

African Commission on Human and Peoples’ Rights

DRAFT

Study on African Responses to Migration and the Protection of Migrant Rights

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2 Foreword

Africa has long been a continent of migration and mobility, with movement across international borders long providing avenues for strengthening development for the continent and also for migrants and their communities. Migration has also brought challenges and rights abuses for people moving across borders, whether temporarily or to establish new lives -- all the more for those fleeing persecution, conflict or other complex causes – as well as for States.

Below you will find the working draft Study on African Responses to the Issue of Migration and the Protection of Migrants in Africa. The preparation of the study was directed by the African Commission on Human and Peoples' Rights in its Resolution 481 (LXVIII) 2021.

This draft study focuses on migration dynamics within and between different regions (North, East, Southern, Central and West) as well as extracontinentally to the African diaspora. In total, the study shows the importance of and support for freedom of movement in Africa. It also shows both the broad consensus and ever-proliferating good practices for the protection of migrants' rights – and the vital need to make the recognition and protection of those rights more widespread. In this sense, the study establishes the need for a nonbinding, soft law restatement of the rights of all African migrants that will allow the African Commission to speak authoritatively about the role of rights in the emergent free movement on the continent.

International migration includes the movement of refugees, asylum seekers and victims of trafficking, as well as movement across borders for reasons of family unity and/or the pull of a better economic situation – for any duration. In Africa, it prominently also includes the mobility of those whose culture and livelihoods are linked to movement, irrespective of political boundaries. Migration on the continent involves issues of armed conflict and disaster, as well as, increasingly, climate change. The latter phenomenon will likely drive international migration trends in new ways in the years to come.

This study, along with regional migration trends, is situated in a robust law and policy landscape, but one in which substantial gaps remain. First, there is an increasingly significant law and policy framework supporting collaboration between African States and the leadership of the African Union (as well as the Regional Economic Communities) to establish freedom of movement, residence, and establishment on the continent. This framework builds on longstanding continental migration dynamics, as well as inter-state dialogue processes. However, this political momentum towards greater continental mobility has identified but not filled a need to specify and affirm the rights of all migrants and create tools for state protection of those rights.

Second, there is a robust regional and international law framework providing for the rights of all migrants via the direct and indirect application of treaty law. However, there is an inadequate *corpus juris*, notwithstanding significant decisions by the African Commission and the African Court on Human and Peoples' Rights touching on the rights of migrants. As this study demonstrates, an important tool in this context would be nonbinding Guiding Principles that restate existing law as applied to migrants, but also reflect areas of progressive development needed to meet new challenges and incorporate the good practices identified herein.

We welcome your input and feedback in the coming weeks.

Confidential Draft

[signature]

Hon. Maya Sahli-Fadel

Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa
Vice-Chairperson of the African Commission on Human and Peoples' Rights

3 Definitions & Abbreviations

TBC

4 Introduction

The present study, formally requested by the African Commission on Human and Peoples' Rights in its Resolution 481 on the Need for a Study on African Responses to Migration and the Protection of Migrants with a view to Developing Guidelines on the Human Rights of Migrants, Refugees and Asylum Seekers (ACHPR/Res. 481 (LXVIII) 2021), is the result of years of leadership on the subject by the Commission and its Rapporteurship. It represents a recognition of the importance of further, practical action by the Commission to contribute its human rights mandate to a broader discussion among African States and led by the African Union for a vision for continental free movement and parallel momentum around the recognition of pathways to cross-border mobility as an adaptation strategy in response to global climate change. The study, along with the proposed Guiding Principles and Explanatory Notes which accompany it, thus represents an opportunity for further African leadership in recognizing and protecting the human rights of all those who move across international borders.

4.1 Purpose of Study

In addition to protecting all people subject to the jurisdiction of States parties, Article 12 of the African Charter on Human and Peoples' Rights enshrines several human rights protections which explicitly protect all migrants, anchored in the right to freedom of movement and residence. Migrants' lived reality, however, is often another matter. Increasingly, human mobility in Africa is characterized by restrictive laws and dangerous migration routes. Indeed, people on the move, who leave their countries and cross international borders for multiple and sometimes overlapping reasons, encounter difficulties and dangers that can affect their lives, safety, and dignity.

This study explores African responses to migration for each major region of the continent — West Africa, Central Africa, East Africa, Southern Africa, and North Africa — as well as the diaspora. It has adopted the classification of African regions as defined by the African Union. For each, the study maps the primary migration trends and corridors, both within the region and the continent, as well as to the diaspora. Next, the study provides a concise overview of key aspects of the applicable legal framework, including the status of ratification of major treaties bearing on migration (included in table form at Appendix 1), regional law and practice on migration, and national legal frameworks — all tending to show good practices on the subject. Finally, each chapter reviews some of the rights challenges faced by migrants in each region.

The study therefore aims to highlight the characteristics and trends of migration in Africa, as well as the human rights violations suffered by migrants. The study adopts a human rights-based approach to demonstrate the difficulty and dangerousness of the migratory journey.

The study takes the view that all migrants, regardless of the reason for their movement across an international border or the duration of their movement away from their place of habitual residence, have a basic set of rights. This study thus seeks to contribute a specific mapping of how States on the continent can best protect, respect and implement the human rights of all migrants in the context of migration governance.

Three key principles thus apply. First, the primacy of human rights. Human rights must be at the center of State responses to human mobility. Second, the rights of dignity, equality and nondiscrimination. Neither individual migrants nor groups of migrants should be subject to discriminatory or differential treatment on account of their status as a migrant nor any other

protected grounds. All human rights are, in this sense, migrants' rights. Third and finally, the duty of States to affirmatively guarantee migrants' rights by taking action to ensure their protection, assistance, access to justice, and human rights, no matter where those migrants are found.

Traversing an international border can never be said to create a zone of exclusion or exception to human rights obligations. States are entitled to exercise jurisdiction at their international borders, but this does not exempt them from their international human rights obligations. It is therefore fundamental to recall the importance of respecting human rights in relation to all stages of the migration process, both on the continent as well as in the African diaspora.

4.2 Defining “Migrants”

In order to include all the categories of persons concerned by the international migration experience, the study adopts a broad definition of “migrants.” International migration, of course, includes the movements of refugees, asylum seekers, victims of trafficking, as well as movement across international borders for reasons of family unity and/or the pull of a better economic situation — whether for short durations or permanently. International migration on the continent also prominently includes the mobility of pastoralists, nomadic people, and others whose culture and livelihoods, including transhumance, are linked to movement, irrespective of political boundaries. Finally, migration dynamics on the continent also prominently involve conflict and disasters.

Increasingly, too, migration on the continent involves issues of global climate change, a phenomenon that is likely to drive international migration trends in new ways in the years to come. The vast majority of migration tied to climate change occurs internally, or within countries' national boundaries. Like the issue of statelessness, internal displacement is also the subject of a significant and growing body of African law.¹ While the question of internal migration is significant, the focus of this work is specifically on categories of persons concerned by the transnational migration experience.

The study thus adopts a broad definition of “migrants” which includes all the categories of persons and groups moving across international borders, including refugees, asylum seekers, victims of human trafficking, and regular and irregular economic migrants. It excludes internal migrants. The study defines a migrant as a person who is outside of a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence. This broad definition is not intended to erase the specificities of the experience of different categories of migrants or individual migrants. Nor should it be seen to deprive them of specific legal protection provided by the various regional and international instruments. Rather, this broad definition embraces all the particularities of people on the move in Africa.

4.3 Overview of Jurisprudence: African Continental Case Law

This study and regional migration trends are also situated in a robust law and policy landscape, but one in which substantial gaps remain. In fact, the case law relating to the rights of migrants remains incomplete since the cases presented to the Commission only concern certain specific

¹ African Charter on Human and People's Rights; OAU Convention Governing Specific Aspects of Refugee Problems in Africa; Draft Protocol to the African Charter on Human and People's Rights on Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.

aspects. It is for this reason that case law remains fragmented and does not cover all aspects relating to the rights of migrants.

The only case of the African Court on Human and Peoples' Rights² to recognize the rights of migrants is *Michelot Yogogombaye v. Senegal* (2009).³ This case raised a refugee issue in the African Court, with petitioner arguing that the prosecution in Senegal of the former president of Chad violated the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter the 1969 OAU Convention). However, the Court determined that it had no jurisdiction to hear the case due to access rules surrounding cases on refugee protection.

The African Commission on Human and Peoples' Rights (hereinafter the African Commission),⁴ however, has a much more substantial jurisprudence. The African Commission has commented on the rights of migrants in many contexts, and there are several key cases in this area.

In *Institute for Human Rights and Development in Africa v. Angola* (2008),⁵ the African Commission recognized a robust right against return to harm. In its decision in *John K. Modise v. Botswana*⁶, the African Commission held that deportation or expulsion that seriously affects other fundamental rights of the victim and constitutes a violation of Article 5 of the African Charter on Human and Peoples' Rights (hereinafter the African Charter). Also, in *Amnesty International v. Zambia* (1999),⁷ the Commission noted the forcible expulsion of two prominent political figures, William Banda and John Lyson Chinula, from Zambia to Malawi and concluded that "by forcing Banda and Chinula to live as stateless persons under degrading conditions, the government of Zambia has deprived them of their families and is depriving their families of the men's support, and this constitutes a violation of the dignity of a human being, thereby violating article 5 of the Charter".⁸

Organisational mondiale contre la torture v. Rwanda (1996)⁹ recognized the right of those fleeing persecution to seek refuge. *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Guinea* (2005–06)¹⁰ recognized the prohibition of the arbitrary expulsion of non-nationals. *Rencontre Africaine pour la defense des droits de*

² The African Court on Human and Peoples' Rights was created by a protocol to the African Charter. The Protocol establishing the African Court was adopted in Ouagadougou, Burkina Faso, on June 9, 1998, and entered into force on January 25, 2004. The Court was created to complement the protective mandate of the Commission. The jurisdiction of the Court extends only to States which have ratified the Protocol relating to the Court.

³ See AfCHPR, *Michelot Yogogombaye v. Senegal*, Appl. No. 1/2008, ACtHPR, Judgment of 15 Dec. 2009

⁴ Created under the African Charter on Human and Peoples' Rights, the mandate of the Commission the African Commission on Human and Peoples' Rights is to promote human and peoples' rights (organization of mobilization and awareness campaigns, etc.). The Commission ensures the protection of human and peoples' rights through the communications procedure, amicable conflict resolution, State reports (including the examination of information contained in alternative reports NGOs), urgent appeals and other activities of Special Rapporteurs, working groups and missions. It is also competent to interpret the provisions of the African Charter at the request of any State Party, AU Organs or individuals.

⁵ *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola*, 292/04, African Commission on Human and Peoples' Rights, May 2008, available at: <https://www.refworld.org/cases,ACHPR,51b6fd4e7.html> [accessed 22 November 2022]

⁶ https://www.achpr.org/public/Document/file/English/achpr28_97_93_14ar_eng.pdf

⁷ file:///C:/Users/ASUS/Downloads/achpr25_212_98_fra.pdf

⁸ Zambia: Amnesty International v Zambia (2000) AHRLR 325 (ACHPR 1999) § 50.

⁹ *Organisational mondiale contre la torture v. Rwanda (OMT) (1996)*

¹⁰ *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Guinea (2005–06)*.

l'homme (RADDHO) v. Zambia (1997)¹¹ and *Union inter-Africaine des droits de l'homme et al. v. Angola* (1997)¹² recognized the right against mass expulsion, a key anchor for due process rights.

The African Commission, for its part, has also passed multiple resolutions addressing the rights of all migrants. This includes Resolution 114 of 2007 on Migration and Human Rights; Resolution 333 of 2016 on the Situation of Migrants in Africa; and Resolution 470 of 2020 on the Protection of Refugees, Asylum Seekers and Migrants in the Fight Against the COVID-19 Pandemic in Africa. Finally, in its Resolution 481 of 2021, the African Commission identified the need to study African Responses to Migration and the Protection of Migrants with a view to Developing Guidelines on the Human Rights of Migrants, Refugees and Asylum Seekers. In addition, the Commission's Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons has undertaken several important studies in recent years highlighting the importance of the rights of migrants.¹³

4.4 African Political Institutions and Their Work on Migration

The African Union has formulated several migration frameworks, including the Migration Policy Framework for Africa (MPFA) and the African Common Position on Migration and Development (ACPMD), both of which were adopted in 2006. The MPFA promotes the formulation of comprehensive policies to better harness the development potential of migration, and it considers all forms of migration. In 2015, the 25th session of the AU Assembly passed the Declaration on Migration, stressing the need to speed up the implementation of earlier commitments, especially those related to the free movement of persons across the continent and those addressing irregular migration.

The 1991 Treaty Establishing the African Economic Community (better known as the Abuja Treaty) calls for the establishment and/or strengthening of existing Regional Economic Communities (RECs) within the African Union. In its Article 43, AU Member States and RECs are encouraged to promote the free movement of people. Other instruments which relate to migration, but were not designed for migration specifically, are the 1969 OAU Convention, the 2004 AU Plan of Action for Promotion of Employment and Poverty Alleviation, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the 2009 AU Minimum Integration Programme, the 2012 Action Plan for Boosting Intra-African Trade, the Joint Labour Migration Programme, and the AU Border Programme . However, several AU migration policies and instruments are only guidelines and are not binding. The 1969 OAU Convention and the Kampala Convention are exceptions.

Taken together, these frameworks and instruments have evolved most recently into a robust agenda for free movement on the continent. Most emblematic of this is the African Union's 2018 Protocol to the Treaty Establishing the African Economic Community Relating to Free

¹¹ [Rencontre Africaine pour la defense des droits de l'homme \(RADDHO\) v. Zambia \(1997\)](#)

¹² [Union inter-Africaine des droits de l'homme v. Angola \(Union inter-Africaine des droits de l'homme\) \(1997\)](#)

¹³ Pilot Study on Migration and Respect for Human Rights; Focus on the Responses provided by Niger, African Commission; Riposte de l'Afrique à la COVID-19 en Matière de Gouvernance, Rapport Préliminaire (Mai 2020).

Movement of Persons, Right of Residence and Right of Establishment, which has not yet entered into force.¹⁴

In this context, AU Member States have recently concluded a revised Migration Policy Framework for Africa (MPFA 2018-2030).¹⁵ The African Union Commission and its Department of Health, Humanitarian Affairs and Social Development have led the deployment of its associated Plan of Action. The revised MPFA represents a recognition that migration has been on the rise on the African continent, and that for some communities, migration has become a survival strategy. It also recognizes that Africa has witnessed changing patterns of migration, and that movement across borders has become both dynamic and extremely complex. Finally, the MPFA recognizes that, if managed in a coherent manner, nations and regions can reap the benefits of the linkages between migration and development as the continent strives towards the ideals of Agenda 2063, in order to establish “which an integrated and politically united Africa,” through the “free movement of people, capital, goods and services.”¹⁶

4.5 Other Key Stakeholders

There are several significant intergovernmental actors whose work on migration on the continent is significant. They include organizations with human rights mandates, such as the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), UNICEF, and the World Health Organization (WHO), as well as other important organizations, in particular the International Organization for Migration (IOM), and crime-control organs like the United Nations Office on Drugs and Crime (UNODC).

Non-governmental actors and civil society groups also have vital functions in many areas related to migration and migrants’ rights. This includes playing a monitoring role in the development and implementation of migration-related policies, especially related to refugees.

Finally, and perhaps most importantly, migrants themselves are significant stakeholders. Their rights of political participation, association and assembly require States to ensure significant actions concerning their rights are not taken without incorporating their perspectives.

4.6 Towards Guiding Principles

This study helps demonstrate the importance of political support for continental freedom of movement. It does this through taking a human rights approach to migration dynamics developed through sustained attention to innovation and rights challenges within the Continent’s regions (North, East Southern, Central, West and the diaspora), between regions, and beyond the Continent. In addition, the study shows the need for specific attention to a human rights vision for free movement that will address violations of migrants’ rights.

Importantly, the practice of individual African States shows that migrants are generally welcomed with African hospitality. However, the practice of individual states, as seen across

¹⁴ See, <https://au.int/en/treaties/protocol-treaty-establishing-african-economic-community-relating-free-movement-persons>.

¹⁵ https://au.int/sites/default/files/documents/35956-doc-2018_mpfa_english_version.pdf

¹⁶ Id.

in the six regions covered in this study, also includes violations of the human rights of migrants. The study establishes the need for Guiding Principles in Africa for three main reasons.

First, Guiding Principles would harmonize the existent multiplicity of migrant protection international, regional, and sub-regional instruments into one instrument. Since 1969, the need for continental action on migrants has been formally recognized.¹⁷ This does not minimize Africa's precolonial experience of hosting and protecting migrants. Several records exist of Ethiopia's experience hosting migrants persecuted for their religious beliefs as far as 615 A.D.¹⁸ However, in our contemporary understanding of human rights law, the contemporary trends of migrant protection starts with the formation of the Organization of the African Unity. Moreover, since its formation, the Organization of African Unity and the African Union at the regional level have managed to pass Continental treaties and protocols that deal with concerns of migrants directly or indirectly. Likewise, many instruments have been signed and adopted at the sub-regional level but have yet to be implemented. In addition, not all African countries have taken steps to domesticate their international, regional or subregional treaty obligations. With the multiplicity of treaty instruments, it is relevant to have all the principles that affect the concerns of migrants in one instrument.

Secondly, a soft law approach would allow States the flexibility to advance a human rights-based approach toward migrants. Several African States lack the resources to provide essential social services to their residents, citizens, and all people. Thus soft law allows a mechanism to show how States can ensure full protection of rights without encouraging a lower protection for migrants. The implementation of Guiding Principles should be based on African Union Member States' choice to implement them, not because a binding legal instrument binds them.

Thirdly, the Guiding Principles will allow the Commission to fill gaps in the protection of human rights of all migrants in Africa. It can do so through the different novel norms the Guiding Principles create.

¹⁷ See the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

¹⁸ Erlich, H. (2007). Ethiopia and the Mahdiyya–You Call Me a Chicken?. *Journal of Ethiopian Studies*, 40(1/2), 219-249.

5 Migration in North Africa

5.1 Migration Trends

The early 1990s saw the emergence of two new centers of migration on the continent: post-apartheid South Africa, and pan-African Libya during the rule of Muammar Gaddafi. Libya in particular has welcomed many migrant workers, primarily from Mali, Niger, Sudan and Chad. Those four primary countries of origin for labor migration have subsequently become countries of transit for migrants who came from a wider range of sub-Saharan countries. Beyond Libya's pan-African agenda, additional contributors to increased trans-Saharan migration are growing instability, civil wars and economic decline in many sub-Saharan countries.

In Libya in 2000, due primarily to tensions between Libyan and African workers, there were waves of mass expulsions of workers followed by the establishment of more restrictive immigration regulations. This abrupt reversal in Libya's policies and attitude toward migrants led to a change in trans-Saharan migration routes. Many of them instead went to Algeria, Morocco and Tunisia. The change also led to more irregular migration to Libya, including due to its persistent need for labor.

Another change took place at the beginning of the 2000s, when sub-Saharan migrants began to reach Morocco, bound for Spain via the Strait of Gibraltar or Italy or Tunisia. The increase was of such magnitude that sub-Saharan migrants intercepted by European border guards came to exceed the number of such migrants from the Maghreb. Libya then also became a transit country to Europe.

The increasing migration restrictions imposed by the European Union (EU) and its Member States have gradually seen sub-Saharan migrants settle for longer periods in the Maghreb. From transit countries, then, these countries have become countries of settlement for sub-Saharan migrants. The hardening of European migration policy, which is focused on deterring irregular migration, has thus also led to the emergence of a repressive migration policy across the Maghreb. The region's countries are subjected to European pressure to control the EU's external borders and to impose repressive policies focused on securitization, particularly in terms of maritime border control.

There are significant migrant populations in North Africa, which primarily consist of regular labor migrants, irregular migrants, international students, and migrants from Sub-Saharan Africa who are in transit to other countries, as well as asylum seekers and refugees. In particular, the numbers of irregular migrants and asylum seekers, who are among the most vulnerable groups in North Africa, have been increasing.

5.1.1 Migration to Other African States

Intra-African migration from North African countries occurs mainly within the region. Migration to other African regions is insignificant. Beginning in the 1960s, North Africa was the only region where extracontinental migration was higher than intracontinental migration. In the last decades, the Maghreb has essentially become Africa's hub of emigration. This is related to its geographical proximity to Europe, strong colonial and post-colonial links to France, and the labor recruitment agreements that countries of the Maghreb have reached with European countries. Egypt has weaker links to Europe, but since the 1970s, massive emigration has

occurred to other oil-producing countries, including Libya, but also extracontinentally to the Gulf States.

5.1.2 Extracontinental Migration

Extracontinental emigration rates are higher in North African countries than in any other African region. The region is characterized by several migration patterns. The main destinations of North African migrants are Europe and Asia (primarily the Gulf countries), followed by the African continent.¹⁹ The region is also known for labor migration to Europe and North America and, to a lesser extent, the Gulf. In Tunisia and Morocco, irregular migrants tend to originate from Sub-Saharan Africa and traverse the countries to their northern borders. North African countries thus serve as primary point of departure to the Euro-Mediterranean countries, whether through regular or irregular routes.²⁰ Egyptians migrate mainly to the Gulf and represent the highest number of migrants in all sectors in these countries. However, over the past decade there has been an increase of Egyptian migration towards Europe. Libya, for its part, remains primarily a country of immigration rather than of emigration. Libya receives mainly Arab migrants but also migrants from other African countries, along with Asia and Eastern Europe.

5.1.3 Climate Migration Dynamics

The role of climate change as a driver of migration in North Africa can only be understood in the context of its interrelationship with other demographic, economic, political and social drivers of migration. In general, extreme weather events in the region have caused more temporary and short-distance internal displacement, rather than international migration. Both migration and remittances have tended to increase in response to climate shocks in the region. In this regard, both trends have functioned in some respects as coping mechanisms. In general, however, further research and data is required.

5.2 Legal Framework and Good Practices

In this section, we will analyze the main characteristics of the legal framework for migrants and migration in North Africa in order to measure the degree of migrant protection. Their legal protection remains relative, and State practice often falls short of regional and international obligations.

5.2.1 Treaty Ratifications

Most North African countries are bound by international obligations arising from important international treaties. All except Libya are party to the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter the 1951 Refugee Convention). Other treaties are the 2000 United Nations Convention against Transnational Organized Crime; its supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air; and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (see Annex 1).

¹⁹ Marie-Laurence Flahaux and Hein De Haas, African migration: trends, patterns, drivers, *Comparative Migration Studies* (2016), <https://link.springer.com/content/pdf/10.1186/s40878-015-0015-6.pdf>

²⁰ Hassène Kassar, Diaa Marzouk, Wagida A. Anwar, Chérifa Lakhoua, Kari Hemminki, Meriem Khyatti, « Emigration flows from North Africa to Europe », *European Journal of Public Health*, Volume 24, Issue suppl_1, August 2014, Pages 2–5, <https://doi.org/10.1093/eurpub/cku105>

5.2.2 Regional Law

The Arab Maghreb Union is effectively non-functional when it comes to regulating migration. Therefore, transnational regulation of migration in the region has primarily been addressed through bilateral agreements for countries to guarantee the free movement of their nationals. There are agreements between Tunisia and Morocco, as well as between Tunisia and Libya. Generally, movement between North African countries is not subjected to complicated procedural requirements.

One important phenomenon is the intersection of the many bilateral agreements signed between Libya and Italy – the latest dated June 17, 2011 – aimed at controlling irregular migration to Europe (the Sicilian coast of Lampedusa in particular)’. The chaotic situation in Libya after the fall of the Gaddafi regime in 2011 has multiplied the number of migrants wishing to cross the Mediterranean Sea to reach European shores. The virtual absence of Libyan authorities has created a dangerous environment for migrants and opened the door to cross-border crime and violent practices against them. Tunisia, as Libya’s neighbor, has in turn become a country of both destination and transit, with a massive influx of migrants.

5.2.3 National Law

Legislation concerning irregular immigration was adopted by Morocco, Algeria and Libya between 2003 and 2011 in a context of negotiating migration issues with the EU, particularly within the framework of the Barcelona Process (1995) and European Neighbourhood Policy (2004). In Morocco, anyone attempting to leave the territory irregularly, including Moroccan nationals, is punished by prison terms and heavy fines. Algeria has adopted similar sanctions. Tunisia has followed suit with the adoption of a 2004 law amending the conditions of entry to Tunisian territory to those possessing authorized travel documents.

The countries of North Africa have similar policies in terms of regulating stays in their territories. Tunisia (Law No. 2004-6/ 3 February 2004), Algeria (Law No. 08-11/ 2 June 2008), and Morocco (Law No. 02-03/ 11 November 2003 relating to the entry and stay of foreigners in the Kingdom of Morocco) have adopted fairly strict laws that significantly restrict the ability of migrants to obtain a residence permit. Regularization of one’s legal residency status is quite difficult in Tunisia. But it should be noted that Morocco, after the adoption in 2013 of its national strategy on migration, carried out two regularization campaigns in 2014 and 2017.

5.3 Key Rights Challenges

There are multiple areas of concern when it comes to the protection migrants’ rights in North Africa. One challenge arises from the lack of legislation relating to refugees. Second, membership in relevant international treaties is low. In addition, there are discrepancies between rights enshrined in national, regional, and international laws and the implementation of those laws in practice.

5.3.1 Human Smuggling and Trafficking

A lack of systematic agreements to create regular migration channels in North Africa (whether seasonal, temporary, or long-term) have increased the incentives for irregular migration, as well as trafficking and smuggling. Irregular migrants in North Africa are generally subjected to economic violence and physical aggression. Many of them are victims of human trafficking

along the various migration routes. Victims of trafficking often find themselves in particularly precarious situations.²¹ Migrants in Libya have reported being subjected to torture, forced labor and sexual violence by traffickers, criminal gangs and armed groups that control the migration flows through the country. Some have reported being held in “connection houses” where they were forced to work as payment for their transport and subject to rape and beatings. Reports by States and NGOs alike mention that some state employees and local officials have participated in smuggling and trafficking activities.

5.3.2 Asylum & Nonrefoulement

Although most North African Countries are States parties to the primary conventions protecting asylum seekers and migrants (only Libya has not ratified the United Nations Convention relating to the Status of Refugees and only Morocco has not ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa), no North African countries have adopted national asylum legislation (the EU has encouraged and offered support and resources to do so). Asylum procedures are thus implemented by UNHCR. Many cases of *refoulement* have occurred in North African country’s border regions and in the Sahara. Since mid-April 2020, 1,731 people have been collectively expelled from Libya to Ounianga Kebir in Chad, including 1,108 in 2020, 582 in 2021 and 41 in 2022.²² They are often in a very vulnerable situation when they arrive in Chad.

The lack of national asylum law and system increases the vulnerability of migrants and asylum seekers and contributes to the deviations from international standards in the North African region.

5.3.3 Statelessness & Lack of Pathways to Regularization

The enjoyment of a nationality typically brings with it an assortment of benefits and forms of protection offered by the State of nationality. However, stateless persons in the region find themselves disadvantaged, unable to enjoy rights that are reserved by States for their nationals. Taking a closer look at some specific protection concerns for stateless persons in North Africa, rights violations include issues related to detention, expulsion and denial of the right to return to one’s country of origin. In addition, issues related to access to citizenship affect children born to migrants, and in particular those born to refugees, who are vulnerable to statelessness throughout the region. Marriages of migrants to citizens may raise problems related to citizenship access for children born from such unions in the region as well. Finally, children born within nomadic communities may face difficulties with birth registration, which puts them at increased risk of statelessness.

Another major challenge in the region is the lack of avenues to regularize the status of the “stranded” irregular migrants and to find long-term, sustainable measures to support their permanent settlement in North Africa.

²¹ Thematic input paper prepared for the Thematic Regional Meeting of the Swiss Agency for Development and Cooperation on ‘Climate Change, Disaster Risks, Migration and Economic Development’ held in Agadir, March 2016 Thematic Input Paper 2: Migration, development and climate change in North Africa By Dr. Özge Bilgili and Katrin Marchand Maastricht Graduate School of Governance & United Nations University May 2016, p.1-3, https://www.weadapt.org/sites/weadapt.org/files/2017/november/mgsog_tip_final_weadapt_1.pdf

²² Chad — Emergency Tracking Tool Report 109 (08 July 2021), The Displacement Tracking Matrix (DTM) file:///C:/Users/ASUS/Downloads/ETT_109_Chad_draft_AL%20EN.pdf

5.3.4 Political Participation

Despite the obligation under Article 34 of the 1951 Refugee Convention to “facilitate the assimilation and naturalization of refugees,” States in the region have not implemented adequate systems to carry out this right. This is arguably the most formal obligation in relation to political participation of groups of migrants on the move. In effect, naturalization remains the only route to full and equal permanent membership of the political community. When formal political participation throughout North Africa is not possible or is hampered by legal and practical constraints, refugees have relied on informal means of engagement to make their voices heard. In many host countries in the region, they count on the support of a well-entrenched network of associations, religious and non-religious charities, and civil society to provide them with day-to-day assistance and advocate for their rights.

5.3.5 Detention

Migrants throughout North Africa report being arbitrarily detained. Data from the IOM’s 2016 and 2017 annual reports illustrate that arrests and detentions occur at all stages of migrants’ journeys. According to a 2019 African Commission study on Niger, “In 2016, out of 1,064, 1,059 and 696 migrants reporting abuse in Algeria, Libya, and Niger respectively, 2% reported to have been detained in Algeria, 15% in Libya and 10% in Niger.”²³ More recent data confirm that. In fact, in 2022, “at least 14,000 migrants, including minors, were expelled from Algeria to Niger between January and May 2022, according to the international medical humanitarian organization Doctors Without Borders/Médecins Sans Frontières (MSF).”²⁴ In some instances, this included detention in severely overcrowded cells, without adequate food and clean water.

In several detention centers in Libya, large groups of migrants have reportedly been held in rooms so crowded that there was not enough room to lie down. Many migrant detainees lacked access to toilets, forcing them to urinate and defecate in their cells. Infectious diseases, respiratory problems and malnutrition are common in such circumstances. Moreover, information received by the United Nations Support Mission in Libya (UNSMIL) showed a consistent and widespread pattern of guards beating migrants. A number of those interviewed by UNSMIL had gunshot and knife injuries, visible wounds or head injuries. Women detainees reported being beaten and raped. Furthermore, for migrants in Libya there is no formal registration, no legal process, and no access to lawyers or judicial authorities.

5.4 Conclusion

A regionally coherent approach to migration management can have positive effects for enhancing the economic development impacts of migration. Moving towards a regional approach requires closer cooperation, improved communication and power-balanced relationships between Maghreb countries (e.g. reinstatement of the Arab Maghreb Union and Arab Regional Consultative Process on Migration), with Sub-Saharan countries (e.g. by strengthening consular services), and with European Member States (e.g. EU Mobility Partnerships, EU-Horn of Africa Migration Routes Initiative and the Euro-African Dialogue on

²³ PILOT STUDY ON MIGRATION AND RESPECT FOR HUMAN RIGHTS FOCUS ON THE RESPONSES PROVIDED BY NIGER, African Commission, p. 39,

https://www.achpr.org/public/Document/file/English/Pilot%20Study%20on%20Migration_ENG.pdf

²⁴ Niger: Thousands of migrants expelled from Algeria and Libya each month and stranded in Sahel desert, <https://reliefweb.int/report/niger/niger-thousands-migrants-expelled-algeria-and-libya-each-month-and-stranded-sahel-desert>

Migration and Development). International organizations such as IOM and UNCHR can play a key role in dialogue processes. For example, IOM, UNHCR, the Danish Refugee Council and the Regional Mixed Migration Secretariat have formed the North Africa Mixed Migration Task Force, which is supported by the Mixed Migration Hub and dedicated to coordination and knowledge production regarding migration in the region.

6 Migration in East Africa

6.1 Migration Trends

East Africa is characterized by patterns of high mobility, and it is a region of origin, transit and destination for migrants. It is also home to some of the highest numbers of refugees on the continent. In 2020, there were 3.5 million refugees in the region.²⁵ The main causes of migration in East Africa are political instability and environment-related factors such as drought and natural disasters.

Migration trends in East Africa are shaped by decades of armed conflict in the continent's two youngest nations: Eritrea, which gained its independence in 1993, and South Sudan in 2011. The independence movement of both countries led to massive migration in the region.²⁶

Secondly, migration history in East Africa is diverse its terms of destinations. Data show that some migrants from East Africa are likely to stay in the region. For instance, from 2017 to 2022, 3,266 South Sudanese applied for asylum in East African countries compared to 1,320 in Europe and 165 in the United States of America.²⁷ Other migration trends also show a different pattern. For instance, from 2017 to 2022, over 105,882 Eritreans applied for asylum in Europe and 59,120 Eritrean applicants in East Africa, and 2,987 Eritreans applied for asylum in the United States.²⁸

A third trend resulted from Eritrea's and South Sudan's independence. People of Eritrean or South Sudan origin faced denationalization and loss of citizenship. In the case of Eritreans, it led to the mass expulsion of over 77,000 Eritreans from Ethiopia post the 1998-2000 border conflict and, in the case of South Sudan, recategorization as foreigners and all the implications that came with being a foreigner.²⁹

Climate change is a fourth factor that has shaped migration in Eastern Africa. Most climate-induced mobility in East Africa is internal.³⁰ For instance, in mid-1980s a severe famine led to the migration of over 300,000 Ethiopians to Sudan.³¹ Within Sudan, the famine led to displacement of pastoralists from the Darfur region towards Khartoum.³²

²⁵ Erica Nelson and Saira Khan, *Climate Migration in East and the Horn of Africa: Spatial Analysis of Migrants' Flows Data*, 7 (UN IOM and Harvard Humanitarian Initiative) August 2021

²⁶ Unfortunately, there is a lack of empirical data on the size of independence struggle-induced conflict displacement for both countries.

²⁷ <https://www.unhcr.org/refugee-statistics/download/?url=Wge5PI> (for migration to the United States)

<https://www.unhcr.org/refugee-statistics/download/?url=aQA7y9> (for migration to Europe)

<https://www.unhcr.org/refugee-statistics/download/?url=pcUG1o> (for migration to East Africa)

²⁸ <https://www.unhcr.org/refugee-statistics/download/?url=2w7FKQ> (for migration to the United States)

<https://www.unhcr.org/refugee-statistics/download/?url=79ypoY> (for migration to the Europe)

<https://www.unhcr.org/refugee-statistics/download/?url=bbxA6u> (for migration to East Africa).

²⁹ See generally Human Rights Watch, *Eritrea & Ethiopia, the Horn of Africa War: Expulsions and the Nationality Issue* (June 1998 – April 2002). See generally Munzoul Assal, *Conflict-Induced Migration in Sudan and Post-Referendum Challenges*, CARIM Analytic and Synthetic Notes 2011/75 (for a denationalization of persons of South Sudan origin in Sudan).

³⁰ See generally Richard Pankhurst & Douglas H. Johnson, "The great drought and famine of 1988–92 in northeast Africa" in *Ecology of Survival* (Ed. Douglas H. Johnson & David M. Anderson).

³¹ See generally Weaver, J. L. (1988). Searching for Survival: Urban Ethiopian Refugees in Sudan. *The Journal of Developing Areas*, 22(4), 457–476.

³² Assal *supra* note 25.

6.1.1 Migration to Other African States

Some East African countries are both countries of origin and host to thousands of migrants from within the region. Somalia, South Sudan and Ethiopia are three such examples. For example, Somalia, long one of the top countries of origin for migrants worldwide, hosts around 14,700 refugees from Yemen and Ethiopia.³³ Somalia also has one of the world's largest populations of internally displaced persons, with about 2.6 million IDPs.³⁴ By contrast, Kenya, Sudan, Djibouti and Tanzania are transit countries for migrants. Uganda, for its part, hosts the largest refugee population in Africa and the region. In 2019, there were around 1.53 million refugees in Uganda, more than 80% of whom were women and children.³⁵ The largest portion of them come from neighboring South Sudan. Meanwhile, Tanzania hosts over 246,000 refugees, mainly from Burundi and the Democratic Republic of the Congo.³⁶

Labor migration within East Africa is limited to a few countries in the region. In addition to migration within the region, there are four significant migration routes out of East Africa.³⁷ One of these is the southern route, involving the migration of people to Southern Africa.

6.1.2 Extracontinental Migration

Of the four primary migration routes, the remaining three are extracontinental. The Red Sea route involves the northern migration of people through Djibouti and the Red Sea to the Arabian Peninsula. Migrants, most of whom are from Ethiopia, use this route to engage in low-skilled jobs in Saudi Arabia, a pattern of labor migration that began in the early 1980s.³⁸ The third route is across the Mediterranean Sea, which often involves smuggling migrants across North Africa and the Central Mediterranean to Europe. The fourth route follows a similar direction, though instead of reaching Europe, migrants from several countries in East Africa transit through Sudan and Egypt to reach Israel.³⁹

6.1.3 Climate Migration Dynamics

Climate change has contributed to migration in the region as well.⁴⁰ Drought, flooding and locust invasions have affected several communities in East Africa, and the Horn Africa has been particularly vulnerable. Communities living in dry areas with low levels of precipitation have been particularly affected by drought. Locust invasions have further exacerbated the situation. Meanwhile, communities in coastal and riparian flooding areas have been vulnerable

³³ UNHCR Submission for the Universal Periodic Review—Somalia—UPR 38th Session 1 (2021).

³⁴ Id.

³⁵ UNWomen, <https://www.unwomen.org/en/news-stories/feature-story/2022/08/in-uganda-refugee-womens-leadership-drives-inclusive-humanitarian-action> (last visited on 09/30/2021) (discussing how refugee resettlement programs have failed to involve women.)

³⁶ UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Third Cycle, 39th Session (The United Republic of Tanzania (February 2021).

³⁷ Katrin Marchand, Julia Reinold, and Raphael Dias e Silva, Study on Migration Routes in the East and Horn of Africa (Maastricht University Graduate School of Governance, 2017).

³⁸ Walk Free, Ethiopia's new migration policy: a positive step but continued scrutiny needed (June 14, 2019) available at (<https://www.walkfree.org/news/2019/ethiopias-new-migration-policy-a-positive-step-but-continued-scrutiny-needed/>), Accessed on May 27, 2022.

³⁹ Ravid, Maayan. "MAKING THEIR LIVES MISERABLE: STRUCTURAL VIOLENCE AND STATE RACISM TOWARDS ASYLUM SEEKERS FROM SUDAN AND ERITREA IN ISRAEL." *State Crime Journal* 11, no. 1 (2022): 128–148.

⁴⁰ See Erica Nelson and Saira Khan, *supra* note []

to climate-related displacement. In Burundi, for example, the rise of Lake Tanganyika, Africa's second-largest lake, has been the main cause of displacement.⁴¹

6.2 Legal Framework and Good Practices

The following subsection will focus on international, regional, sub-regional and national legal commitments of East African countries.

6.2.1 Treaty Ratifications

Membership of East African countries in migrant- and refugee-related international treaties is low. The majority of East African countries are signatories to the 1951 Refugee Convention and the 1969 OAU Convention (see Annex I). Among those not party to the 1951 Refugee Convention are Comoros, Eritrea, Mauritius, and Sudan. Djibouti, Eritrea, Mauritius, and Somalia have signed the 1969 OAU Convention but have not ratified it. Most States in the region are not parties to the 1954 United Nations Convention Relating to the Status of Stateless Persons or the 1961 United Nations Convention on the Reduction of Statelessness.

6.2.2 Regional Law

In East Africa there are several regional and bilateral agreements concerning economic integration and the visa-free movement of people. The East African Community (EAC), the Intergovernmental Authority on Development (IGAD) and the Common Market for Eastern and Southern Africa (COMESA) are some of the widely signed regional agreements. They regulate trade among member countries, along with regional integration and regional institutions. These agreements, with the exception of the EAC, do not provide for the free movement of people within party States.

6.2.3 National Law

This section will examine national laws that affect migrants in the region. These include, for instance, specialized protection laws dealing with forced displacement as well as generalized laws scattered in the legal systems of various North African countries. Most countries in the region have specific laws dealing with refugees. Some, such as Eritrea and Somalia, have no domestic legislation on refugees. This section will highlight gaps between law and practice, essential areas of protection, and/or concerns.

6.2.3.1 Social & Economic Rights (Right to Health Services, Education, Pension Scheme and Employment)

Most countries in East Africa provide migrants with access to social rights on par with those enjoyed by their citizens. For example, Comoros provides migrants and its citizens access to the same government-financed health care.⁴² Migrants with a residency permit in the island nation also benefit from publicly funded education. In place of a national social protection scheme, working migrants get access to social services through their employment and are entitled to a pension, as mandated by the Comoros Labor Code.⁴³ Mauritius provides similar

⁴¹ (<https://www.savethechildren.org/us/about-us/media-and-news/2021-press-releases/families-in-burundi-languish-as-homes-disappear-under-lake-tanganyika>)

⁴² Migrant Governance Indicators (Comoros) (2021), p. 12.

⁴³ Labor Code of Comoros No. Law No. 84—108 of the Comoros Labor Code (1984), Article 139.

rights.⁴⁴ Migrants with a residence permit have access to State-funded health care. Migrants who have lived in Mauritius for at least 15 years since age 40 can access the State pension scheme if they fulfil additional requirements. Similarly, South Sudan, through Article 33 of its Refugee Act, provides that refugees are entitled to the same basic health services and primary education that the State offers to its citizens.⁴⁵

Uganda, Kenya, Ethiopia and Tanzania provide similar rights to migrants. According to Uganda's Refugee Act, migrants have access to social services.⁴⁶ In Ethiopia, the 2019 Ethiopian Refugee Proclamation provides refugees access to pre-primary and primary education, health services and the right to work.⁴⁷ Article 31 of the Tanzanian Refugee Act guarantees access to primary education for children of refugees.

A related issue is the ability of migrants to work in their host States, which often depends on their immigration status. Labor law governs the condition of migrants' employment and their labor rights. In contrast, migration-related laws govern the labor rights of refugees and asylum seekers. There is a positive trend in some East African countries in this regard. Recent legislation in Ethiopia and Kenya enables refugees to engage in gainful employment. Kenya, Ethiopia and Uganda have adopted laws that allow refugees to work.⁴⁸ In Kenya, new legislation, the 2021 Refugees Act, allows refugees to engage—individually or as a group—in employment or practice a profession where they hold qualifications recognized by the relevant Kenyan authorities.⁴⁹

6.2.3.2 Family reunification and Naturalization

Countries in East Africa allow migrants to reunite with their families. The Ugandan Refugee Act provides that refugees may apply to the country's Refugee Eligibility Committee for permission to reunite with family members.⁵⁰ Similarly, Kenya's 2006 Refugee Act and Ethiopia's 2019 Refugee Proclamation allow migrants and refugees to reunite with their families.⁵¹

None of the countries in East Africa prohibit migrants from acquiring the citizenship of their host countries. The conditions and the process of obtaining citizenship vary. In Ethiopia, refugees who fulfil the requirements provided under the Ethiopian nationality law can acquire Ethiopian citizenship.⁵² Comoros, Uganda and Kenya give migrants a similar opportunity. The Comorian Code of Nationality (1979) provides that migrants who have resided in the country

⁴⁴ Migration Governance Indicators (MGI): Mauritius Second Profile 2021, 15 (2021)

⁴⁵ South Sudan Refugee Act, Article 33 (check accuracy of exact provision).

⁴⁶ The Refugees Act (2006), Article 28. It must be noted that access to the National Social Security Fund depends on a migrant's employment status. *See* generally the National Social Security Act of Uganda. The National Social Security Act of does not have any explicit provision for refugees or asylum seekers. Therefore, refugee or asylum seekers are not covered by it. *See* also Article 6 of the National Social Security Act of Uganda.

⁴⁷ Proclamation No. 1110/2019, Article 24-26.

⁴⁸ *See* Proclamation No. 1110/2019 of Ethiopia, The Refugees Act of Uganda (2006), Article 29(c (vi)) (stating the right to employment of refugees)

⁴⁹ Article 28 (5) of the Refugees Act of Kenya 2021.

⁵⁰ Refugees Act (2006) Article 27

⁵¹ Article 15(2) of the Refugees Act No. 13 of 2006 of Kenya. *See* also Article 22(1) of Proclamation No. 1110/2019 of Ethiopia.

⁵² *Id.* Article 42.

for ten years can apply to acquire Comorian citizenship. A person born in Comoros can obtain the same after five years of residence in the country.⁵³

The Ugandan Constitution provides similar requirements. It provides that migrants who have lived in the country for a minimum of 10 years can acquire Ugandan citizenship.⁵⁴ However, the Citizenship and Immigration Control Act provides different standards with regard to refugees.⁵⁵ A person residing in Uganda as a refugee can acquire Ugandan citizenship if he or she has lived in the country for at least 20 years and intends to reside there permanently.⁵⁶ Similarly, the Constitution of Kenya, along with the 2011 Kenyan Citizenship and Immigration Act, allows migrants who have lived in the country for seven years to apply for Kenyan citizenship.⁵⁷ In a 2015 study, UNHCR observed that few refugees express interest in acquiring Kenyan citizenship. Those who applied had to wait a long time for their application to be completed.⁵⁸

The Eritrean Nationality Proclamation governs the requirements and the process of acquiring Eritrean citizenship⁵⁹ and provides a path to Eritrean nationality. A person who migrated to Eritrea before 1974 and has resided in the country for ten years can acquire Eritrean citizenship.⁶⁰ Migrants who have lived in Eritrea for 20 years can also acquire the same.⁶¹

6.2.3.3 Citizenship

No legislation specifically governs the rights and protection of stateless persons in East Africa. Except for Rwanda, none of the countries in the region are parties to the 1954 United Nations Convention Relating to the Status of Stateless Persons. Eritrea—a State that is not a party to the 1951 Refugee Convention—does not have domestic legislation on the rights and protections of refugees. Nor does Somalia, though it does have a draft legislation.⁵⁰

Eritrea and Somalia are hardly exceptions in the region. In 2018, UNHCR issued a report highlighting a gap between law and practice on the rights of stateless persons to acquire the nationality of host States. The report, which covered six countries in East Africa, found that the lack of effective laws gave state authorities broad leeway in determining the eligibility of migrants to acquire nationality in those States, leading to discrimination on the basis of race, ethnicity, religion and gender. Stateless and nomadic people were particularly disadvantaged⁶²

6.2.3.4 Political Participation of Migrants

Political participation of migrants in the affairs of host countries or on issues that affect their interests is limited. Like in other parts of Africa, none of the countries in the region grant migrants political rights. They do not have the right to vote, hold political office, or engage in

⁵³ Comoros Code of Nationality (1979), Article 29.

⁵⁴ Ugandan Constitution of 1995 as revised in 2017 (Article 12(2(b))).

⁵⁵ The Uganda Citizenship and Immigration Control Act, Article 14 (2) (b) and the Refugees Act (2006)

⁵⁶ Citizenship and Immigration Control Act (2006), Article 16.

⁵⁷ Article 15(2) of the Kenyan Constitution of 2010.

⁵⁸ International Institute for Democracy and Electoral Assistance, *Political Participation of Refugees: Bridging the Gaps*, 30 (2018)

⁵⁹ Eritrean Nationality Proclamation (No. 21/1992)

⁶⁰ *Id.*

⁶¹ Nationality Proclamation (No 21/1992), Article 4

⁵⁰ Somalia has a draft refugee proclamation (2019).

⁶² See generally Bronwen Manby, *Statelessness and Citizenship in the East African Community* (A report commissioned by UNHCR, 2018)

political activity. The refugee laws of Ethiopia and Kenya, for example, explicitly prohibit refugees from engaging in political activities, although both countries allow refugees to form non-political associations.⁶³

6.3 Key Rights Challenges

There are several areas of concern regarding the rights of migrants in East Africa. As previously noted, some countries in the region do not have domestic legislation relating to refugees. Membership in relevant international treaties is low. None of the countries in the region has specific legislation dealing with stateless persons. Furthermore, there is a discrepancy between rights enshrined in national, regional and international laws and the implementation of those law in practice—including in countries that have progressive policies towards migrants. Some concerns include the ability of migrants to acquire citizenship and threats of *refoulement*.

6.3.1 Citizenship

Uganda's 2006 Refugees Act guarantees refugees the right to acquire Ugandan citizenship under the Ugandan Constitution and other relevant laws. There are, however, reports of a discrepancy between the right enshrined in the Refugees Act and the Ugandan Constitution, and practice. In 2010, two Ugandan NGOs—the Refugee Law Project and the Center for Public Interest Law—petitioned Uganda's Constitutional Court to clarify the right of refugees to acquire Ugandan citizenship under the Ugandan Constitution and the Refugee Act.⁶⁴ The petition also requested the Court to order government agencies “to process applications for citizenship by registration and/or naturalization of refugees who satisfy the requirements for citizenship under the relevant legislation and regulations.”⁶⁵ Unfortunately, Uganda's Constitutional Court dismissed the petition on procedural grounds.

6.3.2 Refoulement

There are cases of *refoulement* in East Africa. In Uganda, Rwandan refugees face the risk of detention and forced return to Rwanda.⁶⁶ In one well-known example, in 2018 the Ugandan Inspector-General of Police and others were charged with aiding and abetting in the kidnapping and forced repatriation of Joel Mutabazi, a former member of Rwandan President Paul Kagame's security detail. Mutabazi had sought refuge in Uganda. Before arriving there, Rwandan security personnel detained and tortured Mutabazi for his alleged links with the Rwandan opposition.⁶⁷ According to UNHCR, Mutabazi was not an exception. UNHCR reports that Uganda continued repatriated 1,700 Rwandan refugees after Mutabazi's case.⁶⁸

⁶³ Article 27 of the 2019 Ethiopian Refugee Proclamation (Proclamation 1110/2019) allows refugees to form and join non-political and non-profit making associations. See also Refugee Proclamation Act (Kenya),

⁶⁴ Center for Public Interest Law Ltd & Salima Namusobya and The Attorney General, Constitutional Petition No, 34 of 2010

⁶⁵ *Id.*

⁶⁶ Abuses against Rwandan Refugees in Uganda: Hast Time Come (<https://reliefweb.int/report/uganda/abuses-against-rwandan-refugees-uganda-has-time-come-accountability>) accessed on May 25, 2022.

⁶⁷ On the detention and trial of Joel Mutabazi see Human Rights Watch, “We Will Force You to Confess”: Torture and Unlawful Military Detention in Rwanda, 177 (2017).

⁶⁸ UNHCR condemns forced return of 1700 Rwandans from Uganda, available at <https://www.unhcr.org/en-us/news/latest/2010/7/4c406edb6/unhcr-condemns-forced-return-1700-rwandans-uganda.html> (last accessed on 12/04/2022). See also Uganda/Rwanda: Forcible Return Raises Grave Concerns – Rwandan government Should Ensure Returnee's Safety, Fair Trial available at <https://www.hrw.org/news/2013/11/04/uganda/rwanda-forcible-return-raises-grave-concerns> (last accessed on 10/13/2022).

6.3.3 Refugee Encampment Policies

UNHCR has repeatedly criticized Tanzania's migration policy. Tanzania's Refugees Act (1998) regulates the protection and settlement of refugees in the country.⁶⁹ Central to Tanzania's refugee policy is the settlement of refugees in government-designated areas, which is strictly enforced. UNHCR describes the policy as an "enforced encampment." Under the Refugees Act, refugees face penalties if they leave the camps without permission and face barriers to supporting themselves through employment.⁷⁰ During Tanzania's 39th Universal Periodic Review in 2021, UNHCR noted that "the protection space for refugees and asylum seekers is becoming more complex and unpredictable with an overall shrinking of the asylum space."⁷¹

Food insecurity and lack of access to adequate medical care are prevalent in refugee camps. According to UNHCR, millions of refugees rely on food aid to meet their needs. Hunger and acute malnutrition have a significant and long-lasting impact on the health and well-being of migrants. In Ethiopia, six in ten child migrants suffer from critical levels of anemia.⁷²

Similarly, a report by the U.S. Committee for Refugees and Immigrants noted child migrants' specific challenges in Ethiopian refugee camps.⁷³ The report noted the difficulties of family reunification of child migrants, the lack of opportunities, and dire conditions in the camps. The report cited a lack of cooperation from countries of origin that limited family reunification. Furthermore, the report noted that risks child migrants face regarding secondary migration. The report stated that child migrants face risks of trafficking, sexual exploitation, and organ harvest by criminal groups. Nevertheless, child migrants engage in secondary migration to find more suitable host countries.

Safety in refugee camps is another issue of concern. Several countries in East Africa host a large number of migrants in refugee camps. Refugee camps are the first site of residence and, in some countries, a place of long-term settlement. Refugee camps provide protection and access to social services. Yet, life in refugee camps is precarious. There are reports of sexual abuse in and forced repatriation from camps. In Uganda, South Sudanese refugees report sexual abuse by other South Sudanese people and Ugandan citizens in refugee camps.⁷⁴ Relatedly, in March 2021, Kenya decided to close Dadaab and Kakuma refugee camps—which house around 400,000 refugees from Somalia, South Sudan and Democratic Republic of the Congo.⁷⁵ Kenya first announced its intent to close the camps in 2016, citing security concerns, but so far it has

⁶⁹ The Refugees Act (1998).

⁷⁰ Article 17(5) of the Refugee Act of Tanzania, 1998.

⁷¹ UNHCR, UNHCR Submission for the Universal Periodic Review (Tanzania 39th Session) 3 (2021).

⁷² UNHCR and WFP warn refugees in Africa face hunger and malnutrition as COVID-19 worsens food shortages, available at <https://www.unhcr.org/en-us/news/press/2020/7/5f06cb244/unhcr-wfp-warn-refugees-africa-face-hunger-malnutrition-covid-19-worsens.html>

⁷³ U.S. Committee for Refugees and Immigrants, *Forgotten Refugees: Eritrean Children in Northern Ethiopia*, December 2015.

⁷⁴ World Bank, *Linking, Aligning, and Convening: Gender-Based Violence Against Children Prevention and Response Services in Uganda's Refugee-Hosting Districts* (2020). *See also* Refugees accuse hosts of exploitation, abuse (Monitor, December 17, 2018) (<https://www.monitor.co.ug/uganda/news/national/refugees-accuse-hosts-of-exploitation-abuse--1796168>), accessed on May 25, 2022.

⁷⁵ The Sentinel Project, "Closing Kenya's Kakuma and Dadaab refugee camps: thoughts from the ground, June 29, 2021 (<https://thesentinelproject.org/2021/06/29/closing-kenyas-kakuma-and-dadaab-refugee-camps-thoughts-from-the-ground/>). Accessed on July 18, 2022.

not done so. Should it go through with its plans, however, the migrants face daunting humanitarian challenges.⁷⁶

6.3.4 Trafficking and Smuggling

Human trafficking and smuggling are also issues for migrants, particularly if they use the routes noted at the beginning of this chapter. Migrants' vulnerability to trafficking and smuggling depends on the risks of each route and migrants' personal backgrounds, such as country of origin, age and gender.

Migrants who travel through countries that lack effective anti-smuggling and trafficking capabilities are prone to smuggling and trafficking. Those who pass through several countries also face the same challenges. The case of Eritrean migrants is a case in point. Because the Eritrean government restricts the right of Eritreans to travel outside the country, Eritreans often cross the border illegally. Traffickers smuggle some out of the country,⁷⁷ While others are smuggled out by human smugglers.⁷⁸ If caught, Eritrean migrants face detention and interrogation in military-run prisons.⁷⁹ Likewise, smugglers take advantage of the vulnerability of Eritrean migrants and subject them to physical and sexual abuse.⁸⁰ Some reports indicate that some Eritrean military officers are involved in smuggling Eritreans out of Eritrea.⁸¹ The reported involvement of military officials and their entrenched interest in the smuggling network can complicate efforts to address human trafficking and prosecute those involved in smuggling.⁸² Further, in transit countries, such as Sudan and Libya, traffickers hold Eritrean migrants against their will. They use physical and sexual torture to collect money from Eritreans or their relatives back home or in the diaspora.

6.3.5 Access to Status & Legal Protection

Political instability and armed conflict tend to bring about a breakdown of State institutions in places where they may have already been weak or non-existent—which in turn pose obstacles to migrants' ability to access their due process rights and judicial institutions. The political instability in the DRC, South Sudan and Ethiopia are cases in point.

⁷⁶ See Human Rights Watch, Kenya: Involuntary Refugee Returns to Somalia (<https://www.hrw.org/news/2016/09/15/kenya-involuntary-refugee-returns-somalia>) (accessed on June 7, 2022.) Kenya delays closure of campus housing half a million people. (<https://www.theguardian.com/global-development/2021/apr/30/kenya-delays-closure-of-camps-housing-half-a-million-people>). Accessed on June 7, 2022.

⁷⁷ Human Rights Watch, Service for Life: State Repression and Indefinite Conscription in Eritrea (<https://www.hrw.org/report/2009/04/16/service-life/state-repression-and-indefinite-conscription-eritrea>), accessed on July 25, 2022.

⁷⁸ On the role of Eritrea's indefinite national service see Human Rights Council, Situation of Human Rights in Eritrea, Report of the Special Rapporteur on the Situation of Human Rights in Eritrea, 9, A/HRC/47/21

⁷⁹ Human Rights Watch, "I Wanted to Lie Down and Die" Trafficking and Torture of Eritreans in Sudan and Egypt, February 11, 2014 (<https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt>)

⁸⁰ Id.

⁸¹ Mirjam van Reizen et. al., The Human Trafficking Cycle: Sinai and Beyond (2014). See also Andebrhan Welde Giorgis, Eritrea at a Crossroads: A Narrative of Triumph, Betrayal and Hope, 265, United States Department of State, 2016 Trafficking in Persons Report—Eritrea (30 June 2016) (<https://www.refworld.org/docid/577f960b15.html>) (accessed on July 25, 2022).

⁸² On the role of Eritrea's indefinite national service see Human Rights Council, Situation of Human Rights in Eritrea, Report of the Special Rapporteur on the Situation of Human Rights in Eritrea, 9, A/HRC/47/21.

Ethiopia is one of the leading destinations of refugees in the Horn of Africa. It has hosted refugees from Somalia and South Sudan since armed conflict began in both countries in the 1990s. Similarly, Ethiopia has been one of the first migration points for Eritrean refugees since the early 2000s. By 2022, there were around 150,000 Eritrean refugees in the country.⁸³

Before 2020, the Ethiopian government provided Eritrean refugees with automatic refugee status upon arrival in the country. That changed in 2020, when Ethiopia changed its policy. According to the new policy, the government has limited automatic refugee status recognition to particular categories of migrants and excluded others, for example unaccompanied child asylum seekers.⁸⁴ Human Rights Watch noted that the change in Ethiopia's asylum policy towards migrants undermines the ability of Eritrean refugees to seek asylum in Ethiopia, as well as the protection of unaccompanied minors.⁸⁵

6.4 Conclusion

There are two divergent migration policy trends in East Africa. On one hand, some countries have adopted progressive laws that provide migrants with broader rights. These include Ethiopia, Kenya and Uganda, which have allowed migrants to settle outside refugee camps and engage in gainful employment. The other legislative trend is countries that either do not have adequate legislation on migrants or pursue restrictive policies towards them.

Besides these general trends, the scale of migration and displacement in East Africa is high relative to other parts of the African Continent. Political instability and varying migration policies complicate the possibility of addressing the causes of migration. The persistence of political instability is the main factor for migration and displacement. The breakdown of State institutions—one of the consequences of armed conflict—limits the ability of States to protect migrants. Similarly, irregular labor migration for the purposes of finding work and to escape indefinite conscription contributes to those migrants' vulnerability. Without peace and sustained and inclusive economic development, migration in East Africa will continue to be driven by poverty, economic factors and political instability. Relatedly, prolonged drought and locust invasions have repeatedly affected communities in Kenya, Somalia and Ethiopia. Unless countries adopt economic and legal measures commensurate with the humanitarian crisis posed by climate change, it will continue to be a driving force for migration in East Africa.

⁸³ Sarah Miller, *Nowhere to Run: Eritrean Refugees in Tigray*, 5 (Research Report Refugees International, 2022)

⁸⁴ Human Rights Watch, *Ethiopia Events of 2020*. Available at (<https://www.hrw.org/world-report/2021/country-chapters/ethiopia>). Accessed on May 27, 2022.

⁸⁵ Human Rights Watch, *Ethiopia: Unaccompanied Eritrean Children at Risk* (April 21, 2020) Available at (<https://www.hrw.org/news/2020/04/21/ethiopia-unaccompanied-eritrean-children-risk>) (accessed on May 27, 2022)

7 Migration in Southern Africa

7.1 Migration Trends

Cross-border migration within the Southern Africa region has long been common. According to UNHCR, as of 2020 there were around 7 million migrants in Southern Africa.⁸⁶ This included around 1.1 million refugees and asylum seekers.⁸⁷

Southern Africa has been a destination for migrant labor since the colonial period.⁸⁸ The mining industries in South Africa, Botswana, Zimbabwe, Zambia and the DRC attracted many migrants from the African Continent and beyond. The mining industry is still a driving factor, and other sectors such as construction, commercial agriculture and service (including care work) contribute to labor migration today. The pattern and magnitude of migration into Southern Africa have changed in the last two decades. The number of migrants has increased, as has the number of origin they are coming from. By the end of 2020, South Africa, the DRC and Angola were the region's top destination countries for migrants,⁸⁹ with South Africa hosting 2.9 million, DRC hosting 952, 871, and Angola hosting 656,434. South Africa—the region's biggest economy—is also the top destination for migrants from outside the region. Labor migration to South Africa includes seasonal labor migration as well as forced migration. There has been a steady flow of refugees and asylum seekers from Ethiopia, Somalia, Bangladesh, Burundi, Nigeria, Bangladesh and others to South Africa over the years.⁹⁰

7.1.1 Migration to Other African States

The historical trend of labor mobility started with the advent of industrial mining, commercial agriculture, and the railway industry during the colonial period. These historical migration patterns remain largely the same today. Sixty-four percent of migrants from the region migrate within Africa.⁹¹ According to the United Nations Department of Economic and Social Affairs, most migrants move to countries in the region.⁹² South Africa is the top destination for migrants within the region, followed by the United Kingdom, Uganda, the United States and France.⁹³ The 2.9 million migrants in South Africa as of late 2020 made it the continent's largest host of

⁸⁶ Migration Data Portal, Migration Data in the Southern African Development Community (SADC), available at <https://www.migrationdataportal.org/regional-data-overview/southern-africa>

⁸⁷ United Nations High Commissioner for Refugees, Update on UNHCR's Operation in Southern Africa

⁸⁸ Belinda Dodson & Jonathan Crush, *Harnessing Migration for Inclusive Growth and Development in Southern Africa*, 10 (Southern African Migration Program, 2017). See also Christopher Changwe Nshimbi & Innocent Moyo, *History, Trends and Dynamics of Cross-Border Movements and Trade in the SADC Region* (2017).

⁸⁹ Migration Data in the Southern African Development Community (SADC) available at <https://www.migrationdataportal.org/regional-data-overview/southern-africa> (accessed on May 19, 2022)

⁹⁰ Khangelani Moyo, *South Africa Reckons with its Status as a Top Immigration Destination, Apartheid History, and Economic Challenges*, November 18, 2021, <https://www.migrationpolicy.org/article/south-africa-immigration-destination-history>

⁹¹ See supra note 6 (Migration Data in SADC).

⁹² Migration Data Portal, Migration Data in Southern African Development Community (SADC), available at <https://www.migrationdataportal.org/regional-data-overview/southern-africa>

⁹³ Migration Data in the Southern African Development Community (SADC) <https://www.migrationdataportal.org/regional-data-overview/southern-africa>

migrants.⁹⁴ The top countries of origin for migrants in South Africa are Zimbabwe, Mozambique, Lesotho and Malawi.⁹⁵

Political instability and climate change have displaced millions in Southern Africa.⁹⁶ Political conflict in the southern part of the region—which has seen intense political strife since the early 1990s—has ended. Political instability in the DRC, however, has led to forced migration. The civil war, which was limited to the eastern part of the country, has expanded to the central and southern parts of the country. As a result, more than 900,000 Congolese have migrated to neighboring countries.⁹⁷

7.1.2 Extracontinental Migration

One trend that characterizes migration patterns in Southern Africa is the migration of white South Africans away from their country of origin. South Africa's white population decreased from 11% in 1996 to 8% in 2021, according to the Migration Policy Institute.⁹⁸ This emigration is connected to the end of apartheid. The top destinations for white South Africans are the United Kingdom, Australia and the United States.

7.1.3 Climate Migration Dynamics

Extreme weather events are another cause of forced migration in Southern Africa. In recent years, flooding and tropical cyclones have affected thousands of people and communities. Countries in the eastern part of the region, such as Comoros, Madagascar, Malawi and Mozambique, have been hit by tropical cyclones, while drought has affected communities in the western part of the region, including Botswana, Eswatini, Lesotho, Namibia, and Zambia.⁹⁹ In March 2019, a devastating tropical cyclone struck the Gulf of Mozambique which affected Mozambique, eastern Zimbabwe, southern Malawi, and western Madagascar.¹⁰⁰ The cyclone caused death and destruction of property in Mozambique and displaced around 600,000 families in the region.¹⁰¹ In January 2021, another hurricane, Tropical Cyclone Eloise, hit the area. With heavy rainfall and strong winds, Eloise hit parts of Madagascar, Mozambique and South Africa, and affected a total of 467,000 people.¹⁰² Furthermore, drought in Madagascar and Angola has posed humanitarian challenges. In Madagascar alone, drought has affected 1.3 million people in the southern part of the country.¹⁰³

⁹⁴ Migration Data in the Southern African Development Community (citing UN DESA, 2020)

⁹⁵ Khangelani Moyo, South Africa Reckons with its Status as a Top Immigration Destination, Apartheid History, and Economic Challenges, Migration Information Source (November 18, 2021)

<https://www.migrationpolicy.org/article/south-africa-immigration-destination-history>

⁹⁶ Sylvester Mpandeli et. al., Migration under climate Change in Southern Africa: A Nexus Planning Perspective, 12 SUSTAINABILITY 4722, 4722-[...] (2020).

⁹⁷ UNHCR, DR Congo emergency, available at <https://www.unhcr.org/en-us/dr-congo-emergency.html> (last accessed on 12/04/2022).

⁹⁸ Khangelani Moyo, South Africa Reckons with its Status as a Top Immigration Destination, Apartheid History, and Economic Challenges (November 18, 2021) <https://www.migrationpolicy.org/article/south-africa-immigration-destination-history>

⁹⁹ SADC 2019

¹⁰⁰ Internal Displacement Monitoring Center, Tropical Cyclone IDAI, Contextual Information 2

¹⁰¹ Id. at 3.

¹⁰² Tropical Cyclone Eloise – Jan 2021, available at <https://reliefweb.int/disaster/tc-2021-000008-moz> accessed on 12/04/2022.

¹⁰³ See for instance, Social safety Nets Relieve Poverty - and Hunger . Madagascar Needs More of them, available at <https://www.worldbank.org/en/news/feature/2022/10/31/social-safety-nets-relieve-poverty-and-hunger-madagascar-needs-more-of-them> accessed on 12/04/2022.

7.2 Legal Framework and Good Practices

The subsequent subsection will focus on international, regional, subregional and national legal commitments of Southern African countries.

7.2.1 Treaty Ratifications

All Southern African countries are signatories to the 1951 Refugee Convention (see Annex 1). Except for Madagascar and Namibia, all countries in the region are also parties to the 1969 OAU Convention.¹⁰⁴ Most countries in the region are also signatories to other relevant international treaties. These include the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW, 1990), the Conventions on statelessness (1954 and 1961), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Madagascar is the region's only party State to the ILO Migrant Workers Convention (Supplementary Convention 1975, No. 143). Madagascar, Malawi, and Zambia are signatories to the ILO Migration for Employment Convention (Revised, 1949 No. 97).

7.2.2 Regional Law

Besides international treaties, regional initiatives provide policy and legislative guidance to countries in the region. The Southern African Development Community (SADC), the main regional bloc in the area, has adopted several policy frameworks on migration and labor mobility. These include the SADC Protocol on the Facilitation of the Movement of Persons (2005), the ILO-SADC Decent Work Program (2013-2019), the SADC Protocol on Employment and Labor (2014), and the SADC Labor Migration Policy Framework (2014).¹⁰⁵ In 2016, SADC adopted the SADC Labor Migration Action Plan (2016-2019). These protocols and policies aimed to guarantee fundamental rights and better working conditions for migrant workers. Unfortunately, however, none are operational yet.

Furthermore, SADC has adopted binding and soft laws to combat smuggling and trafficking. These include the SADC Protocol on Gender and Development (2008), a 10-year Strategic Plan of Action on Combating Trafficking in Persons Especially Women and Children (2009-2019). It also has a mechanism that monitors the pattern and cases of human trafficking—the SADC Regional Trafficking in Persons Data Collection System.¹⁰⁶ Beyond regional instruments, some countries have concluded bilateral agreements on issues related to migrants. Zambia and South Africa, for example, have signed bilateral agreements aimed at enhancing the rights of migrant workers from their respective countries. South Africa agreed on visa-free travel with Angola in 2018.¹⁰⁷

7.2.3 National Law

This subsection will explore national laws that affect migrants in the region. They could include, for instance, specialized protection laws dealing with forced displacement, or generalized laws

¹⁰⁴ Available at <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>. Listed reflects signature through 16/05/2019.

¹⁰⁵ IOM, Eswatini (16)

¹⁰⁶ United Nations Office on Drugs and Crime, Trafficking in Persons in the SADC Region: A Statistical Report (2014-2016) 12.

¹⁰⁷ Migration Governance Indicators (Zambia) (2019) 16. See also Agreements to boost/Angola relations, Vuk'uzenzele (<https://www.vukuzenzele.gov.za/agreements-boost-saangola-relations>)

scattered in the legal system of different countries in the region. The subsection will also highlight gaps between law and practice, essential areas of protection, and/or concerns.

7.2.3.1 Social & Economic Rights (Right to Health Services and Education)

Southern African countries provide basic social services — such as access to health care and public funded education — to migrants, though some require migrants to obtain additional permits. Similarly, the Malagasy Labor Code (Article 128 of Law No. 2003-044) provides health insurance to migrant workers through their employers.¹⁰⁸ Migrant workers benefit from social security schemes, as do Malagasy citizens. In Zambia, the Refugee Act (2017) states that a recognized refugee can attend an educational institution, including higher education, after acquiring a study permit.¹⁰⁹ Attendance in primary education, however, does not require a permit a priori.¹¹⁰

In Eswatini, migrants have the right to engage in gainful employment after receiving a work permit.¹¹¹ Migrants also have access to State-funded health care, although no statute provides such a right. Article 75 of Zimbabwe’s Constitution (2013) guarantees permanent residents in the country the right to social services, including basic State-funded education and further education, which the State is obliged to provide subject to available resources.¹¹²

7.2.3.2 Path to Citizenship

Countries in the region provide migrants path to citizenship. The process and requirements of getting one, however, vary.

Article 37 of the Constitution of Zambia provides that a person who has resided in Zambia for at least ten years can apply for Zambian citizenship.¹¹³ The Immigration and Deportation Bill outlines the process for acquiring it.¹¹⁴ Eswatini, for its part, does not provide permanent residency.¹¹⁵ Migrants who have resided in the country for five to 10 years can apply for Eswatini citizenship.¹¹⁶ Similarly, Madagascar provides a path to citizenship. Article 27 of the Malagasy Nationality Act (Ordinance No. 60-064) provides that migrants who have lived in the country for at least five years can acquire Malagasy citizenship. Malawi also provides a path to citizenship. According to Malawi’s Citizenship Act, a migrant’s right to acquire that country’s citizenship depends on her country of origin. Migrants who are nationals of a Commonwealth member country can acquire citizenship after five years of residence, while citizens of non-Commonwealth countries acquire one after seven years.¹¹⁷

Angola and South Africa have relatively longer residency requirements. According to the Legal Regime for Foreign Citizens in the Republic of Angola (2019), migrants who have lived for 10

¹⁰⁸ Labor Code No. 2003-044 (2004), Article 128

¹⁰⁹ The Refugees Act (2017), Section 40 (2)

¹¹⁰ Id. Section 40 (3)

¹¹¹ International Organization for Migration, Migration Governance Indicators: The Kingdom of Eswatini: Profile 2021, 13.

¹¹² Constitution, Section 75. Ref. cited in Migration Governance Indicators (ZIM).

¹¹³ Constitution of Zambia (1991) (as amended) Article 37. For persons who were born in Zambia and has resided in Zambia for five years can apply for citizenship.

¹¹⁴ Immigration and Deportation Bill (No. 18 of 210)

¹¹⁵ MGI—Eswatini 2021

¹¹⁶ The Constitution of Eswatini (2005), Art. 45.

¹¹⁷ Citizenship Act (Chapter 15:01) (June 14, 1966) Article 13 (1)(a) (commonwealth citizens—5 years) and Article 21 (1) (a) (aliens—7 years)

consecutive years in the country are entitled to permanent resident status.¹¹⁸ South Africa's Citizenship Act provides that a migrants who has been lawfully admitted and has permanent residence in the country can apply to acquire South African citizenship if he or she has been residing in South Africa for a "period of not less than four years during the eight years immediately preceding the date of his or her application."¹¹⁹

7.3 Key Rights Challenges

Countries in southern Africa have commendable laws on the protection and rights of migrants. As noted above, most countries in the region are also signatories to relevant international and regional agreements. There are, however, several issues related to the rights of migrants in the region. This section explores some of the common violations that migrants experience in Southern Africa.

7.3.1 Human Smuggling and Trafficking

There are reports of human smuggling and trafficking in the Southern Africa countries. Most, if not all, countries in the region have legislation on trafficking of persons.¹²⁰ South Africa is often the destination country for smuggling and trafficking networks, which transport migrants to and from the region. Victims of human smuggling and trafficking often face physical and sexual abuse en route to their destinations. Zambia—a transit country for migrants and one of the first points of entry to South Africa—has recorded such cases. In February 2021, for example, Zambian authorities found 114 Ethiopian nationals in a neighborhood in Lusaka who were held in a crowded place. A local newspaper reported that some of the migrants "visibly appeared to have been physically abused, starved and deprived of freedom of movement."¹²¹ In their preliminary investigations, Zambian authorities found that the victims were held in those conditions for six months.¹²²

Nationals of countries in the region are also victims. Smugglers and traffickers take advantage of the socioeconomic conditions in Southern African countries and their position as transit countries to South Africa. In Eswatini, traffickers target poor communities. They also use the country to transport migrants from Mozambique and elsewhere to South Africa.¹²³ The situation in Botswana is similarly concerning. A report by the U.S. Department of State explains the extent of trafficking and the underlying socioeconomic factors that drive it as follows:

"[T]raffickers exploit domestic and foreign victims in Botswana, and traffickers exploit victims from Botswana abroad. Many ... victims in Botswana are Central African economic migrants intercepted ... transiting Botswana to South Africa. Traffickers transport some child sex trafficking victims through Botswana enroute to exploitation in South Africa. Within Botswana, traffickers target unemployed women, the rural poor, agricultural workers, and children. Some relatives force their family members into

¹¹⁸ The Legal Regime for Foreign Citizens in the Republic of Angola (2019).

¹¹⁹ South African Citizenship Act (1995) 5(b)(c)

¹²⁰ UNODC, Trafficking in Persons in the SADC Region: A Statistical Report (2014-2016) 7-8.

¹²¹ Department of Immigration, Immigration in Lusaka Smashes Human Smuggling Racket

(<https://www.zambiaimmigration.gov.zm/news/press-releases/immigration-in-lusaka-smashes-human-smuggling-racket/> (accessed on May 18, 2022)). See also <https://www.lusakatimes.com/2021/02/08/immigration-in-lusaka-smashes-human-smuggling-racket-involving-114-ethiopians-victims/>

¹²² *Id.*

¹²³ United State of America Department of State, Trafficking in Persons Report 231 (June 2021).

domestic work, cattle herding and commercial sex. [...] Traffickers transport Botswana individuals to Zimbabwe for forced labor. Organized trafficking rings subject some Botswana women to trafficking internally or transport women from neighboring areas, including South Africa, Zimbabwe, Nigeria, the Democratic Republic of the Congo, and East Africa, and subject them to sex trafficking in Botswana.”¹²⁴

7.3.2 Political participation of migrants

None of the countries in the region grant migrants political rights, especially the right to vote in local or national elections. Some countries explicitly prohibit migrants from engaging in political activity—including concerning the affairs of their home countries. In 2019, South Africa amended its 1998 Refugees Act (Refugee Regulations) to prohibit migrants from engaging in any political activity while residing in South Africa.¹²⁵ Section 4 of the legislation provides that refugees are prohibiting from engaging “[...] in any political campaign or activity related to his or her country of origin or nationality whilst in the Republic without the permission of the Minister.”¹²⁶ The provision also explicitly bars any political activity in South Africa. It stipulates that “no refugee or asylum seeker may participate in any political activity or campaign in furtherance of any political party or political interests in the Republic.”¹²⁷ This provision limits any political activity by refugees or asylum seekers in South Africa, making it one of the region’s restrictive legislations.¹²⁸

Angola provides similar restrictions. Angola’s electoral law—the Electoral Law of 2004—does not specify if migrants have the right to vote, and migrants have not participated in the country’s local or national elections. In 2019, Angola adopted new legislation restricting migrants’ right to engage in political activity. The legislation—the Law on the Judicial Regime for Foreign Citizens in the Republic of Angola—prohibits migrants from engaging in any political activity or being involved directly or indirectly in domestic political matters in the country.¹²⁹ The legislation allows migrants to join Angolan trade unions and professional associations. However, it prohibits migrants from taking a leadership role in those organizations.¹³⁰

7.3.3 Access to Social & Economic Rights

As noted above, most countries in the region provide migrants access to social services. Still, numerous issues arise in practice. First, although most countries guarantee access to social services, the social welfare structure of some countries may limit access and, in some cases, may require conditionalities to social services. In countries with a formalized social welfare system, access to social welfare may depend on migration status, such as permanent resident status or employment and whether they contribute to the national social welfare scheme.

¹²⁴ United States of America Department of State, Trafficking in Persons Report 135-136 (June 2021).

¹²⁵ Refugees Act No. 1998; Refugees Regulations 2019, GN R. 1707 of GG 42932 (27 Dec. 2019), Section 4(1) (g). See also James McGovern, Limitations on Political Rights of Refugees and Asylum Seekers in South Africa: Perspectives from International Law, [] HARVARD HUMAN RIGHTS JOURNAL - ONLINE (2021?).

¹²⁶ *Id.* Section 4(1) (i)

¹²⁷ *Id.*

¹²⁸ Regulation 4(2). See also South Africa to Strip Refugees’ Status for Any Political Act, VOA (January 14, 2020) (<https://www.voanews.com/a/africa-south-africa-strip-refugees-status-any-political-act/6182577.html>)

¹²⁹ Law on the Judicial Regime for Foreign Citizens in the Republic of Angola, Article 11.

¹³⁰ *Id.* Article 9

In Angola, migrants can access to social protection in the country's three-tiered social protection scheme depending on their migration status and financial contribution.¹³¹ Migrants are eligible for the first-tier scheme—the basic social protection scheme—available to the entire Angolan population. However, access to the second and the third tiers—the compulsory and complementary schemes—depends on employment status and migration status.¹³² In Zambia, migrants employed in formal sectors of the economy have access to contribution-based social programs, such as the National Pension Scheme and Workers' Compensation Fund.¹³³ Furthermore, Zambia's social cash transfer program, which began in 2003, is limited to Zambian citizens.¹³⁴

In other cases, domestic legislation may provide qualified migrants access to social services. Lesotho's Constitution, for example, limits the right of a naturalized person to access social benefits such as education, social grants and old-age pension. Article 41 of the Constitution provides that “a person who is a citizen of any country who acquires a citizenship of Lesotho by naturalization or registration is only eligible for social benefits after ten years of being naturalized or registered as a citizen of Lesotho.”¹³⁵

7.3.4 Xenophobia and racial discrimination

African migrants from elsewhere on the continent have been targets of xenophobia in South Africa. They often experience verbal and physical abuse in their daily lives.¹³⁶ Several outbursts of xenophobia in recent years have targeted migrants and their businesses, resulting in the bodily injury, death, and destruction of migrant-owned property and businesses.¹³⁷ Rioters have called African migrants to leave the country and chanted “makwerekwere,” a derogatory term for Africans from outside South Africa. Human Rights Watch noted that South African authorities have not taken sufficient measures to address xenophobia. In 2019, South Africa adopted a policy — the National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance — to combat xenophobia and racism towards foreigners. Xenophobia, however, remains unabated.¹³⁸

7.3.5 Refoulement and/or disappearances

Refoulement of migrants is not widespread in the region, but there have been several high-profile cases of forced repatriation and/or disappearance of migrants in some countries.

In 2018, Angola deported around 400,000 Congolese migrants from the northeast Angolan province of Lunda Norte.¹³⁹ Similarly, the U.S. State Department reported that Angolan

¹³¹ Basic Law on Social Protection (2004). Migration Governance Indicators (MGI) Angola 12 (2021)

¹³² Basic Law on Social Protection (2004)

¹³³ MIG-Zambia (2019), 13

¹³⁴ MIG-Zambia (2019), page 13.

¹³⁵ Constitution of Lesotho (1993) (as amended), Article 41 (2). According to the Constitution, social benefits include educational sponsorships, social grants, old age pension or any other benefit.

¹³⁶ Human Rights Watch, South Africa Events of 2020 (available at <https://www.hrw.org/world-report/2021/country-chapters/south-africa>) (accessed on May 16, 2022)

¹³⁷ Human Rights Watch, South Africa: Punish Xenophobic Violence, September 13, 2019 (<https://www.hrw.org/news/2019/09/13/south-africa-punish-xenophobic-violence>)

¹³⁸ *Id.* See also Human Rights Watch, “They have Robbed Me of My Life” (September 17, 2020).

¹³⁹ Angola: Stop Abusive Expulsions of Migrants: Serious Abuses Alleged in Diamond Mining Crackdown <https://www.hrw.org/news/2018/11/15/angola-stop-abusive-expulsions-migrants>. See also Oxfam, Hundreds of thousands of Congolese forced to flee Angola in need of aid (October 31, 2018) <https://www.oxfam.org/es/node/10807>.

authorities in Lunda Norte pressured Congolese refugees to return to the DRC in 2020.¹⁴⁰ In 2019, Botswana deported around 800 Namibian refugees.¹⁴¹ The refugees, who migrated to Botswana in the 1990s following a secessionist uprising in Eastern Namibia, were members of the United Democratic Party, a political party which advocated the secession of the Caprivi Strip in eastern Namibia.¹⁴² The repatriation of the refugees followed a decision of Botswana's Court of Appeal, which reversed the High Court of Botswana's 2015 judgment accepting the applicants' request that the government retains their refugee status.¹⁴³

Notably, the African Commission had the chance to decide on the expulsion of migrants in a case concerning Angola.¹⁴⁴ In a case brought by the Institute for Human Rights and Development in Africa, representing Gambian migrants who were involved in the Angola's diamond mining industry, the Commission noted that Angola must comply with procedural safeguards when removing migrants. It also noted that Angola must make sure that migrants "are not sent back/deported/expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death."¹⁴⁵

There was also a high-profile case of the forced repatriation of an asylum seeker from Zambia. In 2018, the government of Zambia rejected the refugee application of a Zimbabwean politician, Tendai Biti, who sought asylum in Zambia. Biti had opposed the result of the 2018 Zimbabwe presidential election and entered Zambia for fear of political prosecution.¹⁴⁶ The government of Zambia rejected his application for refugee status. Biti challenged the government's decision before the Lusaka High Court, which then ordered the government not to deport him while his case was pending before it. Still, the Zambian government defied the Court's order and handed over Biti to Zimbabwean authorities.¹⁴⁷

In June 2021, the Mozambiquan press and Human Rights Watch reported the arrest and disappearance of a Rwandan asylum seeker, Cassien Ntamuhanga, in Mozambique.¹⁴⁸ Ntamuhanga fled Rwanda in 2017 and sought asylum in Mozambique. There he became politically active in opposing the government of Rwanda, and a Rwandese court convicted him

¹⁴⁰ U.S. Department of State, 2018 Country Reports on Human Rights Practices: Angola

¹⁴¹ A different case but raised similar issues against Botswana see John K. Modise v. Botswana. Comm. No. 97/93, African Commission on Human and Peoples' Rights (November 6, 2000). The Commission found that an individual cannot be forced to return to their country of origin where they can face torture, or other cruel, inhumane, and degrading treatment.

¹⁴² VOA https://www.voanews.com/a/africa_first-group-namibia-refugees-deported-botswana/6175968.html (accessed on December 4, 2022)

¹⁴³ Attorney General et al. v. Tyson Mujela & others, Court of Appeal Civil Appeal No. CACGB-154-18 (High Court Civil Case UAHGB-000141-18).

¹⁴⁴ Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others)/Angola 292/04, May 22, 2008.

¹⁴⁵ Id. Other similar cases include Union inter-Africaine des droits l'homme v Angola (1997). See also Recontre Africaine pour la defense des droits de l'homme v Zambia (RADDHO) (1997).

¹⁴⁶ Tendai Biti: Zambia denies Zimbabwe politician asylum, BBC News available at <https://www.bbc.com/news/world-africa-45112953>

¹⁴⁷ Cristiano d'Orsi, Zambia's "deportation" of Zimbabwean Opposition Leader Tendai Biti: Is someone to blame?

¹⁴⁸ Human Rights Watch, Mozambique: Grave Concerns for Rwandan Asylum Seeker (June 15, 2021) available at <https://www.hrw.org/news/2021/06/15/mozambique-grave-concerns-rwandan-asylum-seeker> (accessed on May 16, 2022). See also Reginaldo Tchambule, Jornalista ruandes esteve detido na 18a esquadra em Maputo e ja foi entregue a embaixada do seu pais, <https://evidencias.co.mz/2021/06/02/jornalista-ruandes-esteve-detido-na-18a-esquadra-em-maputo-e-ja-foi-entregue-a-embaixada-do-seu-pais/> (accessed on May 16, 2022).

of treason in absentia in 2021.¹⁴⁹ Mozambique authorities arrested Ntamuhanga on May 23, 2021, while his asylum application was pending.¹⁵⁰ Ntamuhanga's whereabouts are not known, and Mozambican authorities have denied that he is in their custody, according to Human Rights Watch.¹⁵¹

7.4 Conclusion

Most countries in Southern Africa are signatories to international and regional treaties on the rights and protection of migrants and refugees. There is, however, a gap between law and practice. As discussed above, cases of smuggling and trafficking, *refoulement* and/or disappearance, and xenophobia are some of the concerning trends. Smuggling and trafficking cartels have evaded law enforcement agencies, and enforcement personnel often cooperate with trafficking networks in some countries. It is difficult to claim that *refoulement* and/or disappearance is a systemic issue in the region based on the cases discussed in this chapter. This requires further research, and research is also required to determine what measures—legal or otherwise—are necessary to address it.

The political rights of migrants are another concerning area for Southern Africa. As noted, all countries in the region bar migrants from participating in the political affairs of host States. Although the region is not an exception in this regard, the recent legislative reforms that prohibit migrants from political activity concerning the affairs of their countries of origin are troubling. Should other countries follow suit, migrants in the region will not have political power and agency as migrants and citizens.

Finally, Southern Africa has been prone to extreme weather events. With the global phenomena of climate change, climate-induced migration and internal displacement will probably increase—requiring member States to mobilize resources to address climate-related cross-border migration and displacement. Existing response mechanisms and institutions may help, but the scale and intensity of weather-related migration and displacement conditions might require an ambitious and creative response that existing institutions may be inadequate to accommodate.

¹⁴⁹ Odiedo Stephen, Where is Exiled Former Rwandan Journalist Cassien Ntamuhanga? July 2, 2022 <https://www.theelephant.info/long-reads/2022/07/02/where-is-exiled-former-rwandan-journalist-cassien-ntamuhanga/>

¹⁵⁰ Human Rights Watch, Mozambique: Grave Concerns for Rwandan Asylum Seeker (June 15, 2021) available at <https://www.hrw.org/news/2021/06/15/mozambique-grave-concerns-rwandan-asylum-seeker> (accessed on May 16, 2022). See also <https://evidencias.co.mz/2021/06/02/jornalista-ruandes-estive-detido-na-18a-esquadra-em-maputo-e-ja-foi-entregue-a-embaixada-do-seu-pais/>

¹⁵¹ *Id.*

8 Migration in Central Africa

8.1 Migration Trends

The vast majority of migration flows within Central Africa are internal to the region.¹⁵² Central Africa is characterized by strong intraregional migratory dynamics among the member States of the Economic Community of Central African States (ECCAS). Most Central African migrants are entitled to move across borders, and their migration is legitimized by the normative framework of ECCAS established in 1983.

8.1.1 Migration to Other African States

When Central Africans migrate further afield, they tend to stay within the Continent. A majority of migrants from the DRC, Chad and the Central African Republic migrate to other African countries. Migration to South Africa has also grown in recent decades, particularly from Angola, the Republic of Congo and the DRC.¹⁵³ Overall, refugees from Central Africa represent approximately a significant proportion of all refugees on the Continent and come primarily from the DRC and the Central African Republic.¹⁵⁴

Mobility patterns in Central Africa are primarily driven by employment and economic opportunities in labor-intensive areas and industries. Favored destinations for labor migration vary depending on the season. Inter-regional migration routes taken by migrants regularly shift according to changes in migration legislation, policies and controls. However, the routes themselves have not evolved much.¹⁵⁵ Mobility mainly takes place along two main east-west axes and is then distributed over ancillary routes.¹⁵⁶

8.1.2 Extracontinental Migration

Generally, the majority of migrants from Angola, Cameroon, Republic of Congo, Gabon and São Tomé and Príncipe go to former colonial powers such as France and the United Kingdom.¹⁵⁷ Between 2017 and 2021, an estimated 187,335 migrants from West and Central Africa arrived irregularly to Italy, Spain, Greece, Malta and Cyprus by sea and by land.¹⁵⁸ The main destinations vary from year to year. Between January and December 2021, 27,648 nationals from West and Central African countries arrived irregularly in Europe. Of those

¹⁵² IOM Regional Data Hub, West and Central Africa — Regional Mobility Mapping, p. 6. (June 2022). Available at: <https://displacement.iom.int/reports/west-and-central-africa-regional-mobility-mapping-june-2022?close=true>.

¹⁵³ Migration Data Portal, Migration data in Middle Africa (Last updated on 05.26.2021). Available at: <https://www.migrationdataportal.org/regional-data-overview/middle-africa>

¹⁵⁴ Ndione, Babacar. (2014). L'Afrique centrale face aux défis migratoires. 10.13140/2.1.4740.3207. P.6.

¹⁵⁵ IOM Regional Data Hub, West and Central Africa — Regional Mobility Mapping, p. 11. (June 2022). Available at: <https://displacement.iom.int/reports/west-and-central-africa-regional-mobility-mapping-june-2022?close=true>

¹⁵⁶ IOM Regional Data Hub, West and Central Africa — Regional Mobility Mapping, p. 7. (June 2022).

¹⁵⁷ Migration Data Portal, Migration data in Middle Africa (Last updated on 05.26.2021). Available at: <https://www.migrationdataportal.org/regional-data-overview/middle-africa>

¹⁵⁸ IOM, DTM, West and Central Africa: Irregular Migration Routes to Europe (January — December 2021), p.1. March 2022. Available at: <https://dtm.iom.int/reports/west-and-central-africa-%E2%80%94-irregular-migration-routes-europe-january-%E2%80%94-december-2021>.

arrivals, the most common nationalities recorded were Guinea, Côte d'Ivoire, Nigeria and Mali.¹⁵⁹

Migrants heading to North Africa and onwards to Europe travel along the following three main migration routes: the Western African route, connecting Senegal, Mauritania and Morocco to the Canary Islands of Spain via the Atlantic Ocean; the Western Mediterranean route, which goes through Mali, Algeria and Tunisia or Morocco to Spain; and the Central Mediterranean route, which goes from Niger and Libya to Italy.¹⁶⁰ Within West and Central Africa, the routes to the Central Mediterranean significantly overlap with intraregional migration routes and routes to North Africa. Niger is the main transit country used by West and Central African migrants moving north. In Central Africa, since 1990, Chad has been and continues to be an important transit country for migrants trying to reach Libya and Europe. The Chadian route into northern Libya is often used by Chadian, Sudanese and Cameroonian migrants.¹⁶¹ Most Congolese and Cameroonian nationals reached Europe through Greece.¹⁶²

Many accounts collected from migrants report disappearances or deaths along the migratory routes between West and Central Africa and North Africa or while attempting to cross the Mediterranean, the Sahara desert or the Atlantic.¹⁶³

8.1.3 Climate Migration Dynamics

The exploitation and degradation of the environment in Central Africa creates a web of problems for regional migratory dynamics. These problems will likely only increase across geographic area and time in the context of unregulated ecological crises. Droughts, desertification, deforestation and flooding have increased in occurrence and severity over the last few decades, and these natural disasters displace millions of people throughout the region.¹⁶⁴ Environmental degradation in Central Africa is increasing with the intensification of the exploitation of natural resources with little concern for environmental protection. In Chad, climate change is unavoidably aggravating tensions in the region and exacerbates communal clashes. Displacement is exacerbated by numerous challenges, ranging from water crises to diseases and food security issues. In 2020, the Lake region recorded the highest rainfall in nearly 30 years, causing flash flooding of villages and fields destroying homes and crops.¹⁶⁵

8.2 Legal Framework and Good Practices

This section provides an overview of national legislation on migration and the treatment of migrants, including good practices, under the law of States in the region.

¹⁵⁹ IOM, DTM, West and Central Africa: Irregular Migration Routes to Europe (January — December 2021), p.1. March 2022. Available at: <https://dtm.iom.int/reports/west-and-central-africa-%E2%80%94-irregular-migration-routes-europe-january-%E2%80%94-december-2021>

¹⁶⁰ IOM Regional Data Hub, West and Central Africa — Regional Mobility Mapping, p. 11. (June 2022).

¹⁶¹ Maastricht Graduate School of Governance, Study on Migration Routes in West and Central Africa, p.8. 2017.

¹⁶² IOM, Irregular Migration Routes to Europe: West and Central Africa January - December 2020. Available at: <file:///C:/Users/traac/Downloads/ENG%20-%20IOM%20-%20Mediterranean%20Developments%20-%20Flows%20from%20WCA%20-%20December%202020%20-%20VF.pdf>

¹⁶³ IOM, Irregular Migration Routes to Europe: West and Central Africa January - December 2020.

¹⁶⁴ IOM, West and Central Africa: The regional migration context. Available at: <https://www.iom.int/west-and-central-africa>

¹⁶⁵ Migrants and Refugees, Migration Profile: Chad, 2021, p.3-4.

8.2.1 Treaty Ratifications

States in the Central African region have ratified the major of the international conventions related to migrants, including refugees.

8.2.2 Regional Law

The African Union, the Economic and Monetary Community of Central Africa (CEMAC), the Community of Sahel-Saharan States (CEN-SAD), the G5 Sahel, and the Economic Community of Central African States (ECCAS) are all active in promoting the integration of regional economic communities, including the free movement of people and the development potential of migration in Central Africa. Furthermore, multiple regional frameworks exist to address migration in Central Africa between the AU and EU, including in relation to migration and development, and the fight against human trafficking.

Most Central African migrants are already entitled to move across borders to other countries in the region within the framework of ECCAS. In 1983, ECCAS adopted the Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States, which includes provisions for the freedom of movement, residence and establishment for all citizens in the region. However, Central Africa is the least connected of all Africa's sub-regions, and the use of traditional visas is the highest.¹⁶⁶ In practice, the free movement of people is only effective in four countries: Cameroon, Chad, the Republic of the Congo and the DRC. The rest of ECCAS Member States require visas for fellow ECCAS citizens, and the availability of a visa on arrival is not common.¹⁶⁷

Free movement also applies to movement from the region the Maghreb, due to the existence of bilateral agreements between the ECCAS Member States and the States of the Maghreb.

8.2.3 National Law

Rwanda has the region's most liberal migration policy. Starting on January 2018, citizens of AU Member States can get a visa upon arrival and are waived visa fees for a visit of 30 days. Citizens of ECCAS Member States are issued entry visas free of charge upon arrival with an authorization to stay for a period of six months.¹⁶⁸

8.3 Key Rights Challenges

Migrants are subjected to many human rights violations along their journeys. This section presents several challenges migrants from and within the region face.

8.3.1 Human Smuggling and Trafficking

¹⁶⁶ African Development Bank Group, Visa restrictions and economic consequences in Africa, June 13, 2013. Available at: <https://blogs.afdb.org/afdb-championing-inclusive-growth-across-africa/post/visa-restrictions-and-economic-consequences-in-africa-11987>

¹⁶⁷ United Nations Economic Commission for Africa (ECA), ECCAS - Free Movement of Persons. Available at: <https://archive.uneca.org/pages/eccas-free-movement-persons>

¹⁶⁸ Rwanda Directorate General of Immigration and Emigration, Visa on arrival. Available at: <https://www.migration.gov.rw/visa-on-arrival>

Human smuggling and trafficking are significant problems in Central Africa. Smuggling services are rarely needed for migrants to move between Central African countries, since most Central Africans are entitled to free movement under ECCAS. However, smuggling is common along routes to Europe. In Central Africa, Guinea acts as a country of origin and transit for routes to Europe. Saharan tribal smugglers are also active in the northern part of Chad (particularly the Tebu people), and they orchestrate smuggling activities between Chad, Niger and Libya.¹⁶⁹ The most prominent hubs for human smuggling in Chad are Abéché, Zouar and Faya-Largeau.¹⁷⁰

It is also important to address the challenges and threats affecting child migrants. A major problem relating to human trafficking in Central Africa region is the issue of child soldiers. Militias and armed groups have adopted practices of compulsory recruitment of children.¹⁷¹ Human trafficking exploits domestic and foreign victims in Cameroon, Chad, Nigeria, the Republic of the Congo, the DRC, Sudan and South Sudan. Human traffickers include transient merchants, herders and non-state armed groups. They use children in domestic servitude, sex trafficking and forced labor in agriculture, artisanal gold, diamond mines, shops, drinking establishments, street vending, forced marriages and forceful recruitment of additional child soldiers.¹⁷²

Human trafficking is widespread in the Central African Republic, as the country is ranked Tier Two in the United States' Trafficking in Persons 2022 Report, which signifies that CAR does not meet minimum standards for the elimination of human trafficking.¹⁷³ The report divides nations into tiers based on their compliance with standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000, which provides a useful metric for evaluating national law. Although CAR has ratified protocols against human smuggling and trafficking (the 2000 UN Protocol against the smuggling of migrants by land, sea, and air, and the 2000 UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children and Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and criminalized all instances of trafficking (Article 151 of the penal code), these legislative frameworks are rarely implemented. But there are some efforts to do so.¹⁷⁴ According to the U.S. report, the Central African Republic government reported initiating eight trafficking investigations and has continued 30 investigations from the previous reporting period. Moreover, the government convicted a trafficker for forced labor of children under Article 151 of the criminal code.¹⁷⁵

Chad is ranked Tier Two in the United States' report as well, as minimal efforts have been put in place to combat human trafficking. Chad is considered a source, transit and destination country for victims of human trafficking, and the problem in Chad is predominantly internal,

¹⁶⁹ Maastricht Graduate School of Governance, Study on Migration Routes in West and Central Africa, p.12. 2017.

¹⁷⁰ United Nations High Commissioner for Refugees (UNHCR) (2017r). The Central Mediterranean Route: Working on the Alternatives to Dangerous Journeys. Available at: <https://data2.unhcr.org/en/documents/download/58624>

¹⁷¹ Maastricht Graduate School of Governance, Study on Migration Routes in West and Central Africa, p.16. 2017.

¹⁷² Migrants and Refugees, Migration Profile: Central African Republic, p.3. Available at: <https://migrants-refugees.va/it/wp-content/uploads/sites/3/2022/01/2021-CP-Central-African-Republic.pdf>

¹⁷³ US Department of States, 2022 Trafficking in Persons Report: Central African Republic. Available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/central-african-republic/>

¹⁷⁴ Migrants and Refugees, Migration Profile: Central African Republic, 2021, p.4.

¹⁷⁵ US Department of States, Trafficking in Persons Report: Central Africa, 2022.

mostly affecting women and children.¹⁷⁶ In June 2018, Chad rectified ordinance No. 006/PR/18, intensifying its efforts to prevent, combat, and punish perpetrators of human trafficking and smuggling. As part of this, the United Nations Office on Drugs and Crime (UNODC) provided training to 33 magistrates, gendarmes and police, equipping them with a better understanding of the legal instruments on human trafficking and the smuggling of migrants.¹⁷⁷

8.3.2 Asylum and *Nonrefoulement*

The general trends in matters concerning asylum and *nonrefoulement* in the region are characterized by violations of international law. A recent example from Rwanda demonstrates that bilateral agreements can be used to circumvent obligations under broader multilateral agreements. In April 2022, Rwanda entered into a new memorandum of understanding with the United Kingdom “for the provision of an asylum partnership arrangement to strengthen shared international commitments on the protection of refugees and migrants.”¹⁷⁸ Pursuant to this agreement, the U.K. government announced that it intends to send asylum seekers who arrive in the U.K. to Rwanda. The U.N. Refugee Agency has for the agreement, deemed “incompatible with the spirit of the 1951 Convention.”¹⁷⁹ UNHCR considers that “the arrangement entered into by the UK and Rwanda does not meet the requirements necessary to be considered a lawful and/or appropriate bilateral transfer arrangement.”¹⁸⁰

UNHCR has already expressed concerns about shortcomings in the capacity of the Rwandan asylum system in its July 2020 submissions to the Universal Periodic Review. UNHCR’s concerns include the fact that some asylum seekers are arbitrarily denied access to asylum procedures and are not referred to the Refugee Status Determination (RSD) Committee for consideration of their claims for international protection. This renders asylum seekers undocumented and puts them at risk of detention and deportation. It has also resulted in recent incidents of chain refoulement, or indirect refoulement via an intermediary country.¹⁸¹ Furthermore, according to UNHCR, some persons are denied access to asylum procedures because of their belonging to a specific social group.¹⁸²

8.3.3 Identification Documentation

¹⁷⁶ Migrants and Refugees, Migration Profile: Chad, p.4. Available at: <https://migrants-refugees.va/it/wp-content/uploads/sites/3/2022/01/2021-CP-Chad.pdf>

¹⁷⁷ Migrants and Refugees, Migration Profile: Chad, 2021, p.5.

¹⁷⁸ Gov.UK, Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, 14 April 2022. Available at: <https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-rwanda>

¹⁷⁹ The Migration Observatory, Peter William Walsh, Q&A: The UK’s policy to send asylum seekers to Rwanda, 10 June 2022. Available: <https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-the-uks-policy-to-send-asylum-seekers-to-rwanda/>

¹⁸⁰ UNHCR Submission for the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 3rd Cycle, July 2020.

¹⁸¹ The jurisprudence of the European Court of Human Rights has recognized that chain refoulement, in its decision *T.I. v. the United Kingdom*, violates fundamental rights. See ECtHR - *T.I. v. the United Kingdom*, 7 March 2000, Appl. No. 43844/98 (stating that “the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention.”)

¹⁸² UNHCR, Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, 08 June 2022. Available at: <https://www.unhcr.org/62a317d34>

In 2019, the UNHCR in Chad provided 41,200 birth certificates to refugee and host community children. There has been a presidential decision to issue free birth certificates for an estimated 120,000 children refugees of which 60% were issued by 2021.¹⁸³

8.3.4 Disappearances

Disappearances or deaths have been regularly reported along the migratory routes between Central Africa and North Africa. They are also commonly reported among migrants attempting to cross the Mediterranean, the Sahara, or the Atlantic. These reports have only increased with the rising number of migrants using these dangerous irregular routes, as safe and legal pathways to reach Europe are practically not available for many migrants. IOM recorded at least 3,136 deaths or disappearances along the migratory routes between January and December 2021.¹⁸⁴ However, there is a shortage of data on migrants who have died or are gone missing due to the hazards and remoteness of their irregular journeys.

8.3.5 Detention and Access to Justice

Access to justice is poses a challenge to migrants due to a lack of knowledge and information about how to access courts and tribunals. In the Central African region, the ability to access justice is often further compromised by a lack of a safe location or environment from which to seek legal protections.¹⁸⁵ In Rwanda, migrant detention is used as a last resort. The law places emphasis on deporting migrants who violate immigration law, rather than placing them in detention. It is hard for migrants to enter Rwanda illegally because visas are granted at the border. However, if a person stays in the country after the expiration of their visa, they are considered an illegal immigrant and can be subject to detention.¹⁸⁶ In July 2021, the U.K.'s Ambassador for Human Rights raised concerns regarding Rwanda's human rights record, specifically its rejection of the U.K.'s recommendation to "conduct transparent, credible and independent investigations into allegations of human rights violations including deaths in custody and torture."¹⁸⁷

8.4 Conclusion

Although some measures facilitating the free movement of ECCAS citizens are in place, free movement and establishment has not been a priority for ECCAS Member States. ECCAS Member States do not have a subregional legal framework establishing freedom of movement, and residence for all nationals as well as ECOWAS Member States. In addition, unlike ECOWAS, they do not have a relatively advanced legal framework for the protection of the rights of migrant workers and the protection of human rights in general. While Central African Countries have ratified many of the major African and international conventions related to

¹⁸³ Migrants and Refugees, Migration Profile: Chad, 2021, p.3.

¹⁸⁴ IOM, DTM, West and Central Africa: Irregular Migration Routes to Europe (January — December 2021), p.2. March 2022.

¹⁸⁵ Report of the Special Rapporteur on the human rights of migrants, 25 September 2018, A/73/178/Rev.1, p. 14, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/298/96/PDF/N1829896.pdf?OpenElement>

¹⁸⁶ Gov.UK, Country policy and information note: Rwanda, asylum system, May 2022. Available at: <https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes/country-policy-and-information-note-rwanda-asylum-system-may-2022-accessible#immigration-detention-and-returns>

¹⁸⁷ The Migration Observatory, Peter William Walsh, Q&A: The UK's policy to send asylum seekers to Rwanda, 10 June 2022.

migrants' rights, there is an important gap between those obligations and practice. Armed conflicts in the region have only accentuated the fragility of migrants.

9 Migration in West Africa

9.1 Migration Trends

Migration trends in West Africa are primarily characterized by intraregional labor migration. Migration to Europe is substantially less important, although it has been growing in recent years. Climate change poses a real challenge for migration and freedom of movement in the region, including for pastoralists.

9.1.1 Migration to Other African States

Most migration flows in West Africa are intraregional. The Economic Community of West African States (ECOWAS) free movement protocols facilitate this and have long enabled West African nationals to move freely within other ECOWAS Member States. Intraregional patterns of circular or seasonal labor migration are common, and approximately 86% of the international migrants from West Africa stay in another West African country.¹⁸⁸

Intraregional labor migration in West Africa includes permanent migration, temporary/seasonal migration, cross-border movements, return migration and transit migration. One group of permanent migrants is students, whose numbers are increasing among both immigrants and emigrants within the region.¹⁸⁹ Intraregional patterns of circular or seasonal labor include migration from the Northern Savannah areas to the southern or coastal economic sectors as well as the mining sector, the timber industry and the urban economic sectors. These patterns were originally facilitated by colonial administrations.¹⁹⁰

Two important features of migration within the West African region are that it is still largely undertaken within the Anglophone and Francophone country groups, and largely between directly neighboring countries. In 2010, the migration corridor between Burkina Faso and Côte d'Ivoire was the largest within the region, with 1.3 million people moving from Burkina Faso to Côte d'Ivoire and 840,000 people moving into the other direction. Other major migration corridors are the ones between Mali and Côte d'Ivoire, Benin and Nigeria, Ghana and Nigeria, Guinea and Liberia, and Senegal and the Gambia.¹⁹¹

It should be noted that in times of crisis, migration flows have decreased within the region; for instance, with the outbreak of Ebola in 2014 and COVID-19 in 2020. On the other hand, migration from Nigeria and Côte d'Ivoire have increased in times of crisis associated with conflict and economic stagnation.¹⁹²

¹⁸⁸ Eva Dick, Benjamin Schraven, (2018), Regional migration governance in Africa and beyond: a framework of analysis, Discussion Paper, p.15. No. 9/2018, ISBN 978-3-96021-065-8, Deutsches Institut für Entwicklungspolitik (DIE), Bonn. Available at: <https://doi.org/10.23661/dp9.2018>

¹⁸⁹ Mariama Awumbila, Yaw Benneh, Joseph Kofi Teye and George Atiim, Across artificial borders: An assessment of labor migration in the ECOWAS region. Geneva: International Organization for Migration/ ACP Observatory on Migration, p.19 (2014). Available at : http://publications.iom.int/system/files/pdf/ecowas_region.pdf

¹⁹⁰ Anarfi, J./Kwankye, S./Ofosu-Mensah Ababio, E./Tiemoko, R. (2003). Migration from and to Ghana: A background paper. Working Paper C4, December 2003. Development Research Centre on Migration, Globalisation and Poverty, University of Sussex: Brighton.

¹⁹¹ Eva Dick, Benjamin Schraven, (2018) : Regional migration governance in Africa and beyond: a framework of analysis, Discussion Paper, p.16. No. 9/2018, ISBN 978-3-96021-065-8, Deutsches Institut für Entwicklungspolitik (DIE), Bonn.

¹⁹² *Id.*

9.1.2 Extracontinental Migration

Only a small proportion of migrants from West Africa seek to leave the region, with Europe being the primary destination. The percentage of Western African migrants who went to Europe grew from 12% in mid-1990 to 19% in mid-2020, and the share who went to North America increased from 3% to 10% over the same period, with destinations driven in part by residual colonial ties and common languages.¹⁹³ There is a growing reliance on irregular overland and overseas routes, given the increase in Europe's restrictive migration policies and controls.

West African migrants going to North Africa and seeking to reach Europe generally move north via Mali and/or Niger. Gao in Mali is the primary transit hub for migrants there, who either cross into Agadez, the main hub of Niger, or move onwards directly to Tamanrasset in southern Algeria. Agadez is a historical crossroads of trade routes which extend deep into West and Central Africa. From there, migration routes bifurcate to the Sebha oasis in Libya and to Tamanrasset in Algeria. From southern Libya, migrants move to Tripoli and other coastal cities or to Tunisia.¹⁹⁴ The majority of West Africans who enter Morocco irregularly do so by land across the Algerian border, and the route through Mauritania to Morocco is almost solely used by Senegalese migrants.¹⁹⁵

Irregular onward migration of West Africans from North Africa to Europe is mainly via the Central Mediterranean or Western Mediterranean routes. Migrants travel by boat to either Malta or the Italian islands of Lampedusa, Pantalleria and Sicily.¹⁹⁶ To reach Spain from Morocco, West Africans often organize sea crossings independently, either across the Strait of Gibraltar or Alboran Sea in the Western Mediterranean, along the Moroccan shores to Ceuta and Melilla, or along the northwest African route to the Canary Islands in Spain.¹⁹⁷

Migration to Europe via the Central Mediterranean and Western Mediterranean routes declined between 2017 and 2019, and remaining arrivals from Western Africa shifted from Italy to Spain starting in 2018. Arrivals in Europe continued to decrease on the Western route during the first half of 2020 but increased in Italy and Malta.¹⁹⁸ In recent years, more overseas irregular migrants from West Africa are using the West African Atlantic routes. In 2021, 84 shipwrecks were identified along the migratory route, with an estimation of 1,173 migrants dead.¹⁹⁹ The number of migrants crossing from Western Africa to Spain's Canary Islands increased sharply in 2020,

¹⁹³ United Nations Department of Economic and Social Affairs, International Migrant Stock 2020. Available at: <https://www.un.org/development/desa/pd/content/international-migrant-stock>

¹⁹⁴ UNODC. (2018). Global Study on Smuggling Migrants 2018. United Nations Office on Drugs and Crime, p83 (UNODC). https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf

¹⁹⁵ UNODC Observatory on Smuggling of Migrants, Migrant Smuggling to Morocco and the Western Mediterranean, p.7. First Edition, 8 December 2021. Available at:

https://www.unodc.org/res/som/docs/Observatory_StoryMap_2_Final_2021.12.07.pdf

¹⁹⁶ Hein de Haas, Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends, p.17. International Organization for Migration Geneva, 2008.

¹⁹⁷ UNODC Observatory on Smuggling of Migrants, Migrant Smuggling to Morocco and the Western Mediterranean, p.9. First Edition, 8 December 2021

¹⁹⁸ Maria Fedorova, Tashia Shupert, Trends and evolving arrival patterns through the Central and Western Mediterranean Routes. Migration in West and North Africa and across the Mediterranean Trends, risks, development and governance. International Organization for Migration, Switzerland. 2020. Available at:

<https://publications.iom.int/books/migration-west-and-north-africa-and-across-mediterranean-chapter-4>

¹⁹⁹ ICMPD, Migration Outlook: West Africa 2022, P.2, March 2022. Available at:

https://www.icmpd.org/file/download/57218/file/ICMPD_Migration_Outlook_WestAfrica_2022.pdf

with 16,760 newly arrived between January and November 2020, a more than 1,000% increase compared to the same period in 2019.²⁰⁰

9.1.3 Climate Migration Dynamics

Sub-Saharan Africa generally faces an increasing rate of natural disasters compared to the rest of the world, given the increase in many natural factors of instability such as droughts, floods, cyclones and epidemics. Forecasters agree that the frequency and intensity of flooding and drought will increase, including in West Africa. This will hurt agricultural production and food security.²⁰¹ Environmental migration, disaster displacement and planned relocation are a reality in West Africa. Climate change will jeopardize jobs in agriculture such as mining and fishing, and some seasonal migrant workers could see their jobs disappear. This will increase the prospects for permanent migration in search of new employment opportunities. The World Bank predicts 86 million climate change migrants in Africa by 2050.²⁰²

Climate change is already affecting the age-old practices of cross-border movement in West Africa, and particularly in the Sahel, as climatic variability, demographic pressure, increasing competition for scarcer resources, political volatility, and insecurity have profoundly affected migration routes and flows. While excess precipitation in Senegal is contributing to international migration, heatwaves in Burkina Faso actually decrease the probability of international migration because it leads to people being effectively “trapped” and unable to move to safety.²⁰³ Environmental changes are likely to also affect other mobility patterns in West Africa, such as pastoralism, as cross-border mobility corridors are affected by disasters, adverse effects of climate change, and environmental degradation.²⁰⁴

9.2 Legal Framework and Good Practices

This section evaluates the impact of State practice and the legal framework on human rights protection in the region, highlighting good practices.

9.2.1 Treaty Ratifications

ECOWAS Member States adhere to the ECOWAS Treaty and the revised ECOWAS Treaty. They also adhere to: The 1951 Refugee Convention and its additional 1967 Protocol; the 1969 OAU Convention; the political dialogue between the EU and ACP countries as set out in Articles 8 and 13 of the Cotonou Agreement of June 2000; the ICRMW which entered into force in July 2003; the United Nations General Assembly Resolution No.60/277 on International Migration and Development of 7 April 2006; the Rabat Process, also known as the Marrakesh Political Declaration and Action Plan of July 2006; the ECOWAS General Convention on Social Security; the United Nations High-Level Dialogue on International

²⁰⁰ Migration Data Portal, Regional Data Overview, Migration data in Western Africa, last updated on 05.26.2021. Available at: [https://www.migrationdataportal.org/regional-data-overview/western-africa#:~:text=The%20percentage%20of%20Western%20African,\(UN%20DESA%2C%202020\)](https://www.migrationdataportal.org/regional-data-overview/western-africa#:~:text=The%20percentage%20of%20Western%20African,(UN%20DESA%2C%202020))

²⁰¹ ECOWAS, Report on Agriculture and food in West Africa: Trends, performances and agricultural policies, p.30. ECOWAS, Abuja. 2015. Available at <http://cncafrica.org/wp-content/uploads/2017/04/Agricultureand-Food-Ecowap2014.pdf>.

²⁰² ICMPD, Migration Outlook: West Africa 2022, P.2 March 2022. Available at: https://www.icmpd.org/file/download/57218/file/ICMPD_Migration_Outlook_WestAfrica_2022.pdf

²⁰³ *Id.*

²⁰⁴ International Organization for Migration (IOM), 2021. Environmental Migration, Disaster Displacement and Planned Relocation in West Africa, p.6.

Migration and Development initiated in September 2006; the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children adopted in November 2006; and the Joint Africa-EU Declaration on Migration and Development, or Tripoli Process, of November 2006.²⁰⁵

9.2.2 Regional Law

After its establishment as a REC following the Treaty of Lagos in 1975, ECOWAS in 1979 adopted the Protocol on Free Movement of Persons, Residence and Establishment, which is the region's legislative framework on mobility. The purpose was to facilitate intraregional migration and to achieve the vision of a borderless West African subregion. However, the protocol has not been fully implemented by Member States. While migrating, ECOWAS citizens still often undergo harsh scrutiny by Member State security agencies, demonstrating some of the protocol's ineffectiveness. Issues affecting the application of the protocol include political instability in Member States, terrorism, trans-border crimes, poverty, underdevelopment, and the proliferation of small and light weapons, among others.²⁰⁶

The EU has assertively supported ECOWAS States to develop more efficient migration management and protection of the rights of migrants, asylum seekers and refugees through capacity-building and funding to control irregular migration and human trafficking.²⁰⁷ Furthermore, UNHCR has collaborated with ECOWAS to develop a regional refugee protection framework and model asylum law that allows for the establishment of statelessness determination procedures and facilitates solutions for and protection of stateless persons. Initial discussions on the draft were held during a regional meeting of statelessness experts in Lomé, Togo, in November 2021. The model law is expected to be finalized and formally adopted at the ministerial level in 2022.²⁰⁸

9.2.3 National Law

UNHCR has also played a significant role in promoting a favorable protection environment for refugees in individual West African countries. For instance, it supported the government of Guinea to implement Guinea's 2018 asylum law, including supporting the adoption of additional decrees related to local integration and the issuance and renewal of documentation. Moreover, as part of the implementation of the Global Compact on Refugees and the commitments made at the Global Refugee Forum, the authorities of Niger have undertaken reforms of Niger's legislative and regulatory framework governing asylum. UNHCR has also advised the government of Côte d'Ivoire to develop an asylum law, which is pending review at

²⁰⁵ Idris, I. (2022). Responses to conflict, irregular migration, human trafficking and illicit flows along transnational pathways in West Africa, XCEPT Evidence Synthesis. Birmingham, UK: GSDRC, University of Birmingham, p.30.

²⁰⁶ Inna Frank Ogbise, Ebong, ItoroBassey and Washington, Benjamin Uko, ECOWAS Protocol on Free Movement of Persons, Goods and Establishments: It's Implications on Regional Security and Integration: An Appraisal, International Journal of Education Humanities and Social Science ISSN: 2582-0745 Vol. 3, No. 02; 2020 Department of Political Science and Public Administration, University of Uyo, UyoAkwalbom State-Nigeria, P.84. Available at: <https://ijehss.com/link2.php?id=92>

²⁰⁷ Eva Dick, Benjamin Schraven, (2018) : Regional migration governance in Africa and beyond: a framework of analysis, Discussion Paper, No. 9/2018, ISBN 978-3-96021-065-8, Deutsches Institut für Entwicklungspolitik (DIE), Bonn, P.113.

²⁰⁸ Executive Committee of the High Commissioner's Programme, Regional update: West and Central Africa, 15 February 2022. Available at: <https://www.unhcr.org/6228a6204.pdf>

the ministerial level. UNHCR expects to provide legal and technical support for similar initiatives in Ghana, Guinea-Bissau, Liberia and Senegal.²⁰⁹

The United Nations Office on Drugs and Crime has played a significant role in promoting initiatives to help West African States confront human trafficking at both the regional and national levels. Among its initiatives is the 2017 training workshop in Vienna which aimed to foster regional cooperation among West African states that are also members of the West African Network of Central Authorities and Prosecutors (WACAP) against organized crime. The goal was to build national capacity and work toward combating human trafficking, exploitation and migrant smuggling within and across West African States. WACAP helped in reinforcing ECOWAS' legal response and focus against the trafficking of persons by promoting and facilitating legal and judicial cooperation in various ECOWAS member states.²¹⁰

Additional collaboration among national authorities has been made within the Organized Crime: West Africa Response to Trafficking in Persons project, funded by the European Union and the German Federal Foreign Office, which aims to strengthen national and regional capacities and frameworks.

9.3 Key Rights Challenges

9.3.1 Human Trafficking

Human trafficking in West African countries is often fueled by conflict and lack of livelihood opportunities. It is most often carried out by non-state armed groups and organized criminal groups. In this region, human trafficking is characterized by the exploitation of both migrants and locals,²¹¹ and it is carried out for the purpose of exploitation, in particular forced labor and sexual exploitation.²¹² More than 50% of human trafficking victims in West Africa are children.²¹³

One form of forced labor is agricultural slavery in Côte d'Ivoire, where some of the immigrants from Burkina Faso work in cocoa plantations in effect slaves: They may experience forced labor and other labor rights violations including debt tied to recruitment, withholding or underpayment of wages.²¹⁴ One form of sexual exploitation is related to prostitution or sex slavery. Many victims were often lured with false promises of education or employment, then obliged to work for armed movements as forced laborers or sex slaves.

Nigeria is a source, transit and destination country for human trafficking. A particularly flourishing trade in prostitutes exists in Nigeria, and the main destinations are Europe,

²⁰⁹ Executive Committee of the High Commissioner's Programme, Regional update: West and Central Africa, p3, 23 September 2021. Available at <https://www.unhcr.org/614c8aad4.pdf>

²¹⁰ Samuel Kehinde Okunade and Lukong Stella Shulika, (2021), The Dynamics of Child Trafficking in West Africa, AHMR African Human Mobility Review - Volume 7 No 3, University of Johannesburg, South Africa, p.128.

²¹¹ US DoS. (2019). Trafficking in Persons Report, United States Department of State. Available at: <https://www.state.gov/reports/2019-trafficking-in-persons-report/>

²¹² . International Organization for Migration (IOM). (2017). Global trafficking trends in focus: IOM victims of trafficking data, 2006–2016. Geneva, IOM.

²¹³ Samuel Kehinde Okunade and Lukong Stella Shulika, (2021), The Dynamics of Child Trafficking in West Africa, AHMR African Human Mobility Review - Volume 7 No 3, University of Johannesburg, South Africa, p.119.

²¹⁴ Verité, (2019), Assessment of Forced Labor Risk in the Cocoa Sector of Côte d'Ivoire.

especially Italy, and the Middle East.²¹⁵ The Islamic terrorist organization Boko Haram has become notorious for forced abduction of girls and women. In Mali, both Tuareg insurgent groups and jihadist groups have been involved in human trafficking. In Niger, many West Africans have become victims of trafficking, as Niger is both an origin and transit country for irregular migration.²¹⁶ Two women from Nigeria have taken a case against Italy and Libya to the United Nations Committee on the Elimination of Discrimination against Women, claiming they were trafficked from Nigeria to Libya. Although most of the exploitation occurred in Libya, their lawyers also implicated Italy because of its support to initiatives that ultimately returned the women to situations where they were at risk of abuse, both in Libya and back in Nigeria. The lawyers expressed that the case could lead to better protection for victims of trafficking, increasing both safeguards in voluntary return processes and the possibility of asylum.²¹⁷

Applying relevant laws against organized crime and bringing human traffickers to justice remains a challenge that cuts across all West African countries.

9.3.2 Migrant Smuggling

Human smuggling is widespread in West Africa, and like human trafficking, it is mainly driven by conflict and lack of economic opportunities. Migrant smuggling services are sought out due to restrictive regimes of transborder mobility between West Africa and North Africa by increasing barriers for mobility overall. Most West Africans who use smugglers to reach their destinations outside the ECOWAS region “start their journeys under the provisions for free movement and violate immigration regulations only upon leaving the ECOWAS area.”²¹⁸ Migrants also use smuggling services due to the dangerous environment on their migratory routes, which require facilitators to help navigate. Migrants using smuggling networks are at risk of losing control over their journeys and have a higher chance of being abused and trafficked.

9.3.3 Asylum and *Nonrefoulement*

Asylum procedures in West Africa are not always fair and effective. There is often a short timeframe imposed for migrants applying for asylum upon entry. There is also generally a lack of provision of interpretation and legal aid in the refugee status determination process, as well as a frequent lack of appeal mechanism or an independent appeal committee. Moreover, the asylum procedure can last more than 24 months.²¹⁹ UNHCR advised the government of Côte d’Ivoire in the development of an asylum law, which is pending review at the ministerial level.

²¹⁵ Inna Frank Ogbise, Ebong, ItoroBasse and Washington, Benjamin Uko, ECOWAS Protocol on Free Movement of Persons, Goods and Establishments: It’s Implications on Regional Security and Integration: An Appraisal, *International Journal of Education Humanities and Social Science* ISSN: 2582-0745 Vol. 3, No. 02; 2020 Department of Political Science and Public Administration, University of Uyo, UyoAkwaIbom State-Nigeria, p.96. Available at: <https://ijehss.com/link2.php?id=92>

²¹⁶ Idris, I. (2022). Responses to conflict, irregular migration, human trafficking and illicit flows along transnational pathways in West Africa. XCEPT Evidence Synthesis. Birmingham, UK: GSDRC, University of Birmingham, p.13.

²¹⁷ Mixed Migration Centre, Quarterly Mixed Migration Update: West Africa Quarter 1 – 2022, p.8. (2022).

²¹⁸ European Commission, Directorate-General for Migration and Home Affairs, Abdoulaye Diallo, A., Ward-Booth, G., Knoll, A., et al., Needs assessment study for the development and implementation of legislation and strategies to counter migrant smuggling covering Côte d’Ivoire, the Gambia, Guinea and ECOWAS: final report, Publications Office, 2018, p.11.

²¹⁹ UN High Commissioner for Refugees (UNHCR), *West Africa as a Migration and Protection Area*, p.30. November 2008. Available at: <https://www.refworld.org/docid/4a277db82.html>

UNHCR will provide legal and technical support for similar initiatives in Ghana, Guinea-Bissau, Liberia and Senegal.²²⁰

Cases of *refoulement* of nationals of ECOWAS Member States in the ECOWAS region are almost nonexistent. However, there have been cases of discrimination at national borders by customs officers between asylum seekers who are ECOWAS nationals as well as non-ECOWAS nationals.²²¹

The risk of *refoulement* at European borders, in North African countries and in Mauritania is more significant. Those intercepted at sea or expelled from North African countries are usually not able to lodge an asylum claim even when they wish to do so. Once they are readmitted to their last transit country, the authorities do not make any distinction between those in need of international protection and other migrants.²²²

9.3.4 Migrants Caught in Conflict

In 2021, 2,770 Chadian nationals who had been living in Niger for decades were forced to leave following armed attacks in their area of residence in Niger and arrived in Boulouwa in Batha province, their origin villages in Chad.²²³

9.3.5 Xenophobia

There are some issues related to xenophobia and the integration of migrants in West Africa. The activities of some religious groups threaten West African integration and security. For instance, some view some migrants with suspicion as potential security threats in light of the transnational activities of Boko Haram and other terrorist groups operating in the region. In Mali, violent Islamic groups aiming to Islamize Nigeria and other ECOWAS states viewed integration as ‘integration through Islamization’. The extremist religious group Boko Haram, fighting for the Islamisation of Nigeria with aggressive and violent means and spreading operations to neighboring Niger, Chad and Cameroon led governments and citizens of other western African states view some migrants with suspicion as potential security threats.²²⁴

9.3.6 Detention

Detention and arrests among West African migrants have been widely reported. Data from IOM’s 2016 and 2017 Annual Reports illustrate that arrests and detention occur at all stages of the migration journey. In 2016, out of 1,064, 1,059 and 696 migrants reporting abuse in Algeria, Libya and Niger respectively, 2% reported being detained in Algeria, 15% in Libya and 10%

²²⁰ Executive Committee of the High Commissioner’s Programme, Update on UNHCR’s operations in West and Central Africa, p.3. Standing Committee Eighty-third meeting, 15 February 2022

²²¹ UN High Commissioner for Refugees (UNHCR), *West Africa as a Migration and Protection Area*, p.30. November 2008.

²²² UN High Commissioner for Refugees (UNHCR), *West Africa as a Migration and Protection Area*, p.30. November 2008.

²²³ IOM, Mapping mobility on the Chadian territory, June 2022.

²²⁴ Inna Frank Ogbise, Ebong, ItoroBasse and Washington, Benjamin Uko, ECOWAS Protocol on Free Movement of Persons, Goods and Establishments: It’s Implications on Regional Security and Integration: An Appraisal, International Journal of Education Humanities and Social Science ISSN: 2582-0745 Vol. 3, No. 02; 2020 Department of Political Science and Public Administration ,University of Uyo, UyoAkwaIbom State-Nigeria, p.100. Available at: <https://ijehss.com/link2.php?id=92>

in Niger.²²⁵ However, there is a lack of official statistics on cases of detention and/or custody on grounds related to migration status. There is also a lack of official information on measures to ensure consular assistance and access to such assistance for migrant workers and their concerned family members. Furthermore, access to justice for violations of rights in detention is still a major problem.²²⁶ In November 2021, UNHCR held a technical retreat with the ECOWAS Court of Justice to discuss new areas of strategic collaboration and develop a joint action plan to improve refugees' access to national judicial systems.²²⁷

9.4 Conclusion

Migration in West Africa demonstrates some changing characteristics and challenges. The ability to manage migration in West Africa is questioned as countries frequently infringe on regional agreements on migration policies in response to their economic and political gain. Managing migration is a major objective of ECOWAS, and it is shared with civil society organizations in the region as they influence policy processes from which migrants are excluded.

²²⁵ IOM Annual report 2016, <https://governingbodies.iom.int/system/files/en/council/108/C-108-4%20%20Annual%20Report%20for%202016.pdf>

²²⁶ The Danish Institute for Human Rights, Pilot study on migration and respect for human rights - focus on responses provided by Niger, p.37-38. ACHPR 2019.

²²⁷ Executive Committee of the High Commissioner's Program, Update on UNHCR's operations in West and Central Africa, p.3. Standing Committee 83rd meeting, 15 February 2022.

10 Migration and the African Diaspora

In the mid 1970s, the OAU divided Africa into five zones: West Africa, Central Africa, East Africa, Southern Africa and North Africa.²²⁸ With the transformation of the OAU to the African Union and the latter's broader Pan-Africanism, the diaspora became the sixth and only non-territorial region of Africa.

In 2003, the Constitutive Act of the African Union was amended and invited the African Diaspora to take part in building the African Union.²²⁹ In May 2012, African states adopted a declaration that aimed to navigate the implementation of the AU Diaspora program.²³⁰ The Declaration of the Global African Diaspora Summit, held in Sandton, South Africa, was the precursor to adopting the diaspora as the sixth non-territorial region of Africa. The Declaration also called for African states to negotiate with developed countries to “address concerns of African immigrants in Diaspora Communities.”²³¹ Despite the institutional initiatives to incorporate and create an inclusive Pan-Africanist continental institution, the conceptual understanding of “diaspora” is not without contention.

The African Union and its institutions' work on the diaspora focuses on people of African descent who are outside the Continent, leaving Africans who are outside their country of origin but within the African Continent outside its parameters. In addition, by adopting the same approach to all members of the diaspora, the AU and its institutions assume that African diasporas' migration results from one stream and that they are a monolithic community. On the contrary, diasporic experiences are diverse and require different treatment. Despite these conceptual challenges in African diaspora studies, for practicality purposes, this chapter will focus on people of African descent who are outside the Continent and who seek services and protection from African states.

African countries pursue different policies and legislation toward their respective diasporas. Their policies depend on the country's political and social conditions, the nature of its political system, and the diaspora's size and political and social organization. In the following, we discuss some common themes regarding the African diaspora. These include issues related to racism and Afrophobia, political participation in the affairs of the country of origin (especially the right to vote), the right to hold dual citizenship, and problems associated with consular services, such as acquiring and certifying personal identification documents.

10.1 Racism and Afrophobia

This section is not a holistic mapping establishing that racism and Afrophobia are prevalent, systemic, and alarming. There is clearly a need for vast, varied and intersectional engagement with Afrophobia and racism in several world regions. Our aim here is to highlight why there is a need for intervention from the African Union, African Commission and AU Member States.

²²⁸ Edozie, Rita Kiki. “The Sixth Zone: The African Diaspora and the African Union's Global Era Pan Africanism.” *Journal of African American Studies* 16, no. 2 (2012): 268–99.
<http://www.jstor.org/stable/43526692>.

²²⁹ The Protocol on Amendments to the Constitutive Act of the African Union adopted by the First Extra-Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa, Ethiopia in January 2003, and in particular Article 3(q)

²³⁰ Declaration of The Global African Diaspora Summit, Diaspora/Assembly/AU/ /Decl (I), Sandton 2012.
<https://au6rusa.org/wp-content/uploads/2019/01/Declaration-of-Global-African-Diaspora-005-1011223.pdf>

The OAU in May 1963 condemned racial discrimination and apartheid in Africa and other parts of the world. Furthermore, the assembly of Heads of African States in 1964 issued a resolution critiquing pervasive “racial bigotry and racial oppression” in the United States.²³² In addition to these legal instruments, African governments have used diplomacy to advance anti-racist policies for people of African descent everywhere. Nevertheless, racism and Afrophobia require massive resources from African institutions to decolonize racialized bodies. In 2006 the European Monitoring Centre on Racism and Xenophobia conducted an empirical study of the experiences of migrants in 12 EU Member States. The study shows that in all these countries diasporic communities face racism in employment, shops and restaurants, commercial transactions, and governmental institutions.²³³

The United Nations the Working Group of Experts on People of African Descent (Working Group) in its 2015 mission to Italy found that members of African diaspora have been subject to racist abuse, including members of diaspora who work in high in non-African state. For instance, the racist attacks on Cécile Kyenge, the former minister of integration of Italy who was born in the DRC, shows impunity and the enabling environment for racist behaviors.²³⁴ Similarly, Afrophobic chants against sports players – for instance, professional footballer Kevin-Prince Boateng — are emblematic of deeper racist and Afrophobic behavior prevalent in Italy. Furthermore, the Working Group found racial profiling and bias of the criminal justice system against people of African descent.²³⁵ The Working Group further noted that people of African descent have lower access to health, education, housing and employment opportunities.

The Working Group on a 2022 mission to Switzerland noted that in Switzerland, “[e]ven Swiss-born/naturalized people of African descent are presumed to be ‘other’.”²³⁶ The Working Group found the systematic use of “humor” to whitewash racialized misconduct and perpetuate racial stereotypes.²³⁷ Similar to the experiences of people of African descent in Italy, the Working Group observed how racialized police misconduct diminishes the right to liberty and life of boys and men of African descent in Switzerland.²³⁸

Victims of racism and Afrophobia face obstacles to accessing justice. In its mission to Italy, the Working Group eloquently summed barriers to access to justice. It noted: “Afrophobia and racial discrimination are manifest in the lack of protection afforded to people of African descent, a vulnerable group, in the difficulty that people of African descent have in gaining access to justice and in the failure to prosecute and provide reparation and remedy.”²³⁹

²³² OAU Resolution adopted by the First Ordinary Session of the Assembly of Heads of State and Governments, Held in Cairo, UAR, 17-21 July 1964, available at https://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/OAU_AHG_Res-16-I-1964_en.pdf

²³³ European Monitoring Centre on Racism and Xenophobia, Migrants’ Experiences of Racism and Xenophobia in 12 EU Member States, available at https://fra.europa.eu/sites/default/files/fra_uploads/224-Migrants-Experiences-web.pdf

²³⁴ A/HRC/33/61/Add.1: Mission to Italy – Report of the Working Group of Experts on People of African Descent on its mission to Italy <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/179/55/PDF/G1617955.pdf?OpenElement> para. 39

²³⁵ *Id.* Para 51- 53.

²³⁶ ²³⁶ A/HRC/51/54/Add.1: Visit to Switzerland – Report of the Working Group of Experts on People of African Descent, 04 October, 2022, available at <https://www.ohchr.org/en/documents/country-reports/ahrc5154add1-visit-switzerland-report-working-group-experts-people> para 35

²³⁷ *Id.* at para 36

²³⁸ *Id.* At para 41 - 43

²³⁹ Report of the Working Group of Experts on People of African Descent on its mission to Italy, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/179/55/PDF/G1617955.pdf?OpenElement> para 50

The Working Group, on a 2016 mission to the United States, documented extensive biases and racialization of persons of African descent in the United States. The Working Group heard testimonies from people of African descent that “from an early age they are treated by the State as a dangerous criminal group and face a presumption of guilt rather than of innocence.”²⁴⁰ The magnitude and brutality of police killings of people of African descent led the Chairperson of the AU Commission, Moussa Faki Mahamat, to recall the OAU’s 1964 Resolution on Racial Discrimination in the United States. Mahamat urged U.S. authorities to eliminate racialized policing and criminalizing black bodies.²⁴¹ The Working Group noted disparities in access to education, health, housing and employment. It further indicated that racial discrimination is a product of a capitalistic economic model that fails to address the root causes of racial injustice, leading to structural invisibility of persons of African descent.²⁴²

African migrants have also experienced racial discrimination in the Middle East. For instance, people of African descent are viewed as “inferior” and face discrimination in employment and education.²⁴³ Racism against people of African descent is also prevalent in other parts of the world. For example, in China, Human Rights Watch reported that people of African descent experience both covert and overtly racist policies.²⁴⁴

10.2 Political participation—the right to vote

According to a database prepared by the International Institute for Democracy and Electoral Assistance, 31 African countries permit their citizens living in the diaspora to vote in presidential elections, and 28 countries allow voting in elections for members of legislative bodies. Fifteen countries have “no external voting,” while two countries have “no provisions for direct elections.”²⁴⁵

For instance, Southern Africa, Angola, Mozambique, Namibia and Zimbabwe allow their diasporas to vote in presidential elections.²⁴⁶ On the other hand, Botswana, Mozambique, Lesotho, Namibia and South Africa allow the diaspora to vote for parliamentary representatives. Malawi, Madagascar, Zambia and Eswatini do not allow the diaspora to participate in any election, be it presidential or parliamentary.²⁴⁷

²⁴⁰ Id. at para 24

²⁴¹ Statement of the Chairperson following the murder of George Floyd in the USA, May 29, 2020, available at <https://au.int/en/pressreleases/20200529/statement-chairperson-following-murder-george-floyd-usa>

²⁴² See generally A/HRC/33/61/Add.2, Report of the Working Group of Experts on People of African Descent on its mission to the United States of America, 2016. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>

²⁴³ Canada: Immigration and Refugee Board of Canada, Saudi Arabia: Treatment of racial minorities, particularly black African Saudi nations, by society and authorities (2012-2013, available at <https://www.refworld.org/docid/563c58f34.html>

²⁴⁴ Human Rights Watch, China: Covid-19 Discrimination Against Africans – Forced Quarantines, Evictions, Refused Services in Guangzhou, available at <https://www.hrw.org/news/2020/05/05/china-covid-19-discrimination-against-africans>

²⁴⁵ International Institute for Democracy and Electoral Assistance – Voting from Abroad Database – Africa, available at <https://www.idea.int/data-tools/continent-view/Africa/52> (accessed on 12/04/2022).

²⁴⁶ Id.

²⁴⁷ ECZ committed to ensure diaspora voting is actualized in 2026 <https://www.lusakatimes.com/2020/10/25/ecz-committed-to-ensure-diaspora-voting-is-actualized-in-2026/>

Likewise, in Eastern African countries, diaspora participation is limited. Burundi, Comoros, Djibouti, Kenya, Mauritius (parliamentary), Rwanda and Sudan allow diaspora voting.²⁴⁸ Ethiopia, Seychelles, Tanzania, South Sudan and Uganda do not have “external voting.”²⁴⁹ Eritrea and Somalia do not have legislation on diaspora participation in national elections.²⁵⁰ Kenya provides the right to its nationals abroad to vote in the country’s presidential elections. In 2022, members of the Kenyan diaspora living in 12 countries voted in the 2022 presidential election.²⁵¹ In the case of Somalia, the diaspora (or Somalis who were in the diaspora) play an essential role—and consist of a good amount of the political and professional leadership in Somalia.²⁵²

In West Africa, Benin (presidential), Burkina Faso, Cape Verde, Côte d’Ivoire (presidential), Ghana, Guinea, Mali, Mauritania, Niger, Senegal and Togo provide for diaspora voting. On the other hand, Gambia, Liberia, Nigeria and Sierra Leone do not. In North Africa, diaspora members from Algeria, Egypt, Libya (parliamentary), Morocco (parliamentary) and Tunisia can vote in a national election. In Central Africa, Cameroon, Central African Republic, Chad, Equatorial Guinea, Gabon, and São Tomé and Príncipe provide for diaspora voting. The DRC and the Republic of the Congo do not.

Diaspora voting rights have been subject to erratic suspension or change depending on the politics of their country of origin. For instance, Liberia “abandoned” diaspora voting in 2004, and a revised 2014 electoral law “does not provide diaspora voting.”²⁵³ In South Africa, the country’s diaspora voted in the first post-apartheid election in 1994. The South African government reversed the policy in the next election cycle (1998-2009).²⁵⁴

Similarly, in DRC, despite the law allowing diaspora voting in practice, the government suspended diaspora voting in the 2018 election. The DRC’s amendment to [No. 06/006], prior legislation from 2006, did not adopt a provision that allowed diaspora voting (Article 7 of Law No 15/001). Although the latter provides voting in a presidential election, the DRC government did not allow the DRC diaspora to vote in the country’s 2018 general election.²⁵⁵ Similarly, in Zambia, the Constitution and the Electoral Act do not prohibit the diaspora from voting. However, the Zambian diaspora has not yet participated in the country’s elections.²⁵⁶

In some countries—for instance, Zimbabwe—although the electoral law does not deny voting, the diaspora must fulfill residency requirements to register in particular voting districts. Zimbabwe’s Electoral Act of 2013 provides that a Zimbabwean national must have resided in

²⁴⁸ International Institute for Democracy and Electoral Assistance – Voting from Abroad Database

²⁴⁹ Id.

²⁵⁰ Id.

²⁵¹ Cosmas Butunyi, 12 countries verified by IIBC for diaspora voting

(<https://www.standardmedia.co.ke/world/article/2001452818/12-countries-verified-by-iebc-for-diaspora-voting>)

²⁵² Somali Public Agenda, *Divided Loyalties? Dual Citizenship and High-Ranking Political Office in Somalia*, August 13, 2019

²⁵³ See *Voting from Abroad – The International IDEA Handbook*, at 33. See also Thibaut Jaulin and Etienne Smith, *Diffusion and Practice of external voting in North and West Africa*, in *Migration in West and North Africa and across the Mediterranean – Trends, risks, development and governance*, (Fragues, F., et. al, Eds.) at 394, 395.

²⁵⁴ See for example Elizabeth I. Wellman, *Diaspora Voting in South Africa: Perceptions, Partisanship and Policy Reversal in AFRIQUE CONTEMPORAINE*, 35-50 (Vol. 256, Issue 4) (2015).

²⁵⁵ IDEA website <https://www.idea.int/data-tools/region-view/24/52>

²⁵⁶ Lusaka Times, *Civil Society Demands for 2021 Diaspora Vote*, February 3, 2020 (<https://www.lusakatimes.com/2020/02/03/civil-society-demands-for-2021-diaspora-vote/>)

the country for not less than twelve months to be able to vote.²⁵⁷ That was subject to litigation in *Bukaibenyu v. Chairman, ZEC, the Registrar-General of Voters, the Minister of Constitutional and Legal Affairs, and the Minister of Justice and Legal Affairs & Ors CC-12-17*.²⁵⁸ In the case, a Zimbabwean who was living in South Africa argued that the Electoral Act Section 23(3) violated his constitutional right to vote (23A(2) by requiring that “a voter must be resident in a constituency in order to be registered to vote in that constituency.” Moreover, if a voter has been absent from his registered constituency for 12 months, his name would be struck from the voter registry. Furthermore, he argued that the Electoral Act does not provide the right to vote “at a designated place in the country...he was residing at the time.”²⁵⁹ The Court ruled in favor of the applicant by arguing that the Constitution does not provide limitations.²⁶⁰

10.3 Citizenship — the right to Dual Citizenship

Chad and Gabon were the first countries in Africa to allow dual citizenship.²⁶¹ According to a study commissioned by the Open Society Foundations, the following countries allow dual citizenship: Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Congo, Mozambique, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan and Tunisia.²⁶² Some countries allow dual citizenship with permission from relevant domestic authorities.²⁶³

Seven African countries prohibit dual citizenship in their national law: Cameroon, the DRC, Equatorial Guinea, Eritrea, Ethiopia, Tanzania and Liberia. Despite the legal prohibition of dual citizenship, some countries — for instance, Eritrea — inconsistently confer citizenship to members of their diasporas. That often depends on the diaspora member’s political views concerning the country’s current government. Eritreans who have left the country as critics or have sought asylum post-2000 era are highly unlikely to have dual citizenship. In addition, Eritrea only recognizes members of the diaspora as its citizens if they are willing to pay a special income tax for the diaspora.²⁶⁴ On the contrary, Eritreans who left the country when it was under colonial rule, along with their descendants, can maintain their Eritrean citizenship, and their loyalty to the state is not contested.

Some countries guarantee dual citizenship constitutionally. Zambia’s Constitution (2016) allows Zambians who live abroad to acquire Zambian citizenship alongside citizenship of host countries.²⁶⁵ Likewise, the Kenyan Constitution of 2010 allows Kenyans to hold dual citizenship.

10.4 Consular Services For the Diaspora

²⁵⁷ Part V (S23)

²⁵⁸ *Bukaibenyu v. Chairman, ZEC, the Registrar-General of Voters, the Minister of Constitutional and Legal Affairs, and the Minister of Justice and Legal Affairs & Ors CC-12-17*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, 74 (Open Society Foundations) (2016).

²⁶² *Id.*

²⁶³ *Id.* According to Manby, these include Egypt, Eritrea, Libya, Mauritania, South Africa, and Uganda. *Id.* at 74.

²⁶⁴ See generally Kibrom Teweldebirhan & Luwam Dirar, *Citizenship, Rights and Political Subjectivity in Eritrea*, in *THE ROUTLEDGE HANDBOOK OF AFRICAN LAW* 442 (Muna Ndulo & Cosmas Emeziem eds., 2022)

²⁶⁵ The Constitution of Zambia (2016), Article 39.

African State embassies and consulates aid the diaspora on various issues: birth, marriage, and death of a citizen abroad, to name a few. For example, South Africa has 103 embassies, commissions, or consulates. In countries with no South African embassy, commission, or consulate, its citizens abroad can get consular services from another embassy in the region. For instance, South African citizens in Uruguay receive consular assistance from the South African embassy in Argentina.²⁶⁶ Some African countries do not allocated the financial capacity to keep their embassies and consulates running. For instance, at the end of 2021, the Ministry of Foreign Affairs of Ethiopia announced the decision to close 31 consular missions.²⁶⁷ The closure of African embassies and consulates impacts the family reunification efforts of diasporic communities.

Consular missions also play a significant role in identity documentation and verification abroad. Host countries often require African migrants to provide additional verification of their records. For instance, in 2020, Germany granted protected status to around 35,000 Eritreans. How many of these Eritreans would be able to reunify with their family members remains a German bureaucratic anomaly. For instance, in 2017, German embassies in Ethiopia, Kenya, and Sudan received 808 family reunification applications from Eritreans with protected status in Germany. Although family reunification of migrants is guaranteed under German law, only 48.8% of Eritrean migrant family reunification applications were approved.²⁶⁸ Host countries — in this case, the German government — are reluctant to recognize identity documents if not authenticated by Eritrean embassies abroad or if not issued by Eritrean government officials.²⁶⁹ On the other hand, the Eritrean migrants who were categorized as forced migrants had barriers to accessing consular services from Eritrean embassies abroad.

10.5 Repatriation of African Migrants

Several States deport members of the African diaspora to their country of origin or to third countries without due consideration for their rights under international law. In 2018, Amnesty International reported that the Israeli government engaged in two forms of repatriation of migrants. The first stage, alternatively called “hot returns,” was the automatic rejection and deportation of asylum seekers from sub-Saharan Africa to Egypt or their country of origin.²⁷⁰ The report noted that the “hot return” policy affected hundreds of migrants who were wrongfully categorized as “infiltrators” instead of “asylum seekers” by the Israeli Defense Forces. Amnesty International reports the prevalence of the practice from 2007-2012. The second stage, which the Israeli government categorized as “voluntary” departures, does not involve the repatriation of forceful return to the country of origin, but rather to third countries. This so-called voluntary departure started around 2013, and a threat of indefinite detention was used to force African migrants to leave Israel. The Amnesty International report noted that Israeli officials used the threat of indefinite detention to force refugees and asylum seekers to agree to the so-called voluntary departure. From 2013 to early 2018, Israel repatriated 16,866 migrants from Eritrea and Sudan to their origin country or third countries.

²⁶⁶ Finding South African Embassies and Consulate Aboard, available at <https://apostil.co.za/south-african-embassies-and-consulates-abroad/>

²⁶⁷ Khouloud Haskouri, Ethiopia Closes Number of Embassies Worldwide, Including in Algiers, available at <https://www.morocoworldnews.com/2021/08/344123/ethiopia-closes-number-of-embassies-worldwide-including-in-algiers>

²⁶⁸ Daniel Pelz, “Eritrean Refugees in Germany Struggle to Reunite with Family” available at <https://www.dw.com/en/eritrean-refugees-in-germany-struggle-to-reunite-with-family/a-53840858>

²⁶⁹ <https://learnrgerman.dw.com/en/family-reunification-hard-for-eritrean-refugees-in-germany/a-43722130#>

²⁷⁰ See generally, Amnesty International, Forced and Unlawful – Israel’s Deportation of Eritrean and Sudanese Asylum-Seekers to Uganda, 2018 at p. 18

More recently, the United Kingdom announced its intention to send asylum seekers to Rwanda for processing.²⁷¹ Just like the Israeli government policy, the U.K. government is targeting irregular migrants and has failed to consider its responsibility under international law to protect asylum seekers.

The United States deports members of African diaspora without necessarily arranging integration plans in the country of origin — another violation of their rights under international law. Researchers Daniel J. Van Lehman and Estelle M. McKee studied the return of Somali Bantu to Somalia²⁷² and argued that their return violates the United States commitment to the United Nations Convention Against Torture. Lehman and McKee further noted that the United States has failed to recognize the historical human rights violations Bantu Somalis faced in their country of origin.²⁷³ Journalist Halima Gikandi reported on the traumatic experience of a Bantu Somali who was born in Kenya but was deported to Somalia in 2020 despite never having been there.²⁷⁴ In another incident, the United States government flew 92 Somalis out of the country on deportation order, but their flight was returned to the United States with all the deportees still aboard after landing in Dakar, Senegal.²⁷⁵ A lawyer for two of the Somalis noted that the return of the flight is emblematic that the United States government is scheduling deportations without proper planning, both in terms of execution and re-integration of migrants in their countries of origin.

In early 2021, the Ethiopian government agreed to repatriate 40,000 Ethiopians held in various detention centers in Saudi Arabia.²⁷⁶ Human Rights Watch reported that upon their return, they were subject to human rights abuses, including ethnic profiling, detention, and physical torture by Ethiopian authorities. The experience is another example of deporting States not considering issues of reintegration and penalizing of migrants upon return to their country of origin.

10.6 Conclusion

This chapter took a binary engagement with the experience of the African diaspora. The first looked at the rights of members of the African diaspora in their countries of origin. Here we conclude that the political dynamics in the country of origin can determine diaspora policy. Countries with a dominant party may expand the rights of migrants to participate in the electoral process due to fear of electoral loss. In contrast, a country's policy toward its diaspora may be consequential for those with competitive electoral politics, such as Kenya, Zambia, Ghana and Nigeria. For instance, an unpopular government party may change the country's electoral policy because a critical diaspora constituency might negatively impact its electoral success. Others

²⁷¹ Danica Kirka, UK rights groups fight plan to send asylum-seekers to Rwanda, available at <https://apnews.com/article/boris-johnson-africa-rwanda-london-immigration-c7f48ec8d0a193f5e49bcbe1552e5b78>

²⁷² Daniel J. Van Lehman & Estelle M. McKee, Removals to Somalia in Light of the Convention against Torture: Recent Evidence from Somali Bantu Deportees, 33 GEO. IMMIGR. L.J. 357 (2019).

²⁷³ Id. At 360.

²⁷⁴ Halima Gikandi, US-based Somali Bantu face deportation to a country they've never known, available at <https://theworld.org/stories/2020-09-08/us-based-somali-bantu-face-deportation-country-theyve-never-known>

²⁷⁵ Jacey Fortin, U.S. Put 92 Somalis on a Deportation Flight, Then Brought Them Back, available at <https://www.nytimes.com/2017/12/09/us/somalia-deportation-flight.html>

²⁷⁶ Human Rights Watch, Ethiopia: Returned Tigrayans Detained, Abused – Saudi Arabia Should Stop Deporting Tigrayan Migrants in Ethiopia, available at <https://www.hrw.org/news/2022/01/05/ethiopia-returned-tigrayans-detained-abused>

might decide to strengthen their ties with the diaspora as part of their commitment to democratic principles.

This chapter's second approach analyzes the African diaspora's experiences in their host countries and how these policies translate into Afrophobia worldwide. The level of racism and Afrophobia demonstrate the need for African countries to increase their legal activism to secure the lives of the African diaspora. Despite the significant developmental achievements of Western countries, persons of African descent are subject to systematic racism. Similarly, the experience and treatment of the African diaspora in deportation proceedings need reconsideration to analyze the reintegration and respect for the fundamental rights of deportees in their countries of host and origin. One way to bridge these limitations is by developing capable consular missions that work to create a better future for the African diaspora.

11 Synthesis – The Case for Guiding Principles

On 4 May, 2021, the African Commission passed Resolution 481 (LXVIII) 2021 (Resolution 481). Resolution 481 emphasized the need for a study on African responses to migration and the protection of migrants. It also contained a unique proposal : to consider the development of human rights-based principles that apply continentally to promote the well-being of all migrants.

This study has shown the need for Guiding Principles. As established above, there is no single articulation of the rights of all migrants and so a restatement in Guiding Principles would be the first continental document to lay out the major principles that are found scattered across many regional, subregional and international documents into one instrument.

This study also shows that, given African realities, Guiding Principles should incorporate specific principles on climate migrants. This is an exceptional proposal, as it aims to tackle, at the African Union-level, the human rights challenges at the nexus between migration and climate change. Doing so would make the Commission’s Guiding Principles the first such attempt at the international level.

The study also shows the need for Guiding Principles to extend African values of group rights or peoples’ rights to migrants. This approach, moving beyond euro-centric individualized protections for migrants, would reflect the virtues of the African Charter and the welcoming atmosphere African societies extend toward migrants.

The study has also demonstrated that Guiding Principles must include safeguards to preserve pastoral and nomadic lifestyles. Given the realities for those whose cultures and communities cross borders in ways unique to the Continent, Principles should tackle the issues that cross-border communities face on our continent due to borders mapped by European colonizers, as well as the impact of climate change. The protection of pastoral mobility should also address range lands as a prerequisite for preserving pastoral lifestyle as well as the importance of protecting livestock.

This study has also demonstrated concerns about the collection of personal data throughout the migratory process of migrants. As other African initiatives have demonstrated, data collection on migratory processes is central to the empirical and evidence-based understanding of migratory flows in Africa.²⁷⁷ However, the possibility of a data breach, theft and loss raises concerns about individual data privacy safeguards which should be taken into account in Guiding Principles..

Given the migration realities and regional and State innovation present on the continent, Guiding Principles should also protect all migrants without distinction between regular, irregular, forced, voluntary, economic, or climate migrants. Indeed, as the study demonstrates, many African States and African values have historically welcomed all migrants without differentiations, but rather as human beings deserving of all fundamental rights.

11.1 Who are migrants?

²⁷⁷ <https://www.migrationdataportal.org/themes/migration-and-data-protection>

Guiding Principles must embrace a more comprehensive and all-inclusive definition of migrants that aligns with applicable continental, sub-regional, and international human rights standards.

Considering the multiple subregional and regional treaty instruments adopted up to the present, there has not been a single definition of migrants. Instead, different instruments that provide rights to migrants or groups of migrants adopt tailored definitions relevant to that specific instrument.

For instance, Article I of the 1969 OAU Convention adopts a broader definition of displaced persons than the 1951 Refugee Convention. It recognizes the need to protect persons who migrate because of external aggression and events that disturb public order, creating a broader conceptualization and legal protection for displaced persons. A definition in Guiding Principles should therefore proceed in this inclusive spirit and also consider the AU Migration Policy Framework for Africa and Plan of Action (2018-2030), which recommends that States accord the fundamental “rights of all persons, regardless of their migration status.”²⁷⁸

In line with the fact that climate change disturbs public order at the national, regional, and international levels, this Study shows that Guiding Principles should develop a definition of climate migrants recognizing African particularities. Climate-induced African peoples’ mobility and regional and sub-regional protections exist in various instruments. For instance, the Great African Drought of 1984-85 led to more than 300,000 Ethiopians migrating to Eastern Sudan.²⁷⁹ In 1986, East African countries established the Inter-Governmental Authority for Development to respond to the drought. Article 16 (1) of the Protocol on Free Movement of Persons in the Inter-Governmental Authority at the sub-regional level recognizes cross-border climate mobility caused by disasters.²⁸⁰ Although Guiding Principles should focus on climate mobility across international borders, climate mobility does not just affect international migrants. Mobility motivated by the adverse effects of sudden- or slow-onset climate impacts happens within and across national borders. It involves different constraints, agency, and vulnerability levels and encompasses both forced displacement and migration, including planned relocation. Climate mobility occurs over various distances and can be temporary, recurrent, or permanent. Taking into account such a full understanding of these nuances, the Guiding Principles could still adopt a definition of climate migrants focused on those that cross international borders.

11.2 Nature of Rights Granted to Migrants

Having taken a human-rights based approach and surveyed the many rights violations experienced by international migrants, the study demonstrates the need for Guiding Principles

²⁷⁸ See the African Union Migration Policy Framework for Africa and Plan of Action (2018-2030) recommends the need to “[r]espect, protect and meet the rights of all persons, regardless of their migration status” (Page 30).

²⁷⁹ Weaver, Jerry L. “Searching for Survival: Urban Ethiopian Refugees in Sudan.” *The Journal of Developing Areas* 22, no. 4 (1988): 457–76. See also 71/92: Rencontre africaine pour la défense des droits de l’Homme (RADDHO)/Zambia (Para. 22), where the African Commission on Human and Peoples’ Rights confirmed that the African Charter on Human and Peoples’ Rights “imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals.”

²⁸⁰ Article 16 (1) of the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region stating, “Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of [a] disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.”

which accord fundamental rights regardless of a person's reason for movement across an international border.

Firstly, the Guiding Principles must provide for general principles, such as those of equality, non-discrimination, life, human dignity, torture and ill-treatment, enforced disappearances and missing migrants, and migrants in vulnerable situations. Secondly, Guiding Principles should develop principles that reflect the manner in which existing law provides additional vital rights protections to migrants, taking into account progressive development and innovation included in the various sections of this study. Such rights should include liberty and security of person, legal personhood, due process, victims of crime, freedom of thought, conscience and religion or belief, freedom of opinion and expression, privacy and personal data, freedom of peaceful assembly, the right to free movement, pastoral mobility, expulsion, asylum, non-refoulement, nationality, civil and political life, property, labour, health, adequate standard of living, education, culture, family, the right to favourable environment, remedy, diplomatic protection, and consular assistance. Finally, given the realities surveyed above, Guiding Principles should include principles that protect migrants in armed conflict and emergencies. A set of comprehensive Guiding Principles would best conform to the Continental realities and trends and the needs of migrants whose rights are violated after they cross borders as demonstrated in this study.

11.3 The need for a Saving Clause

Guiding Principles should be an instrument of soft law, based on binding legal norms and reflective of State practice. As shown above, global, regional, and sub-regional institutions have produced many norms that deal with migration and several promising practices. Therefore, Guiding Principles should heavily rely on existing treaty norms and customary international law. These Guiding Principles should be developed to focus on African values and systems and create common standards for the African context. Therefore, these Guiding Principles should also include a “saving clause” to open room for more positive continental norm entrepreneurship – as a formal recognition of the manner in which the region and its States have historically led on issues related to migration. The Guiding Principles should be the most basic and important set of rights for all migrants. When a African Union Member State adopt more progressive norms and continue to create new norms not already covered under any Guiding Principles, there should be room for the Member State to apply its new or more progressive norms.

11.4 Cooperation of African Union Member States

Finally, Guiding Principles must be based on existing binding legal norms. In this way, Principles should serve as an invitation for AU Member States and also the African Union and its organs to undertake a more comprehensive mapping and review of their national laws, instruments, and policies in order to address domestic human rights gaps and ensure compliance. Implementing the Guiding principles and addressing domestic human rights gaps for migrants must also be done at the Regional Economic Community level. In this way, implementation of Guiding Principles would serve to ensure compliance with existing African rights undertakings and can only be made effective through continued cooperation among AU member States.

11.5 Conclusion

This study has taken a human-rights based approach and focused on migration dynamics within and between different regions on the Continent, with chapters exploring trends – in the North, East, Southern, Central and West as well as extracontinentally to the African diaspora. The study has demonstrated the importance of and longstanding support in law and in practice for freedom of movement in Africa. The study has also demonstrated that there is effectively a broad consensus and significant set of good practices providing for the safeguarding of migrants' rights in Africa. The study has also evidenced the need to make the recognition and protection of those rights more widespread on the Continent. Therefore, the study has established the need for a nonbinding, soft law restatement of the rights of all African migrants that will allow the African Commission to speak authoritatively about the role of rights in the emergent free movement on the continent.

12 Appendix – Table of Relevant Treaties and Status of Ratifications

	United Nations Convention relating to the Status of Refugees 1951	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969	The Protocol to Prevent, Suppress & Punish Trafficking in Persons, especially Women and Children	United Nations International Convention on the Protection of the Rights of All Migrant Worker and Member of their Families (ICRMW)1990	United Nations Conventions Relating to the Status of Stateless Persons 1954 and 1961	International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 No. 97	ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143)	AU Convention for the Protection & Assistance of Internally Displaced Persons in Africa
Algeria	Yes	Yes	Yes	Yes	Yes (Not to the 1961)	Yes (Has excluded the provisions of Annex II)	No	No
Angola	Yes	Yes	No	Yes	Yes	No	No	Yes
Benin	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Botswana	Yes	Yes	Yes	Yes	Yes (not to 1961)	No	No	No
Burkina Faso	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Burundi	Yes	Yes	Yes	No	No	No	No	Yes (sig. only)
Cameroon	Yes	Yes	Yes	Yes (sig. only)	No	Yes (Has excluded the provisions of Annexes I to III)	Yes	Yes
Cape Verde	No	Yes	Yes	Yes	No	No	No	No
Central African Republic	Yes	Yes	Yes	No	No	No	No	Yes
Chad	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Comoros	No	Yes	No	No	No	Yes (in force 15 Jul. 2022)	Yes	Yes (sig. only)
Côte D'Ivoire	Yes	Yes	Yes	No	Yes	No	No	Yes
Democratic Republic of Congo	Yes	Yes	Yes	Yes	No	No	No	Yes
Djibouti	Yes	Yes (sig.)	Yes	No	No	No	No	Yes
Egypt	Yes	Yes	Yes	Yes	No	No	No	No
Equatorial Guinea	Yes	Yes	Yes	No	No	No	No	Yes
Eritrea	No	Yes (sig.)	No	No	No	No	No	Yes (sig. only)
Eswatini	Yes	Yes		No	Yes	No	No	Yes
Ethiopia	Yes	Yes	No	No	No	No	No	Yes
Gabon	Yes	Yes	Yes	Yes	No	No	No	Yes
Gambia	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Ghana	Yes	Yes	Yes	Yes	No	No	No	Yes (sig. only)

Confidential Draft

Guinea	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes (sig. only)
Guinea-Bissau	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Kenya	Yes	Yes	Yes	No	No	Yes	Yes	No
Lesotho	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Liberia	Yes	Yes	Yes	Yes (sig. only)	Yes	No	No	Yes
Libya	No	Yes	Yes	Yes	Yes	No	No	No
Madagascar	Yes	No	Yes	Yes	Yes (Not to the 1961)	Yes	Yes	Yes
Mali	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Malawi	Yes	Yes	Yes	Yes	Yes (not to 1961)	Yes	No	Yes
Mauritania	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Mauritius	No	Yes (sig.)	Yes	No	No	Yes	No	No
Morocco	Yes	No	Yes	Yes	No	Yes (Has excluded the provisions of Annexes I to III)	No	No
Niger	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Nigeria	Yes	Yes	Yes	Yes	Yes	Yes (Has excluded the provisions of Annexes I to III)	No	Yes
Namibia	Yes	No	Yes	Yes	No	No	No	Yes
Sahrawi Arab Democratic Republic	No	Yes (sig. only)	No	No	No	No	No	Yes
São Tomé and Príncipe	Yes	Yes (sig. only)	Yes	Yes	No	No	No	Yes (sig. only)
Senegal	Yes	Yes	Yes	Yes	Yes	No	No	Yes (sig. only)
Sierra Leone	Yes	Yes	Yes	Yes (sig. only)	Yes	Yes	Yes	Yes
Seychelles	Yes	Yes	Yes	Yes	No	No	No	No
Somalia	Yes	Yes (sig.)	No	No	No	Yes	Yes	Yes
South Africa	Yes	Yes	Yes	Yes	No	No	No	No
South Sudan	Yes	Yes	No	No	No	No	No	Yes
Sudan	No	Yes	No	No	No	No	No	No
Republic of the Congo	Yes	Yes	Yes (sig. only)	Yes (sig. only)	No	No	No	Yes
Rwanda	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Tanzania	Yes	Yes	Yes	No	No	Yes	No	Yes (sig. only.)
Togo	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Tunisia	Yes	Yes	Yes	No	Yes	No	No	Yes (sig. only)
Uganda	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Zambia	Yes	Yes	Yes	Yes	Yes (not to 1961)	Yes	No	Yes

Confidential Draft

Zimbabwe	Yes	Yes	Yes	Yes	Yes (not to 1961)	No	No	Yes
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