

REPORT ON MOROCCO'S IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES –EXECUTIVE SUMMARY

This joint report, prepared under the coordination of GADEM by a group of associations¹, presents the result of several years of capitalizing on the situation of migrants in transit or residing in the Moroccan territory.

Since the end of the year 2011, the submitting organizations note an important outbreak of violence, especially the institutional, against Sub-Saharan migrants in the major cities of the country and particularly in the North. They worry about the risk of deterioration of this situation due to the exclusively security-orientated approach of migration policies, particularly in the context of Morocco European Union and its members States collaboration to fight against illegal immigration. This report illustrates the lack of the effectiveness in practice of certain fundamental guarantees provided by the Convention. In detail, those are relating to the right to life, security, work, education or health, effective remedy, fair trial and wider access to justice, especially when it comes to those who are in irregular administrative situation.

1. General Principles

- **Articles 1 and 7: Institutional discrimination based on complexion and origin, characterized in particular by the increase in facial identity controls and arrests, specifically targeting Sub-Saharan migrants.**

In 2012 and 2013, the submitting organizations noted a rise in raids of Sub-Saharan migrants that are akin to real roundups. These often violent arrests are accompanied by other violations, especially the seizure of personal effects by the police force, home invasions and collective deportations to the Algerian border of migrants, including those protected by law. A week before the publication of this report, a national Congolese residing regularly in Morocco since several years was killed as a result of the brutality of the police during a raid conducted in the area of Boukhalef, Tangiers.

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This highly unfavorable to the integration of Sub-Saharan migrants original context is compounded by strong stigma that they are subjected to and makes especially difficult for many of them to access housing or, more serious, to the effectiveness of their right to security.

- **Article 84: Provisions of national law incompatible with the Convention.**

This report lists the provisions of Act 02-03 on the entry and stay of foreigners in the Kingdom of Morocco, illegal emigration and immigration, of the Labour Code and the Family Code inconsistent with the Convention, in particular its articles 12.2, 16, 19, 44.2, 52.3.b and 56.

2. Rights of All Migrant workers

- **Article 8: Impediments to the right to return to his country and to leave any country.**

Act 02-03 reserves the right to freely leave Moroccan territory only to legal immigrants and creates an offense of illegal immigration, in contradiction with the provisions of the Article 8 of the Convention. It is also common for airport authorities, especially in Casablanca and Tangiers to retain transit migrants outside any legal framework, preventing them from continuing their journey to the destination State.

- **Articles 9 and 10: Institutional violence against migrants, including the most vulnerable, that can lead to death.**

Throughout the year 2012 and until the publication of this report, police violence to Sub-Saharan migrants, have experienced a significant increase and are characterized by a magnitude and seriousness of the abuses that recall the dark years following the events at the fences of Ceuta and Melilla in 2005. This violence is specifically marked in the North but equally observed in the major cities of the country, especially Rabat. Several Sub-Saharan migrants died of the police violence in 2013 alone, and until now, no investigation has been opened.

- **Article 11: Insufficient protection of migrants employed as domestic workers and subjected to abusive working conditions.**

ODT and GADEM followed numerous cases of nationals Filipino, Senegalese, Ivory Coast and Congolese in particular, subjected to inhumane working conditions. They are often victims of identity documents confiscation, withholding of wages and other abuses from their employers. A bill is under consideration but does not provide all the required guarantees to ensure the effective protection of victims.

- **Articles 12, 13 and 26: restrictions on the freedom of conscience and religion, pressures against migrants involved in associations.**

The Moroccan Family Code imposes the conversion to Islam of men wishing to marry a Moroccan. It also contains discriminatory provisions for non-Muslim spouses that are inconsistent with Article 12 of the Convention.

The submitting organizations are aware of the persistence of practices designed to intimidate or interfere with the action of migrants engaged in associations to defend their interests.

- **Article 14: Legal impediments to mixed marriages, home invasions and lack of mechanisms for effective sanctions needed to put an end to political and media discourses stigmatizing in particular sub-Saharan migrants.**

Home invasions are very common during mass arrests. The police forces intervene late night or at dawn, and in many cases force the doors of houses, exposing inhabitants to looting and ransacking of their homes.

Interferences in the private and family life are illustrated by the difficulties in entering into a mixed marriage, especially when one spouse is in irregular administrative situation.

Eventually, attacks on honor and reputation can be particularly violent in the political and media discourses stigmatizing migrants, especially those of Sub-Saharan origin and create a climate of hostility towards them. The report's authors are particularly concerned by the increase in racially-motivated attacks committed against migrants with impunity.

- **Articles 15 and 21: Theft and destruction of personal property by the police, including identity papers and other administrative documents.**

Seizure and destruction of personal belongings by the police are very common during arrests, when migrants are being taken to the police station (if it exists), or during 'refoulement' operations. When belongings are confiscated, the police do not take inventory and do not issue receipt in practice, in contradiction with what is provided for by the legal procedure. Confiscations of passports are also very common during an arrest. In some cases, administrative documents are even destroyed during 'refoulement' operations and migrants are again deprived of any remedy against such illegal practices.

- **Articles 16, 17, 18, 24 and 83: Violation of the right to liberty and security, lack of protection against arbitrary arrests and custodies, deprivation of the right to an effective remedy and barriers to complaint.**

The violence committed by the police against Sub-Saharan migrants continues with impunity, even when they cause death. Aggression and violence, which are committed by individuals or officials state against migrants, remain unpunished. In practice, their administrative situation is systematically opposed to victims wishing to file a complaint, including for the most serious crimes and whatever their situation of vulnerability. The submitting organizations observe refusal to register complaints at police stations as well as obstruction practices at the prosecution.

Furthermore, the procedural safeguards provided by law are not met, either in the criminal or administrative proceedings. Access to legal advice or an interpreter who offers all guarantees of independence and impartiality, and the right to communicate with consular authorities are rarely observed in practice.

- **Article 22: collective expulsions and violation of all the guarantees provided for by the law when carrying out expulsion measures.**

The majority of interpellations, arrests and expulsions are usually carried out without any assessment of the individual situation. The migrants are deprived of their right to an effective remedy against the irregular identity checks, have no possibility to challenge decisions of ‘refoulement’ taken against them, which are rarely formalized or taken almost systematically by the prosecution, which is not the competent authority. They are also deprived of the right to challenge arbitrary freedom deprivation, during ‘refoulement’ operations, as far as they are locked out without a legal framework.

The majority of Sub-Saharan migrants are otherwise deported to States land borders where they are not admitted: at the Mauritanian border or frequently at the Algerian border. It also happens that the persons being deported in these dangerous areas are protected by Act 02-03 from the ‘refoulement’, namely minors, pregnant women, serious injured and refugees.

Incoming immigrants that have been refused access to Moroccan territory can be detained arbitrarily during long periods at the airports and are constrained to handle and assume the cost of repatriation.

- **Articles 25, 27 and 28 : Administrative situation of migrants as an obstacle to the possibility of enforcing equal treatment in working conditions, exclusion of foreigners from the medical assistance scheme (RAMED) by the administrative doctrine and unsystematic access to care urgently needed to preserve life.**

In practice, migrants in an irregular administrative situation can not challenge the failure of disrespect on the ground of equal treatment by their employers, who often take advantage from their vulnerable situation to submit them to abusive working conditions.

Administrative doctrine seems to exclude foreigners from the benefit of medical assistance in violation of Article 27 of the Convention.

Access to healthcare is generally in progress, while remaining highly variable from one city to another. Migrants in an irregular administrative situation may suffer permanent damage or even die because they could not receive any medical care urgently required for the preservation of their life or the avoidance of irreparable harm to their health. This is specifically the case in some northern cities, where going to the hospital can create the risk of an arrest if not a ‘refoulement’.

- **Articles 29, 30 and 31: Migrants in an irregular administrative situation are unable to register their children and obtain birth certificate, and access to education of their children remains extremely limited.**

Migrants who are in an irregular administrative situation are unable to enroll their children in the birth records. The delivery notice is far from being systematically delivered in hospitals and even in possession of this document, the registration of births in the records of the Moroccan civil status is denied to those who are in an irregular administrative situation.

Access to public pre-school educational institutions or schools, is far from being a right granted to migrants children as it depends on approval from the Academy, which is virtually impossible to obtain for migrants, who are in an illegal situation and do not benefit from the support of an association. Other obstacles consist in the lack of a birth certificate, non mastery of Arabic, the age limit for enrolling children or fear of racist attacks, especially regarding Sub-Saharan migrants.

3. Other rights of migrants workers and members of their family who are in a regular situation.

- **Article 40: Impediments to the right to form associations and trade unions.**

Moroccan associations are considered foreign when their members or leaders are foreign. For them, it is very difficult to exercise their activities in accordance with the law, because of administrative practice of not issuing the receipt provided for by law that is needed to prove the declaration. Furthermore, the Labor Code excludes migrant workers from administration and management functions in trade unions.

- **Articles 51 and 52: Impediments to the right to look for a new job and lack of time limit for national preference opposed to foreigners.**

The right of residence is systematically related to the work permit which makes it impossible to find a new job when the legalized working contract terminates. Equally, the situation of employment is still opposed to migrant workers, even after five years of legal residence and authorized work in violation of Article 52-3b of the Convention.

- **Article 54: Lack of protection against dismissal and violation of the right to compel the employer to meet his obligations.**

The Social Chamber of the Court of Cassation set legal precedent that put the work permit scheme above the legal and contractual obligations of the employer. Therefore, all the foreigners' working contracts are considered as fixed-term and dismissals as end of the contract.

As the right of residence is subject to the work permit, migrant workers can not challenge the refusal by the administration to renew their work permit in contradiction with equality of treatment in relation to working conditions as granted by the Convention.

- **Articles 44, 45 and 50: Administrative practices clogging the protection of the family integrity and the access to education.**

The principle of family unity is not taken into consideration in the administrative decisions, especially when it comes to family reunification. Similarly, the administrative authorities do not facilitate to the children of migrants the access to education.