

BEST PRACTICES OF IMPLEMENTING A HUMAN RIGHTS APPROACH IN ASSISTED VOLUNTARY RETURN (AND REINTEGRATION)

INTRODUCING HUMAN RIGHTS MONITORING

POLICY BRIEF

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EXECUTIVE SUMMARY

Policy engagement on human rights monitoring (HRM) in assisted voluntary return (and reintegration) (AVR(R))¹ represents a novelty in the context of a comprehensive approach to migration management in the European Union (EU). While the [Return Directive \(2008/115\)](#) (RD) in Article 8(6) mandates the establishment of effective fundamental rights monitoring systems for forced-return, there is not a set legal monitoring oversight directed towards returnees involved in AVR(R).² Thus, and in line with relevant provisions of the [Screening Regulation \(2024/1356\)](#) – a key component of the EU’s Pact on Migration and Asylum – EU Member States are to set up independent fundamental rights mechanisms at EU external borders for a range of border management activities (including monitoring compliance with the principle of non-refoulement and the application of national rules on detention).³ The current human rights monitoring policy envisioned within the Pact is reinforced by a second monitoring mechanism foreseen by the [Asylum Procedure Regulation \(2024/1348\)](#), with several questions arising on their impact, if any, on subsequent border return procedures.

Complementing and updating such policy debates and provisions on monitoring in migration governance, this Policy Brief seeks to draw attention to the necessity of introducing EU coordinated HRM mechanisms built-in within AVR(R) Member States national programming. Based on desk research and in-depth qualitative interviewing undertaken across 9 EU countries, it aims to expand ad hoc/informal current applications of monitoring within AVR(R) – mainly conceived for post-return review of financial and reintegration services – by recommending to extend the scope of monitoring for better accounting of returnees’ human rights. In consideration of valuable criticisms of AVR(R) schemes,⁴ our research showed that different EU countries give different weight to human right aspects in their return procedures and programmes resulting in patchy protection systems. Such protection systems will be addressed in this Policy Brief in terms of human rights practices associated to a list of key associated rights addressed by AVR(R)

¹ While the Policy Brief looks at human rights monitoring in the pre-return stage of assisted voluntary return, we refer to AVR(R) – including also reintegration – as: a) we understand pre-return and post-return stages in *continuum*; and b) a second phase of our research will involve exploring practices and opportunities of human rights monitoring in countries of return, with fieldwork envisioned in Georgia, Iraq and Nigeria.

² For more on work related to harmonizing procedures of fundamental right monitoring across EU Member States, see the project [Forced Return Monitoring \(FRM III\)](#), led by ICMPD in cooperation with Frontex and FRA, concluded in 2021. In the framework of the FAiR project, ICMPD is to formulate improved guidelines for monitoring for scheduled flights, in-land and sea forced return operations (FAiR deliverable 7.1).

³ See, Fundamental Rights Agency (FRA), [Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms](#), 2024. For more see, Molnár, T., [Monitoring fundamental rights compliance in the context of screening and the asylum border procedure: putting bricks back into the EU house of rule of law?](#), EU immigration and Asylum Law and Policy, Odysseus Network, 2024.

⁴ For example, drawing on several works in the field, Kuschminder identifies 3 main key criticisms associated to AVR(R): 1) its voluntariness, addressed as major determinant for framing AVR as a choice under disputed conditions; 2) its presumption of returning individuals to countries/situations that are safe; and 3) its level of return-reintegration achievable through these programmes, framed as ‘sustainable’ while, in truth, evidence shows that re-emigration is a reality. See Kuschminder, K., (2017), [Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return – Time for a Paradigm Shift](#), Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2017/31, 4-5.





staffers consulted for the study – and referenced in the second part of this work as key takeaways from our fieldwork, desk review results and experts roundtable discussion – including a review of relevant challenges.

Overall, the identified good practices of human rights protection presented in this Policy Brief are converged with what informal monitoring looks like in AVR(R). This approach acknowledges and significantly recognises that formal and informal monitoring are two distinct processes. These processes are considered as such only for detailing how current more informal practices function to constantly maintain the rights of returnees at check through observations and assessments of human rights compliance, supplemented by more or less structured procedures. Taking human rights practices as informal monitoring as the point of departure, and arguing for a better oversight of AVR(R) activities, this Brief provides for *policy guidance* (and not guidelines), therefore making the case for initiating discussions over the necessity of establishing proper HRM mechanisms and regularising the process. To a great extent, it also suggests that such efforts could increase the legitimacy of EU return policies and practices for the scope of protecting and advancing individual rights.

ABOUT THE FAIR PROJECT

The Finding Agreement in Return (FAiR) project aims to strengthen the governance of return migration in the EU, addressing the legitimacy issues around return migration policies and alternatives. The project contributes to generating new insights into the factors and processes that either foster or impede the legitimacy and effectiveness of related policies. The initiative places the perspectives of non-EU realities centre stage and brings together multidisciplinary expertise from academic, policy research, governmental, and migrant advocacy organisations across Europe, Africa, and the Middle East. This policy brief is based on data collected by the research team through desk research and qualitative interviewing in Austria, Belgium, Germany, Greece, Italy, Poland, Spain, Sweden, and the Netherlands, and roundtable exchanges.





1. INTRODUCTION

EU Member States, bodies, and agencies implementing EU law have human rights obligations towards third country nationals (TCNs) returning or being returned to countries of origin and transit. Returning individuals should be undertaken with full respect of their human rights and dignity. Indeed, all migrants, irrespective of their status, nationality and identity, are entitled to the protection provided under international and EU human rights law, international refugee law, and applicable domestic law. In this respect, efforts to build a common EU system for returns - with the RD and the recently adopted Pact providing for common rules and procedures on return for Member States from the Union, and at its external borders for 'irregular arrivals', – should account for fundamental rights safeguards and procedural guarantees⁵ in order to ensure the *effective*, but also *humane*, implementation of the EU return and readmission policy.⁶ In light of these considerations, the EU and its Member States tend to position AVR(R) programmes as an important tool to ensure human rights compliance of returns from the Union. Under the auspices of “enabling [migrants’] return in a dignified manner,” the [EU Strategy on Voluntary Return and Reintegration](#) of 2021 reiterates the need for Member States to prioritize ‘voluntary’ over forced returns, as grounded in the RD which, nevertheless, does not lay out a framework for setting up and running AVR(R) programmes. This is the case, despite the fact that ‘voluntary’ returns are assessed and strongly presented in policy and discourses as more humane, safer and less costly than forced returns.

‘Voluntary returns’⁷ – a term that encompasses both assisted and independent/spontaneous return⁸ – targets both individuals with regular status and irregularised migrants,⁹ such as rejected asylum seekers, overall including stranded migrants, survivors of trafficking/exploitation and other vulnerable groups returning to their country of origin or transit based on their informed and (supposedly) free decision.¹⁰ The actors involved in AVR(R) range from: international organisations (IOs, such as IOM), non-governmental organisations (NGOs), civil society actors, state authorities, border guards or police and the European Border and Coast Guard Agency (Frontex). Assistance within AVR(R) programmes and eligibility criteria vary among EU Member States and according to entities involved, but benefits typically include individual counselling, pre-departure support (administrative, medical, legal and psychological) and travel arrangements (such as facilitating identification/acquisition of travel documents, and sponsoring of the return journey), with possible access to reintegration packages.

So far, the ‘success’ of these programmes has been mainly measured by return implementers in terms of the quality of socio-economic post-return reintegration (usually, up to a max of 12 months), with current

⁵ Dumbrava, C., & Radjenovic, A., [Towards a common EU system for returns](#), (Briefing), European Parliamentary Research Service, 2024.

⁶ European Commission (EC), [A humane and effective return and readmission policy](#).

⁷ While for the specific scope of this Policy Brief we refer to ‘voluntary’ and forced return, in the wider framework of the FAiR project we use a) enforced return as an overarching term for all returns that occur when a return decision has been issued, or could be issued, under EU Law; b) voluntary return as incentivized return; c) forced return as deportation; and d) return that occur in the absence of a return decision is considered as non-enforced return. These conceptualisations are addressed in the Working Paper on Legitimate Return and Alternatives to Return, Work Package 2.

⁸ The International Organisation for Migration (IOM) defines assisted migration as “the movement of migrants carried out with the assistance of governments or international organisations, as opposed to spontaneous, unaided migration,” while spontaneous return is termed as “the voluntary, independent return of a migrant or a group of migrants to their country of origin, usually without the support of States or other international or national assistance,” see the [International Migration Law No-34 – Glossary on Migration](#), 2019, also available as a living document.

⁹ *Irregularised* is used in the Policy Brief as a preferred addressing than *irregular* migrants as to critically emphasise the role of EU/EU Member States policies and approaches that make individuals’ legal status irregular by the lack of regular routes, repressive policies and systems. This notion includes individuals who are referred to as undocumented who have not been granted authorisation to enter, live or work in a country. On the reasons to reject the term ‘illegal’ in migration, privileging ‘undocumented’ or ‘irregular’ instead, see PICUM’s leaflet on [Words Matter Terminology](#).

¹⁰ See more in the footnote 19 on suggested declinations of ‘voluntary’ return to reflect dubious voluntariness.



monitoring tools paying little attention to the overall human rights evaluations of AVR(R) procedures and their impact on returnees' rights, including during pre-return stages. A general perception, that emerged also from our research, is that the 'voluntary' component of AVR(R) assigns to these schemes an implicit human rights compliance dimension that is not necessarily accurate. In other words, while on the one hand, the lack of proper human rights monitoring tools can be justified in line with such a position, on a practical level the "human face of return" – as one of our interviewees put it – assigned to AVR(R) remains largely unassessed raising questions on the extent of which such perception is even realistic. This policy brief seeks to address such questions by aiming to fill this gap and offering alternatives to current uses and conceptions of monitoring in AVR(R) constrained by a very limited space for human rights scrutiny.

2. RETHINKING THE SCOPE OF MONITORING IN AVR(R)

In the context of AVR(R) designing and implementation, monitoring is primarily concerned with assessing the effectiveness of programmes in their post-return phase, especially in terms of measuring the quality of reintegration assistance and the 'sustainability' of return. At the EU level, for instance, in 2016 the European Migration Network (EMN) delivered [Guidelines for monitoring and evaluation of AVR\(R\) programmes](#) introducing monitoring as serving the scope "to inform programme management decisions, and involves carrying out systematic internal data collection and analyses activities to identify and measure gaps between actual and planned performance," with: 1) *programme implementation monitoring* focusing on how activities are being implemented, the types and numbers of outputs of these activities and costs; and 2) *beneficiary monitoring*, to be conducted by local implementing (I)NGOs (International and Non-Governmental Organisations), focusing on outcomes for the returnees, including their well-being. *Evaluation* aims to assess performance systematically on the basis of set criteria for future programming or improvements to current programmes. More recently, in its inform on [Coherent return and reintegration assistance](#) published by EMN in September 2024, their consultation with Members and Observer Countries resulted in a reiterated focus over the current lack of structured monitoring frameworks at the EU level affecting the standards for evaluating the promotion of 'voluntary' return and reintegration, with insufficient monitoring data being collected.

Since the [EU Reintegration Programme \(EURP\)](#) has been launched in 2022, Frontex has been increasing its support to EU+ countries in assisted voluntary returns – in addition to providing reintegration support to forced return cases – covered by the Agency's budget, with services implemented by reintegration partners in 35 third countries (with a projected target of 50 countries).¹¹ Under the EURP, Frontex has set up a dedicated Evaluation and Monitoring Framework (EMF) to oversee the provision of EU reintegration assistance – which includes the monitoring, evaluation and reporting of the post-arrival and post-return support. Various types of assessments are envisioned to measure the programme progress.

Limited post-return monitoring is also possible through the [Reintegration Assistance Tool \(RIAT\)](#) where return counsellors in Member States and reintegration partners in third countries have to input their data on the returnees also to identify potential reintegration gaps. However, access to the tool is restricted to people working in EU Member States, EU Agencies and contracted reintegration partners, therefore not allowing for proper external monitoring.

¹¹ European Commission (EC), [Striking a balance on migration: an approach that is both fair and firm](#), COM(2024) 126 final, 10.



Further, through the EU-IOM Knowledge Management Hub, the International Organization for Migration (IOM) has developed a [Monitoring and Evaluation \(M&E\) package](#) for activities concerning return and reintegration programmes. In the words of the IOM, these tools for monitoring aim “at initiating progressive harmonisation of M&E across return and reintegration programmes globally,” and are envisioned to help practitioners to understand the contents of the M&E framework developed.¹² Psychological, social and economic are the three key dimensions informing the reintegration sustainability survey for returnees, while the AVR programme satisfaction survey for returnees is designed to assess the satisfaction of beneficiaries throughout their outreach, pre-departure, travel and reception. The [IOM Monitoring and Evaluation Guidelines](#) provide more details for systematic M&E carried out by the organisation for any of its interventions, with monitoring presented as an established practice of internal oversight that provides an indication and tracking of both operational and financial activities. While monitoring is framed in the IOM’s Guidelines more in terms of an assessment of interventions carried out for managerial purposes, indicators take into account humanitarian and human rights considerations informed by common ethical principles.¹³

Periodic monitoring missions to evaluate reintegration project results and beneficiary assistance, including consideration of third countries’ approaches to returning migrants, are also widely envisaged by EU Member States authorities, (I)NGOs and Frontex.

Overall, the fact that the abovementioned monitoring(s) are conceived mostly for evidence-based programming and are exclusively, or mostly, tied to EU and Member States reintegration assistance – considering that a great proportion of returnees do not benefit from it¹⁴ – raises questions about AVR(R) schemes review rationales. In addition to this, it is worth emphasising that these instruments are not only narrow in scope, but are also set up by and provide assessments for the same entities involved in return and reintegration. Our research assessed that, to a significant extent, existing monitoring tools and approaches – mostly conceived for the post-return phase of the migratory cycle – fall short of exhaustively assessing human rights compliance in AVR(R) procedures. This, notwithstanding returnees direct involvement through questionnaires, surveys, and direct feedback.

2.1 OUR APPROACH TO MONITORING: HUMAN RIGHTS PRACTICES IN AVR(R)

Strictly speaking, no such thing as HRM in AVR(R) exists yet. Ergo, to examine current practices that even partially contribute to this aim, we took a broad approach to assessing types of informal monitoring. In the context of our research, we collected human rights practices, to be understood as part of AVR(R) procedures for guaranteeing and eventually restoring the protection of rights in the return process. AVR(R) policies and programmes design are accompanied by procedures and decision-making that define human rights implementation. Giving consideration to limitations¹⁵ and articulations of monitoring in AVR(R) conceived by

¹² More in details, the IOM enlists 17 annexes (not public, accessible only under request). **Data gathered through the beneficiary surveys and other M&E tools feed into the organisation research and studies** See IOM’s Migrant Protection Platform, [Monitoring and Evaluation Tools for Return and Reintegration Programmes](#), 2022.

¹³ The [IOM Monitoring and Evaluation Guidelines](#) make explicit reference to common ethical principles that “should be applied in full respect of human rights, data protection and confidentiality, gender considerations, ethnicity, age, sexual orientation, language, disability, and other considerations when designing and implementing the evaluation,” 2020, 110.

¹⁴ It is worth noting that, on the contrary, in the Italian AVR(R) context reintegration assistance to take place in countries of origin is structurally offered to all individuals, vulnerable and non, who are granted access to voluntary return programmes. For information on current AVR(R) programming in Italy see: [RI.VOL.ARE IN RE.TE – Ritorno volontario e assistenza alla | IOM Italy](#). For more, see Caselli, M., Kadio, A. A., Rizzo, C., (2022), [Assisted Voluntary Return & Reintegration Policies and Programmes in Four EU Countries: France, Germany, Italy and Spain](#), *Italian Sociological Review*, 12(2).

¹⁵ In addition to reflecting on the need and benefits of establishing proper monitoring in AVR(R), some of our research participants also referred to possible shortcomings related to making human rights monitoring a more explicit practice, some of which have been addressed in terms of: adding



the participants of our study, together with an in-depth understanding of EU countries-level return procedures, we assessed that there are differences within the expression of these practices by state authorities, NGOs, or the IOM, with differing possibilities also afforded by AVR(R)'s designing and national return procedures. *Practices of informal HRM*, mostly embedded in AVR(R) procedures, were indicated by our respondents as existing as part of human rights ideals and adopted practices sustained by the EU acquis and national legislative frameworks, international law principles and common standards, and variously informed by codes of conduct, guidelines, quality frameworks, toolkits, handbooks, and trainings, therefore ethically and practically grounding and guiding their actions.

Several interviewees reported difficulties in defending and maintaining an exhaustive human rights approach in AVR(R) due to the fact that, ultimately, the goal to 'humanely' return TCNs is still their *effective return*, with achievable 'targets' often linked to funding opportunities. One of our interviewees referred to the fact that donors are not always interested in monitoring and evaluation for human rights compliance and this restricts the scope of monitoring to the performance of attained results. From an accountability perspective, some AVR(R) experts working at NGOs underlined that their reporting to authorities interests only marginally the human rights of returnees as the data requested and gathered mostly concerns answers to indicators such as return targets, how many of which are vulnerable, the mapping of reintegration assistance and effective obstacles to return for statistical purposes. Ultimately, all actors involved in AVR(R) interviewed to some extent variously commit to human rights principles within their work and, as such, impact the scope and procedures of return. It clearly emerged during our exchanges that AVR(R) implementers execute and promote human rights practices more-or-less structurally, therefore providing fertile grounds for the development of consistent and formal monitoring.

We identify informal HRM in AVR(R) taking place through practices that can serve a threefold scope:

- 1) to identify alleged human rights violations and possibly prevent them, while also ensuring that respect of human rights is fulfilled in the return process;
- 2) to reinforce states' and involved actors' responsibility and accountability with regard to the human rights of returnees;
- 3) to strengthen the agency of prospective returnees by allowing for their informed agency and engagement over their participation in AVR(R) processes.¹⁶

The assessment of good practices and relevant limitations, identified together with key human rights that will follow in this Policy Brief is, therefore, significant for sustaining the arguments that: **a)** human right compliance of AVR(R) procedures should not be taken for granted or even considered unnecessary for monitoring due to the connotation of such programmes as more compatible with 'humanitarian' goals than forced returns; **b)** types of more informal HRM are already embedded within AVR(R) procedures but fragmented national and organisational approaches call for EU coordinated mechanisms to be properly established to guarantee equal and effective protection of returnees who choose to return through AVR(R) schemes; **c)** no dedicated human rights violations reporting exists to be activated both by all AVR(R) implementers (with principles of not harm, due diligence and toolkits mainly guiding staffers work), and

more reporting duties to staffer; funding constraints; ensuring availability and returnees' cooperation in the process; and the possibility for monitoring to overly restrict adopted practices or to create just a 'minimum' consensus over human rights protection. Nevertheless, protecting the well-being and rights of returnees have been largely assessed as crucial in our research.

¹⁶ In regards to point 3, it is imperative to remark that our analysis is based on the perspectives of AVR(R) implementing actors, and not prospective returnees themselves, thus it acknowledges that their views might differ and are not fully accounted as an institutional view only is privileged. Nevertheless, we believe that individuals' direct engagement with AVR(R) processes is an essential and indirect component of our assessment towards the scope of human rights monitoring practices. Within the FAiR project, interviews with returnees are envisioned in Work Package 4 which addresses non-EU and diasporic (counter) discourses.



directly by returnees (besides some general ones),¹⁷ leaving actors, as one of our interviewed expert put it, “powerless” when trying to defend rights and seek remedy for failures to respect human rights; and **d**) formal HRM would be of benefit for returnees, but also for state and non-state actors implementing AVR(R), as to openly review/support their work.

Indeed, the need of introducing dedicated HRM mechanisms in AVR(R) will be put in dialogue in this Policy Brief with the identified human rights practices, in an effort to improve human-rights frameworks of return and comprehensively bring our research evidence into the policy recommendations outlined at the end of it.



Figure 1. The three-step process indicates our research rationale from 1) the collection of human rights practices; to 2) the identification of such practices as sustaining informal monitoring; and 3) our call to set-up next formal human rights monitoring in AVR(R) based on our findings.

2.2 METHODOLOGY

This Policy Brief is based on desk research, including the analysis of EU, Member States and (I)NGOs policy documents, together with in-depth qualitative analysis grounded in 36 semi-structured interviews conducted both in-person and online, with a range of practitioners implementing AVR(R) programmes. Our interviewees worked at (I)NGOs and national public offices in Austria, Belgium, Germany, Greece, Italy, Poland, Spain, Sweden, and the Netherlands and held different job functions: return and reintegration experts, counsellors, social workers, and protection officers. In order to reflect a variety of informed views, human rights experts at EU Agencies, human rights advocates and academics with relevant experience of EU return governance, both in policy and in practice, have also been interviewed. While this Policy Brief is based on findings collected in EU Member States, and accounts mainly from pre-return processes initiated in the EU, post-return HRM will be addressed as a later stage of our research with fieldwork envisioned in Georgia, Iraq and Nigeria.

Relevant data was collected over a period of 6 months, from January to June 2024. This study period allowed us for thorough data collection, review and analysis in the targeted countries concerning AVR(R) national legal frameworks, programmes design, and adherence to human rights approaches. The interim findings of this research were presented during a roundtable discussion, held both in-person in Brussels and online, in June 2024. This event, conducted under ‘Chatham House rules’, included attendees from the European Commission, EU agencies, (I)NGOs operating in several EU+ countries, national authorities and academics. The Policy Brief factors in exchanges and feedback received during this cooperative gathering.

Considering the novelty of research conducted on HRM in AVR(R), throughout our interviews we adopted a bottom-up approach to investigate how the human rights dimension of AVR(R) would effectively benefit from centring monitoring within it. Our research participants, therefore, have been actively involved in detailing

¹⁷ Access to internal feedback and complain mechanisms are available for the activities of the IOM. See [IOM’s policy on the full spectrum of return, readmission and reintegration](#), 7.



AVR(R) practices, through an extensive engagement with these return procedures. Their practical and situated understandings allowed us to strengthen our research objectives in order to provide *policy guidance* on monitoring that would increase human-rights compliance in AVR(R) processes. Thus, the recommended operationalisation of human rights practices, presented in this Policy Brief, acts as a springboard for the EU-wide formalisation of good practices within AVR(R) to be sustained by the introduction of proper monitoring.

3. KEY TAKEAWAYS FROM THE RESEARCH

Formal and informal practices shape the context in which returnees' human rights are upheld in AVR(R) during pre-return stages. Interviews with experts across 9 EU countries, and information gathered through desk review, resulted in the collection of human rights practices. These practices were reported by our research participants as taking place in continuity with post-return to anticipate potential reintegration challenges. HRM is often formalised primarily in terms of post-return outcomes where structured frameworks are in place to evaluate the conditions and treatment of returnees after they have arrived in their country of origin. However, the monitoring of human rights during earlier stages, such as pre-return and during the return process itself, tends to be more informal. These earlier stages are critical to safeguarding the rights of returnees throughout the entire return procedure.

AVR(R) staffers consulted for the study reported setting clear safeguards towards returnees involved in this type of return. However, on a larger picture, protection practices remain less systematically regulated leaving room for arbitrariness and differential guarantees. Such practices are approached in our study as the exercise of work, expressed in various forms and mediums – and performed by several actors – that, ultimately, provide awareness, safeguard, expose violations and/or redress human rights situations. Our approach advocates for bringing to the forefront existing and suggested protection practices as assessed in our study, and enlisted below, together with key associated rights of fundamental importance for monitoring. Efforts to regulate the execution of human rights practices through monitoring could strengthen transparency, oversight and accountability, ergo widening the scopes of current AVR(R) monitoring by including at the core flexible (tailored to specific contexts, jurisdictions and groups) and harmonised (pertinent to all EU countries in scope) mechanisms responsive to returnees' rights.

Our research revealed that differences exist within the execution of 'voluntary' returns in the countries under study at the national and organisational levels, where human rights practices, acting as informal monitoring, are differently implemented and articulated as: following up/staying in touch with returnees post-return; looking after health rights pre- and post-return; establishing close relationships with (I)NGOs partners in third countries to ensure tailored assistance of returnees; refusing to take in charge returns if assessed as unsafe/unsustainable and/or lacking specific guarantees; providing up-to-date information in order to ensure informed consent and, therefore, assessing the ability of individuals to provide it. Ultimately, it is their execution with an explicit human rights focus that qualifies these practices as *a type of informal monitoring*.

3.1 IMPLEMENTING HUMAN RIGHTS IN AVR(R): ASSESSING GOOD PRACTICES

In what follows, human rights practices are discussed by associating them with key human rights of interest for monitoring, namely: *the right to 'voluntary' return; the right to information; the right to safety; the right to health; the right to privacy; the right to family life; the right to personal liberty; and the right to dignity.*

This list of rights identified in this Policy Brief (represented also in figure 2 below) needs to be considered not exhaustive, but reflective of what are the key associated rights to AVR(R), singled out for the research aims and addressed by our interviewees as human rights practices of crucial interest for monitoring based on their direct experience and understanding of the needs of returnees.

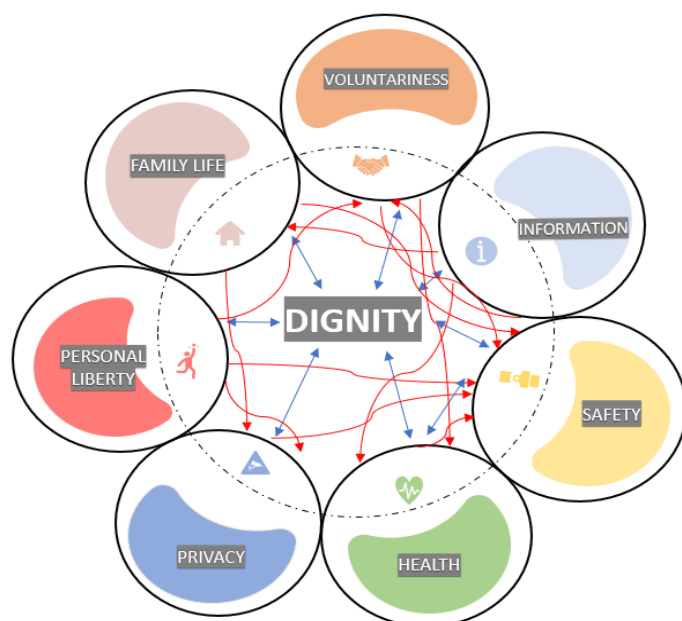


Figure 2. Key Associated Rights to Human Rights Monitoring in AVR(R).

The human rights enlisted and discussed in this Policy Brief, while not exhaustive, need to be considered intertwined and of interconnected interest for exhaustive and well-balanced monitoring. Accordingly, this figure aims to further show that such rights – with dignity at the core – are of different impact and can variously influence the respect of individual rights in AVR(R), i.e., information and voluntariness; family life and safety; privacy and personal liberty; information and health; and more.

Our general findings form the basis for arguing for the introduction of monitoring in AVR(R) to ensure that this human rights approach is implemented correctly. To provide *policy guidance* on this key topic, our wider research assessment in dialogue with what our interviewees reported as good and, when possible, as suggested practices, have been considered together with relevant limitations in order to highlight the need to improve current approaches. References to more general recommendations are also included in the section below in an effort to link our key findings with our main targeted policy recommendations.

- Right to ‘voluntary’ return:** It is very important that EU+ countries maintain a sustained commitment to set-up AVR(R) programmes, either by designing, promoting, implementing or delegating implementation of initiatives for return to (I)NGOs or through Frontex’s support. This ensures wider availability for prospective returnees to choose this type of return. Our research showcased that in recent years, not all the EU Member States under study had active AVR(R) programmes and, therefore, the right to benefit from assistance was for certain periods of time not guaranteed.¹⁸ Closely related to the issue of availability, AVR(R) schemes can be overly limited to the assistance of only certain nationalities with substantial differences among EU+ countries in areas such as return budgets, criteria of access to reintegration support and wider incentives. Such approaches put into question the sustainable outcomes of AVR(R) options. Significantly, increased attention to vulnerable groups and profiles provides for tailored assistance and the prioritisation of the needs of returnees, but short and ad-hoc project funding can undermine the right to return ‘voluntarily’. Facilitating return journeys is also crucial for Member States. For instance, a practice of notice shared by an interviewee is that irregularised individuals returning from Spain through AVR(R) have been reported as being overwhelmed with questions by

¹⁸ This is the case for Italy where AVR(R) programmes have registered several periods of inactivity concerning the last decade, and considered up to 2022 in the detailed Report of the Italian Court of Auditors, [Il Rimpatrio volontario e assistito nella gestione dei flussi migratori](#), Deliberation 12 May 2022, n.10/2022/G, 86-87.



immigration police at the airport when leaving the country. This concern was raised with the Ministry of Inclusion in Spain which subsequently developed a document for all returnees enrolled in AVR(R) to carry upon their return. This document states returnees' participation in the AVR(R) program supported by the Ministry of Inclusion, with the expectation that it will decrease questioning by police.

Concerns remain in regard to how the principle of voluntariness is guaranteed, this being a prerequisite to AVR(R).¹⁹ Current practices for ensuring voluntariness involve the returnee signing a voluntary declaration which expresses their will to return. However, voluntariness and consent should be considered as a process and not as a one-time decision and, as such, forms should not be considered to be signed at once.²⁰ In respect to the principle of Free Prior Informed Consent (FPIC),²¹ returnees should be placed in the condition to withhold/withdraw consent at any point and not being 'softly' coerced into "accepting" the return,²² with applications for AVR(R) "pushed by other services," such as reception facilities, without the clear will of the interested individual. AVR(R) staffers shared that can make decisions, when appropriate and possible, to discontinue the return process to explore thin margins for regularisation paths or account for returnees' options to stay and desire not to return. This aims at providing access to alternatives to return, adding elements that question and disrupt "return at all costs."²³ To be noted that 'voluntary' return is often proposed as an option with no acceptable alternatives possible and, therefore, can fall along a *continuum* of forced deportations.²⁴ Indeed, AVR(R) programmes are usually coordinated and promoted by the same Ministries that nationally enforce forced returns (with relevant exceptions), or executed through the support of Frontex, with some of our interviewees questioning, more generally, the practical boundaries between these two types of return maintained by the law enforcement agency, especially in consideration of their greater involvement in delicate matters surrounding 'voluntary' returns.²⁵ All this considered, efforts to rather assess 'full' and 'degrees' of voluntariness based on the conditions of renaming and redesigning AVR(R) programmes

¹⁹ Significantly, academics and not have queried the specific aspect of 'voluntariness' within the spectrum of 'voluntary returns' with, amongst others, the following substantial semantic declinations suggested to better reflect tactics of persuasion and conditions of un-voluntary return: "compelled": Cherti, M., & Szilard, M., [Returning irregular migrants? How effective is the EU's response?](#), (Briefing), Institute for Public Policy Research (IPPR), 2013; "mandatory": European Council on Refugees and Exiles (ECRE), [Voluntary departure and return: between a rock and a hard place](#), (Policy Note), 2018; "induced returns": Koch, A., (2013) [The Politics and Discourse of Migrant Return: The Role of UNHCR and IOM in the Governance of Return](#), *Journal of Ethnic and Migration Studies*, 40(6); "incentivised returns": Koser, K., & Kuschminder K., (2017), [Assisted Voluntary Return and Reintegration of Migrants: A Comparative Approach](#)" In: *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-Making*, edited by Marie McAuliffe and Khalid Koser, ANU Press; "soft deportations": Leekers, A., van Os, R., & Boersema E., (2017), [What drives 'soft deportation'? understanding the rise in Assisted Voluntary Return among rejected asylum seekers in the Netherlands](#), *Population, Space and Place*, 23(8); "self-deportation", a term that stresses that voluntariness can be very limited by removal strategies that make life so unbearable for a group that its members have to leave a place: Park, K-S, (2019), [Self-Deportation Nation](#), *Immigration Law*, 132(7); or simply avoiding referring to such returns as voluntary but only as "assisted returns": Lietaert, I., (2022), [Critical Reflections on Assisted Return Programmes and Practices](#)", In: *Handbook of Return Migration*, edited by Russell King and Katie Kuschminder, Edward Elgar.

²⁰ See Gauci, J-P., (2020), [The "voluntary" in assisted voluntary return](#), Externalisation of borders: detention practices and denial to the right to asylum.

²¹ The principle of Free Prior Informed Consent (FPIC) is the practice of giving or withholding consent based on the right to choose. This is an emerging principle of international law that, while being associated with the right of indigenous people, is the right of all people to make informed decisions, especially in relation to 'voluntary' return where consent is at the core of such procedures.

²² See Cleton, L., & Schweitzer, R., (2021), [Our aim is to assist migrants in making a well-informed decision': how return counsellors in Austria and the Netherlands manage the aspirations of unwanted non-citizens](#), *Journal of Ethnic and Migration Studies*, 47(17).

²³ In the context of FAIR research, Work Package 6 assesses alternatives to return policies in the EU, their political feasibility and public acceptance.

²⁴ See Gauci J-P., (2023), [IOM and 'Assisted Voluntary Return': Responsibility for Disguised Deportations?](#) In: *IOM Unbound?: Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, edited by Megan Bradley, Cathryn Costello and Angela Sherwood, Cambridge University Press, 402.

²⁵ On this matter, of interest is what Frontex refers to as "combined return operations" reported in its [Observations to Return Operations conducted in the 1st half of 2023 by the Fundamental Rights Officer](#), 4: "two return operations organised by Spain were combined return operations including returnees falling under voluntary and forced returns supported by Frontex under a pilot project and monitored by the fundamental rights monitors". It is worth highlighting that despite this contingency of forced returns and 'voluntary' returns, it is welcomed the in-flight monitoring by the FRO also of 'voluntary' returns considering that otherwise, and highlighted by some of our interview respondents, these are not envisioned for monitoring. To be referenced that Frontex adopted its [Fundamental Rights Strategy](#) in 2021, with its [Consultative Forum](#) on fundamental rights operating since 2012.



would better account for returnees' choices by making a clear dual distinction between voluntary returns for stayers regularly and those carried out under enforced circumstances.

- **Right to information:** Providing comprehensive and accurate information in AVR(R) is a key part of the return process and requires the involvement, across all stages of return, of appropriate and effective counselling. The EMN maps counselling approaches in the EU as follows: migrant-centred and compliance approaches.²⁶ Consistent with this distinction and findings, our research also showed that national institutions tend to combine a migrant-centred approach with a compliance approach to counselling more respondent to the implementation of return policies, that is, individual situations considered, the dialogue leans also towards convincing individuals to return, especially following up a rejection of an asylum application. Conversely, most interviewees from (I)NGOs pointed out to the importance of a migrant-centred approach to return counselling where individuals are enabled to make comprehensive informed decisions about their return while also attempting “to find the best solution for the person,” including exploring their staying. Some of our interviewees reported that when individual circumstances require it, counsellors themselves would actually need “to be convinced,” to more or lesser degree, by AVR(R) participants that return is something that they “really” want and is suitable for them, especially when it involves conflict-unstable third countries or countries where delicate human rights situations exist. Gathering knowledge of circumstances of return in countries of origin has been framed as an extremely important practice despite the voluntary wishes expressed by prospective returnees. Long counselling timeframes have been indicated as unnecessarily frustrating returnees.

The [EU framework on return counselling](#) frames these activities as comprising several aspects, with EU Member States being encouraged to adopt guidelines for harmonised counselling strategies.²⁷ In practice, approaches to counselling differing in scope (*migrant-centred, compliance or more nuanced approaches*) increase risks of fragmentation which can impact rationales of return dialogues with respect to the quality of returning assistance that can be provided by Member States. A deep-through dialogue between *independent* counsellors and the returnees serves the scope also of reducing the possibility of human rights risks. From a human rights perspective, pre-return decision-making counselling conducted by (I)NGOs has been indicated in our research by some AVR(R) practitioners as a guarantee to set limits and resist pressures – as possible – from governments eventually coordinating these services and enforcing returns.²⁸ These service providers navigate restrictive national policies in respect to returnees' needs and demands – framed in dialogue with their backgrounds, journeys and stories – by finding *spaces of autonomy* for the implementation of human rights.²⁹ This contrasts with a context where it is possible that the same state organisation that rejects an asylum application is also in charge of arranging and conducting counselling, with return assessed and presented as the “most” viable option.

The research finds that virtual counselling is a practice that is being widely implemented in AVR(R) where the returnee has the possibility to ask questions and engage with the post-return phase by maintaining close contact with field officers or colleagues in countries of return who have a better understanding of the changing contexts of return, limitations and opportunities (this can be particularly relevant for

²⁶ European Migration Network (EMN), [Policies and practices on return counselling for migrants in EU Member States and Norway](#), 2019.

²⁷ European Commission, [EU framework on return counselling and the Reintegration Assistance Tool](#), Commission Staff Working Document accompanying the COM(2021) 120 final, [The EU strategy on voluntary return and reintegration](#), 7: “Member States are encouraged to draw up a core set of guiding principles for all stakeholders involved in counselling and referrals to other services to ensure a minimum level of quality and consistency.”

²⁸ It is worth pointing out that the IOM has also developed a [Return Counselling Toolkit](#), to facilitate and contribute to the operationalisation of its policy. This is also the case for Frontex under the EURP, with the [Practical Handbook for Return Counsellors](#).

²⁹ See Ambrosini, M., & Van der Leun, J., (2015) [Introduction to the Special Issue: Implementing Human Rights: Civil Society and Migration Policies](#), *Journal of Immigrant & Refugee Studies*, 13(2).



migrants returning after long time spent in the EU). This practice sets the basis for a more holistic participatory approach to counselling where returnees can use virtual platforms and actively exchange information with counsellors on their individual needs and provide “realistic” expectations. The importance of current post-return monitoring practices for upholding human rights (virtual counselling being an example of this) should be stressed, but also considered complementary. While virtual counselling (as an added option) can be positive, there could be risks of relying exclusively on remote meetings also in terms of consistency. The fact that several counsellors or organisations can be engaged in counselling during individual dialogues ensures more transparency and diversity on the quality of support provided but, at the same time, it can undermine the consistency of both the information shared and the relation of trust established through the digital, and also face-to-face, sessions experiences.

- **Right to safety:** The principle of non-refoulement prohibits states from returning (both transferring or removing) any individual to countries and territories where they would face persecution, torture, cruel, inhuman or degrading treatment or any other human rights violations.³⁰ Procedural aspects of non-refoulement include a careful individual assessment by the returning state to establish whether the person runs human rights and irreparable harm risks upon return. Throughout our interviews, AVR(R) implementers remarked that they also carry out added checks on the feasibility of return to guarantee safety in the country of origin or transit. Such an assessment is particularly salient in the case of applicants and beneficiaries of international protection involved in AVR(R) where extra-safeguards are put in place, often in coordination with other organisations, such as the United Nations High Commissioner for Refugees (UNHCR), and migrants’ rights protection entities, authorities and actors in countries of return. Similar considerations are made when the return takes place, to name a few, to active war zones, areas affected by indiscriminate violence or concerns related to the gender of the prospective returnee or their psycho-sexual orientation. Heightened attention towards internally displaced persons (IDPs), victims of domestic violence, and survivors of trafficking/exploitation where the return considers them staying in protected shelters. Of positive notice is the [Assisted Voluntary Return for Victims of Trafficking and Foreign Citizens in Prostitution](#), an annual project funded by the Swedish Gender Equality Agency and implemented by IOM Finland in Sweden with high return safeguards applied. Conclusions are drawn from our research that human right safeguards are more prevalent when individuals are variously assessed as vulnerable/in need of extra-protection.

In agreement with the principle of non-refoulement, IOs such as the IOM, for example, maintain a structured approach with a periodically updated suspension list that indicates countries/zones where returns are halted for security reasons. The same safeguards apply for NGOs who, nevertheless, adopt a more discretionary approach due to less extensive capacity and local partners’ networks. An NGO staffer signalled difficulties when making such considerations without added support from state authorities of the sending states (this could be crucial when individuals did not go through an asylum application), therefore having to rely mostly on their own assessment. A practice, which has been addressed by an interviewee from a public office as an effort to keep a balance between ensuring the right to return voluntarily as well as that of safety, has been reported as a carefully evaluated decision to return individuals to countries that are presently considered unsafe (i.e., Ukraine, Syria, Afghanistan) following a proper assessment of individual cases and researching into their personal migration trajectory (with relevant exceptions based, for instance, on the gender of the returnee). This could be considered a challenging practice that would need to be reviewed in light of the fact that the right to return

³⁰ See the Office of the United Nations High Commissioner for Human Rights (OHCHR), [The principle of non-refoulement under international human rights law](#).



(voluntarily) and the right to safety would need to be treated not solely as competitive but also as complementary rights. Yet, preventing returns should not be the only focus of human rights adherence to AVR(R) as protection should ensure that the individual is making a conscious decision about their return, for example, if returnees aim to reunite with their families under conditions where safety can be also prioritised. Many interviewees, in fact, pointed out the right of individuals to return and for them to be given the possibility to be assisted comprehensively and in line with their informed choices.

We observed that AVR(R) makes the principle of non-refoulement more overreaching (moving beyond assessments made for the evaluation of asylum applications, when is the case) as it also includes broader declinations of personal safety as a human right. Our research assessed that, at minimum, the right to safety is similarly protected in terms of determining comprehensive and context-specific challenges that returnees might face in reference to social or economic instability. Some (I)NGOs, for instance, included as a pre-requisite for the safe return of 'uprooted' returnees the existence of a network of support in the country of return – considering also the problematic formulation of individuals just returning 'back home'³¹ – together with access to essential services. Some interviewees also pointed out that prospective returnees are informed that their full safety is not something that can be guaranteed in absolute terms. Local AVR(R) project implementers and focal points in third countries make their best efforts to conduct these assessments to further determine conditions of return, when necessary, in close cooperation with police services, lawyers and embassies. Greater involvement of countries of origin in these efforts is vital. Yet, the absence of dedicated post-return human rights monitoring mechanisms remains problematic.³² An interviewee referred to the case of a TCN who, upon returning from the EU, was detained and then sentenced to death. The case was reported to relevant embassies to avoid the execution, but efforts were unsuccessful. In regard to this specific situation, the expert reflected on the lack of post-return monitoring and the limits of facilitating such returns in a full responsible manner.

- **Right to health:** Returnees with health vulnerabilities have been referred to by our research participants as experiencing crucial protection needs. Pre-return checks concern verifying returnees' health to trace medical histories and assessing whether there are previous, ongoing and/or deteriorating medical conditions; mapping the presence of adequate healthcare structures in the country of return; verifying, in some cases, whether the family of origin is willing to take care of the returnee; understanding whether returnees have automatic access to healthcare or, eventually, registering people in the healthcare system of the country of origin by accounting for certain situations where there has been, for instance, a long absence in such country and specific types of treatments are needed. In-depth detailed information on drugs availability, cost prices, and alternative available medicines is information that gets shared and discussed with the returnee. Effectively, the right to health needs to be ensured across the whole return process, including the post-return phase. For example, experts suggested specific rehab paths proposed in the country of return for individuals with a protracted stay in the EU and irregularised migrants experiencing severe addictions and/or mental health issues, before their actual return, together with clear psychological support. In such instances, returnees' will to engage with AVR(R) and full capacity to make such a decision themselves is carefully assessed.

IOs usually deploy medical escorts that accompany returnees with significant medical conditions, mobility problems and/or psychological needs during their travel to the country of return, while NGOs

³¹ See Kalir, B., [Between 'voluntary' return programs and soft deportation. Sending vulnerable migrants in Spain back 'home'](#), In: Vathi, Z., & King., R., (2017), *Return Migration and Psychological Wellbeing. Discourses, Policy-Making and Outcomes for Migrants and their Families*, Routledge: London.

³² The European Parliament resolution on the [Implementation of the Return Directive \(2019/2208\(INI\)\)](#) calls on the Commission "to ensure that the establishment of a post-return monitoring mechanism to understand the fate of returned persons, where legally and practically possible, with particular attention for vulnerable groups, including unaccompanied minors and families," part of observations n.35, 17 December 2020.



reported to have less extensive capacity to guarantee this service. A common issue concerns the availability of dedicated medical budgets or top ups to such budgets for heavy medical cases. With few notable exceptions, such as Belgium where reintegration assistance for medical aid added to standard medical budgets is envisioned through the Adapted Medical Assistance After Return (AMAAR) project run by the IOM³³ for the return of migrants with heavy health conditions, in some other EU Member States health support can fall within the budget regularly assigned for reintegration. Thus, in the case of medical interventions or certain treatments that should be continued after the return, vulnerable returnees who could keep budgets for economic and social reintegration purposes have their budget diverted in large part or fully to medical expenses. The flexibility of health funding, instead, needs to be considered as a good practice in the EU context where top ups to support specific medical conditions are not largely envisioned, consequently, individuals are not enabled to focus on other elements of their reintegration. Indeed, the overall lack of coherence across EU Member States on forms and amounts of health assistance results in significant protection gaps.

- **Right to privacy:** Besides being a requirement sustained by data protection legislation, returnees' privacy rights are of importance for the operationalisation of AVR(R). The protection of this right has been stressed by some AVR(R) staffers as determining the possibility for returnees to retaining agency over their return. Specifically, in the case of irregularised migrants who approach and want to enrol in AVR(R) programmes, and who have been living in a state of constant fear of being deported, choosing to join them can be particularly difficult also for the implications that their individual data collected to join such schemes is often handled directly by national authorities or Frontex. For instance, just to name the case of Italy, the execution of AVR(R) has as a prerequisite the issuance of authorisations and clearance from law enforcement authorities. As reported by AVR(R) staffers, the definition of these administrative processes is often perceived by prospective returnees as an invasion of privacy with concerns raised over their abandonment of projects, rather than benefiting from such measures, of individuals who feel that their identities will be profiled. Such feelings can emerge despite established safeguards and could expose individuals who at a later stage opt-out of programmes to the increased risk of detention and deportation. Extended waiting time and uncertainty over these procedures further frustrate this process.

To avoid such circumstances, some AVR(R) procedures are designed to maintain extended confidentiality of information about potential returnees from migration office authorities of countries of residence until the return actually occurs. Practices involve returnees being priorly informed by signing over documentation that acknowledges this right. While the transmission of returnees' data only post-return fully guarantees the right to privacy in the EU, authorities in receiving countries are also not informed about returnees' migration/asylum status, health conditions and criminal records. Such practices are decisive for deterring possible retaliation, for instance, against individuals who requested international protection and then opted for AVR(R). It must be emphasised that, overall, AVR(R) procedures are underpinned by approaches and conditions that preserve the confidentiality of the information and limit which personal data may be shared, especially during counselling sessions where it is specified to the returnee that no legal consequences may derive from the exchange.

- **Right to family life:** The right to maintain a family life in the context of return closely relates to the right to preserve family unity. Problematically, families in the context of AVR(R) programmes are narrowly

³³ The project has been developed by Fedasil, in partnership with the IOM and Caritas INT, in response to the increasing number of migrant candidates suffering from a significant medical condition and willing to return to their country of origin. For more data see [IOM 2022 Annual Report](#), country office for Belgium and Luxembourg, 9.



defined, as they tend to not include non-nuclear units.³⁴ A crucial aspect that emerged in our research is the role that counsellors play in providing accurate information concerning difficulties in family reunification in case that only one member of the family decides to return to explore life in the country of origin, to eventually encourage the rest of the family in the EU to return as well or eventually to remigrate. In such circumstances, exploring conditions of return is set against the practical implication of, eventually, not being able to reach back to the EU and reunite with the family who remained there. AVR(R) experts stressed that viewing return from the EU solely as a failure is quite common for return migrants, with social stigma and discrimination negatively affecting them.³⁵ Few interviewees mentioned their role in assisting with family reunification, especially when a person's final wish before dying is to be with their family. Pre-return monitoring in such cases concerns facilitating and expediting the process and providing emotional and logistical support to both the individual and their family members.

As far as AVR(R) is concerned, the best interests of the child's determination should be accurately assessed before considering a return.³⁶ The right of the child to be heard is also very important during this stage. The assessment made for the feasibility of return, as some experts stressed, considers whether minors can be assisted back in the country of origin through the support of the family, explore the presence of a network, and accommodation availability. In the case of returning unaccompanied minors (UMs), the assessment also involves the assigned legal guardian and their escorting until their final destination. The return of UMs is also balanced against the possibility of ascertaining if a family/network exists in the country of origin and if, positively assessed, they are willing and able to accept and welcome the minor back. Effective engagement with and from countries of origin, with partners located there better placed to monitor general and personal situations, has been described by some of our interviewees as a reoccurring practice that seemed key to ensure (as much as possible) that human rights related issues and the general well-being of minors are accounted for. In some cases, more standard in-kind assistance can be integrated with specific grants for parent(s) to support the reintegration of the child into their family/community upon return.³⁷ Alternatives to return and integration possibilities for family units and UMs should be given priority.

- **Right to personal liberty:** Depending on circumstances, AVR(R) can be presented as a choice to make for irregularised individuals experiencing restrictive measures such as administrative detention in pre-removal centres.³⁸ Considering that the detention of a person constitutes a major interference with personal liberty, some national systems offer AVR(R) to end detainment on the condition that individuals cooperate and agree with their 'voluntary' return. Concernedly, enrolment in AVR(R) does not guarantee immediate release from detention or precludes detention, this most commonly taking place only after return procedures have been completed and travel preparations have been made for the returnee. AVR(R) returnees can be also held in spaces of semi-detention, depending on the character of the return centre, open or not, or in temporary precarious shelters. Individuals can be also left in destitution while arranging the return if they apply for AVR(R) from outside the circuit of reception networks. Despite

³⁴ The United Nations Children's Fund (UNICEF), [Family Unit in the Context of Migration](#).

³⁵ See Schuster, L., & Majidi, N. (2015). [Deportation Stigma and Re-migration](#). *Journal of Ethnic and Migration Studies*, 41(4).

³⁶ There might be many situations in which the child best interests are not adequately assessed, for instance, if the parents already have a return order or lack a residence document. See more information here: UNICEF, IOM, Save the Children, PICUM, ECRE and Child Circle, [Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework](#), 2019.

³⁷ This is the case, for example, for services offered by IOM Belgium. See: [Annual Report 2021](#), 9.

³⁸ IOM, [A Framework for Assisted Voluntary Return and reintegration](#), 2018, 9: "In some contexts, in the absence of other alternatives, assisted voluntary return can be an option to end unnecessary and sometimes prolonged detention. Strict safeguards are required when facilitating the voluntary return of migrants held in immigration detention to ensure that migrants have access to all relevant information and are counselled on all options available to them to enable an informed decision. In assessing the willingness of detained migrants to return, it must be ensured they are not subject to pressure, violence or ill treatment intended, or to an actual or implied threat of indefinite or arbitrary detention to force enrolment in the AVR(R) programmes."



safeguarding measures being applied in relation to AVR(R) from detention, questions pertaining to returnees' 'voluntary' uptake of such schemes persist. (I)NGOs advocate with authorities for alternative measures – such as open accommodation centres – but in the EU+ countries under study, there is a lack of such options. A noteworthy exception is the Open Centre for individuals registered for AVRR (OCAVRR) in Athens where are accommodated solely as beneficiaries of AVR(R) and extended services are offered while awaiting departure.³⁹ Despite some AVR(R) participants being considered eligible to reside in the Open Centre, AVR(R) from administrative detention remains a possibility in Greece.⁴⁰

AVR(R) procedures from detention are set on a case-by-case basis. Some national models couple forms of detention with the progressive withdrawal of financial and health assistance or other benefits for individuals who are to comply with a return decision, therefore making return 'voluntary' only 'under the force of law.'⁴¹ For individuals held in detention particular attention is paid to assessing "the continuous reconfirmation of their will" to participate in AVR(R). Case workers, who are responsible for coordinating and organising the voluntary departure, refer detained returnees to counsellors who keep the process at check. Access to face-to-face but also remote counselling for AVR(R) participants held in remote areas in pre-return detention facilities, for instance, has been addressed as an important option to maintain oversight over restriction of freedom conditions and guarantee individuals substantial involvement with 'voluntary' return options. Despite this, and given all these considerations, it would be key to further reflect on detention determinants that might compel individuals to accept return as *de facto* decision over detention realities.

- **Right to human dignity:** Returning with dignity is presented as the cornerstone of AVR(R) programmes. In our research, the need to ensure individuals' dignity has been often mobilised by experts to describe what guides the implementation of AVR(R)s. Indeed, the right to human dignity is the very foundation of human rights. Different understandings of dignity apply to the idea that returnees have the 'right to have rights'.⁴² By guaranteeing the right to be treated with dignity in AVR(R), all other rights are equally accounted for. The close involvement of different organisations and professional figures allows for broader considerations of the character of AVR(R), with social workers, counsellors, medical staff, cultural mediators and protection staff variously taking dignity to the level of procedural safeguards. Desk research and interviews highlighted that a multi-stakeholder approach involving civil society organisations, both in countries of departure and countries of return, allows for closer cooperation and oversight over migrants' rights. Dignity is at the core of what some of our interviewees suggested should substantiate overall return procedures with multiple and expansive readings of it in practice, such as creating the conditions for returnees to experience "waiting periods as dignified as possible." While being embedded in legal and procedural standards, considering (possible) violations of the right to life with dignity in AVR(R) can translate – more concretely – in terms of AVR(R) staffers thinking carefully about their role in facilitating the return. For instance, an interviewee provided examples of Roma and Sinti residing without papers in Germany for whom entering back into the social system in their countries of origin is impossible, therefore limiting their return as "safe and dignified."

³⁹ For more on the Open Centre for individuals registered for AVRR OCAVRR in Athens, see: [Assisted Voluntary Return & Open Center | IOM Greece](#) | IOM Greece.

⁴⁰ See Papatzani, E., Hatziprokopiou, P., Kandylis, G., & Koutrolidou, P. (2024), "Procedures of irregularisation in Greece: spatial, carceral and temporal aspects. WP2 Working Paper" In: *GAPS: De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*, 23-24.

⁴¹ Lindberg, A., (2022), *Deportation Limbo: State violence and contestations in the Nordics*, Manchester University Press, 120.

⁴² The notion of 'a right to have rights' draws on Hannah Arendt's thinking and idea that there is no guarantee for human rights outside the principle of national and territorial sovereignty, that is outside belonging to a political community: see Arendt, H., (1973), Chapter 9: The Decline of the Nation-State and the End of the Rights of Man, *The Origin of Totalitarianism*, New York, Harcourt Brace Jovanovich. In reference here, it is understood as to emphasize the fact that the right to ensure returnees' dignity should be treated as a given precondition for the protection of other human rights.



The respect of the right to dignity also touches upon the right of returnees to be heard throughout the return process. Indeed, returnees need to be put in the position to enact their rights. Against a background where *AVR(R) maintains human rights more explicit-but-implicit*, the effective monitoring of this return process, together with the establishment of accountable, independent and efficient complaint mechanisms, constitutes an important development for ensuring that returnees' voices are heard alongside the consistent protection of their rights within all EU Member States. Ultimately, the fact that AVR(R) is presented both in policy and in practice as a "more dignified" form of return compared to forced return, with interventions also presented as humanitarian rather than only as immigration control,⁴³ urges us to emphasise that returning individuals "humanely" and "with dignity" should mean acknowledging and protecting their personhood by bringing closer what is effective *for* return policy with what is imperative *for* returnees' rights.

4. POLICY RECOMMENDATIONS

Recommendation 1: AVR(R) programmes design ought to be rethought to allow for the effective safeguard of human rights, of which the principle of voluntariness constitutes the backbone of this type of return. To achieve this, it is suggested to clearly separate AVR(R) pathways to differently account for voluntary returns and incentivised (enforced) returns.

- **The European Union** should inform the designing of national and EU-wide AVR(R) programmes that would channel returnees into two different pathways: 1) *Voluntary returns*: for individuals with a regular stay in the EU and holders of appropriate documentation who freely choose this option; and 2) *Incentivised (enforced) returns* : for individuals with irregularised status *unwilling but also unable to stay* in the EU. Both pathways should be firmly grounded on equal protection standards. This distinction would make return processes and 'voluntary' decision-making more transparent, especially if individuals are held in detention conditions, and reflective of serious concerns over the assessment of their '*full*' versus '*degraded*' voluntariness. This recommended dual approach should not be instrumentalised as such, but it should guide returns based on the practical implications of voluntariness.

Recommendation 2: Bringing forward Recommendation 1, human rights monitoring in AVR(R) should be introduced. Current applications of monitoring in AVR(R) would benefit from shifting their main focus from reviewing assistance activities and the work of service providers to increasing oversight and accountability over the human rights of returnees. Monitoring processes could increase the legitimacy of return policies and practices by realising the right to return 'humanely'.

- **The European Union** should consider taking a leading coordinating role in setting up and promoting flexibly harmonised mechanisms for the monitoring of the human rights of returnees involved in AVR(R) programmes implemented by EU Member States and by Frontex, and be applicable for the work of (I)NGOs. On the grounds that there is an obligation to monitor forced return operations, the same level of scrutiny and monitoring should be applied to AVR(R) programmes. Ensuring oversight of AVR(R) would help safeguard the rights and well-being of returnees and enhance the transparency and accountability of these operations. Such monitoring mechanisms, with a human rights protection scope, could be integrated within existing AVR(R) monitoring tools, therefore extending their scope from post-return to all return phases, including the pre-return phase, and should be established to guarantee independence

⁴³ Paasche, E., (2021), [The Rise of Frontex in the EU's New Strategy on Assisted Return](#), *Border Criminologies*, Faculty of Law Blogs/University of Oxford.



from entities carrying out returns. Monitoring would increase the legitimacy of return policies and practices by informing and strengthening a human rights-based approach to migration, therefore realising the right to return ‘humanely.’

- **EU Member States** should set up consistent complaint mechanisms to prevent and redress human rights risks and be made available to returnees and AVR(R) implementers, with monitoring providing for a reinforced medium to underscore continuous accountability. Such mechanisms should be established at national levels and might include courts or other independent bodies being vested with such authority. Remedies should be envisioned if human rights were to be violated by national authorities, including financial damages and the obligation to immediately relocate a person to the EU. Instructions on the forms of monitoring and reporting mechanisms could be detailed through policy discussions and informed considerations emerging upon consultation over feasibility and effectivity with all actors involved in AVR(R), from policy-makers to implementers.
- **Civil society actors, humanitarian organisations⁴⁴ and the European Ombudsman, with its national ombudspersons**, could take a key role in overseeing AVR(R) processes independently.⁴⁵ International guidelines guaranteeing the independence of monitoring mechanisms, together with the Fundamental Rights Agency’s well-established guidelines for fundamental rights monitoring in the EU, should form the basis for advancing general guidance of AVR(R) monitoring.
- **National authorities, (I)NGOs and Frontex** should use the recommended human rights monitoring framework to be set by the European Union to improve their responsibility and accountability over fragmented AVR(R) procedures that, currently, guarantee different levels of rights protection depending on national and organisational approaches, with challenges in communication and coordination among them. Monitoring could be key for harmonising such approaches while maintaining high standards.

Recommendation 3: Overall, human rights considerations should be at the forefront of AVR(R) procedures. The formalisation of good practices of human rights protection enlisted in this Brief – that safeguard, prevent and mitigate human rights risks of returnees, – together with a review of relevant limitations, would enhance the practical application of legal standards and principles already part of AVR(R)-related policies. Ensuring the correct implementation of such practices represents a recommended step forward for the fairer treatment of all EU returnees.

- **The European Union** needs to develop a dedicated framework for voluntary returns by providing robust guidance geared towards human rights compliant procedures. This could translate in practice by creating a focused and substantial list of the fundamental rights relevant to return procedures – of which this Policy Brief provides a springboard for – in order to help raise awareness among AVR(R) operators of precise common return safeguards, such as where to return safely. This would offer renewed clarity on how returns should take place and their interlinked human rights dimensions. Such a list should be made available without prejudice to individual assessments carried out by involved entities to be, in any case, levelled up against more general information gathered in the spirit of ensuring EU-wide applicability of norms and human rights practices. This recommendation considers that otherwise host countries’ governments often apply discretionary and inconsistent approaches when faced with decisions of impact on returnees’ rights.

⁴⁴ In the case of AVR(R), reference is made to humanitarian organisations not directly implementing returns.

⁴⁵ This has already been suggested for the fundamental rights monitoring of procedures set by the Pact. More in detail, see Carrera, S., (2020), [Whose Pact? The cognitive dimensions of the new EU Pact on Migration and Asylum](#), CEPS Policy Insights, No 202-22, 12.



- **AVR(R) practitioners** should ensure that the human rights of intended beneficiaries of their interventions are addressed by reinforcing the quality of return dialogues. Independent counsellors need to ensure consistency of support by providing univocal counselling provisions throughout individual return processes. It is recommended for return counsellors to be continuously empowered to effectively support returnees' rights throughout the AVR(R) project cycle by stepping up training from generic to specific knowledge of constantly evolving landscapes of return and returnees' positioning, including cases of vulnerability. Handling vulnerable cases means carrying out risk assessments sensitive to an intersectional approach that integrates and weights in the assessment multiple dimensions such as gender, age, psycho-sexual orientations or gender identity (LGBTQIA+), families, single parents, unaccompanied children, survivors of trafficking and other forms of exploitation.
- **All actors involved in designing AVR(R) measures** – from the distribution of funding to their efficient programming – should further commit to developing morally responsible policies by integrating human rights principles. Such considerations should include the following key determinants:
 - openness of programmes to all TCNs whose return is assessed as voluntary, safe and feasible, including considering more wider access under particular/justified circumstances to individuals who might not comply with voluntary departure following a return decision;
 - inclusive reintegration paths and eligibility criteria providing more attention also to returnees of visa-free countries, even if under differentiated budgets than visa-bounded;
 - enhanced and adaptable financial support to vulnerable groups, especially in regard to returnees' health conditions where systematic attention in the organisation of returns requires adapted budgeting and tailored reintegration assistance;
 - increased funding for AVR(R) to strengthen paths towards 'sustainable' return;
 - integrated transnational, national and local referral mechanisms clearly identified for the provision of protection and assistance services to individuals with intersecting vulnerabilities and conditions, such as survivors of domestic violence, exploitation, abuse and various forms of trafficking.

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