



LAWYERS FOR  
HUMAN RIGHTS

JOINT SUBMISSION TO THE UNITED NATIONS  
COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION

107<sup>TH</sup> SESSION (8 - 30 AUGUST 2022)

**ZIMBABWE**  
ISSUES RELATED TO IMMIGRATION DETENTION

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*Joint submission from:*

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## **ABOUT THE GLOBAL DETENTION PROJECT**

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

## **ABOUT LAWYERS FOR HUMAN RIGHTS**

Lawyers for Human Rights (LHR) is an independent, non-profit human rights organization, started by a group of activist lawyers in 1979 and located in South Africa. LHR's programs undertake strategic work in six areas of human rights law, including a key focus on refugee and migrant rights, including immigration detention. LHR employs a holistic approach to social justice and human rights enforcement that includes strategic litigation, advocacy, law reform, human rights education, and community mobilization and support.

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## **1. INTRODUCTION**

This submission has been prepared by the Global Detention Project (GDP) and Lawyers for Human Rights (LHR) for consideration by the Committee on the Elimination of all Forms of Racial Discrimination (CERD) at its 107<sup>th</sup> session where it will consider Zimbabwe's state report as part of the 5<sup>th</sup> -11<sup>th</sup> periodic review of Zimbabwe under the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).<sup>1</sup>

This submission focuses on human rights concerns relating to Zimbabwe's immigration enforcement policies and practices, with a focus on detention and the treatment of at-risk groups. It is based in large measure on research undertaken by LHR and builds on recommendations issued to Zimbabwe during its review before the Working Group on the Universal Periodic Review (UPR) in 2022.

## **2. RELEVANT ICERD OBLIGATIONS**

This submission focuses on the discriminatory treatment and detention of non-citizens (migrants, refugees, and asylum seekers) in Zimbabwe, on the basis of their race, colour, nationality, and/ or ethnic origin, in the context of Zimbabwe's obligations under the ICERD and the General Recommendations of the CERD.

Zimbabwe acceded to the ICERD on 13 May 1991.<sup>2</sup> Pursuant to Article 5 of the ICERD, State Parties to the ICERD undertake to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" in order to enjoy the rights listed therein, including the "right to freedom of movement and residence within the border of the State"<sup>3</sup> and "the right to leave any country, including one's own, and to return to one's country."<sup>4</sup>

CERD General recommendation No.22 "Article 5 and refugees and displaced persons,"<sup>5</sup> emphasises that in respect of State Parties' obligations in terms of Article 5:

"(a)All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;

(b) State parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;"<sup>6</sup>

CERD General Recommendation No. 30 on Discrimination Against Non-Citizens<sup>7</sup> also makes certain recommendations to State Parties to the ICERD as they relate to non-citizens, including a recommendation to "ensure the security of non-citizens, in particular with regard

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<sup>1</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, (ICERD) available at: <https://www.refworld.org/docid/3ae6b3940.html> [accessed 1 July 2022].

<sup>2</sup> [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=195&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=195&Lang=EN)

<sup>3</sup> Article 5(d)(i).

<sup>4</sup> Article 5(d)(ii).

<sup>5</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 22: Article 5 and refugees and displaced persons*, 24 August 1996, available at: <https://www.refworld.org/docid/4a54bc340.html> [accessed 1 July 2022]

<sup>6</sup> Paragraph 2 of General Recommendation No. 22.

<sup>7</sup> UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non Citizens, 5 August 2004, available at: <https://www.refworld.org/docid/45139e084.html> [accessed 2 July 2022]

to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards.”<sup>8</sup>

The severe limits on freedom of movement and association imposed on non-citizens in Zimbabwe prevents them from making a meaningful contribution to the socio-economic development of their host country. This is a critical because as per Article 5 of the CERD state parties must eliminate racial discrimination in all its forms and guarantee the enjoyment of key rights, most notably:

- (i) The right to freedom of movement and residence within the border of the State;<sup>9</sup> and Economic, social and cultural rights, in particular: the rights to work, to free choice of employment, to protection against unemployment etc.<sup>10</sup>

### 3. DOMESTIC LAWS AND REGULATIONS

#### 3.1. The Constitution of Zimbabwe

The Constitution<sup>11</sup> is the supreme law in Zimbabwe. Generally, the rights afforded under the Constitution are afforded to every person in Zimbabwe. Section 56 of the Constitution is the clause governing equality and discrimination. In terms of section 56(1) of the Constitution “[all] persons are equal before the law and have the right to equal protection and benefit of the law.” Section 56(3) provides:

“Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, Race, Colour, Tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.”

Section 56(4) specifies what a discriminatory manner is under section 56(3) and section 56(4) and 56(5) provides for instances where the discrimination might not be unfair.<sup>12</sup>

However, it must be noted that there are some specific rights that are only afforded to Zimbabwean citizens. These rights include the rights to move freely within Zimbabwe, reside in any part of Zimbabwe; and leave Zimbabwe,<sup>13</sup> the right to education and the right to health care.<sup>14</sup> This is contrary to the general non-discrimination principles underscored in the ICERD and specifically to Article 5 which provides for equal rights without discrimination, including rights to freedom of movement, health care and education; and General Comment No. 30 which stipulates that health and education should be provided without discrimination

Owing to the country’s strict citizenship laws and citizen transmission requirements, the rights protected in Article 5 of the ICERD hold protection for stateless citizens in Zimbabwe and their socio-economic welfare in the country too. Longstanding migrant labourers from Mozambique, Malawi, and Zambia whose families have lived in Zimbabwe for generations remained blocked from accessing identity documents that allow them to access social and welfare services.<sup>15</sup> The Zimbabwean Birth and Death Registration Act also fails to

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<sup>8</sup> Article 19 of CERD General Recommendation 30.

<sup>9</sup> Article 5 (i).

<sup>10</sup> Article 5 (e)(i).

<sup>11</sup> Ibid.

<sup>12</sup> The Prevention of Discrimination Act [Chapter 8:16] of 1998 gives effect to section 56 of the Constitution. This Act sets out the prohibitions against discrimination and also defences to such prohibitions.

<sup>13</sup> Section 75 of the Constitution.

<sup>14</sup> Section 76 of the Constitution.

<sup>15</sup> US Department of State, ‘Annual Report on Human Rights 2021: Zimbabwe’, 2022, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/zimbabwe/>, accessed on 08 July 2022.

accommodate children born in the diaspora and outside a health facility to Zimbabweans who are either illegal or unregistered illegal migrants.<sup>16</sup> Article 5 (d)(iii) protects the right to nationality and the discriminatory practices around citizenship in Zimbabwe often prevent persons born in the country from registering for citizenship when they have foreign relatives, fostering discrimination based on their native origin. Newborn children with migrant parents/relatives are deprived of a birth certificate, which limits the child's ability to acquire identity documents or enroll in school. This constitutes a direct violation of Article 5(e)(v).<sup>17</sup> This must also be seen against the backdrop of Section 4, article 16 of General Comment 30 which further highlights States Parties' obligations with respect to protection and access to citizenship and provides that they must:

"Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children."<sup>18</sup>

### 3.2. The Immigration Act and the Refugees Act

The key provisions regulating administrative immigration-related detention in Zimbabwe are provided in the Immigration Act [Chapter 4:02] of 1979 (Immigration Act), the Refugees Act [4:03] of 1978 (Refugees Act), and the Immigration Regulations of 1998 (SI 195/1998).

Section 9 of the Immigration Act of 1979 provides that "a person may be detained in terms of section eight in a prison, police cell or other convenient place." Section 8 provides that "an immigration officer may arrest any person whom he suspects on reasonable grounds to have entered or to be in Zimbabwe in contravention of this Act and may detain such a person for such reasonable period, not exceeding fourteen days, as may be required for the purpose of making inquiries as to such person's identity, antecedents and national status and any other factor relevant to the question of whether such person is a prohibited person." In addition, Section 8(2) provides that "an immigration officer may:

- (a) subject to subsection (3), remove or cause to be removed from Zimbabwe any prohibited person; and
- (b) pending the completion of arrangements for the removal of a person in terms of paragraph (a) and such removal, subject to section nine, detain that person."

The Immigration Act also provides for penalties for entering Zimbabwe at any place other than a port of entry (Section 11(5)) and also for leaving Zimbabwe at any place other than a port of exit (Section 24 (4). Any person who contravenes Section 11(1) and (3) and Section 24(1) and (2), may be found guilty of an offence and liable to a fine or to imprisonment for a period not exceeding one year—or to both such fine and such imprisonment.

Law enforcement must ensure that within the administration of justice, they adhere to the recommendations in Section V of General Comment No 30 of CERD, whereby state parties must ensure that non-citizens that are detained are properly protected in domestic law and that it complies with international human rights, refugee, and humanitarian law. Furthermore, in the expulsion and deportation of non-citizens, state parties hold an obligation under Section VI, article 25, to "ensure that laws concerning deportation or other form of removal of noncitizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies."<sup>19</sup>

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<sup>16</sup> Section 10 Zimbabwean Births and Deaths Registration Act,

<sup>17</sup> Ibid.

<sup>18</sup> Article 16 of the CERD General Comments No 30.

<sup>19</sup> General Comment No 30 of ICERD.

## 4. TREATMENT OF REFUGEES, ASYLUM SEEKERS, AND MIGRANTS IN ZIMBABWE

**4.1 Migration-Related Detention:** While the detention of Zimbabweans in South Africa has long received critical attention both locally and internationally,<sup>20</sup> much less attention has been placed on Zimbabwe's efforts to control and block migrants, refugees, and asylum seekers, seeking passage across their territory to South Africa.<sup>21</sup> However, the GDP has received reports dating back to 2010 about Congolese migrants being detained for periods exceeding three months in Zimbabwe as they sought to cross the country.<sup>22</sup> More recently, there have been numerous reports of forced returns of refugees, in violation of Zimbabwe's international *non-refoulement* obligations, as well as of refugees and migrants having limited freedom of movement and lack of equal access to means of income and other social institutions in the country.<sup>23</sup>

Zimbabwe has long been an important source and transit country for migrants heading to South Africa.<sup>24</sup> Many migrants and refugees have also settled in the country owing to lax immigration controls and difficulties continuing their journeys to their chosen destination.<sup>25</sup> According to the UNHCR, in May 2022 there were 12,754 asylum-seekers and 9,880 refugees in Zimbabwe. Seventy-four percent were from the Democratic Republic of Congo (DRC), eleven percent from Mozambique, six percent from Burundi, five percent from Rwanda, and four percent were of other nationalities.<sup>26</sup>

Refugees are mainly housed in the Tongogara Refugee Camp located near Chipinge, however there are also refugees living in urban areas.<sup>27</sup> UNHCR statistics indicate that by the end of September 2021, the Tongaara refugee camp hosted a total of 15,210 asylum seekers and refugees; 7,120 women and 8,090 men.

Under its refugee and immigration laws, no person admitted to Zimbabwe as a refugee is permitted to leave an area designated for refugee residence unless authorised to do so in writing by an officer in charge of that centre. Accordingly, the majority of refugees in Zimbabwe are confined to the Tongogara camp. In 2018, Zimbabwe's Parliamentary Portfolio Committee on Public Service, Labour and Social Welfare stated that Zimbabwe had shifted towards a graduation approach in refugee policy and affairs whereby refugees "have to be self-sustainable" and under provisions of the Refugee Act, refugees domiciled in Zimbabwe enjoy the right to engage in economic activities and movement. However, studies indicate that while refugees can undertake economic activities, their movement remains restricted as the relevant legislation has not been changed or adjusted to reflect this in reality. Access to the outside world in terms of financial services and interpersonal relations of various kinds remains constricted.<sup>28</sup>

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<sup>20</sup> See, for instance, Global Detention Project, "Stricter Control of Administrative Detention, Increasing Criminal Enforcement Of Migration," June 2021, <https://www.globaldetentionproject.org/immigration-detention-in-south-africa-stricter-control-of-administrative-detention-increasing-criminal-enforcement-of-migration>

<sup>21</sup> Global Detention Project and Lawyers for Human Rights, Joint Submission to the Universal Periodic Review: Zimbabwe, July 2021, available at:

<https://www.globaldetentionproject.org/joint-submission-to-the-universal-periodic-review-zimbabwe> [accessed 23 June 2022].

<sup>22</sup> Corey R. Johnson (Scalabrini Centre of Cape Town), Email Correspondence with Michael Flynn (Global Detention Project/Graduate Institute of International and Development Studies), August 2013-March 2014.

<sup>23</sup> Raymond Taruvinga, Dorothee Holscher & Antoinnette Lombard, 'A critical ethics of care perspective on refugee income generation: Towards sustainable policy and practice in Zimbabwe's Tongaara Camp', *Ethics and Social Welfare* (2021).

<sup>24</sup> Marko Phiri, Zimbabwe a transit site for migrants, *Mail and Guardian*, 7 May 2022, available at <https://mg.co.za/africa/2022-05-07-zimbabwe-a-transit-site-for-migrants/> [accessed 1 July 2022].

<sup>25</sup> Ibid.

<sup>26</sup> UN High Commission for Refugees, Zimbabwe Operational Update: May 2022, available at <https://reliefweb.int/report/zimbabwe/zimbabwe-unhcr-monthly-operational-update-may-2022> [accessed 1 July 2022].

<sup>27</sup> Phiri (note 2 above).

<sup>28</sup> Supra note 14.



While refugees in Zimbabwe are housed in the Tongarara Refugee Camp, there do not appear to be any facilities or places for accommodating undocumented migrants in Zimbabwe. When undocumented migrants, including minors, are apprehended by the Zimbabwean law enforcement officials, they often end up in remand detention facilities and are detained for unlawful entry into the country.<sup>29</sup> The Zimbabwean government lacks the resources to send people back to their countries of origin and has not developed non-custodial measures for people in return procedures.<sup>30</sup>

Holding refugees and migrants in criminal facilities may be in contravention of Article 19 of General Comment No. 30 of the CERD as these are not appropriate conditions for administrative detention and don't meet international standards on immigration detention. It is also worth recalling in this respect the UN Working Group on Arbitrary Detention's Revised Deliberation No. 5 on the deprivation of liberty of migrants (2018), which states that migration infractions must not be subject to criminal penalties and calls for the prohibition of the detention of refugees, asylum seekers, and children, including unaccompanied or separated children.<sup>31</sup>

In 2021, Zimbabwe had a prison population of 20,407; but it is unclear what portion of that are non-citizens of Zimbabwe. In 2017, it was reported that 1.9 percent of the then prison population were non-citizens or migrants.<sup>32</sup> However, there is a lack of information on the current prison population at the time of this submission, and a further lack of information on the percentage of that population that are imprisoned for migration-related offences. In an article from February 2020, it was reported that there were 96 migrants in custody at the Harare Remand Prison.<sup>33</sup>

**4.2 Forced Removals:** In August 2021, the Zimbabwean government forcibly removed approximately 80 Congolese refugees from the Tongogara Refugee Camp after accusing them of various crimes, including looting a food supply warehouse in the camp, and placed them in detention in Harare. The government subsequently forcibly returned approximately 70 of the refugees to the DRC.<sup>34</sup> The DRC authorities rejected approximately 15 of the refugees and the Zimbabwean government thereafter placed them in detention facilities in Harare.<sup>35</sup>

The collective removal of the Congolese refugees violates articles 26, 27 and 28 of the CERD General Comment No. 30 regarding *non-refoulement*. Without fair judicial process or regard for the personal circumstances of each refugee, there is insufficient guarantee that they would not be returned to harm in their country or origin or that their right to family life would be protected.

**4.3 Conditions in detention:** Conditions in prisons in Zimbabwe are reportedly harsh.<sup>36</sup> Prisons are overcrowded, with a population of over 22 000 in 2021, while prisons at that time only had a capacity for 17 000.<sup>37</sup> There are also reports that the Zimbabwean Prison and Correctional Services did not provide adequate food, water, sanitary conditions, or

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<sup>29</sup> UN International Organisation for Migration, IOM Facilitates the Safe and Dignified Return of 100 Vulnerable Malawian Migrants Stranded in Zimbabwe, 27 May 2020, available at <https://zimbabwe.iom.int/news/iom-facilitates-safe-and-dignified-return-100-vulnerable-malawian-migrants-stranded-zimbabwe> [accessed 30 June 2022].

<sup>30</sup> Linda Mujuru and Evidence Chenjerai, 'As Zimbabwe Struggles With Finances, Undocumented Migrants Languish in Prison', Global Press Journal, 2 February 2020 <https://globalpressjournal.com/africa/zimbabwe/cash-strapped-zimbabwe-struggles-detain-deport-undocumented-migrants-languish-prison> [accessed 1 July 2022].

<sup>31</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/196/69/PDF/G1819669.pdf?OpenElement>

<sup>32</sup> World Prison Brief, Zimbabwe, available at <https://www.prisonstudies.org/country/zimbabwe> [accessed 2 July 2022].

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Roselyn Hanzi, interview by author, July 4 2022.

<sup>37</sup> Human Rights Watch, World Report 2021 Country Chapter Zimbabwe, available at <https://www.hrw.org/world-report/2021/country-chapters/zimbabwe#db5f1d> (accessed 1 July 2022).

personal protective equipment during the COVID-19 pandemic.<sup>38</sup> Incarcerated persons did not have access to warm clothing and blankets.

During the COVID-19 pandemic, the Zimbabwean government released a number of prisoners under a special amnesty order to reduce overcrowding in the prisons. It is unclear whether those released included persons imprisoned for immigration-related offences.

**4.4 Women:** Undocumented female migrants are at risk of robbery, sexual violence, sexual harassment and rape, and physical, psychological and emotional abuse regardless of whether they are detained for migration-related offences or not.<sup>39</sup> It is important to highlight the intersectional adversities that affect migrants and may be prejudicial towards them, based on their gender, race, and/ or ethnicity. Article 8 of General Comment No 30 illustrates this by stating that state parties, such as Zimbabwe, must pay “greater attention to the issue of multiple discrimination faced by non-citizens”.

The conditions of detention in Zimbabwe contravene article 36 of the CERD General Comment No 30 on equal access to adequate physical and mental health care for non-citizens. In a study undertaken based on interviews with female undocumented migrants at the Plumtree Border Post in Zimbabwe, participants shared that when they were caught and placed in detention centres or holding cells at the borders, they were susceptible to a number of health vulnerabilities, including: lack of access to sexual and reproductive health services such as sanitary wear and bathing facilities; lack of access to baby care supplies for women with babies; and lack of access to medication for chronic conditions.<sup>40</sup> Although the women interviewed were deported to Zimbabwe from Botswana, their experiences related to the transit experience in its entirety.

Against this backdrop, it is worth noting the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) in 2020 that Zimbabwe:

“Promote the use of alternatives to detention, especially for pregnant women, mothers of young children and women heads of household, improve the conditions in female detention facilities in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and enhance the measures to protect women in detention from gender-based violence, including through regular monitoring and independent and confidential complaint mechanisms.”<sup>41</sup>

**4.5 Children:** As noted above, because of the lack of immigration detention facilities and the lack of alternatives to detention, child migrants are often imprisoned with adults. In this regard, the 2016 recommendations of the Committee on the Rights of the Child (CRC) in relation to the administration of juvenile justice bear noting, specifically that Zimbabwe:

“(f) Continue the Pretrial Diversion Programme and ensure that children have access to alternative disciplinary measures to deprivation of liberty, such as probation, mediation, counselling or community service, and ensure that detention is used as a last resort;

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<sup>38</sup> United States Department of State (note 13 above).

<sup>39</sup> Tsitsi Matose, Gracious Maviza, Wilfred Njabulo Nunu, Pervasive irregular migration and the vulnerabilities of irregular female migrants at Plumtree border post in Zimbabwe, *Journal of Migration and Health*, Volume 5, 2022, <https://www.sciencedirect.com/science/article/pii/S2666623522000149> [accessed 1 July 2022].

<sup>40</sup> Ibid.

<sup>41</sup> UN Committee on the Elimination of Discrimination Against Women, “Concluding Observations on the Sixth Periodic Report of Zimbabwe,” CEDAW/C/ZWE/CO/6, 10 March 2020, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fZWE%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fZWE%2fCO%2f6&Lang=en) [accessed 29 June 2022.]



- (g) Establish child-sensitive complaint mechanisms regarding ill-treatment and torture of children in police custody and detention;
- (h) Ensure the independent monitoring of places where children are deprived of their liberty.”<sup>42</sup>

This must further be examined against the backdrop of the Committee on the Protection of Migrant Workers and Members of their Families (CMW) and the Committee on the Rights of the Child (CRC) Joint General Comments No. 4 and No 23 (2017) on the right to liberty for migrant children which makes the following recommendations:

- Every child, at all times, has a fundamental right to liberty and freedom from immigration detention. The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents’ migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.<sup>43</sup>
- In addition, both the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have emphasized that children should not be criminalized or subject to punitive measures, such as detention, because of their or their parents’ migration status.<sup>44</sup>
- Child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice.<sup>45</sup>

## 5. PREVIOUS CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The CERD considered the combined second, third, and fourth periodic reports of Zimbabwe, held on 7 and 8 March 2000 and made certain concluding observations following this.<sup>46</sup> Some of the relevant observations include:

- ***The CERD noted with dissatisfaction that the laws concerning citizenship give preference to non-national female spouses over non-national male spouses of nationals of Zimbabwe and that the children born to citizens of Zimbabwe overseas may not acquire citizenship. The CERD recommended that Zimbabwe review its citizenship laws to ensure non-discrimination.*** As noted above, Zimbabwe’s citizenship laws still hold discriminatory practices in the acquisition of citizenship for non-nationals.
- ***The CERD noted with concern the insufficient information provided on the situation of refugees, migrants and non-nationals residing in Zimbabwe.*** This is still evident today as information, including statistics, is still not freely available regarding the possible discrimination and ill-treatment of migrants by law enforcement, as well as the socio-economic situation and access to welfare for migrants in the country. Information about migrants being held in immigration detention, including in prisons, is still incomplete.

<sup>42</sup> UN Committee on the Rights of the Child, “Concluding Observations on the Second Periodic Report of Zimbabwe, 7 March 2016, CRC/C/ZWE/CO/2, available at <https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/044/47/PDF/G1604447.pdf?OpenElement> [accessed 2 July 2022]

<sup>43</sup> Committee on the Protection Migrant Workers and Members of their Families and the Committee on the Rights of the Child Joint General Comments (2017) at article 7.

<sup>44</sup> Ibid at article 7.

<sup>45</sup> Ibid at article 12.

<sup>46</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Zimbabwe*, 19 April 2000, CERD/C/304/Add.92, available at: <https://www.refworld.org/docid/3ae6af8210.html> [accessed 11 July 2022].

## 6. RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW OF ZIMBABWE

During the third cycle of the Universal Periodic Review of Zimbabwe in January 2022, a number of recommendations were made to Zimbabwe.<sup>47</sup> The following noteworthy recommendations are highlighted below:

- Zimbabwe supported the recommendation to redouble efforts to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and without delay address complaints about overcrowding and poor conditions in places of detention, including pretrial detention centres;
- Zimbabwe promised to examine the recommendation that it ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance; and
- Zimbabwe noted the recommendation to address overcrowding and poor material conditions in places of detention and separate juveniles from adults.

## 7. RECOMMENDATIONS

Based on the above, the following issues have been highlighted as areas for concern that the CERD should consider when making recommendations to Zimbabwe:

- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance;
- Implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and without delay address complaints about overcrowding and poor conditions in places of detention, including pretrial detention centres and in facilities where migrants are detained.
- Provide human rights training for all law enforcement officials, police officers, and prison officials to ensure that instances of violence or ill-treatment towards migrants is prevented, and that perpetrators of such violence are investigated.
- Provide public access to regularly updated statistics concerning migration-related detention procedures and deportations, including disaggregated information broken down according to gender, age, and reason for detention and/or removal.
- Provide detailed information on where—and in what conditions—refugees and migrants are detained for reasons related to their nationality, or asylum, refugee or residence status.
- Provide annual statistics on the numbers of non-citizens who have been prosecuted for immigration-related offences and the grounds for criminal prosecution.
- Release detainees whose detention is unlawful or unnecessary.
- Ensure that child migrants, refugees, and asylum seekers are not placed in detention and instead provide proper care and assistance, in line with the recommendations of the CRC and the CMW.<sup>48</sup>

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<sup>47</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review : Zimbabwe, 5 April 2022, A/HRC/50/9, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/301/62/PDF/G2230162.pdf?OpenElement> [accessed 4 July 2022].

<sup>48</sup> Committee on the Protection Migrant Workers and Members of their Families and the Committee on the Rights of the Child Joint General Comments (2017) No 3 & 4.

- Ensure that all detention sites and sites used to accommodate refugees, asylum seekers, migrants, and stateless persons are adequately equipped with food and sanitation supplies.
- Ensure that the practice of arbitrary detention is ended and furthermore, that the conditions of detention facilities that asylum seekers and refugees are placed in meet international standards.
- Ensure that migrants and asylum seekers that have not committed a criminal offence or crime are held separately from convicted criminals in carceral detention.
- Provide information about whether vulnerability assessments are made in advance of placing an individual, especially women and children, in migration-related detention.
- Ensure that there is an end towards discrimination against migrant women, including in immigration detention, and take measures to protect migrant women against sexual violence, abuse, and ill-treatment; bring perpetrators of such violence, including police, prison, and other law enforcement officials to justice.
- Provide additional information on the situation of refugees, migrants, and non-nationals residing in Zimbabwe as well as the relevant legislative measures available to ensure the protection of their rights, in line with recommendations made by the CERD in its 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> periodic review of Zimbabwe in March 2000.