



Migration in Africa

**Promoting respect of fundamental rights
for refugees and migrants in transit camps**





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About the Network of African National Human Rights Institutions

The Network of African National Human Rights Institutions (NANHRI) is a not-for-profit-organisation that brings together 44 National Human Rights Institutions in Africa. The Secretariat of the Network is hosted by the Kenya National Commission on Human Rights in Nairobi, Kenya.

The Network supports the establishment and strengthening of the NHRIs across the continent in addition to facilitating coordination, cooperation amongst members and linking them to other key human rights actors at the regional and international level.

Vision

A continent with effective NHRIs; contributing to an enhanced human rights culture and justice for every African.

Mission

To support, through national, regional and international co-operation, the establishment and strengthening of NHRIs to more effectively undertake their mandate of human rights promotion, protection, monitoring and advocacy.

Values and Guiding Principles

To achieve its mission and vision, NANHRI is committed to the following: -

- Transparency
- Accountability
- Openness
- Cooperation
- Professionalism and
- Gender Equality



A map of migration routes in Africa. Map by National Geographic

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BACKGROUND

Criminal Justice Systems in many countries in Africa are increasingly using immigration detention in prisons and police stations as a common response to curb the movement of migrants, particularly in East Africa and in parts of Southern Africa.

The migration corridor from Southern Africa to Horn of Africa remains of great concern given increasing militarization, securitization and criminalization of irregular movement and a nearly universal “migration control” approach to border management in Egypt, Libya, Kenya, Ethiopia, Tanzania, South Africa and Zambia. The west African migration corridor from the West African coast through west-Sahel to North Africa is another sub-region of equal concern and there are a number of other migrations happening throughout Africa these days.¹

The current migrant and refugee crisis in the Mediterranean region is leading to proposals from some European Union (EU) Member States to establish asylum-processing centres outside of Europe, most probably in North Africa. This means that entry to Europe would only take place after a positive asylum decision is made, and refugees would be resettled throughout Europe according to a quota system.²

There are serious human rights concerns regarding the situation of refugees and migrants in Libya.³ In 2017 a Memorandum of Understanding between the Italian government and the new UN-backed Libyan government was signed, with the aims of “combatting illegal immigration, human trafficking and contraband and reinforcing the border security between the Libya State and the Italian Republic”.⁴

The memorandum does not make any reference to the country’s international legal obligations nor does it establish an independent monitoring mechanism. Libya is not party to the 1951 Refugee Convention and has no domestic law or procedure for considering asylum claims. According to legislation adopted under former Libyan leader Muammar Gaddafi, all individuals arriving in Libya without valid travel authorization are deemed “illegal migrants” and must be locked in Libyan detention centres.

1 <https://www.brookings.edu/blog/africa-in-focus/2018/06/07/figures-of-the-week-internal-migration-in-africa/>

2 Léonard and Kaunert, (2016) “The extra-territorial processing of asylum claims”. *Forced Migration Review*, Issue 51, vol. p.48-51.

3 *Refugees International* (2017); *UNHR and UNSMIL*, (2016)

4 *EU-Libya Memorandum of Understanding*, (2017)

Detention- Why is it a problem?

In general, all migrants have the right to liberty and security of person and freedom of movement under international and regional human rights law. The African Charter on Human and Peoples' Rights which came into effect in 1986 outlines the right to liberty and protection from arbitrary arrest or detention (Article 6) and the right to freedom of movement (Article 12(1)).

In relation to asylum seekers and refugees, the 1951 Refugee Convention specifically provides for the non-penalisation provided asylum seeker and refugees present themselves without delay and show good cause for their illegal entry or stay (article 31).

Prisons and police stations should be used as a last resort for detaining migrants since these detention centers are not built for the purpose and expose the migrants to dire conditions. The so-called detention centers are not generally equipped to screen and distinguish the presence of those with protection needs from any other, and further, deportations or expulsions are documented with little or no access to due process or other protection mechanisms by independent bodies.

Migrants who are detained in police cells or prisons find themselves in an especially vulnerable situation, as they are frequently denied access to key procedural safeguards, such as:

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- Notification of the custodial measure in writing in a language they understand;
 - Prompt access to a lawyer, interpretation/translation services, and consular representatives;
 - Medical care;
 - Indefinite and prolonged detention;
 - Means of contacting family; and

Overall, the lawfulness of their detention is strongly questionable and the personal consequences are not only harmful, but also represent a significant challenge to the human rights conventions to which most countries are signatories.

Violation- For who is it a problem?

First, immigration detention risks the fundamental rights of detained refugees and migrants.

Second, the EU and its Member States, who are actively pursuing cooperation with African countries to prevent secondary movement of refugees and migrants towards Europe, risk legal risk and reputational damage where immigration detention in African states violates fundamental rights.

Third, many African governments lack of capacity, resources and possibly political will to prevent the violations.

What roles can National Human Rights Institutions play?

National Human Rights Institutions (NHRIs) across Africa are uniquely positioned to monitor the performance of governments with regard to detention of refugees and migrants. They carry out important work within their own jurisdictions and possess well-developed capacity to collect and analyze information regarding emerging human rights issues. However, there is a need to strengthen their technical capacity to be able to deal with these issues, disseminate the information and implement their responses.¹

In particular, an overview of the various country efforts is missing locally which is a barrier to an overarching coordinated effort.



Photo: Strategihuset

The mandate of NHRIs

The right to challenge the lawfulness of detention before a court is a non-derogable, self-standing universal human right, as enshrined in States Constitutions under the Bill of Rights, and apply to all human beings equally, the absence of which constitutes gross human rights violations.

¹ State of Africa NHRIs – Study Report (2016)

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- Freedom from torture and cruel, inhuman or degrading treatment or punishment;
 - Freedom from slavery or servitude;
 - The right to a fair trial; and
 - The right to an order of habeas corpus to be produced within 24 hours depending on offence and jurisdictions time lines.

NHRIs are recognised in accordance with the Paris Principles relating to the Status of National Institutions, established under their constitution and operationalized by enabling legislation.

In a nutshell the NHRI mandate and functions include:

- a) Promote respect, formulate, implement and oversee programmes to raise public awareness and develop a culture of human rights and obligations;
- b) Promote the protection and observance of human rights in public and private institutions;
- c) Monitor, audit, investigate and report on the observance of human rights in all spheres of life;
- d) On its own initiative or on the basis of complaints, investigate or research alleged abuses or matters in respect of human rights, and make recommendations to improve the functioning of State organs; and
- e) Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination.

NANHRI's initiative to foster a coordinated response

NANHRI, the Network of the African NHRIs, aims to create a new, shared and standardised African understanding of how to deal with detention of migrants. As the coordinating body of African NHRIs, it is NANHRI's ambition to work for and support the establishment of a mechanism that ensures an adequate assessment of individual protection needs and an independent oversight mechanism of the situation of migrant detention centres. Finally, it is also NANHRI's ambition to ensure that NHRIs across African borders collaborates on the protection of migrants across countries and borders and potentially handle cases jointly, when necessary.

NANHRI to host regional conference on migration

To kick-start the process in Africa, NANHRI will organize a Conference bringing together regional and International partners and key stakeholders for discussions on human rights violation in migrant detention. The purpose of this multi-stakeholder event is to examine ways and means to overcome the obstacles existing in the realisation of human rights for refugees and migrants by promoting the effective application of relevant international norms and standards on the issue through six key action packages:

Action pack 1: Undertaking detention monitoring visits to document violations of human rights of refugees and migrants and their families;

Action pack 2: Conduct surveys on violations of the human rights of refugees migrants from Governments, Treaty Bodies, Specialized Agencies, Special Rapporteurs for various human rights questions, Intergovernmental organizations, non-governmental organizations, to respond effectively to such information;

Action pack 3: Consider a gender perspective when requesting and analysing information, and to give special attention to the occurrence of forms of discrimination and violence against refugee and migrant women;

Action pack 4: Identifying alternatives to detentionnd concrete areas and means for international cooperation;

Action pack 5: Formulating appropriate recommendations to prevent and remedy violations of the human rights of refugees and migrants, at national, regional and international levels to eliminate violations;

Action pack 6: Reporting regularly to the Human Rights Mechanisms and States on the human rights situation faced by refugees and migrants.

African NHRIs to collaborate on the enforcement of the Global Compact Migration (GCM)

One of the major global migration movements is the one from Africa to Europe. To underpin the Global Compact on Migration, NANHRI will work with African NHRIs as proposed above. These NHRIs comes from all of Africa, but it is proposed to begin with those located in Northern and Western Africa since there are severe human rights repercussions on the rights to life, liberty and security of the person, freedom from torture and freedom of movement.

NHRIs have unique national mandates to protect and promote human rights for all and are hence ideal stakeholders for bringing key actors together at the national level to initiate debates around specific human rights issues, which deserve attention in the implementation of the GCM at the national level. NANHRIs role is to support that this interface between actors at national level is materialised and thereby also addressing challenges at the international level.

Potential activities and outputs relating to GCM Action Plans

NANHRI will initiate a number of activities to enhance collaboration and prompt development of national action plans on the GCM, including:

- organising and/or initiating stakeholder engagement processes at the national level for the implementation of the GCM
- initiating debates/events on specific topics relevant for the implementation of the GCM (possible criteria: human rights relevance, absence of other actors on this issue), incl. but not limited through monitoring visits and reports/studies, events/debates
- formulation of recommendations to government/legislative representatives with regard to a transparent, participatory implementation of the GCM.

Reducing the detention of migrants and disappearances

African NHRIs have identified detention as a joint issue on which they want to work for the years ahead. Detention of migrants in Africa is fuelled not only by governments, but also by EU policies promoting border management and security among African states, esp. those of Western and Northern Africa.

Exchange among NHRIs in one region and across regions with similar challenges both at the structural as well as the policy level has proven to be a useful means of both capacity-building for NHRIs as well as a basis on which to develop joint action.

To make NHRIs cooperate more closely on the detention issue, NANHRI will engage in a multifaceted line of work, with several layers and actors:

- coordinating NHRIs cross-regionally in Africa to address human rights violations through detention directly and indirectly through national government, the AU and EU on their policies and/or actions
- analysing and addressing drivers such as EU policies on detention
- working with the African and European human rights systems

Potential outputs

- formulating appropriate recommendations to prevent and remedy violations of the human rights of migrants, at national, regional and international levels;
- identifying best practices and concrete areas and means for international cooperation;
- facilitate conferences/workshops at the national and regional level (objectives: coordination/dialogue/capacity-building)

Enhancing monitoring of returnees and repatriation

Forced return can result in a violation of the principle of *non-refoulement*, a human right enshrined *inter alia* in the 1951 Refugee Convention (article 33(1)) and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (article 2(3)). In Europe, a de facto circumvention of access to asylum determination procedures can take place if those seeking asylum are incentivised to accept voluntary return options which provide higher grants if they do not submit a request for asylum. Other practices currently resulting in a de facto violation of non-refoulement are the cooperation with the Libyan coastguard and subsequent incarceration by them, plus liberation out of these camps and subsequent return to the countries of origin without proper refugee status determination.

This line of work is structurally similar to the one on detention. Its proposed focus is monitoring return and repatriation of migrants and/or advocating for independent monitoring mechanisms. Practical obstacles of real-life monitoring (tracking) would need to be discussed and suggestions for solutions found.

This is again a multifaceted line of work, with several layers and actors where NANHRI will play a key role:

- coordinating NHRIs cross-regionally to address directly and indirectly through national government the AU and EU on their policies and/or actions
- working with the African and European human rights systems

Potential outputs

- NANHRI has prompted NHRIs to increase monitoring visits by 40% and document violations of human rights of migrants and their relatives.
- NANHRI has helped NHRIs formulating appropriate recommendations to prevent and remedy violations of the human rights of migrants, at national, regional and international levels;
- NANHRI has facilitated an ad-hoc task force to identify best practices and concrete areas and means for international cooperation;
- NANHRI has organised 2 conferences/workshops per year at the national and regional level (objectives: coordination/dialogue/capacity-building) with the purpose of coordinating and improving monitoring practise.

THE NEED TO ACT - NOW!

The refugee and migration crisis will not be solved in the near future, rather it may get worse if the current international initiatives of extraterritorial asylum processing are realized. Policy-makers, governments and researchers need informed data which need to be generated now to take decisions for the future.

NANHRI is, therefore, inviting partners to collaborate on this legally, politically, financially and socially important line of work.



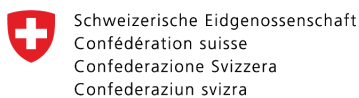
File photo shows a migrant boat in distress in the Mediterranean Sea.
Photo credit: TORM

Notes

Our Partners



Empowered lives.
Resilient nations.



Swiss Agency for Development
and Cooperation SDC



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