, the Niger and Algeria reached an agreement on the forced return of Nigerien nationals, mostly women, who were engaged in street begging in Algeria. Subsequently, Algeria started to also expel other Nigerien migrants and their families, which prompted further discussions and commitments among the Nigerien and Algerian authorities. As a result, since 2014, 35,598 Nigerien migrants have been expelled from Algeria, and the number has increased steadily each year (from 1,354 in 2014 to 12,177 in the first nine months of 2018).²⁹ These agreements are not public – apparently they are not even in writing, which raises serious concerns in terms of transparency and accountability.

40. Reportedly, based on these agreements, with very short notice, Algerian authorities inform Nigerien authorities of the arrival of official convoys of Nigerien migrants and their families in Assamaka, the Nigerien town closest to the border with Algeria. Once in Assamaka, the Nigerien migrants are transported to Agadez, from where they are returned to their regions and communities of origin. In the absence of individual risk assessments and due process guarantees, these forced returns amount to collective expulsions and are contrary to international law, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which both Algeria and the Niger have ratified. The Nigerien authorities have expressed concern to the Algerian authorities about the conditions in which Nigerien migrants are returned from Algeria.

41. IOM and other humanitarian actors declined to support these operations as being contrary to international law. However, once the expulsions of Nigeriens began, IOM started to provide them with humanitarian assistance upon their arrival in the Niger to address their very destitute and extremely difficult conditions. Therefore, as part of the IOM Migrant Resource and Response Mechanism, and in collaboration with Nigerien authorities, the United Nations Children’s Fund (UNICEF) and various NGOs, IOM provides basic humanitarian assistance (e.g., tents, mats, sanitary kits, blankets and mattresses) to Nigerien migrants upon their arrival in Agadez, before they are returned to their villages of origin, mainly in Zinder region. While these efforts are important to cover immediate humanitarian needs, they are usually not followed by more long-term human rights-based reintegration programmes and independent mechanisms to monitor the human rights of returned migrants and ensure their access to complaint mechanisms and remedies. Several sources reported that some forcibly returned Nigerien migrants tend to emigrate again.

42. Furthermore, since 2017, Algeria has been conducting collective expulsions of non-Nigerien migrants (mainly from ECOWAS countries such as Cameroon, Ghana, Guinea, Mali and Nigeria) without any notice – which has prompted numerous protests from the

²⁷ Hamadou, “*La gestion des flux migratoires au Niger*”, p. 11.

²⁸ See also Tubiana, Warin and Saeneen, *Multilateral Damage*.

²⁹ Estimates provided by IOM Niger during the visit of the Special Rapporteur.

Nigerien authorities to their Algerian counterparts, as well as calls on Algeria from OHCHR, United Nations human rights mechanisms and international NGOs to cease the collective expulsions.³⁰ The Special Rapporteur regrets that no formal protest has been made by ECOWAS or the member States concerned.

43. Based on IOM estimates, between September 2017 and July 2018, at least 6,441 West African migrants, mainly from Mali and Guinea, were expelled from Algeria to the Niger, with a peak of expulsions in the second quarter of 2018. The migrants were rounded up by the Algerian police in their workplaces or homes, including in the middle of the night, beaten up, arrested and brought to police stations, detained, identified, deprived of their personal belongings and savings, loaded in buses and transported to Tamanrasset, the last Algerian city before the border with the Niger. Once in Tamanrasset, the non-Nigerien migrants were put in trucks in unsafe and inhuman conditions and dropped on the so-called point zero, 15 km from the border with the Niger. From there, migrant women, children and men were forced to walk in the desert for approximately 25 km to Assamaka.

44. Due to its limited capacities, the Government of the Niger relies on other actors, especially IOM, to address the situation of non-Nigerien migrants expelled from Algeria. In this respect, the IOM search and rescue operations within the Nigerien territory play a key role. Search and rescue teams actively seek information, in Tamanrasset, Assamaka and along the migration routes, regarding imminent expulsions of migrants from Algeria. When such information is confirmed, IOM launches search and rescue operations to find and assist migrants who have been abandoned in the desert. When IOM is not notified of the expulsions, many of the expelled migrants walk to Assamaka, where they can receive humanitarian assistance from IOM (e.g., water, food and emergency medical and psychological assistance). Both rescued migrants and those who turn to IOM for assistance are also offered transport to Arlit, the closest urban centre to Assamaka, where IOM has one of its six transit centres. This humanitarian assistance is offered by IOM to all migrants abandoned in the desert, regardless of whether or not they sign up for the assisted voluntary return programme. Since the beginning of the search and rescue operations in April 2016 until September 2018, IOM has assisted 8,569 migrants (7,805 non-Nigeriens and 764 Nigeriens) at the border between Algeria and the Niger.

45. The Special Rapporteur recalls that the expulsions from Algeria to the Niger are in flagrant violation of international law, including the prohibition of collective expulsions, the fundamental principle of non-refoulement and due process guarantees, and urges the Government of Algeria to abide by its international obligations and halt with immediate effect all collective expulsions of migrants to the Niger. In addition, he calls on ECOWAS and its member States to deploy all necessary efforts, including in the framework of the African Union, to halt the expulsions and provide the necessary assistance, including consular assistance in the Niger, and access to justice and remedies to their nationals expelled from Algeria.

3. Returns

46. In a regional context characterized by the strengthening of border control to curb and prevent migration to Europe, collective expulsions from Algeria and systematic human

³⁰ United Nations special procedure mandate holders, including the Special Rapporteur on the human rights of migrants, sent a communication to the Government of Algeria on 17 August 2018 ([DZA 3/2018](#)). In its [reply of 11 October 2018](#), the Government responded that the expelled migrants had been “illegal” and had been compromising public security and order. Furthermore, Algeria stated that the Nigerien migrants who had been expelled were victims of criminal networks, while those stranded in the desert had been abandoned by transnational organized crime groups involved in the illicit smuggling of migrants. The Special Rapporteur recalls that based on international human rights law, migrant persons, regardless of their status, are entitled to enjoy their human rights, including non-refoulement and due process guarantees. See also [OHCHR press briefing note on Algeria](#) of 22 May 2018, and Amnesty International, “Forced to leave: stories of injustice against migrants in Algeria”, December 2018.

rights violations against migrants in Libya, the Niger has become a transit country for migrants expelled or forced to return from Algeria and Libya.³¹

47. Due to its limited capacities, since 2014 the Government of the Niger has relied largely on IOM to address the situation of non-Nigerien migrants who have either been expelled from Algeria, rescued in the desert or forced to return from other neighbouring countries such as Libya and Mali. In this regard, the IOM assisted voluntary return programme, which aims at assisting States to address the practicalities of the return process, constitutes a central component of Nigerien migration management policy. Between 2015 and 2018, 27,821 (14,977 in 2018) non-Nigerien migrants were returned to their countries of origin as part of the IOM programme.

48. In the case of non-Nigerien migrants expelled from Algeria, IOM community mobilizers in Assamaka and Arlit inform them about their options and rights, namely to continue their migration journey, to receive assistance from IOM to return to their countries of origin, to be referred to UNHCR³² or to remain in the Niger as ECOWAS citizens or asylum seekers. Those who sign up for the IOM assisted voluntary return programme receive the necessary administrative, logistical and reintegration support for their return to their countries of origin (e.g., shelter, food, medical and psychosocial assistance, travel and identity documents, and transport). Out of the 20,056 migrants profiled at IOM transit centres in the Niger in 2018, 16,396 signed up for return while the rest chose other options.

49. During his visit the Special Rapporteur talked to numerous men, women and children in IOM transit centres in Agadez and Niamey who had signed up for the assisted voluntary return programme. Some of them indicated that they could no longer endure the human rights violations they had been subjected to during their migration journey – such as racial discrimination, arbitrary arrest, torture, collective expulsion and sexual and labour exploitation – and the difficult situation in the transit centres, and they wished to return to their countries of origin. Others indicated that they had signed up for assisted voluntary return because it was the only assistance offered to them, and many of them conceded that as soon as they returned to their countries of origin, they would try to remigrate.

50. IOM states that its assisted voluntary return programme is based on voluntary return, defined by (a) the absence of physical or psychological pressure to enrol in the programme and (b) an informed decision, that is, a decision based on timely, unbiased and reliable information. However, the Special Rapporteur notes that when there are no sufficiently valid alternatives to assisted voluntary return (e.g., through the facilitation of temporary permits or permanent residence, accompanied by relevant administrative, logistic and financial support) the return can hardly be qualified as voluntary (A/HRC/38/41, para. 30).

51. Moreover, while IOM transit centres are open and migrants can leave at any time, the main condition for accommodation in the centres is a willingness to return voluntarily,³³ and there are no other alternatives in the Niger for migrants who are in need of assistance, including shelter and food. The free consent to voluntary return is therefore undermined by the pressure exerted by extremely hazardous weather, living and travel conditions on migrants in vulnerable situations, who are physically and mentally exhausted by gruelling journeys and by the human rights violations that they have suffered in Algeria and Libya, which in the latter case include torture and sexual and gendered crimes.

52. Furthermore, signing up for an assisted voluntary return programme cannot override the fact that most of these migrants and their families are first and foremost victims of illegal expulsions from Algeria, contrary to fundamental principles of international law. The Special Rapporteur also noted the lack of statistics on the number of returned migrants

³¹ See OHCHR and the United Nations Support Mission in Libya (UNSMIL), *Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya* (20 December 2018).

³² In 2018, IOM made 23 referrals to UNHCR, based on the standard operating procedures adopted by both agencies in 2016 for the identification and referral of asylum seekers. See www.refworld.org/pdfid/57fde5cf4.pdf (in French).

³³ See www.nigermigrationresponse.org/en/Our-work/iom-transit-centers.

who try to remigrate and a lack of monitoring of the human rights situation of returned migrants.

53. The Special Rapporteur noted that, apart from the humanitarian assistance provided by IOM in the context of its search and rescue operations and the response mechanism and resources for migrants project in the Niger, no support or protection was provided to migrants, most of them in vulnerable situations, who did not wish to sign up for the assisted voluntary return programme. Furthermore, he observed with concern that migrant victims of expulsions, including those who had signed up for the assisted voluntary return programme, were victims of multiple human rights violations, and no assistance was provided to them to ensure their access to justice and remedies, including reparations. In that regard, the Special Rapporteur notes that the Nigerien authorities and ECOWAS member States (e.g., through their consular services in the Niger), with the support of the United Nations and in collaboration with the National Human Rights Commission and civil society organizations, have an important role to play, including in ensuring accountability.

54. Moreover, systematic and in-depth identification of returned migrants who have been victims of or at risk of human rights violations is not carried out by IOM or other actors. Of particular concern, for example, is the lack of systematic screening and assistance to migrants who have been victims of torture or other cruel, inhuman or degrading treatment or punishment, despite the high prevalence of such violations, especially in Libya. Systematic identification should be prioritized, among other reasons because, when the need for treatment has been medically certified, victims of torture or other cruel, inhuman or degrading treatment or punishment should not be removed to a State where adequate medical services for their rehabilitation are not available or guaranteed.³⁴

4. Resettlement programmes

55. Despite the hardships facing the Niger due to poverty, limited capacities and security concerns related to neighbouring countries, it has displayed an openness and solidarity in receiving asylum seekers and refugees in need of international protection, setting an example for many other countries and regions around the world that have been taken over by xenophobic and anti-migration discourses and practices.

56. In particular, the Special Rapporteur commends the generosity shown by the Niger in accepting refugees and asylum seekers evacuated from detention centres in Libya, where conditions of detention amount to torture and other cruel, inhuman or degrading treatment or punishment. According to UNHCR estimates, there are up to 4,100 persons in one of the accessible Libyan detention centres. In November 2017, UNHCR established the emergency transit mechanism programme to evacuate vulnerable asylum seekers in order to facilitate the processing of refugees held in detention in Libya, and their access to protection and durable solutions.³⁵ During his visit, the Special Rapporteur had the opportunity to talk to asylum seekers evacuated from Libya and they all reported that refugees and migrants suffered multiple human rights violations – such as killings, arbitrary detention, torture, sexual and gender-based violence and forced labour – along their journeys.³⁶

57. The Special Rapporteur also commends the Niger for allowing and providing space for a humanitarian centre for Sudanese refugees. At the same time, he calls on the international community, especially the European Union and its member States, to assist the Niger in that daunting task, to strengthen the capacities of the Niger in that regard, and to assume their international human rights obligations and shared responsibility vis-à-vis that vulnerable group in need of international and human rights protection.

³⁴ Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 22.

³⁵ The Niger has agreed to temporarily expand its asylum space for these refugees. So far 3,175 persons have been evacuated from Libya, 2,491 of them to the Niger. Of these, 1,269 are still in Niamey while 1,212 have already been resettled. See UNHCR, “Libya-Niger situation: resettlement update No. 50”, 25 February 2019.

³⁶ See also OHCHR and UNSMIL, *Desperate and Dangerous*, p. 25.

V. Migrant women

58. Women make up an important part of the migrants expelled from Algeria: 76 per cent of the Nigeriens expelled are women from Zinder Region. For the most part they are young, heads of households or married. These women do not migrate following or accompanied by their partners or spouses but to work on their own (e.g., in street begging). They represent the feminization of migration from the Niger to Algeria.³⁷

59. Women also make up nearly one third of the non-Nigerien migrants expelled from Algeria. During his visit to the IOM transit centre in Agadez, the Special Rapporteur collected information on the multiple violations that they suffered. Some of them had witnessed cases of sexual abuse and violence, including rape by police and guards, during the collective expulsions from Algeria. Extortion, forced prostitution and rape were also reported by women who had been returned from Libya. The women in the IOM transit centre of Agadez expressed enormous anger and feelings of desperation regarding the motives behind and conditions of their expulsion in violation of their rights and human dignity. They are in need of psychosocial support, and must have access to justice and reparations for the violations they have suffered.

60. The Special Rapporteur also noted that the Law on the Illicit Smuggling of Migrants had rendered women more vulnerable to falling victim to sexual abuse and exploitation. Indeed, he learned with concern that migrant women had become trapped in Agadez without being able to move further north in their migration journey. They were often forced into prostitution as a means of survival.

61. Protection of the rights of migrant women must be part of the national strategy on migration. In drafting the strategy, the Government should take into account the concerns and needs of migrant women, address the causes of migration for women, develop responses in consultation with them, including for their protection from trafficking and exploitation, and create mechanisms to eliminate harassment and other constraints encountered by women in their migration journey.

VI. Migrant children

62. During his visit, the Special Rapporteur interviewed children who left their homes due to poverty and lack of opportunities and engaged in the migration journey without their parents, family members or any adult guardian. These unaccompanied migrant children had been victims of all sorts of human rights violations during their migration journeys through Algeria, Chad, Libya, Mali and the Sudan, including harassment and intimidation, abuse, ill-treatment, labour exploitation, arbitrary arrest and detention and expulsion, as well as lack of access to food, water, health, shelter and education. They all indicated that they had never benefited from any special protection, but had been treated like adult migrants by State authorities and armed groups, nor had they received assistance from international organizations.

63. These unaccompanied migrant children, once forcibly returned to or trapped in the Niger while in transit to third countries, do not have access to any child protection system. Furthermore, there is no guardianship system to protect their best interests and rights. The Nigerien children who are returned from Algeria are taken care of by the Nigerien authorities with the support of UNICEF and reunited with their families.

64. Non-Nigerien unaccompanied migrant children who are expelled from Algeria or forced to return from other neighbouring countries are referred to the IOM transit centre in Niamey, which is exclusively devoted to unaccompanied and separated migrant children. They receive tailored assistance while the family tracing process is conducted in their country of origin. In 2018, IOM returned 346 unaccompanied children who had signed up

³⁷ Economic and Social Development Plan, 2017–2021.

for the assisted voluntary return programme. These children are entitled to reintegration assistance upon their return, for example to continue their studies or initiate an income-generating activity. IOM and UNICEF have adopted a joint standard operating procedure for the referral and shelter of children under the age of 15.

65. As for those unaccompanied migrant children who do not want to return to their communities or countries of origin, there is no system in place to identify and refer them to childcare services or to identify and trace their families, which renders them more vulnerable to abuse, violence, exploitation and child rights violations.

VII. Cross-cutting issues

1. Detention

66. The Law on the Illicit Smuggling of Migrants has not only tightened the conditions for the entry and stay of migrants but also increased the recourse to detention of migrants. In Agadez Region, the National Human Rights Commission has documented multiple human rights violations suffered by migrants during their transit and stay in the Niger, including physical and psychological violence and ill-treatment, threats, confiscation of documents, extortion (e.g., at checkpoints), deprivation of food and water, and restrictions on and deprivation of liberty.³⁸ These violations were also reported to the Special Rapporteur during his visit to a migrant ghetto in Agadez. The risk and fear of being stopped, retained and subjected to administrative detention push these migrants into hiding. The Special Rapporteur recalls that any form of administrative detention or custody for migrants must be used as an exceptional measure of last resort, for the shortest period possible and only if justified by a legitimate purpose. Furthermore, detention of children based on their migration or refugee status is contrary to the international principle of the best interests of the child and is thus prohibited (A/HRC/38/41, paras. 21–22).

2. Access to justice

67. Migrants in the Niger, including those in vulnerable situations, do not have access to justice. This applies also to a large part of the population of the Niger, due to economic, geographic, social and cultural barriers.³⁹ However, migrants are a vulnerable group that face a particularly high risk of abuse, exploitation and violations of their rights. During his visit to Agadez and Niamey, most migrants, among them children, told the Special Rapporteur that they had been victims of arbitrary arrest and corruption. While in detention, which often lasted several days, none of them, including the children, had received access to legal aid and representation.

68. Although the Special Rapporteur was told that the National Legal and Judicial Assistance Agency was in charge of providing free legal assistance to vulnerable groups, he was also informed that the capacities and the funds of the agency were insufficient to provide effective legal assistance. In addition, there is a limited understanding of migrants' rights among migrants as well as State officials, and insufficient means to conduct human rights monitoring activities, including by the National Human Rights Commission office in Agadez.

VIII. Conclusions and recommendations

69. Due to its relative security and stability, the Niger has become a hub for migration to the north. In recent years, the situation of migrants in the country has worsened as a result of migration policies and agreements adopted by the Niger, especially with the European Union, which have resulted in the violation of the human

³⁸ CNDH-Info, No. 1 (December 2017), p. 19.

³⁹ See European Union Delegation to the Niger, "L'assistance juridique et judiciaire au Niger".

rights of migrants through their criminalization, harassment, arbitrary arrest and detention, and forced return. The current situation has significantly increased the pressure on the Nigerien authorities regarding the country's migration management, at a time when their capacities are limited and already severely stretched. The international community must raise its awareness of this situation and increase support to the Niger to help the country refocus its strategy on migration management, which should be compliant with its international human rights obligations, and to strengthen relevant national institutions and capacities to create a well-functioning system of protection for asylum seekers and migrants in vulnerable situations.

70. The Niger has an obligation to protect all migrant persons in its territory, regardless of their status or nationality. Due to the limited capacity of the Niger, the international community must step up its support by addressing the root causes of migration and by providing regular and safe pathways for migration instead of banning all migration to the north and turning the Niger into a hub for processing forced returns, in disregard of international human rights law and raising questions as to the effectiveness and sustainability of these measures.

A. Recommendations to the Government of the Niger

71. Based on the information received and the concerns expressed, the Special Rapporteur proposes the following recommendations to the Government of the Niger, urging it to implement them in cooperation with relevant stakeholders, including the United Nations country team and civil society organizations.

72. To promote human-rights based migration management in the Niger and in the region, the Special Rapporteur recommends that the Government:

(a) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

(b) Reform the Law on the Illicit Smuggling of Migrants to clarify its purpose and provisions, ensuring that it does not criminalize or victimize migrant persons and is fully in line with international human rights standards, strengthen provisions on prevention (e.g., through awareness-raising and training of State officials), clearly state the competences of pertinent authorities and ensure the protection of migrants, including victims of illicit smuggling (e.g., by prohibiting the detention of migrants and victims of illicit smuggling, including children, adopting specific measures for the protection of non-accompanied children and establishing accessible complaint mechanisms);

(c) Adopt a comprehensive national migration management strategy that is child-sensitive, gender responsive and fully respects the human rights of migrants, and that sets the framework for the implementation of the Global Compact for Migration and the Sustainable Development Goals as well as regional and international cooperation for this purpose;

(d) Take ownership of the migration policy and strengthen and empower national institutions and capacities to take the lead in the design and implementation of national migration management measures;

(e) Invest in filling data gaps, such as those concerning underground migration, remigration and smuggling and trafficking networks, to develop a systemic picture and evidence-based policies;

(f) Design and implement “firewalls” to separate immigration enforcement and counter-smuggling activities from public service provision, labour law enforcement and criminal justice processes to ensure that migrants in irregular situations, including those in transit, can access these services and assistance provided by humanitarian actors without fear and repercussions;

(g) Ensure the transparency, oversight and accountability of readmission agreements, including bilateral agreements with Algeria, and facilitate independent monitoring – by the National Human Rights Commission, civil society organizations and OHCHR – of human rights at the international border and in the context of the transit, return and reintegration of migrants;

(h) In the context of forced returns to the Niger or other arrivals, conduct individual human rights risk assessments upon arrival in order to identify migrants in vulnerable situations who are victims or at risk of human rights violations, determine their protection and assistance needs and take measures to prevent violations of their human rights in returning countries;

(i) For Nigerien returnee migrants, put in place human rights-based reintegration programmes and independent mechanisms to monitor their human rights, design effective human rights protection responses and ensure their access to complaint mechanisms and remedies;

(j) Adopt and support the implementation of strategies on migrants in vulnerable situations, including by creating mechanisms and resources to ensure that the status of migrants in vulnerable situations can be determined individually, fairly and reliably, and respecting the principle of non-refoulement, following the guidance provided by the Global Migration Group Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations;

(k) Never detain children based on their migration status but adopt non-custodial care and community responses instead. Unaccompanied children should only be returned when it has been determined to be in their best interests through an appropriate procedure before a competent institution that includes their proper representation;

(l) Establish accessible complaint mechanisms for migrants, including child-friendly complaint mechanisms for children, as well as legal information and aid in a language that they understand, ensuring their access to justice for violations of their human rights;

(m) Ensure prompt, impartial and independent investigations of violations of the human rights of migrants;

(n) Promote regular intraregional and interregional channels for migration and labour mobility, ensure that regular, safe, accessible and affordable channels for migration are available, decriminalize illegal border crossings and combat the stigma and discrimination associated with irregular migration;

(o) Take appropriate legislative, policy and practical measures to ensure that border management and measures aimed at addressing irregular migration and combating smuggling activities are in line with international human rights law, following the guidance provided by the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders;

(p) Disseminate the present report and its recommendations among all concerned national stakeholders.

B. Recommendations to the Economic Community of West African States and its member States

73. The Special Rapporteur recommends that ECOWAS and its member States:

(a) Ensure that ECOWAS nationals victims of collective expulsions from Algeria to the Niger have access to justice and remedies, including reparations, by facilitating their access to information, consular services and effective legal representation, for example through the establishment of consular services in Agadez Region;

(b) Facilitate the provision of documentation to all nationals of ECOWAS member States as a means of ensuring the implementation of the ECOWAS and West African Economic and Monetary Union principles of freedom of movement of persons;

(c) Ensure that any regional migration strategy is in line with international human rights norms and standards and puts protection of the rights of migrant persons at its centre.

C. Recommendation to the European Union and its member States

74. The Special Rapporteur recommends that the European Union and its member States:

(a) Integrate rigorous human rights, due diligence, monitoring and oversight mechanisms into all external agreements and initiatives and prioritize projects in the Niger that will improve the human rights of migrants;

(b) Fully recognize the push and pull factors of irregular migration, and the responsibility of the European Union in managing and mitigating them;

(c) Take a global leadership role whenever needed in relation to humanitarian and human rights crises and reduce the market for smugglers by increasing, in cooperation with other States, resettlement opportunities;

(d) Ensure that all European Union programmes, policies and technical assistance to the Niger concerning migration furthers the realization of human rights for all migrants, including those that are neither refugees, asylum seekers or assisted voluntary return applicants, in compliance with international human rights norms and standards;

(e) Expand safe and regular entry channels for migrants and refugees to Europe, including by expanding access to asylum, refugee resettlement (including through private sponsorship), humanitarian admission, including for survivors of trafficking, family reunification, access to educational visas and labour mobility at all skill levels;

(f) Effectively advocate with the Libyan authorities for the opening of safe spaces for migrants and refugees and alternatives to detention, as well as improved access for the United Nations, humanitarian NGOs and other relevant actors to provide life-saving assistance and monitoring of all places of detention.

D. Recommendations to other States concerned

75. The Special Rapporteur recommends that the Government of Algeria stop with immediate effect the collective expulsions of migrant persons to the Niger and their intimidation, harassment, detention and ill-treatment based on racial discrimination, and ensure access of migrants to justice and remedies, including reparations, for violations of their human rights.

76. The Special Rapporteur recommends that the Libyan authorities:

(a) Release all migrants and refugees detained arbitrarily, prioritizing persons in vulnerable situations, including children, and persons in need of international refugee protection;

(b) End the practice of mandatory or automatic detention of migrants.

E. Recommendations to the international community, donors and United Nations agencies, funds and programmes

77. The Special Rapporteur recommends that United Nations agencies, funds and programmes in the Niger:

(a) Ensure that all interventions of United Nations agencies, funds and programmes related to migration issues include a legal protection mandate and a clear protection policy anchored in international human rights law, and adopt a comprehensive human rights framework for their work, with full respect for the human rights of migrants and the “do no harm” principle;

(b) Reflect on their contribution in support of mixed migration in the Niger to ensure comprehensive United Nations support, that is, all United Nations actors should have specialized staff, activities and funds devoted to monitoring mixed migration (e.g., through observation points).

78. The Special Rapporteur recommends that IOM increase the access of United Nations humanitarian and human rights actors to IOM transit centres to identify and provide specialized assistance to migrants, including children, victims of human rights violations and others in vulnerable situations. IOM should strengthen cooperation and complementarity with United Nations partners to ensure access to migrants in its centres and external monitoring, for example to address migrants’ complaints, which could be done, for instance, by opening UNHCR and UNICEF offices in IOM centres.

79. The Special Rapporteur recommends that the international community, donors and United Nations agencies, funds and programmes:

(a) Increase coordination among United Nations actors and with international and local NGOs to ensure that all migrants, and especially the most vulnerable, including children, are able to exercise their human rights;

(b) Strengthen identification, assistance and human rights protection programmes for migrants in vulnerable situations who are outside IOM transit centres;

(c) Set up mechanisms for the identification, assistance and appropriate referral of migrants in vulnerable situations, following the conceptualization and guidance provided by the Global Migration Group Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations;

(d) Collect and analyse data on remigration to assess the effectiveness of migration policies and programmes, including the assisted voluntary return programme;

(e) Develop a joint United Nations fundraising strategy for projects related to migration and ensure the added value of each United Nations actor and their mandates is reflected therein and is grounded on a human rights-based approach to migration.
