



Human Rights Watch submission to the Africa Regional Review on implementation of the Global Compact for Safe, Orderly and Regular Migration

RE: Challenges to Implementation of GCM Objectives #4, 10, 13, 15, 17, 21 in Cameroon, Mauritania, Nigeria, Senegal, South Africa, and Tanzania,
December 2018 – June 2021
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I. Introduction

The UN General Assembly's adoption of the Global Compact for Safe, Orderly and Regular Migration (GCM) in December 2018 by the vote of 152 states, over a quarter of which are African states, marked a significant milestone in global commitment to protect the rights of migrants, reduce the risks and vulnerabilities they face, and improve systems, policies, and practices responding to migration.

In advance of the first Africa regional review, Human Rights Watch welcomes the opportunity to provide input on the status and human rights dimensions of the implementation of the GCM in the region, in response to the UN Network on Migration's call for stakeholder submissions.

Consistent with our mandate as an independent international nongovernmental organization dedicated to investigating, documenting, and exposing human rights violations worldwide, Human Rights Watch has chosen to focus this submission on challenges to progress on several rights-focused GCM objectives, listed below. We aim to build on a number of Africa-led efforts to advance the human rights of migrants, including the work of the [Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa](#) and commitments within the [AU Migration Policy Framework for Africa](#) and the [Common African Position on the GCM](#).

Much of this submission looks at challenges to implementation of the following GCM objectives under Thematic Area 2, "Protecting migrants through rights-based border governance measures":

- **GCM Objective #4:** "Ensure that all migrants have proof of legal identity and **adequate documentation.**"

- **GCM Objective #10:** “Prevent, combat and eradicate **trafficking in persons** in the context of international migration.” States committed to “investigate, prosecute and penalize trafficking in persons, discouraging demand that fosters exploitation leading to trafficking,” to “enhance the identification and protection of, and assistance to migrants who have become victims of trafficking, paying particular attention to women and children.”
- **GCM Objective #13:** “Use **migration detention** only as a measure of last resort and work towards alternatives.” States committed to ensuring that any detention “follows due process, is non-arbitrary, is based on law, necessity, proportionality and individual assessments, is carried out by authorized officials and is for the shortest possible period of time”; “to prioritize non-custodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants.”
- **GCM Objective #21:** “Cooperate in facilitating **safe and dignified return** and readmission, as well as sustainable reintegration.” States committed to “guarantee due process, individual assessment and effective remedy, by upholding the prohibition of **collective expulsion** and of returning migrants [**refoulement**] when there is a real and foreseeable risk of death, torture and other cruel, inhuman and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law.” Regarding reintegration of returning migrants, states committed to “create conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities.”

For one case, we also look at issues linked to the following GCM objectives:

- From Thematic Area 3 – **GCM Objective #15:** “Provide **access to basic services** for migrants.” States committed to “ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services” and to “establish and strengthen holistic and easily accessible service points at local level, that are migrant inclusive.”
- From Thematic Area 4 – **GCM Objective #17:** “Eliminate all forms of **discrimination** and promote evidence-based public discourse to shape perceptions of migration.” States committed to “condemn and counter expressions, acts and manifestations of **racism, racial discrimination, violence, xenophobia** and related intolerance against all migrants in conformity with international human rights law.”

This document presents an overview of Human Rights Watch’s key findings relating to the above objectives in six states that voted in favor of the GCM in December 2018: **Cameroon, Mauritania, Nigeria, Senegal, South Africa, and Tanzania.**

While violations of migrants’ rights also took place in many other states, we have focused this submission on contexts where we recently carried out relevant research. Our findings are grounded in research conducted through in-person and telephone interviews with migrants, asylum seekers, refugees, human trafficking survivors, children, aid workers, witnesses to violations, government officials, and others, as well as analysis of videos, photos, injuries, legal documents and other evidence.

Several of these countries took some positive steps in line with GCM objectives, such as Senegal and Nigeria expanding efforts to combat human trafficking, and South Africa’s president announcing the government would provide Covid-19 vaccine access to all adults, regardless of migration status.

However, we documented a range of practices by all six countries that both contravene their commitments under the GCM and violate international and regional human rights and refugee law.

Human Rights Watch documented the following abuses between 2019 and mid-2021:

- Persistent and widespread practices of **human trafficking** in Nigeria and Senegal, with inadequate support to victims and survivors.
- **Arbitrary detention** of migrants and asylum seekers, often in squalid and unacceptable conditions, in Mauritania and South Africa. In Mauritania, children were among those arbitrarily detained.
- **Forced returns:** Summary or collective expulsions or forced returns (including pushbacks at land borders) by Mauritania and Tanzania of migrants, asylum seekers or refugees, without due process, in some cases accompanied by violence; and arbitrary detention and other abuses in Cameroon against returned asylum seekers (deportees).
- **Discrimination, xenophobia, insufficient access to services, and inadequate documentation** for migrants in South Africa.

Details on the documented violations are presented by GCM objective and by country below, followed by an overview of international and regional law prohibiting these practices.

Human Rights Watch urges participants of the Africa regional review in July, including members of the UN Network on Migration, state representatives, and stakeholders such as civil society and other organizations, to address these points during the relevant roundtable sessions. We invite the governments of the countries covered in this submission to respond to the allegations listed below and detail how they will address the issues cited, in order to work towards better implementation of the relevant GCM objectives.

II. Human Trafficking

State actions contravening GCM Objective #10: “prevent, combat and eradicate trafficking in persons”

Nigeria

An August 2019 Human Rights Watch [report](#) provided detailed accounts of how human trafficking operates in Nigeria, documenting how traffickers deceive women and girls, transport them within and across national borders, and exploit them in various forms of forced labor. The report also found that Nigerian authorities had failed to provide the assistance survivors needed to rebuild their lives and had unlawfully detained many of the already-traumatized women and girls in shelters.

Nigerian authorities have taken some important steps to address the country’s widespread problem of trafficking, including establishing shelters, assisting with medical care, and creating skills training and economic support programs for trafficking survivors. However, the documented government practice of detaining trafficking survivors in shelters, often for many months, violated their rights to liberty and freedom of movement and risked their recovery and well-being. “I have been here for almost six months... I want to go home,” an 18-year-old woman at a National Agency for the Prohibition of Trafficking in Persons (NAPTIP) shelter told Human Rights Watch.

We also found that many survivors of sex and labor trafficking struggled with unaddressed mental and physical health problems, poverty, and social stigma after return to Nigeria, where they struggled to get comprehensive and long-term support and services. Survivors reported long waiting periods without

assistance after they contacted service providers for help, and they said providers often gave them insufficient information and did not actively involve them in decisions about their own assistance and recovery.

Recommendations: The Nigerian government should take steps to address the serious health conditions, social exclusion, and poverty faced by human trafficking survivors. Authorities should work urgently to improve assistance and services for repatriated survivors, including by developing and providing resources for individual and collective community-based rehabilitation and reintegration programs for survivors of trafficking; ensuring that no one is detained in shelters; and ensuring that shelter policies and practices respect survivors' human rights.

For more information, see:

- December 2019, "'Crying Since Morning': Trafficking Survivors' Double Trauma in Nigeria" <https://www.hrw.org/news/2019/12/16/crying-morning-trafficking-survivors-double-trauma-nigeria>
- August 2019, "'You Pray for Death': Trafficking of Women and Girls in Nigeria" <https://www.hrw.org/report/2019/08/27/you-pray-death/trafficking-women-and-girls-nigeria>

Senegal

Each year thousands of children known as "talibés" (Quranic students) migrate to Senegal's major cities to attend Senegal's still-unregulated, traditional Quranic boarding schools ("daaras"). These include both Senegalese children and children who migrate or are trafficked from other countries – most commonly from Gambia, Guinea, or Guinea Bissau, and occasionally from Côte d'Ivoire, Liberia, Mali, Mauritania, Niger, or Nigeria. Hundreds of talibés and dozens of Quranic teachers ("marabouts") cross land borders into Senegal each year. The children are either brought by a family member, sent on their own, or brought in a group by a Quranic teacher. In some cases, marabouts bring talibé children into Senegal to establish new daaras. Abuse, exploitation, and neglect of talibés continue at alarming rates in many daaras. Human Rights Watch has estimated that over 100,000 talibé children in Senegal are forced by their Quranic teachers to beg daily for money, food, rice, or sugar. Between 2010 and 2019, Human Rights Watch [documented](#) scores of abuses against talibés including forced begging, violence, sexual abuse, chaining or imprisonment, and children's deaths due to abuse and neglect. Many marabouts set daily begging quotas enforced by beatings.

Human Rights Watch research suggests that hundreds to thousands of talibés are victims of human trafficking, which under Senegalese law includes the act of exploiting them for money through forced begging, as well as the recruitment or transport of children for this purpose. "Often, Quranic studies are just a cover – a lot of talibé children are trafficking victims. The parents entrust their child to a marabout, who brings the children to another country, installs them in a building, and sends them out begging," said the manager of a center assisting children in Dakar. Senegal is a member of the Economic Community of West African States (ECOWAS), a free movement zone. However, the ability of Quranic teachers, or those claiming to be Quranic teachers, to cross borders into Senegal with a group of children lacking identification or proof of parental authorization – including after "negotiations" with border police, in some cases – has remained a problem, contributing to the prevalence of child trafficking.

Despite strong domestic laws banning child abuse and human trafficking, sustained commitment by Senegalese authorities to stop the forced begging and abuse of talibés has proven elusive. In December 2019, Human Rights Watch published a [report](#) examining the government's efforts from 2017 to 2019 to address these issues, outlining a roadmap for the government to better protect talibé children. We

noted that among other positive steps in 2017-2019, Senegal had [increased prosecutions](#) of Quranic teachers for forced begging under the [anti-trafficking law](#), [increased](#) the funding and activities of the National Anti-Trafficking Unit, established frameworks of cooperation for returning children to neighboring countries, and increased police border checkpoints. However, relative to the scale of ongoing abuses, the government's efforts have remained limited and insufficient, and prosecutions for forced begging reportedly sharply [declined](#) in 2020.

Recommendations: The government should more consistently enforce the 2005 anti-trafficking law and continue to strengthen border controls to monitor the movement of talibé children. Both at borders and within the territory, police and gendarmes should question self-professed Quranic teachers, their assistants, or other adults traveling with groups of children and request identification and parental authorization, as well as the teacher's credentials or some form of proof of profession. The government should also pass a still-stalled 2013 draft law setting standards for daaras, take steps to regulate daaras, and adequately fund child protection services to assist talibés who are victims of abuse or trafficking.

For more information, see:

- December 2019, "These Children Don't Belong in the Streets': A Roadmap for Ending Exploitation, Abuse of Talibés in Senegal"
<https://www.hrw.org/news/2019/12/16/senegal-failure-end-abuses-quranic-schools>
- June 2019, "There Is Enormous Suffering': Serious Abuses Against Talibé Children in Senegal"
https://www.hrw.org/report/2019/06/11/there-enormous-suffering/serious-abuses-against-talibe-children-senegal-2017-2018#_ftn155

III. Migration Detention

State actions contravening GCM Objective #13: "migration detention only as a measure of last resort"

Mauritania

In 2020 and 2021, Human Rights Watch documented cases of arbitrary and abusive arrests and detention by Mauritanian police and gendarmes of migrants intercepted at sea, arrested on Mauritanian territory, or deported from Spain's Canary Islands. We spoke with a dozen people who described experiencing or witnessing detention without due process, unaccompanied children detained with unrelated adults, abuse during arrest and detention, and poor conditions in detention, including failure to provide adequate food and sanitation. The alleged abuses took place in a context of increased migration [from western Africa to the Canary Islands](#) (the "Atlantic route") [during 2020](#) and [into 2021](#), pressure from the EU and Spain to combat irregular migration flows, and increasing migration cooperation between Spain and Mauritania. We also documented collective expulsion by Mauritanian authorities, as noted in [Section IV](#) of this submission. Our findings will be detailed in an upcoming Human Rights Watch report.

Concerns about Mauritania's treatment of migrants in the context of controlling irregular "Atlantic Route" migration, including arbitrary detention and poor treatment in detention, have also been cited in [news reports](#), in a February 2021 Mixed Migration Center (MMC) [report](#), and in [July 2020](#) by the Global Detention Project.

Recommendations: Mauritanian authorities should ensure that any arrests and detention of migrants are carried out with full respect for due process, including with individual case reviews and screenings for age and protection needs. The government should ensure that children are referred to appropriate child protection services and never placed in detention, and that immigration detention of adults is used

as an exceptional measure of last resort, when it is necessary and proportional to do so. Detainees should receive adequate food and services and be treated decently in accordance with human dignity. Detention facilities' conditions should meet appropriate international standards.

South Africa

As part of persistent national trends of xenophobic violence and discrimination against foreigners in South Africa (discussed in [Section V](#) of this submission), arbitrary and abusive detention of migrants has continued in recent years. A September 2020 Human Rights Watch [report](#) documented how police have carried out raids to arrest non-nationals allegedly lacking documentation, in some cases arbitrarily arresting people even after they showed their documents in order to extort money. In several documented cases, police officers beat migrants during arrests or in detention. Authorities' detention of migrants in police station cells and deportation centers sometimes violated due process by denying them access to lawyers, failing to inform them of any charges, or failing to bring them to court within the prescribed time period of 48 hours. This has resulted in cases of prolonged detention, with officials frequently claiming to have lost or misplaced migrants' documents or possessions. We also documented poor conditions of detention, including overcrowding in small cells, poor sanitation, and inadequate food. For instance, two migrants detained at Johannesburg Central Police Station said they were fed only two slices of bread and water a day and were crammed with over 100 people into a cell they estimated to be 250 square feet at most.

Recommendations: The South African government should launch investigations into abuses against migrants by the South African Police Service (SAPS), including in the contexts of excessive force and arbitrary arrests during documentation raids, due process failures resulting in arbitrary and prolonged detention, and abusive conditions of and treatment in detention. Authorities should ensure due process for all detained migrants, including by guaranteeing judicial reviews and access to legal counsel.

For more information, see: September 2020, "‘They Have Robbed Me of My Life’: Xenophobic Violence Against Non-Nationals in South Africa," <https://www.hrw.org/report/2020/09/17/they-have-robbed-me-my-life/xenophobic-violence-against-non-nationals-south>

IV. Migrant Returns

State actions contravening GCM Objective #21 on “facilitating safe and dignified return”

Cameroon

In 2020 and 2021, Human Rights Watch documented arbitrary arrests and detention and other abuses by Cameroonian authorities against returning Cameroonian asylum seekers deported from the US and Bolivia (via Panama). A forthcoming report will present our findings on the treatment of deportees from the US. [News articles](#) in 2020 also reported cases of arbitrary detention and abuse of returnees.

Recommendations: Cameroon's actions contravene its commitments under GCM Objective #21 to “create conducive conditions for personal safety” of returning migrants. The government should issue instructions to all responsible authorities—police, gendarmes, and military—to immediately cease arbitrary detention and abusive treatment of returned asylum seekers. It should ensure that all such abuses are appropriately investigated, with a view to ensuring justice.

Mauritania

In the context of crackdowns by Mauritanian authorities on irregular migration along the “Atlantic route” toward Spain’s Canary Islands, in addition to arbitrary and abusive migrant detention ([see Section III](#)), Human Rights Watch documented arbitrary and collective expulsions of migrants to Mali’s land borders in 2020 and 2021. Mauritania expelled several thousand people of multiple African nationalities, including children, during this period, according to [IOM reports](#) and Human Rights Watch interviews with humanitarian workers, migrant rights associations, and a dozen expelled migrants in Mali. The migrants said they were expelled in groups and reported a lack of individual screenings or due process during the proceedings. We will detail these and other findings related to the expulsions in an upcoming report. Other sources have also cited concerns about Mauritania’s expulsions, including MMC’s February 2021 [report](#) on the Atlantic migration route and articles in 2020 by [RFI](#), [Info Migrants](#) and [El Pais](#).

Recommendations: Before moving to deport or expel anyone, Mauritanian authorities should ensure individual verification of immigration status and should guarantee due process, including through individual court reviews. The government should also cease expulsions of separated or unaccompanied children and ensure they are referred to appropriate child protection services.

Tanzania

Tanzania has forcibly returned or “pushed back” thousands of **Mozambicans** fleeing violence in the country’s northern Cabo Delgado province during 2020 and 2021. In June 2021, the UN refugee agency, UNHCR, [reported](#) that Tanzania had pushed back more than 9,600 Mozambican asylum seekers at the Negomano border point since January 2021. Many were fleeing armed conflict and insecurity in the coastal city of Palma, following a [brutal attack](#) by non-state armed groups in March 2021. As of June, [nearly 800,000](#) people were internally displaced in Cabo Delgado province. Noting that people were “fleeing daily in a desperate search for safety both in Mozambique and across the border in Tanzania,” UNHCR called on Tanzania to halt the refoulement of Mozambicans and allow them access to asylum. It said those pushed back from Tanzania “end up in a dire situation at the border and are exposed to gender-based violence and health risks,” with many “sleeping in the open at night in extreme cold.” [News reports](#) also [alleged](#) that Tanzania deported or forcibly returned some 800-900 Mozambican asylum seekers in September or October 2020. Human Rights Watch research underscores the legitimate protection needs of the Mozambicans fleeing Cabo Delgado to Tanzania, as we have documented ongoing [violence](#) in northern Mozambique in 2021 and the [deteriorating human rights situation in 2020](#) due to the worsening conflict in the north.

Separately, Human Rights Watch documented ongoing coerced and forced returns of **Burundian refugees and asylum seekers** by Tanzania in 2019 and 2020. In August 2020, Tanzanian authorities [forcibly returned eight Burundians](#) following their arbitrary detention and torture. As of June 2021, these eight [remained in detention](#) in Burundi, facing trial. During 2019, we [found](#) that the fear of violence and arbitrary arrest, deportation threats by officials, and deteriorating conditions in refugee camps had driven many Burundians in Tanzania out of the country. In October 2019, Tanzanian authorities unlawfully [coerced](#) more than 200 unregistered asylum seekers into returning to Burundi by threatening to withhold their legal status.

Recommendations: Tanzania’s forced returns to danger of Mozambican and Burundian asylum seekers and refugees violate prohibitions on refoulement and collective expulsions under international and regional refugee and human rights law (see [Section VI](#)). The government should immediately cease all pushbacks, forced or coerced returns, and collective expulsions, and should ensure that those in need of protection have access to asylum.

For more information, see:

- March 2021: “Mozambique: Protect Residents Fleeing Northern Town”
<https://www.hrw.org/news/2021/03/26/mozambique-protect-residents-fleeing-northern-town>
- January 2021: World Report on events of 2020: Mozambique
<https://www.hrw.org/world-report/2021/country-chapters/mozambique>
- March 2021: “Burundi: Free Forcibly Returned Refugees”
<https://www.hrw.org/news/2021/03/08/burundi-free-forcibly-returned-refugees>
- November 2020: “Tanzania: Burundian Refugees ‘Disappeared,’ Tortured”
<https://www.hrw.org/news/2020/11/30/tanzania-burundian-refugees-disappeared-tortured>
- December 2019: “Tanzania: Burundians Pressured into Leaving”
<https://www.hrw.org/news/2019/12/12/tanzania-burundians-pressured-leaving>
- October 2019: “Tanzania: Asylum Seekers Coerced into Going Home”
<https://www.hrw.org/news/2019/10/29/tanzania-asylum-seekers-coerced-going-home>

V. Discrimination, Xenophobia, Access to Services and Documentation

State actions contravening GCM Objective #17 (“Eliminate all forms of discrimination” and “condemn... violence, xenophobia and related intolerance against all migrants”); Objective #4 (“Ensure that all migrants have proof of legal identity and adequate documentation”); and Objective #15 (“Provide access to basic services for migrants”)

South Africa

Xenophobia, violence and discrimination: South Africa, with a population of 59.6 million, is home to an [estimated](#) 4.2 million migrants, refugees and asylum seekers. During 2020 and 2019, there were [widespread incidents](#) of xenophobic harassment and attacks against migrants and foreigners by mobs and ordinary members of the public, as well as by law enforcement officials. Authorities throughout the country largely failed to ensure justice for xenophobic violence and operated in discriminatory and abusive ways against non-nationals. Some officials exacerbated xenophobia through inciteful rhetoric, while police used counterfeit goods raids as a cover to target foreign-owned shops and businesses, beating shop owners and ransacking their shops. In coordination with the Department of Home Affairs (DHA), police conducted abusive “documentation raids” in areas where many non-nationals reside, including by entering foreigners’ homes to verify documents and legal status while administering beatings. The police also carried out arbitrary and abusive arrests and detention of migrants, as described in [Section III](#) of this submission.

While the March 2019 adoption of a [National Action Plan](#) (NAP) to combat xenophobia marked an important step forward, a September 2020 Human Rights Watch [report](#) nonetheless documented numerous xenophobic incidents in the year after the government adopted the NAP. These included killings, serious injuries, forced displacement, discrimination, and barriers to justice and basic services, including education. Problems identified included indifference, denial and tacit approval of xenophobic actions by authorities, and barriers to legal representation.

Documentation: Migrants interviewed by Human Rights Watch also reported difficulty in acquiring and renewing permits and identification documents from the DHA in order to maintain legal status. Many said they found it difficult to find accurate information about their options and to stay informed of DHA policy changes, and some cited inconsistencies in policy application. Asylum seekers faced a massive DHA backlog of cases, appeals, and renewals, forcing some to remain undocumented for years. Some

asylum seekers reported that having legal documentation made no difference, as police still harassed them and banks or hospitals often rejected permits they had taken pains to renew.

Access to services: The documentation difficulties cited above have also impacted migrants' access to basic public services, including education and health care. One Congolese man with permanent residency said that after two of his children born in South Africa received permanent residency status, a DHA worker told him the policy had changed, and his last two children, born in South Africa, received birth certificates stating they are "aliens." The two children's public schools warned them to acquire identity documents without the word "alien" to continue enrollment, but the man said DHA told him that there were no alternative forms of documentation for his children. An asylum seeker living in South Africa for 17 years said even though he regularly renews his permit, his status appears fraudulent due to an administrative error. "I cannot do anything. They have robbed me of my life," he said.

During the Covid-19 pandemic, South Africa has seen one of the highest rates of confirmed cases and deaths on the continent, with over 1.9 million cases and 59,000 related deaths [reported](#) as of June 2021. Following the [first shipment](#) of Covid-19 vaccines, President Cyril Ramaphosa [stated](#) that his government aimed "to make the vaccine available to all adults living in South Africa, regardless of their citizenship or residence status." However, his remarks contrasted with a [statement](#) by Health Minister Dr. Zwelini Mkhize that only registered South African citizens would be eligible to receive the vaccine. South African authorities have an obligation to fully respect the right to health of everyone within their borders, without discrimination, regardless of migration status or nationality. This should include ensuring equitable access to Covid-19 vaccines and related care for both documented and undocumented migrants, asylum seekers and refugees, in line with the vaccine roll-out plan for others in the country.

Recommendations: The South African government should increase the urgency with which it responds to violence and discrimination against migrants and non-nationals. Crucially, it should hold perpetrators of xenophobic harassment and attacks accountable and ensure justice for victims. Potential measures to do so include creating a hotline to report xenophobic incidents and standardizing how instances of xenophobia are recorded and responded to. President Ramaphosa should fully implement the NAP, including by articulating actionable items and objectives that reflect contemporary discrimination and inequalities. Xenophobia should be acknowledged to manifest not only as violence, but also as discrimination against migrants and barriers in accessing employment, education, health care, and housing. As part of the national response to Covid-19, authorities should ensure non-discrimination in response plans and vaccine distribution, embark on awareness raising and information campaigns so people understand when they are eligible and how to access a vaccine, and ensure undocumented migrants can travel safely to vaccination centers.

For more information, see:

- February 2021, "Ensuring Equitable Covid-19 Vaccine Distribution in South Africa" <https://www.hrw.org/news/2021/02/03/ensuring-equitable-covid-19-vaccine-distribution-south-africa>
- January 2021, World Report on events of 2019: South Africa: "Xenophobic Attacks on Foreign Nationals" <https://www.hrw.org/world-report/2021/country-chapters/south-africa#90de97>
- September 2020, "'They Have Robbed Me of My Life': Xenophobic Violence Against Non-Nationals in South Africa" <https://www.hrw.org/report/2020/09/17/they-have-robbed-me-my-life/xenophobic-violence-against-non-nationals-south>
- March 2020, "South Africa Should Uphold the Dignity of Asylum Seekers" <https://www.hrw.org/news/2020/03/21/south-africa-should-uphold-dignity-asylum-seekers>

VI. Legal Obligations

Detention

Regional and international human rights law, including the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR), prohibits arbitrary arrest and detention. Detention without due process or adequate procedural safeguards is arbitrary. Irregular migrants should not be detained if their detention is not necessary and proportional to achieve a legitimate, lawful aim. If there is no realistic prospect to deport a detained person, including because they would face harm in their country, or if the person is unable to challenge their removal, the detention is arbitrary. Migrants should only be held in administrative detention on an individual basis, in full compliance with due process rights and procedural safeguards, for the shortest possible period, and only as an exceptional measure of last resort. While detained, they should be able to communicate with their families and have access to the UN refugee agency (UNHCR) and consular missions. Detention conditions and treatment should fully comply with international human rights standards, including prohibition of inhuman and degrading treatment. The [AU Migration Policy Framework for Africa](#) (MPFA) calls on states to “ensure that migrants who are detained by public authorities, are treated humanely and fairly... and are afforded all applicable legal protection, ...access to their consulates, and protection against arbitrary detention.”

International organizations such as the [UN Subcommittee on Prevention of Torture](#) have repeatedly called on governments to release immigration detainees. Authorities should work to ensure immediate release of immigration detainees with no foreseeable prospect of deportation, mitigating risks through alternatives to detention. States should not detain children for immigration-related reasons and are obliged to provide appropriate care to unaccompanied children. International human rights standards hold that immigration-related detention is never in the best interest of the child and should be prohibited due to its harmful impacts. The MPFA calls on states to “end the detention of migrant children... and establish alternatives to detention that are in the best interests of the child.”

Forced Returns, Collective Expulsions, and Pushbacks

The principle of nonrefoulement – under the African (OAU) and UN refugee conventions, the Convention against Torture, the ICCPR, and international customary law – prohibits the return of anyone to a place where they would face a real risk of threats to their lives or freedom, torture or other serious harm, enforced disappearances, or other serious human rights violations.¹ The claims of anyone expressing such fears should be examined in full and fair procedures prior to any removal proceedings.

Article 2 of the OAU Refugee Convention encompasses “rejection at the frontier, return or expulsion,” while article 33 of the UN Refugee Convention prohibits the refoulement of refugees “in any manner whatsoever.” The prohibition on forced return also applies to asylum seekers not yet formally recognized as refugees. Governments may not use violence or threat of violence or detention to coerce people to return to places where they face harm. The UN Committee on the Rights of the Child has noted in its [General Comment No. 5](#), para. 27, that states party to the 1989 Convention on the Rights of the Child “shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.”

¹ UN Special Rapporteur on the human rights of migrants (Felipe González Morales), “Report on means to address the human rights impact of pushbacks of migrants on land and at sea,” May 12, 2021, UN doc. A/HRC/47/30, <https://undocs.org/A/HRC/47/30>, para. 41.

Collective expulsions are prohibited by African regional law and as a principle of general international law.² Article 12(5) of the ACHPR prohibits mass expulsions aimed at national, racial, ethnic, or religious groups. The UN Human Rights Committee has stated that article 13 of the ICCPR “would not be satisfied with laws or decisions providing for collective or mass expulsions,”³ and collective expulsions without individual case reviews are also prohibited by the UN Migrant Workers Convention.

The UN Special Rapporteur on the Human Rights of Migrants has defined “pushbacks” as measures “which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs,” which can encompass “practices that can take place before an individual has entered a State’s territory, as well as within the State’s territory.” He stated that “pushbacks deny migrants their fundamental rights by depriving them of access to protection defined in international and national law, as well as procedural safeguards.”⁴

Human Trafficking

Human rights violations are both a cause and consequence of human trafficking, making the promotion and protection of human rights particularly relevant to the fight against it. Human trafficking can violate legal prohibitions against slavery, forced or bonded labor, torture, or cruel, inhuman, degrading treatment or punishment, and gender-based violence. It can also violate the right of children to special protection, and the basic rights to liberty and security, freedom of movement, health, and an adequate standard of living, among others. These rights are laid out in the ICCPR; the ACHPR; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the UN Convention on the Rights of the Child; and the African Charter on the Rights and Welfare of the Child.

Discrimination

The ACHPR, ICCPR, and ICESCR contain non-discrimination clauses providing that states should guarantee all persons the enumerated rights and freedoms in each instrument without distinction for any reason of race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status, fortune (ACHPR) or property (ICCPR and ICESCR), or ethnic group (ACHPR).

Article 1 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” When policies and practices lead to such indirect discrimination, states party are required to change them to eliminate the discriminatory impact. Article 2 of ICERD requires governments to pursue by all appropriate means and without delay measures to eliminate racial discrimination.

The Committee on the Elimination of Racial Discrimination, in its General Recommendation No. 30 on discrimination against non-citizens, has stated that states are obliged to guarantee equality between citizens and non-citizens in the enjoyment of civil, political, economic, social, and cultural rights to the extent recognized under international law.

² *Ibid.*, para. 40, citing intervenor brief filed by the UN High Commissioner for Human Rights to the European Court of Human Rights, in *N.D. and N.T. v. Spain* (applications Nos. 8675/15 and 8697/15), paras. 7–11.

³ UN Human Rights Committee, General Comment No. 15 (1986), para. 10.

⁴ UN Special Rapporteur on the human rights of migrants, “Report on means to address the human rights impact of pushbacks of migrants on land and at sea,” May 2021, paras. 34-36.