

## Beyond Borders: Migrants' and Refugees' Rights and Protection Under the Veil of International Law

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### Abstract

*Migration has always been a phenomenal instrument throughout human survival and development. Since the dawn of history, people have been moving from one place to another seeking for better good welfare, employment opportunities, peace, or re-uniting with loved ones. This article argues that, despite the existence of regional and international instruments on the rights and principles governing the migration regime, yet, violations against migrants' and refugees' rights still persist. The study method used is literature with comparative approach. The results of the study, shows that the host states' imposed discriminative legislation and a legal vacuum on punitive measures against violators of those principles contribute migration ordeal, and therefore, advocates for a strong regional and international coordination among the United Nations member states to develop long-term and viable solutions to enforce annulment of repressive migration laws, arbitrary detentions and forced deportations by the migrants-receiving states.*

**Keywords:** *Migrants, asylum seekers, refugees, arbitrary detention, deportation.*

### A. Introduction: Immigrants and Refugees under International Law

“Nowhere are the effects of insecurity more visible than in the lives of persons seeking international protection.”

Volker Turk, Assistant High Commissioner for Refugees, 2017.<sup>1</sup>

People have been migrating from one place to another, and even beyond territorial borders, in search of better social life, employment, and economic activities, family reunion, and education, as well as to avoid hunger, political unrest, and natural disasters, among other things. Countries with better social welfares and good political, climatic conditions have always been the hotspots of immigrants and refugees, Western European countries, the United States of America, and Canada. A surge of migrants, mostly from

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<sup>1</sup> “UNHCR - Open Briefing to United Nations Security Council Counter-Terrorism Committee,” accessed June 26, 2021, <https://www.unhcr.org/admin/dipstatements/58e35b317/open-briefing-united-nations-security-council-counter-terrorism-committee.html>.

war-torn Africa and Middle Eastern countries, has prompted some states to close borders or impose strict immigration legislation. The predicament of immigrants and refugees reflects harsh and devastating treatment by various countries. According to Lutz Philipp (2021), opines that “many refugee-receiving countries have restricted their asylum policies and stepped up their border control policies to prevent asylum seekers from reaching their countries.”<sup>2</sup>

Despite fleeing their home countries out of fear of persecution, migrants are frequently subjected to arbitrary detentions and mass deportations. For instance, the Italian and Libyan partnership accord on security cooperation, among other things, aims at interfering and intersecting migrants and refugees at sea or blocking the caravan across Africa to Europe. The accord contradicts article 16 of the Articles on the Liability of States for International Wrongful Acts<sup>3</sup>. It is right to conclude that Italy and Libya are liable for infringements of international laws against migrants and refugees, abuses of human rights, and non-compliance with international conventions.

Likewise, it is appalling that the unsettling and deplorable trend of host states’ authorities to detain and deport migrants without proper regard for their legal and fundamental human rights. The current candid remarks by Pope Francis that downplays “narrow self-interest and nationalism” together with national egoism and neglect of migrants by the European countries, as the “shipwreck of civilization”, puts more weight on the persisting migrants’ and refugees’ situation not only in Europe but globally, as well.

Different regional and international agreements contain specific articles that entrench the issue of migrants and their legal statuses and clearly define the essential criteria that host nations must fulfill for migrants and refugees, such as protection from human rights violations. Migrants and refugees usually comprise of people with varying legal and social statuses; for instance, there might be children who need special attention and care from their families, women with health issues, victims of human trafficking, smuggled persons, stateless persons, older people, and disabled ones among many others. Hence, the host states and the NGO’s are required to work shoulder to shoulder to make sure every necessary care concerning migrants and refugees is taken lest their basic human rights and dignity are violated.

Among the common treaties that champion protecting and promoting the rights of migrants, asylum seekers and refugees include the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, African Charter on the Rights and

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<sup>2</sup> “Pope Condemns Treatment of Migrants in Europe - BBC News,” accessed June 26, 2021, <https://www.bbc.com/news/world-europe-59538413>.

<sup>3</sup> United Nations, “Of States for Internationally Wrongful Acts,” n.d., [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

Welfare of the Child, Convention on the Elimination of All Forms of Discrimination against Women, International Labour Organization Migrant Workers Convention, 1975 (No. 143), African Union Convention Governing Specific Aspects of Refugee Problems in Africa, UN Convention on the Reduction of Statelessness, 1961, U.N. Convention on the Law of the Sea, International Convention on the Elimination of All Forms of Racial Discrimination, U.N. Convention relating to the Status of Refugees, 1951, 1967 Protocol, U.N. Convention relating to the Status of Stateless Persons, 1954, U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, U.N. Protocol against the Smuggling of Migrants by Land, Sea and Air, Universal Declaration of Human Rights and African Charter on Human and Peoples' Rights.

The International covenants play an important role in the observance of international obligations and protection of migrants and refugees as other fellow human beings from discrimination, arbitrary detention and deportation, forced labor, torture, slavery and inhumane treatment. Articles 5 and 9 of the Universal Declaration of Human Rights enshrine that:-

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

“No one shall be subjected to arbitrary arrest, detention or exile.”

The regional and international treaties also offer a handful of rights to migrants and refugees, such as freedom of movement, right to social security, family right, right to medical assistance, and in case of children's right to education. Increasingly, the African Charter on Human and People's Rights<sup>4</sup> Article 4 and 5 have a close if not similar to the Universal Declaration of Human Rights regarding human rights protection.

*“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”*

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”*

On the contrary, each country is free to exercise its sovereignty in creating immigration legal requirements, such as issuing passports, visas, residency and work permits, and other travel papers to facilitate lawful entry, exit, or stay in a country's territory. These legal requirements are enshrined in individual countries' national laws, such as immigration, citizenship, and refugee laws and regulations. Taking an example, section 15(1) of the Tanzanian Immigration Act, 1995, sets forth conditions of entry and residence in the country, including (a) having a valid passport and (b) being

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<sup>4</sup> See, the African Charter On Human and Peoples' Rights, art. 4&5.

the holder of or his name, is endorsed upon a residence permit issued under the provisions of this Act; or (c) being a holder of, or his name is endorsed upon, a pass issued under the provisions of this Act.

Immigrants, with exception to immigrant workers and those who move across borders for economic opportunities and the likes, often fail to furnish legal documents and other immigration legal requirements such as passports or national I.D.s before the immigration counters of the host states due to the circumstances surrounding their escapement from their countries. After interrogating immigrants and scrutinizing their documents, if any, the authorities of a receiving country usually categorize the immigrants based on their legal statuses and international immigration standards.

Refugees and asylum seekers enjoy different immigration and legal treatments compared to immigrant workers and others. In this situation, different international treaties will suit different categories of immigrants, based on their legal status, gender, vulnerability, mode of entry into the country, and circumstances surrounding such an entry et al.

It must not be confused that migrants and refugees have different legal interpretations and are entitled to different treatments based on international laws. For example, the 1951 Geneva Convention on protecting refugees, which bred the non-refoulment principle, absolutely excludes other migrants besides refugees and asylum seekers. The non-refoulment principle categorically puts aside those who flee their countries for other reasons than seeking protection from persecution in their home countries and, therefore, do not enjoy the international privilege as afforded by international law. However, the “International Covenant on Economic, Social and Cultural Rights of 1966, includes other types of migrants besides refugees and asylum seekers as rightfully candidates who are supposed to enjoy the international protection as underlined by the law.

The Covenant stipulates that “all people under the jurisdiction of the state concerned should enjoy covenant rights....that includes asylum seekers and refugees and other migrants, even when their situation in the country concerned is irregular”<sup>5</sup>.

Recent global events, including the Arab Spring, migrants crossing from Latin America into the United States of America, ongoing atrocities against the Rohingya Muslim communities in Myanmar, political instability in South Sudan and Northern Sudan, Ethiopia’s war against so-called Tigray separatists, the political impasse in Ukraine and Belarus, and the Taliban’s

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<sup>5</sup>United Nations, ““International Covenant On Economic, Social And Cultural Rights,” 1967, [https://treaties.un.org/doc/Treaties/1976/01/19760103\\_09-57PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103_09-57PM/Ch_IV_03.pdf).

recent government takeover have all had a negative impact and contributed to the increasing number of refugees and migrants globally.

The influx of immigrants and refugees into other nations has recently become an anathema, prompting the destination countries to establish strict immigration regulations and border control measures, such as arbitrary detention, to deter any potential entry of immigrants into their borders. Coutin. S, (2010) postulates that the securitization of immigration has led to increased reliance on border enforcement, detention, and deportation to control unauthorized movements. The crux of the matter on refugees and other immigrants is that host countries have a legal duty to protect and guarantee individuals' right to life ...within the states' territories.<sup>6</sup> As the Covenant stipulates, the host states are obliged to uphold the fundamental human rights of migrants and refugees while in the territories by granting migrants and refugees the freedom to enjoy economic, social, and cultural rights.

Psarra, C. and Cornish, S. eds., (2021). Opine that, "Repressive migration policies in Europe criminalise, humiliate, and punish refugees and people on the move, rather than uphold their rights under international law."<sup>7</sup> Due to the severe treatments that immigrants, asylum seekers, and refugees have been experiencing in some host countries, regional and international institutions have ratified different laws and conventions to mitigate immigrants' suffering and re-install hope, respect, and humanity. For example, Article 2 of the United Nations Universal Declaration of Human Rights (UDHR) 1948 provides that "everyone is entitled to all the rights and freedoms outlined in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or another status."

However, as mentioned earlier, Greece, together with other European countries, has neglected both regional and international principles on the protection and treatment of migrants and refugees on its soil. Recently, a score of refugees and immigrants from Syria, Yemen, Afghanistan, Sudan, and other war-torn countries have been arbitrarily kept in prison-like camps in the Greek island of Samos...<sup>8</sup>

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<sup>6</sup> Nicholson F and Kumin J, "The Obligation of States towards Refugees under the International Law: Some Reflections on the Situation in Lebanon", n.d.

<sup>7</sup> "Samos: Where Europe Lost Its Values and Moral Responsibility | Refugees | Al Jazeera," accessed June 30, 2021, <https://www.aljazeera.com/amp/opinions/2021/10/2/samos-where-europe-lost-its-values-and-moral-responsibility?s=09>.

<sup>8</sup> United Nations, "Universal Declaration of Human Rights | United Nations," accessed June 30, 2021, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

According to the United Nations Population Division, the number of “migrants globally stand at 280.6 million up to mid-2020”<sup>9</sup> with 82.4 million forcibly displaced people worldwide, 4.1 million are asylum-seekers 26.4 million are refugees. India, China, Russia, Mexico, and the Syrian Arab Republic have become the overall leading sending countries of immigrants globally, mainly to Europe and the United States of America. It is important to note that 85% of humanitarian immigrants fleeing countries ravaged by war and insecurities are often hosted in neighboring developing countries. Few have made it to rich capitalist countries, as indicated in the chart below.

The study will basically rely on national legislation, regional, international treaties, and data from journals, books, official government reports, and internet materials on immigration and refugees to respond to the problem in hand that corresponds to the host states’ non-compliance with international obligations on protection and promotion of migrants’ and refugees’ basic (human) rights and the execution of indefinite and arbitrary detentions and deportations as mechanisms that violate migrants and refugees’ basic rights as articulated by both regional and international covenants.

## **B. Discussion**

### **1. Detention of Migrants: A Challenge to International Legal Law**

According to UNHCR (1999)<sup>10</sup>. Detention refers “to the restriction of freedom or imprisonment in a closed location where an asylum seeker is not permitted to leave at his/her own will, and the detention may be within a short period or indefinite.” In a similar vein, Ioanna. K., (2016) reiterates that “the meticulously organized strategy to restrict the influx of immigrants and asylum-seekers in Europe through detention is on the rise.” Italy and Libya signed a security pact in 2008 entitled “the treaty of friendship, partnership, and cooperation,” as explained earlier. The pact reveals the necessity to curb the fluxes of immigrants en route to Italy via Libya through the border and intersecting at sea, ensuring Libya with financial and military support to meet such an objective.<sup>11</sup> The pact has faced criticisms from different regional and international players. The European Union and International Community

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<sup>9</sup> “Net Number of Migrants by Country, 1950-2020 (by F.. | Migrationpolicy.Org.” accessed June 30, 2021, <https://www.migrationpolicy.org/programs/data-hub/charts/net-number-migrants-country-1950-2020-five-year-intervals>.

<sup>9</sup> “Refworld | Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention,” accessed June 30, 2021, <https://www.refworld.org/docid/503489533b8.html>.

<sup>11</sup> “The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?,” accessed June 30, 2021, [https://www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/..](https://www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/)

have critically downplayed it, accusing it of overturning the Dublin III Convention, the Dublin II, the Geneva Conventions of 1951, and other humanitarian and immigration laws protecting immigrants and refugees.

In international law, people's liberty is among the noblest courses protected by almost all regional and international conventions. Hence, any attempt to limit or deprive someone's liberty must comply with national laws of the respected country (host state) and conform with international law as well. For example, the E.U. Charter of fundamental rights of the migrants explicitly propagates that any detention of immigrants must be under observance of a legal requirement that requires migrants to be notified of their detention's apparent reason as ordained by Article 5 Para.2, which outlines that "Everyone who is arrested shall be informed promptly, in a language of his understanding, and of the reasons for the arrest and any charge against him".<sup>12</sup>

On a similar account, article 9(1) of the International Covenant on Cultural and Political Rights (ICCPR)" articulates that "except for grounds and in line with the procedures laid down by law, no one shall be deprived of his liberty."<sup>13</sup> Hence, it becomes evident without a shred of doubt that depriving a person's liberty by mere racial and political prejudices is unconstitutional and considered a grave violation of international law. Should the authorities find it necessary to deprive migrants of their liberty, such action must be proportionate to sustain the positive goal; therefore, irregular entry alone is an insufficient justification for denying a person's freedom. On that end, detention must be the exception, not the rule, and therefore it must be a last resort and not an immediate step.

In essence, the fundamental objective here is to carefully underlay the relevant legal foundation to prevent the host states from unlawfully depriving immigrants of their freedom inconsistent with international laws. It is immensely significant; any detention of an immigrant or group of immigrants goes in tandem with the underlined 'United Nations Principles on the Protection of All Persons.'<sup>14</sup>

## **2. Detention of Migrants, Women and Children**

Children constitute about half the number of those who flee persecutions from their home countries. Therefore, it is of paramount significance to put forth special care by the host states that will speed up the

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<sup>10</sup> Echr - Cedh, "European Convention on Human Rights," accessed June 30, 2021, [www.conventions.coe.int](http://www.conventions.coe.int).

<sup>13</sup> "See "MULTILATERAL International Covenant on Civil and Political Rights," n.d., [https://treaties.un.org/doc/publication/unts/volume\\_999/volume-999-i-14668-english.pdf](https://treaties.un.org/doc/publication/unts/volume_999/volume-999-i-14668-english.pdf).

<sup>14</sup> "International Standards On Immigration Detention And Non-Custodial Measures" (International Migration Law Unit, n.d.), <https://www.ohchr.org>.

process of asylum applications for children. Likewise, whatever is in the best interests of children must urgently be well taken care of, and whatever is detrimental to children's welfare is avoided. Children often experience psychological trauma when exposed to physical hardships such as torture, discrimination, and forced detention. Segregating the children away from their family members and relatives can adversely impair their psychological development, upbringing, and human rights, causing severe and long-term emotional distress.<sup>15</sup>

In 2012, the United Nations Committee on the Rights of the Child passed a resolution, "right to liberty and alternatives to detention," of which Para.78 reads as "children, including adolescents, should not be subjected to arbitrary arrest or detention based solely on their migration status."<sup>16</sup>

Increasingly, the interests of a child are well protected by both regional and international Conventions, including the "International Convention on Cultural and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples among others." Article 37(b) of the International Convention on the Rights of the Child articulates that "

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*"<sup>17</sup>

Impliedly, authorities must use detention as the last possible option to avoid any physical and psychological implications against migrant children. According to the general comment by the Committee on the Rights of the Child of 2006, "Non-physical punishment that "belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child" is cruel and degrading and incompatible with the CRC."<sup>18</sup>

The most striking development in international migration law is European Union Regulation No 604/2013, of the European Parliament and

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<sup>15</sup> "OHCHR | The Rights of All Children in the Context of International Migration," accessed June 26, 2021, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2012.aspx>.

<sup>16</sup> "Third Committee Adopts Resolutions on Migrant Children and the Rights of Migrants – International Detention Coalition," accessed June 30, 2021, <https://idcoalition.org/news/third-committee-adopts-resolutions-on-migrant-children-and-the-rights-of-migrants/>.

<sup>17</sup> See "The United Nations Convention on the Rights of the Child, Article 37: "Torture and Deprivation of Liberty,"" n.d.

<sup>18</sup> "CRC General Comment on Corporal Punishment | CRIN," accessed June 26, 2021, <https://archive.crin.org/en/library/publications/crc-general-comment-corporal-punishment.html?infoID=8495>.

the Council, of which Articles 6 and 8 consecutively<sup>19</sup> lay down the basic principles on how the European member countries should engage and treat third-country nationals below 18 years (children). The regulation sets the basic rules and legal guarantees for how European countries can deal with migrants under 18 years who seek refuge alone or with their family members. Such treatment by the E.U. immigration guideline on immigrant children sets a good road map for other countries and regional blocks to adopt to protect the rights of immigrant children irrespective of their background or immigration status.

Similarly, women immigrants also need careful observation and treatment while in host states' custodianship. Furthermore, contrary to men, women encounter many problems while fleeing their homes, including sexual abuses, human trafficking, slavery, and other ill-treatments in host states. As a result, it is recommended that separate facilities be established to protect women from sexual assault in order to preserve personal privacy. The states' apparatus should guarantee safety and protection for women detainees against sexual violence while in custody. Medical and psychological services must be instantly and often available should the need arise with the focus of redressing sexual-related offenses against migrants.<sup>20</sup>

François Crépeau, the U.N. Special Rapporteur, in this account, opines that "whenever possible, migrant women who are suffering the effects of persecution or abuse, or who are pregnant or nursing infants, should not be detained."<sup>21</sup> Besides, if the female detainees cannot immediately be released from custody, the responsible authorities must develop alternative programs to ensure suppressive and derogating treatments are not used.

### **3. Prohibition of Arbitrary and Indefinite Detention of Migrants**

Grange and Majcher (2017) point out that "the imprisonment of migrants is not specifically forbidden"; however, any attempt to unlawfully deprive a human being of his natural freedom is considered as a violation of human rights and is prohibited under international law.<sup>22</sup>

The fear of indefinite detention is often exacerbated by inadequate detention conditions, including regular poor-quality health care, which in

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<sup>19</sup> The Regulation, "No 604/2013 of the European Parliament and of the Council Of," n.d., <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0604-20130629>.

<sup>20</sup> "Guidelines for Border Management and Detention Procedures Involving Migrant; A Public Health Perspective" (International Organization of Migration, n.d.), <https://eea.iom.int/publications/guidelines-border-management-and-detention-procedures-involving-migrants-public-health>.

<sup>21</sup> Ibid, p.6

<sup>22</sup> Mariette Grange and Izabella Majcher, "When Is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms," *SSRN Electronic Journal*, February 24, 2017, <https://doi.org/10.2139/SSRN.2923038>.

some cases contribute to the deaths of asylum seekers and the weakening of their physical and mental health. It is inhumane and in utter violation of regional and international laws to confine immigrants, asylum seekers, and refugees in prisons and be treated as criminals.

On a similar tune, confining asylum seekers with criminals who committed other crimes besides entering the countries through irregular means constitutes a gross violation of international principles on safeguarding the rights and dignity of asylum seekers fleeing persecution from their home countries. In 2015, at its 70<sup>th</sup> session, the United Nations adopted Resolution No. 2016, A/RES/70/147 on the security of migrants, of which paragraph 4(a) ‘invites all States to respect the human rights and inherent dignity of migrants, to put an end to arbitrary arrest and detention .....’<sup>23</sup>

In 2012, the Israel Knesset, on December, 10 passed amendments to the Anti-Infiltration Law. It is designed to brand migrants and asylum seekers who cross the border into Israel through irregular means as infiltrators and therefore severely deals with them. The report by Human Rights Watch said: *“Subjecting irregular border-crossers to potential indefinite detention without charge or access to legal representation would violate the prohibition against arbitrary detention under international human rights law.”*<sup>24</sup>

Despite Israel being the party to the Geneva Convention of 1951 on the protection of refugees and the 1967 protocol, yet it went on enacting a law that to many international law spectators find it to violate international norms over migrants and refugees in its territories and is not positively corresponding to international obligations on the treatment of migrants and refugees.

In order to meet the standard conditions of necessity and proportionality, international law requires all States to contemplate less suppressive means to detention; hence, detention must be in line with international laws lest the immigrants’ human rights are violated.

#### **4. Deportation of Migrants and Refugees Seeking Protection in the Host Countries**

Forced deportation of immigrants, refugees, and asylum seekers without justified recourse to the law are illegal. Such conduct is in flagrant violation of articles 31 para.1 and 2 of the “1951 Convention of refugees, which instituted the principle of non-refoulement. In addition, article 33 of the same the Convention forbids States from “expelling or returning a refugee, in any way whatsoever, to the boundaries of territories where, based

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<sup>23</sup> Undocsorg, “A/RES/70/147 - E - A/RES/70/147 -Desktop,” n.d., <https://undocs.org/en/A/RES/70/147>.

<sup>24</sup> Human Rights Watch, “Israel: Amend ‘Anti-Infiltration’ Law. Measure Denies Asylum Seekers Protections of Refugee Convention,” n.d.

on ethnicity, faith, nationality, membership of a specific social group or political union, his or her life or freedom may be endangered.”<sup>25</sup>

In addition, the African Charter on Human and People’s Rights’ approach on the protection of migrants is that immigrants, whether refugees, asylum seekers or other immigrants, categorically reject the host states’ attempts to detain immigrants unlawfully. Adding further, article 2 of the ACHPR articulates that “a member State shall subject no person to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, para.1 and 2.”<sup>26</sup>

More interestingly, though, the convention enrolls all “persons who left their countries of origin out of fear of persecution, foreign occupation, and external occupation fall under this convention.” On such a note, host States are de-jure deprived of exercising their sovereignty over immigrants that do not pose any immediate viable security threat against the state. Failure to do so will amount to grave violation of human rights and non-compliance with international principles on protecting immigrants and refugees.

To sum it all up, a deportation order shall be executed only based on a fair review of the individual cases of each person concerned and shall be taken into account the circumstances applicable to each case. Deportation of migrants from a host state’s jurisdictions back to the countries of origin may have adverse legal repercussions if carried out without resorting to law and assessing the security situation in those countries. The United States’ practices of interdiction, deportation, and strict measures that bar migrants from crossing the border from Latin American countries, the Haitians who enter the country by boat and derogatory remarks against migrants contravene the pillars of international law and the fundamental principles of humanity. The deportation of migrants, unless proven beyond reasonable doubt by a host state’s court with competent jurisdiction that a migrant does not qualify for the status of refugees, such deportation will violate international law.

On the other side, in the case of relevant and proven grounds by competent security apparatuses, such a migrant’s continued presence in a host state could jeopardize the country’s national security if the immigrant in question engages or is in contact with terrorism networks, posing imminent danger to the surrounding communities or the country in general. Engaging

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<sup>25</sup> "the 1951 Refugee Convention," n.d., <https://www.unhcr.org/1951-refugee-convention.html>.

<sup>26</sup> “UNHCR - Note on Non-Refoulement (Submitted by the High Commissioner),” accessed June 26, 2021, <https://www.unhcr.org/excom/scip/3ac68ccd10/note-non-refoulement-submitted-high-commissioner.html>.

in illicit activities, such as drug trafficking, prostitution, or human trafficking, other illicit activities, violates national and international laws may as well be the genuine grounds to disqualify immigrant's or refugees' status and hence make a high chance of deporting the applicant. Without the legitimate cause, arbitrary deportation will be illegal and is therefore prohibited in absolute terms by both regional and international conventions on the protection of immigrants' rights, including et al., article 22(9) of the "Americas Convention on Human Rights (ACHR)," "article 4 of Protocol No.4 to European Convention on Human Rights", "article 26 (2) of the Arab Charter on Human Rights and Article 12(5) of African Charter on Human and People's Rights (ACHPR)".

Similarly, according to article 13 of ICCPR and Article 1 of ECHR, unfold that expulsions of migrants are only permissible if:-

- I. "Any decision to deport the migrants must be according to the law based upon and compatible with substantive laid down provisions and procedural safeguards as set out by those laws."
- II. "The expulsion "must not be arbitrary in nature,"<sup>27</sup> and
- III. "The State is supposed to provide the reasons against the expulsion of a migrant,"<sup>28</sup>

#### **The Refugees, Countries of Origin and Host States**

S/N	Host state of refugees	Sending state of refugees	Number of Refugees
1	Turkey	Syria	3.4 Million
2	Jordan	Palestine	2.9 Million
3	Lebanon	Palestine & Syria	1.4 Million
4	Colombia	Venezuela, Haiti & Cuba	1.7 Million
5	Sudan	South Sudan, Somalia, Djibouti, Eritrea & Ethiopia	2.2 Million
6	Pakistan	Afghanistan	1.4 Million
7	Bangladesh	Myanmar	854,000
8	Iran	Pakistan, Bangladesh	979,000
9	Tanzania	Burundi, D.R.C	263,393

UNHCR, Global Trends, Forced Displacement in 2019, and UNHCR, Projected Resettlement Needs 2020.

<sup>27</sup> "The Case between Republic of Guinea v. Democratic Republic of the Congo | International Court of Justice," n.d., <https://www.icj-cij.org/en/case/103>.

<sup>28</sup> "OHCHR | International Convention on the Protection of the Rights of All Migrant Workers," accessed June 30, 2021, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

The article has found that non-compliance of regional and international obligations, resolutions and fundamental principles on migrants and refugees as the source of migrants and refugees crisis. Simultaneously, the absence of universally binding punitive measures against countries that enact discriminatory and repressive legislation and that violate or reject regional and international programs supporting and assisting migrants and refugees appears to be the legal vacuum that other countries enjoy, allowing them to ignore their legal obligations to comply with the backbone of today's migrants and refugees problems.

### **C. Conclusion: The Way Forward**

The issue of immigration and refugees needs special and close intervention by the international community to remediate the issue of migrants and refugees from the dangerous and painful ordeal that they continue to experience on daily basis. The regional integration blocks together with International community must act like a solid-cemented body to influence and promote compliance of the laid down international fundamental principles on migrants and refugees, by the host states.

Correspondingly, it is high time now that, the regional and international bodies develop strict, and strategic plans that will ensure host states, irrespective of their economic or political orientation, comply and adhere with the laid down principles that will see migrants and refugees free from arbitrary detentions and deportations, intimidations and abuses, as well as punishing countries that violate such obligations.

The author proposes that the regional and international communities, in collaboration with the United Nations, establish joint initiatives that will rectify and improve economic development support programs in developing countries worst affected by war, famine and other natural calamities as well as setting up legal and policy infrastructures that will help to promote peace and security, encouraging political tolerance and reconciliation, advancing democracy and the rule of law, and advocating social cohesion that cherishes and support diversity.

In addition, financial relief programs by the United Nations agencies and friendly nations, including soft loans from regional and international monetary institutions,, must assist the developing countries in subduing poverty and improving their people's economy and well-being. Such initiatives, therefore, will help countries overcome economic downfall, maintain peace in their jurisdictions, and help reduce the number of people who flee their home countries either for political or economic reasons.

Elsewhere, national and regional blocks must team up with a task force and risk assessments committees to investigate the repressive immigration policies and legal-humanitarian requirements of immigrants

confined in detention centers to protect immigrants' rights and reduce violations of their fundamental human rights and inhumane treatment.

Finally, the host countries that receive migrants and refugees may set up integration and citizenship schemes for migrants and refugees detained for a long time, and whose countries' political and security conditions are shadowed with uncertainty. With this scheme, migrants will be able to work and earn their living, integrate and assimilate the cultures of the particular societies.

## References

Cedh, Echr. "European Convention on Human Rights." Accessed June 26, 2021. [www.conventions.coe.int](http://www.conventions.coe.int).

"CRC General Comment on Corporal Punishment | CRIN." Accessed June 26, 2021. <https://archive.crin.org/en/library/publications/crc-general-comment-corporal-punishment.html?infoID=8495>.

F, Nicholson, and Kumin J. "The Obligation of States towards Refugees under the International Law: Some Reflections on the Situation in Lebanon", n.d.

Grange, Mariette, and Izabella Majcher. "When Is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms." *SSRN Electronic Journal*, February 24, 2017. <https://doi.org/10.2139/SSRN.2923038>.

"Guidelines for Border Management and Detention Procedures Involving Migrant; A Public Health Perspective". International Organization of Migration, n.d. <https://eea.iom.int/publications/guidelines-border-management-and-detention-procedures-involving-migrants-public-health>.

"International Standards On Immigration Detention And Non-Custodial Measures". International Migration Law Unit, n.d. <https://www.ohchr.org>.

Nations, United. "International Covenant On Economic, Social And Cultural Rights," 1967. [https://treaties.un.org/doc/Treaties/1976/01/19760103\\_09-57\\_PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103_09-57_PM/Ch_IV_03.pdf).

———. "Of States for Internationally Wrongful Acts", n.d. [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

"Net Number of Migrants by Country, 1950-2020 (by F.. |

- Migrationpolicy.Org.” Accessed June 26, 2021. <https://www.migrationpolicy.org/programs/data-hub/charts/net-number-migrants-country-1950-2020-five-year-intervals>.
- “OHCHR | International Convention on the Protection of the Rights of All Migrant Workers.” Accessed June 26, 2021. <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.
- “OHCHR | The Rights of All Children in the Context of International Migration.” Accessed June 26, 2021. <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2012.aspx>.
- “Pope Condemns Treatment of Migrants in Europe - BBC News.” Accessed June 26, 2021. <https://www.bbc.com/news/world-europe-59538413>.
- “Refworld | Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention.” Accessed June 26, 2021. <https://www.refworld.org/docid/503489533b8.html>.
- Regulation, The. “No 604/2013 of the European Parliament and of the Council Of,” n.d. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0604-20130629>.
- “Samos: Where Europe Lost Its Values and Moral Responsibility | Refugees | Al Jazeera.” Accessed June 26, 2021. <https://www.aljazeera.com/amp/opinions/2021/10/2/samos-where-europe-lost-its-values-and-moral-responsibility?s=09>.
- “MULTILATERAL International Covenant on Civil and Political Rights,” n.d. <https://treaties.un.org/doc/publication/unts/volume999/volume-999-i-14668-english.pdf>.
- “The 1951 Refugee Convention,” n.d. <https://www.unhcr.org/1951-refugee-convention.html>.
- “The Case between Republic of Guinea v. Democratic Republic of the Congo | International Court of Justice,” n.d. <https://www.icj-cij.org/en/case/103>.
- “The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?” Accessed June 26, 2021. <https://www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/>.
- “The United Nations Convention on the Rights of the Child, Article 37: ‘Torture and Deprivation of Liberty,’” n.d.

- “Third Committee Adopts Resolutions on Migrant Children and the Rights of Migrants – International Detention Coalition.” Accessed June 26, 2021. <https://idcoalition.org/news/third-committee-adopts-resolutions-on-migrant-children-and-the-rights-of-migrants/>.
- Undocsorg. “A/RES/70/147 - E - A/RES/70/147 -Desktop,” n.d. <https://undocs.org/en/A/RES/70/147>.
- “UNHCR - Note on Non-Refoulement (Submitted by the High Commissioner).” Accessed June 26, 2021. <https://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>.
- “UNHCR - Open Briefing to United Nations Security Council Counter-Terrorism Committee.” Accessed June 26, 2021. <https://www.unhcr.org/admin/dipstatements/58e35b317/open-briefing-united-nations-security-council-counter-terrorism-committee.html>.
- “Universal Declaration of Human Rights | United Nations.” Accessed June 26, 2021. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- Watch, Human Rights. “Israel: Amend ‘Anti-Infiltration’ Law. Measure Denies Asylum Seekers Protections of Refugee Convention,” n.d.