

2nd Regional Review of the Implementation
of the Global Compact for Safe, Orderly and Regular Migration (GCM)
in the United Nations Economic Commission for Africa (UNECA) Region

8-10 October 2024, Addis Ababa, Ethiopia

Background note
Thematic Round Table 2: Protecting Migrants Through
Rights-based Border Governance



I. Guiding Questions

1. What strategies and support mechanisms can be provided by States and other stakeholders to ensure that all migrants have proof of legal identity and other required documentation?
2. How can States improve their implementation of adopted AU policies for combating the smuggling of migrants and trafficking in persons?
3. What are the major constraints that have impeded African countries' efforts to guarantee protections to migrants and implement human rights-based border governance?
4. How can States further work towards non-custodial alternatives and ensure that detention follows due process, is non-arbitrary and is used only as a measure of last resort?
5. Is your government aware of the "Checklist for Safe and Dignified Return and Sustainable Reintegration" developed by the UN Network on Migration?

II. Introduction

A route-based approach could provide one means by which to analyse progress on the GCM objectives under consideration in this session. This approach is a revitalized way to address the movements of migrants during their journeys through concrete measures that States and stakeholders can implement with support from the United Nations Network on Migration.

The route-based approach aligns with the GCM's comprehensive view of migration at all points of the journey, involving countries of origin, transit and destination, building on the complementarity of the two Global Compacts.¹

In the GCM, States commit to ensuring that the measures they adopt to manage their borders align with their international obligations. It further calls for improved cross-border collaboration among neighbouring and other States regarding the treatment of persons crossing or seeking to cross international borders, including by taking into consideration relevant recommendations from OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders. African initiatives to improve border governance include the African Union (AU) Convention on Cross-Border Cooperation (Niamey Convention 2014), the AU Border Programme and the AU Border Governance Strategy, adopted to facilitate the implementation of the Niamey Convention.²

Other AU initiatives, relevant to this thematic roundtable 2, are the AU Policy on the Prevention of Trafficking in Persons (TiP) in Africa and the AU Policy on the Prevention of Smuggling of Migrants (SoM) in Africa, both adopted in 2022.

III. Overview of Progress

The achievements have been significant in ensuring the protection and promotion of the human rights of all migrants, regardless of their status. However, challenges remain, including limited resources and capacity in many countries to effectively manage migration movements and protect migrants' human rights.

Objective 4: Ensure that all migrants have proof of legal identity and adequate documentation

Globally, the births of one in four children under five have never been officially recorded (164 million). More than half (around 91 million) live in Africa. In Africa, more than half of unregistered children under five - 52 million - live in East and Southern Africa.³

AU Member States (2023) agreed to enhance bilateral and regional cooperation on advancing digital legal identity to facilitate mobility. However, the above-mentioned report also highlights the need for Governments to demonstrate political commitment through sufficient financing and revamping of systems, to make them sustainable and inclusive for marginalized groups, including migrants and those who are displaced, and the need for concerted efforts to achieve birth registration for all children,

¹ UNHCR's Grandi on need for 'panoramic' approach to mixed movements, 21 April 2023
<https://www.unhcr.org/news/speeches-and-statements/unhcr-sgrandi-need-panoramic-approach-mixed-movements>

² Out of AU' 55 Member states, 19 signed, 08 ratified, and 08 deposited (as of August 19, 2024).

³ <https://www.unicef.org/wca/media/5526/file/AU-Birth-Registration-Statistical-Brochure-Nov-2020.pdf>

anchored in the collective action of partners engaged in the Africa Programme for Accelerated Improvement of Civil Registration and Vital Statistics, with investments geared towards continued decentralization, digitization and interoperability.

At the 2021 GCM consultations,⁴ ECOWAS States acknowledged that the introduction and adoption of biometric ID and Passports represent an essential tool in support of regional migration governance and the implementation of the GCM. They also noted that where birth certificates are a prerequisite for issuing ID cards and passports, this is a significant barrier to effective migration governance for rural border communities. At SADC level (2022),⁵ several States (e.g. Eswatini) reported that they already had existing mechanisms for the documentation of migrants in their national registration schemes. These schemes allow migrants, including children born of regular or irregular migrants, to be documented.

Finally, despite the steady progress reported by UNHCR (2023) on tackling statelessness,⁶ such progress is not enough. In Africa, according to UNHCR's 2022 Global Trends report, over 103,000 stateless persons live in Burundi, Kenya, Rwanda, South Sudan, and Uganda. However, these figures are expected to be significantly higher, given the relative invisibility of stateless people in national statistical exercises.

Objective 8: Save lives and establish coordinated international efforts on missing migrants

At least 15,938 recorded migrants have gone missing in Africa, since 2014. The highest numbers have been recorded in the years 2019, 2021 and 2023; and the riskiest routes are the Saharan Desert crossing and Western Africa/Atlantic route to the Canary Islands. Amongst the main known causes of death, IOM's Missing Migrants Project mentions drowning; harsh environmental conditions, lack of adequate shelter, food, and water; and vehicle accidents or death linked to hazardous transport.⁷

During their last regional review of the implementation of the GCM (2021),⁸ UNECA Member States agreed that working groups on missing migrants should be established at the subregional level to ensure that the required rescue, medical and forensic work is conducted collaboratively. Such mechanisms would provide data and documentation on missing migrants at the national level.

⁴<https://migrationnetwork.un.org/system/files/docs/ECOWAS%20-%20Report%20on%20Regional%20Consultations%20on%20GCM.pdf>

⁵<https://migrationnetwork.un.org/system/files/docs/SADC%20-%20GCM%20Regional%20Review%20-%20Final%20Outcomes%20Document.pdf>

⁶ In 2023 alone, in the East and Horn of Africa and Great Lakes region, around 3,300 individuals at risk of statelessness were granted nationality in Zanzibar, Tanzania, while in Kenya, approximately 7,000 people from the Pemba community were officially confirmed as citizens).

⁷ <https://missingmigrants.iom.int/region/africa>

⁸ https://migrationnetwork.un.org/system/files/resources_files/africa_gcm_regional_review_report.pdf

Objective 9: Strengthen the transnational response to smuggling of migrants

Building on two previous key frameworks - the Khartoum Declaration on the AU-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants (2014) and the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (2006) - in 2022, the continental policies on the Prevention of Trafficking in Persons (TiP) in Africa⁹ and on the Prevention of Smuggling of Migrants (SoM) in Africa¹⁰ were adopted by the African Union. These frameworks provide States and RECs with guidelines on combatting the TiP and SoM respectively and urge them to, amongst others: (i) forge and strengthen joint information and intelligence sharing; (ii) conduct joint investigations and operations; and (iii) develop bilateral and regional mutual legal assistance and extradition frameworks as the legal basis for international cooperation in combatting TiP and SoM.

During the last GCM regional review, ECOWAS States (2021)¹¹ underlined the need to differentiate between forced and voluntary migration, within the context of addressing the drivers of migration in the region. States in the region were encouraged to make coordinated efforts at harmonising laws, policies and practice around migrant smuggling, a preoccupation that echoes SADC's (2022)¹² note as a key challenge.

Objective 10: Prevent, combat and eradicate trafficking in persons in the context of international migration

As mentioned in objective 9, within the framework of the two recently adopted continental policies on the Prevention of TiP and SoM in Africa, AU Member States adopted a five-year action plan to strengthen cooperation for saving lives, while providing assistance to migrants in vulnerable situations.

SADC States jointly recognised (2022) that human trafficking is a growing concern in the region. This has been evidenced by the number of States that have established TIP legislation. In 2021, ECOWAS supported the development of a network of policy experts and immigration lawyers to provide support to its member States in developing national policies and laws, including on combatting smuggling and trafficking, prosecution of offenders and access to justice for victims. ECOWAS also expressed their wish

⁹ https://au.int/sites/default/files/documents/43950-doc-AU_Policy_on_the_Prevention_of_Trafficking_in_Persons_in_Africa_-_Final.pdf

¹⁰ https://au.int/sites/default/files/documents/43951-doc-AU_Policy_on_the_Prevention_of_Smuggling_of_Migrants_in_Africa_-_Final.pdf

¹¹

<https://migrationnetwork.un.org/system/files/docs/ECOWAS%20-%20Report%20on%20Regional%20Consultations%20on%20GCM.pdf>

¹²

<https://migrationnetwork.un.org/system/files/docs/SADC%20-%20GCM%20Regional%20Review%20-%20Final%20Outcomes%20Document.pdf>

to carry out a review of best practices in the region for capturing data on missing migrants and deaths at sea and in deserts.

Under objectives 9 and 10, the Migration Multi-Partner Trust Fund¹³ recently selected for funding a Joint Programme in Gabon and Togo.¹⁴ This programme aims to strengthen the management of migration along the maritime and land route from Togo, via Nigeria, to Gabon; and to further assist the Togolese and Gabonese Governments in better preventing and countering trafficking in persons and smuggling of migrants, while protecting and assisting victims.

Objective 11: Manage borders in an integrated, secure and coordinated manner

When it comes to border management, at the African Union level, the key issue is how to ensure security and safety in line with international norms and AU instruments, including the AU Convention on Cross-Border Cooperation. Significant challenges stem from the multiplicity of agencies involved in that process, the persistence of violent conflict along many borders, the fact that many borders between African countries are long and porous, and the widespread use of irregular border crossing points by migrants, smugglers and human traffickers. Many border management officials also routinely violate international human rights law, including those related to immigration detention.

SADC Member states have continued to implement legislations and guidelines to manage borders in compliance with international law obligations, including OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders. Countries that have installed One-Stop Border Posts (OSBPs) report greater intercountry coordination and service delivery, which has motivated other States in that direction. SADC recommended (2022) that Member States in the region increase the number of OSBPs as a measure to enhance bi-country coordination for faster and more effective border management.

ECOWAS recognized (2021): (i) the need to harmonize laws on free movement across its Member States and increase cooperation with CSOs to promote awareness of free movement; (ii) the importance of addressing language barriers, especially at border communities, as an inhibiting factor to the implementation of the GCM; (iii) that border posts should provide designated points for processing migrant children as an essential response to child protection and enforcement of child rights; (iv) the need for standardizing and adopting a common border management system and procedure within the region; (v) the imperative of aligning the implementation of ECOWAS Protocol on Free Movement to respond to the specific provisions and objectives of the GCM; and (vi) the need for harmonization of travel documents as critical to effective regional migration governance.

¹³ <https://migrationnetwork.un.org/mptf>

¹⁴ To be jointly implemented with UNODC and UNICEF.

<https://migrationnetwork.un.org/system/files/docs/MMPTF%20Leaflet%20-%20Africa%20%28Web%29.pdf>

Examples under this objective include Migration MPTF Joint Programmes implemented in Guinea, Liberia and Sierra Leone to address irregular migration and support vulnerable groups by strengthening border management, social cohesion, and cross-border security in the Parrot's Beak area. These activities promoted integrated border management approaches to address security, development and humanitarian concerns. Another example is The Gambia, where the programme aimed to increase safety and prosperity among women and youth living and working along the Trans-Gambia transport corridor. A key highlight was the renovation and technological upgrade of the Misera border post, including the integration of the Migration Information Data Analysis System (MIDAS), which enhanced migration management, data collection, and security, enabling more effective combat against cross-border crimes.

Objective 13: Use migration detention only as a measure of last resort and work towards alternatives

At the International Migration Review Forum (IMRF)¹⁵ in 2022, Member States recognized the challenges in ensuring alternatives to detention with full respect for human rights. Alternatives to detention must be prioritized to uphold human rights and international law. Progress was highlighted in modernizing border-crossing points, including simplifying procedures and upgrading infrastructure and equipment to reduce immigration detention, as well as implementing non-custodial alternatives to detention. It was also recognized that some Member States have taken steps to end child immigration detention.

ECOWAS highlighted (2021) that the training of border personnel on standards and protocols, especially regarding migrant rights, is essential to reducing abuses of migrants and eliminating the culture of criminalizing the migration process. The Committee on the Rights of the Child determined that immigration detention is never in the best interests of the child and, therefore, the principle of last resort does not apply.

The United Nations Network on Migration¹⁶ has supported Member States and stakeholders by organizing peer learning events, developing policy guidance¹⁷ and mobilizing pledges. Yet, the detention of migrants continues to be used beyond the very limited circumstances in which it is permitted under international law. In SADC, the presence of irregular migrants in transit, held in detention centres, separate from convicted offenders in prisons, was reported (2022) by several Member States. Southern African states are also committed to “developing and implementing alternative options to detention,” as well as implementing Migration Dialogue for Southern Africa MIDSA Regional and National Action Plans to oversee progress.

¹⁵ https://migrationnetwork.un.org/system/files/resources_files/Final-%20IMRF%20Progress%20Declaration-%20English.pdf

¹⁶ Tasked with promoting the development and implementation of non-custodial, human-rights based alternatives to detention in the migration context.

¹⁷ <https://www.unicef.org/media/151371/file/Advocacy%20Brief:%20End%20Child%20Immigration%20Detention%20.pdf>.

Zambia has developed a national migration policy which addresses migrant children's rights and established a National Referral Mechanism that trains frontline officials to screen migrants and identify vulnerable groups, to divert them from the detention system to appropriate alternative arrangements. Community placement for refugee and migrant children is in place in countries such as Botswana, Kenya, Malawi, Morocco, Mozambique, South Africa, Uganda, Tunisia, Zambia, and Zimbabwe, among others. Foster care or guardianship arrangements for non-national children are codified in law in Zambia, Uganda, Kenya, Tanzania, Zimbabwe, South Africa, and Libya as well as in domestic law in Egypt and Morocco¹⁸.

Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

The IMRF Progress Declaration acknowledges that safe and dignified returns, readmission and sustainable reintegration in full compliance with international human rights law have proven difficult and complex in many cases. Addressing drivers of migration in countries of return, including fostering employment opportunities and enhancing cooperation between host countries and countries of return, is necessary. Likewise, involving civil society, local communities, authorities, and returnees in needs assessments, implementation, and monitoring of returns and creating conditions for safe and dignified returns and sustainable reintegration, including with development actors and financial institutions, are critical. The UN Network on Migration Position Paper and Checklist for Safe and Dignified Return and Sustainable Reintegration provides a 'package' to assist States and other stakeholders in operationalizing GCM objectives.¹⁹ However, challenges to facilitate and cooperate on safe and dignified returns and upholding international law obligations remain, including the absence of agreements with concerned countries of origin and resources needed for sustainable reintegration. It must be ensured that return and readmission processes involving children are carried out only after a determination of the best interests of the child.

SADC Member States highlighted (2022) that bilateral engagement is key in facilitating safe and dignified returns, in addition to providing support for reintegration. They also urged Member States to put in place strategies, policies and programs on assisted voluntary return and reintegration (AVRR); and encouraged them to coordinate with countries of origin to find durable solutions for safe and dignified returns, readmissions and sustainable reintegration.

¹⁸ <https://www.unicef.org/media/151371/file/Advocacy%20Brief:%20End%20Child%20Immigration%20Detention%20.pdf>

¹⁹ The Checklist presents a range of actions against which Governments and other stakeholders can assess whether their return and reintegration activities are consistent with the GCM and can draw on best practices. It is intended to be a practical resource for use across the stages of (i) Pre-Return, (ii) Return and (iii) Post-return and Reintegration.

One example under this objective is the Migration MPTF Joint Programme in Ethiopia,²⁰ which aims to support the federal government, Addis Ababa city administration and local organizations in providing reintegration support to returning migrants, focusing on the areas of health, housing, social protection, livelihoods and employment.

IV. Recommendations

1. Promote effective, evidence-based communication with communities at risk of embarking on dangerous journeys to help curb trafficking.
2. States should commit to avoid the criminalization of those being smuggled
3. As part of strengthening child protection systems, end the detention of children in the context of migration by i) adopting explicit legal prohibition of detention of children based on their legal or migratory status or that of their families, and ii) investing in child rights-based community and family-based alternative care arrangements, among other key actions.
4. Mainstream the issue of missing migrants into national migration governance frameworks and policies by strengthening national interagency collaboration.

²⁰ Jointly implemented with UN Habitat, WHO and ILO. M-MPTF funded. [Ethiopia: Innovative Approaches to Address Inclusion and Integration, Through Health and Economic Empowerment of Migrant Street Children and Youth in Addis Ababa | United Nations Network on Migration](#)