



## Research Article

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## Protecting the Rights of Migrants between National Legislation and International Conventions

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**Abstract:** The issue of protecting the rights of migrants has become increasingly important in a globalized world where people are moving across borders for various reasons. The protection of these rights is governed by a complex interplay between national legislation and international conventions. National laws play a crucial role in defining the rights of migrants and determining the conditions under which they can be exercised. On the other hand, international conventions, such as the International Covenant on Civil and Political Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, establish minimum standards for the protection of migrants' rights and serve as a framework for the development of national legislation. This paper explores the relationship between national legislation and international conventions in protecting the rights of migrants and how they can be harmonized to better serve the interests of all parties involved.

**Keywords:** National, International and Rights.

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## INTRODUCTION

The end of the twentieth century and the beginning of the twenty-first century witnessed a set of international transformations and changes that directly affected global politics, especially in light of the global trend towards economic globalization, which contributed to the emergence of a set of new challenges, and the change of a set of concepts that were prevalent during the Cold War (1), and thanks to the expansion of the concept of security, and due to the repercussions of globalization and the economic crisis, and the absence of political stability in a group of countries, all these factors and others, contributed to the increase in human flows.

The issue of asylum has become one of the important issues raised in the international arena due to its political, economic and cultural dimensions... This has left the world facing a new wave that is not strictly regulated by international law (2).

Migration is also a social and human phenomenon, and an innate behavior in man, and in its general concept and in its historical contexts, it is a movement that moves people in search of what they believe is the best in the field of living from south to north, and also from south to south and even from north to north (3).

In total, these migration flows can be divided into three interrelated and overlapping time stations, as follows:

- **The first phase before 1985:** This phase was characterized by the urgent need of countries for manpower coming from the southern Mediterranean countries, especially the citizens of the Maghreb countries.
- **The second phase of 1985-1995:** It was characterized by the emergence of contradictions that contributed to the tension of the relationship between legal immigrants in their competition with the native countrymen, and with the increase in the number of immigrants to the Nordic countries, European countries rushed to close their borders (4).
- **The third phase, the post-1995 phase:** It was characterized by the strict nature adopted by European countries as a security policy regarding family reunification (5), and it also reviewed immigration laws and concluded several agreements with the countries of the South with a view to deporting irregular migrants.

Migration took on unexpected dimensions starting with the adoption of the Schengen Agreement on June 14, 1985, under which only the movement of persons belonging to the European space was allowed, and the form of Spain's accession to this agreement on June 25, 1992, which entered into force on March 25, 1995. Spain has become obligated to respect the rules and conditions for the entry of foreigners to its territory, so immigration has taken another turn, especially after the Spanish authorities resorted to taking precautionary

measures to prevent any flow of migrants from Spanish territory to other European countries (6).

Irregular or irregular migration has multiple factors and causes between social, economic and political... The search for work and living in conditions that guarantee human dignity is the common goal of all migrants, as the phenomenon has become of great importance and concern to the Kingdom of Morocco, given the threats it represents at the economic, social, security and health levels (7).

The multiplicity of forms of illegal immigration makes it difficult to estimate the real sizes of it in any country, as illegal immigrants are often hidden from sight in general, and from the sight of the state and its institutions in particular, as they are exposed at any moment to deportation and deportation, as well as arrest, accountability, and bad treatment in many countries. Therefore, countries do not provide a complete description of the magnitude of the migration phenomenon in them, but rather work on showing <sup>8</sup> what they have been able to monitor through their various internal and border institutions (8).

### Relevance of the topic

The issue of migration is one of the thorny topics that arouse the love of knowledge and research and require scientific and objective study and analysis, and is related to how to manage a new type of cross-border threats, in addition to the issue of the integration of migrants into new societies, with the challenges that this poses in the way of life, values, and social relations, in addition to being one of the most important common issues between the countries of the North and the countries of the South, which makes this topic a priority in the foreign policy of these countries.

As for the scientific importance, migration has become a major problem for the Kingdom of Morocco in recent years due to the increase in the number of migrants coming to Morocco from sub-Saharan African countries, and the resulting cross-border problems.

### The Problem of Research

Morocco is experiencing the result of its strategic location as a link between two continents, the situation of an increasing flow of migrants coming from sub-Saharan Africa who dream of crossing to the other bank, but the reality of the crossing has turned into stability due to monitoring factors, and with this situation and the rise of international pressure, and human rights reports on the situation of migrants in Morocco, the latter hastened to adopt a law regulating the phenomenon of migration.

Therefore, the central problem that will be addressed through this research is related to the guarantees and legal and institutional mechanisms that ensure the protection of the rights of migrants, whether at the level of national or international legislation?

A number of sub-questions arise from this problem:

- Is it really possible for the restrictive approach adopted by the legislator in Law No. 02-03 to curb the phenomenon of migration? - To what extent are the Moroccan laws regulating migration compatible with international laws?
- Have the rights of migrants been affected by Morocco's anti-migration policy?
- To approach this topic, we will adopt the following division:
- The first topic: the legal and institutional framework for the protection of migrants' rights in Morocco
- The second topic: the compatibility of Moroccan laws with international laws

### The first topic: the legal and institutional framework for the protection of migrants' rights in Morocco

Political changes in North Africa and the Middle East, as well as the worsening economic crisis in Europe, and the new policies of the European Union, have contributed significantly to changing the context of respect for the economic and social rights of foreigners in the Euro-Mediterranean region.

The 1949 Universal Declaration of Human Rights recognizes economic and social rights as fundamental rights and their subsequent inclusion in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) gives them legal value, and therefore respect for these rights is a duty of the international community.

Since Morocco is one of the countries suffering from the phenomenon of migration, due to its strategic location on the Atlantic Periphery and the Mediterranean Sea, it has become urgent for Morocco to establish an effective legal (**first** requirement) and institutional (second requirement) framework to protect the rights of sub-Saharan African migrants that takes into account Morocco's human rights obligations.

### The first requirement: the legal framework for the protection of migrants' rights in Morocco

Each country shall establish a specific legislative regulation for the admission and residence of foreigners within its territory, which is a regulation that is peremptory and to which all foreigners, regardless of their nationality and whatever their type of residence (9).

Moroccan legislation in the field of migration has witnessed a slow development that has not been able to keep pace with the social and economic transformations in the region, where Morocco occupies an important and vital geostrategic position (10).

To illustrate further, the legislative development in the field of migration in Morocco will be examined by shedding light on national laws to protect

the rights of migrants (**first** paragraph), while (**second** paragraph) concerns international conventions to protect the rights of migrants.

#### **First Item: National laws to protect the rights of migrants**

The initiative to enact laws is an answer to a societal, political or economic need, so regulating the issue of immigration in Morocco and controlling the determinants of the foreigner's residence on the national territory is one of the main concerns that have become a privileged position within the concerns of national legislation, so we will work to address the 1949 phenomenon in (**first**), and then address Law 02-03 (**second**).

#### **First: Noon 1949**

The afternoon of November 8, 1949 is considered the first to use the word immigration, in order to regulate the movement of migration by taking several regulatory controls, and the provisions of this phenomenon are contained in 12 chapters, Chapter IV deals with the documents necessary to travel to Europe in particular, while Chapter X specifies the penalty imposed on every worker who left Morocco without having the documents stipulated in Chapter IV and VII, where he is punished by imprisonment ranging from one month to two years, and with a fee of an amount ranging from Between 12.000 centimeters to 240.000 centimeters or one of these two penalties only (11).

As for the case of a foreigner who attempts to immigrate clandestinely to another country from Moroccan territory and is arrested by the Moroccan security forces, the sentence that the Moroccan courts of first instance have issued against him is two months suspended and a fine of 600 dirhams with an order to deport him from Morocco (12).

The first legislation issued in Morocco regarding the regulation of immigration dates back to the era of the French protectorate, and the afternoon of October 27, 1931, is a legal mechanism that works to regulate the exit of Moroccan workers in order to go to European countries, and this process is carried out in accordance with the controls stipulated in Chapter I of the Dahir, most notably the need to obtain a passport delivered by the authority, a copy of the criminal record record, in addition to a recent medical certificate proving that the person concerned is free of any infectious disease, with the need to obtain a contract. Work and it is a prerequisite for being able to travel. At the time of the 1949 publication on immigration during the period in which Morocco was subject to the French protectorate, its aim was to protect the rights of France as the colonial state, which was pursuing an immigration policy in Morocco according to its needs of the Moroccan labor force that it wished to attract, as it established several

employment offices in several cities in the Kingdom, to export the workforce.

Morocco's modest policy towards immigration continued until 2003, after the wave of terrorism that affected Morocco and many European countries (13), without forgetting the external pressure exerted by Brussels, after accumulating these data, Moroccan officials began to move towards issuing a new law regulating this phenomenon and abolishing previous laws dating back to the colonial era, and this law was approved by Parliament immediately after the terrorist events of Dar Al-Bayda, and it is related to Law 02-03. This will be addressed (second).

#### **Second: Law No. 02-03**

The Moroccan legislator approved several administrative and judicial measures to curb the phenomenon of clandestine immigration, and because the afternoon of November 8, 1949, which regulated clandestine immigration, no longer kept pace with the interim developments in the field of illegal immigration, due to the age of this legal text and being a legislative product issued during the protection phase, Morocco introduced a new legislation, Law 02. 03 November 11, 2003, and sees in it a text that keeps pace with the phenomenon and is able to control it, and stipulates a package of measures and punitive measures to limit the phenomenon and the beating at the hands of organizers and contributors to its spread.

Thus, the Moroccan legislator was criminalized by Law No. 02. 03 Illegal migration, assistance and regulation, Articles 50, 51 and 52 thereof punish with custodial and financial penalties any person who leaves Moroccan territory clandestinely or provides assistance or assistance to another person for the same purpose, whether such person is carrying out the task of commanding a public force or belonging to it, or is entrusted with the task of surveillance, or is an official, agent or employee working in land, sea, air or any other means. Of the means of transportation, whatever the use of these means.

Article 52 of the same Code punishes with imprisonment and a fine any person who organizes or facilitates the entry or exit of Moroccan or foreign persons clandestinely into or out of Moroccan territory, whether free of charge or for compensation, and even increases the penalty from imprisonment to imprisonment and a fine if such acts are committed habitually, by a gang or on the basis of a prior agreement, and up to life imprisonment if such acts lead to death, as authorized by article 53. From the same law, the court has the right to confiscate the means of transport used in the commission of clandestine immigration crimes of any kind (public or private) as well as to order the publication of convictions in the newspapers that it expressly specifies.

Within the framework of jurisdiction, the Moroccan legislator has given the courts of the Kingdom the right to hear any crime stipulated in this law, regardless of the place where it was committed at home or abroad, regardless of the nationality of the perpetrators, but the application of these provisions depends on the fact that they do not violate the relevant international conventions (14).

With regard to the entry of foreigners into Morocco, the law stipulates that every foreigner wishing to enter the Kingdom of Morocco must have a passport delivered by the State to which he belongs, or any other means of travel recognized by the Moroccan State in order to enter the Kingdom (15), provided that its validity is valid and accompanied by a visa issued by one of the Moroccan consulates abroad, unless the person concerned belongs to a country whose nationals have been exempted of visa under a bilateral agreement with Morocco.

On the other hand, the Moroccan legislator was keen in Law No. 02-03 to protect the rights of foreigners whose application to enter the Kingdom of Morocco was rejected, in parallel with the provisions of the international human rights conventions ratified by Morocco, and therefore the decisions of the public authorities vis-à-vis foreigners must be legally taken (16), and at the same time provide them with procedural guarantees to preserve their rights (17).

This is with regard to the entry of foreigners into Morocco, as for the legal residence of foreigners in Morocco, it is necessary to have the residence documents specified by Law 02-03, namely the registration card and the residence card, the registration is intended from a scientific point of view, the registration of the foreigner in the foreigners' register, in which a set of information related to the foreigner's identity, family status and date of arrival in Morocco are recorded according to a specific method, as a result of which he is granted his own registration number, and this process contributes to monitoring the status of the foreigner. Continuously (18).

Article 8 of Law 02-03 allows a foreigner wishing to reside in Moroccan territory to request the administration to hand over a renewable registration card and to carry it or be able to submit it within forty-eight hours, and it can be replaced by the receipt of the request for its delivery or renewal. One year and ten years, and the foreigner must declare his place of residence change to the authorities, and if the registration card is refused or withdrawn, the person concerned must leave Moroccan territory within 15 days from the date of rejection or withdrawal by the administration (19).

As for the residence card, it is issued to a foreigner who has proven that he has resided in Moroccan territory for a continuous period of not less than four years, and this card is conditional on the availability of the means of subsistence of the person

concerned, the conditions of his work and the facts invoked to justify his desire to reside permanently in Morocco (20).

Article 17 of Act No. 02-03 specifies certain persons to whom a residence card may be granted automatically:

- The foreign spouse of a Moroccan citizen or the foreign wife of a Moroccan citizen, in which case the spouses must submit a marriage contract in accordance with article 2 of the Moroccan Family Code;
- A foreign child of a Moroccan mother, and a stateless child of a Moroccan mother who does not benefit from the provisions of the first item of Chapter VII of the afternoon of September 6, 1958;
- A foreigner who is the father or mother of a child residing in Morocco and acquiring Moroccan nationality;
- The spouse and minor children of a foreigner holding a residence card;
- A foreigner who has been granted refugee status;
- A foreigner who has proved by any means that the habitual place of residence is Morocco, more than fifteen years ago;

Despite these laws, those interested in the phenomenon believe that the enactment of legal and administrative measures alone is not enough to reduce the rate of illegal immigration, as those who decide to venture and throw themselves into the sea putting the choice of life or death between their eyes, are difficult to convince them of the law or the penalties resulting from doing so, and those who have no hope in life will not be pushed by the law to retreat from their idea, except if there are parallel measures related to improving living conditions and providing job opportunities and social services for the public. Citizens.

Perhaps what confirms these positions is the presence of hundreds of young people and minors in the port of Bani Ansar in Nador and Melilla, who, after coming from distant cities, preferred to lie on the ground waiting for the opportunity to sneak inside a truck or ship heading to Spain, indifferent to the damage that would be caused to them if they failed to try. This group is completely indifferent to the law or the penalties they will be subjected to if they are caught trying to emigrate, but their main concern is to reach the European paradise because their sweethearts did not succeed in the motherland (21).

## **Second Item: International Conventions for the Protection of the Rights of Migrants**

This paragraph will focus on the Geneva Agreement (**one**) and the Schengen Agreement (**two**), which have played an important role in protecting migrant and migration issues.

### **First: Geneva Convention**



The process of developing a set of laws, conventions and guiding principles aimed at the protection of refugees began in the first half of the twentieth century under the League of Nations, the international body that preceded the United Nations, and culminated on July 25, 1951, when the United Nations General Assembly approved the Convention relating to the Status of Refugees.

The Convention clearly spells out who is a refugee, the type of legal protection, and other social assistance and rights that must be obtained from the national signatories to this document. It equally defines a refugee's obligations to host governments, as well as certain categories of persons, such as terrorists who do not qualify for refugee status.

Months before the Convention was approved, UNHCR began its work on 1 January 1951, and during the next five decades, it remained the basis of UNHCR's efforts to provide assistance and protection to an estimated 50 million refugees.

This first instrument was limited to providing protection mainly to European refugees in the aftermath of World War II, but the 1967 Protocol significantly expanded UNHCR's mandate as the problem of displacement spread around the world. The original Convention also inspired a number of regional instruments such as the 1969 OAU Convention and the 1984 Cartagena Declaration on Latin American Refugees (22).

A total of 139 States have signed one or both United Nations instruments. However, with the increasing number of people moving from one place to another and the global migration pattern radically changing, in the coming years, doubts have arisen about the relevance of the 1951 Convention to the new millennium, particularly in Europe, which, paradoxically, is its place of birth.

This was the first truly international convention to address essential aspects of a refugee's life. It has set out a set of fundamental human rights that must at least be equivalent to the freedoms enjoyed by foreign nationals in a country and, in many cases, the nationals of that country. The Convention recognizes the international scope of refugee crises and the need for international cooperation, including burden-sharing, to address the problem.

The Convention defines what is meant by the word "refugee" and outlines the rights of a refugee, including his rights such as freedom of belief and movement from one place to another, the right to education, travel documents, and the opportunity to work, and stresses the importance of his/her obligations to the host government. One of the main provisions of this Convention states that refugees may not be returned

and the legal term is the prohibition of expulsion or refoulement to a country where he/she fears persecution. They also identify people or groups of persons not covered by this Convention and who are persons who have committed crimes against peace, war crimes, crimes against humanity or serious non-political crimes outside the country of asylum (23).

### **Second: The Schengen Convention for the Protection of the Rights of Migrants**

The Schengen Agreement entered into force in March 1995, taking its name from the small town of Schengen in Luxembourg, where the agreement was signed on June 1985 by five countries (Germany, France, Belgium, the Netherlands and Luxembourg). Prior to the entry into force of the agreement, borders between European countries were closely guarded and controlled and passports were checked at border crossings.

The Schengen Agreement guarantees freedom of movement between its member countries, as one does not need an entry visa and is not subject to inspection or questioning of one's passport. However, the only case in which a travel document must be shown in the Schengen area is when entering the first Schengen country, known as the external border of the area, where the passport is certified by a stamp issued by the country that entered it. When crossing additional borders within the Schengen area, no documents will be verified, or placed Seals (24).

The freedom to travel within the Schengen area, which has more than 400 million people within its borders, is available to citizens of all countries once they enter the area. However, when in the Schengen area, it is always advised to carry a passport or ID card while moving between Schengen countries - as a precautionary measure.

However, due to the repercussions of the events of the Arab Spring, which since 2011 have pushed thousands of refugees to cross illegally from North Africa to Italy and Greece, and the policy of Greece or Italy in their dealings with African refugee groups, which provoked a wave of great criticism within the European Union, the need for amendments to the agreement was raised, and large numbers of these refugees went to France, which reacted quickly and closed its borders with, and Denmark abandoned the Schengen Agreement, and reinstated measures Monitor travel on its border with Germany.

Many EU interior ministers are currently critical of Greece, which is accused of not adequately monitoring its border with Turkey, allowing refugees from Africa and Asia to pursue their route to Europe. The interior ministers of the European Union countries agreed to take the decision at the European level first before any member state of the Schengen agreement resorts to adopting its own procedures to control its external borders, considering that any country can

control traffic through its external borders if it fears the infiltration of illegal migrants into its territory.

Negotiations between the European Parliament, the European Commission and the Council of Ministers continued for two years before reaching this solution, which avoids any member state resorting to unilateral measures without European approval.

The latest amendment to the Schengen Agreement allows the European Commission to take on the task of verifying in situ that Member States control external borders in accordance with the approved laws. It should be noted that the recent amendment to the Schengen Agreement does not change much in terms of reimposing passenger traffic controls at the EU's external borders. If the European Commission, the executive arm of the European Union, proposes to impose controls on passenger traffic, the proposal first needs to be approved by the Council of Ministers, which includes the heads of state and government, who ultimately approve border controls or not (25).

### **Second Requirement: Institutional Framework for the Protection of the Rights of Migrants in Morocco**

Irregular migration, and what is related to ensuring the care and preservation of the rights of migrants and protecting them from all forms of harm, violence and exploitation, has received the attention of the Kingdom of Morocco, as the latter has worked to establish a group of official institutions for human rights in general and irregular migrants in particular (the first requirement) and in addition to official institutions, there are some national informal institutions interested in defending the rights of migrants (**the second requirement**).

#### **First Item: Institutions provided for in the Constitution**

In order to strengthen the rule of law, law and institutions, to which Morocco has voluntarily engaged, the Constitution of the Kingdom of Morocco of 2011 adopted human rights as universally recognized and stipulated the protection of its system, taking into account their universal nature and indivisibility, as well as the totality of human rights contained in the Universal Declaration of Human Rights, in addition to enshrining the supremacy of international conventions as ratified by Morocco on national legislation and stipulating the harmonization of these legislations with their requirements.

Pursuant to this, the 2011 Constitution provided for the creation of the National Council for Human Rights (first), and the Kingdom of Morocco created the Council of the Moroccan Community Abroad (second).

#### **First: The National Council for Human Rights**

In the context of Morocco's constitutional reform in 2011, the National Human Rights Council

(CNDH) was established to enshrine the rule of law, law and institutions, and to replace the Consultative Council on Human Rights.

The CNDH is considered "an independent pluralistic national institution responsible for considering issues related to the defense and protection of human rights and freedoms, ensuring their full exercise, promotion and safeguarding the dignity, rights and freedoms of citizens, individuals and groups, within the framework of full concern for respect for national and universal references in this field" (26).

This Council was established as an independent national institution for the protection of human rights and public freedoms, whose regulatory texts are in line with the Paris Principles governing human rights, and the Council has several competencies, at the national or regional level, which ensures greater independence and influence in the field of protection and defense of human rights.

With regard to the issue of migration, the CNDH issued a thematic report on the situation of migrants and refugees in Morocco under the title "Foreigners and Human Rights in Morocco", for a new policy in the field of migration and asylum, in which it provided a general diagnosis of migrants in Morocco, stressed the existence of human rights violations by the Moroccan authorities against sub-Saharan African migrants in particular, and urged the Moroccan government to stop these violations, and to adopt a new policy in the field of migration and asylum based on Human rights and the involvement of civil society.

In this context, the CNDH calls on the Moroccan government to take the following measures:

- Take measures to restrain employers who exploit irregular migrants, and guarantee the right of these migrants to resort when necessary to the Labour Inspectorate without fear.
- Facilitating the registration of new births and the issuance of death certificates.
- Prohibit all forms of violence against migrants in an irregular situation during arrest processes.
- Development of training and sensitization programmes for the staff of the departments in charge of migration.

The Council also praised the work of civil society working in the field of defending the rights of migrants and asylum seekers, and called for the integration of associations active in this field, such as the Civil Organization Group against Racism and the Defense of the Rights of Foreign Migrants, and to keep pace with the proposed legislative reforms, the Council called on the government to launch a national research on the phenomenon of migration and to develop a national action plan based on a consultative approach, with the development of a program to form and

strengthen cooperation between the various departments concerned with combating trafficking in persons (27).

### **Second: Council of the Moroccan Community Abroad**

The Council of the Moroccan Community Abroad was established by Royal Decree No. 1. 07. 08 December 21, 2007. As a consultative institution with administrative and financial autonomy, the Council of the Moroccan Community Abroad has the mission to ensure the follow-up and evaluation of the Kingdom's public policies towards its immigrant citizens and to improve them with a view to guaranteeing their rights and intensifying their participation in the political, economic, cultural and social development of the country. It is also mandated to carry out the functions of understanding and foreseeing migration problems and contributing to the development of relations between Morocco and the governments and communities of the countries of residence Moroccan immigrants, as the Council of the Moroccan Community Abroad gives its opinion on:

- Preliminary drafts of legislative or regulatory texts on the subject of immigration and issues of interest to Moroccans living abroad;
- The main orientations of public policies to ensure that Moroccans living abroad maintain strong links with their Moroccan identity, particularly with regard to language education, religious education and cultural activity;
- Measures aimed at guaranteeing the rights and safeguarding the interests of Moroccans living abroad, especially those in a difficult or vulnerable situation;
- Means aimed at inducing Moroccan citizens living abroad to participate in institutions and various sectors of life at the national level and to support activities carried out on their behalf;
  - Means of intensifying the participation of Moroccans living abroad in the development of the capacities of their country of origin and in the effort of sustainable human development and modernization of society;
  - Developing modern strategies for communication, interaction and cooperation with host countries at the cultural, humanitarian and economic levels (28).

Article 163 of the 2011 Constitution enshrines this role : "The Council of the Moroccan Community Abroad shall, in particular, express its views on the orientations of public policies that enable Moroccans living abroad to ensure the maintenance of strong relations with their Moroccan identity, guarantee their rights and safeguard their interests, as well as contribute to the human and sustainable development and progress of their homeland, Morocco."

### **Second paragraph: Institutions not provided for in the Constitution**

There are many institutions not provided for in the constitution that defend human rights in general, and the rights of migrants in particular, whether it concerns foreign immigrants or Moroccans immigrating abroad, and it concerns the Inter-Ministerial Delegation for Human Rights (I), and non-governmental associations concerned with human rights, the model of the Moroccan Association for Human Rights (II).

### **First: Ministerial Delegation for Human Rights**

The Inter-Ministerial Delegation for Human Rights was created by Decree No. 2-11-150 of April 11, 2011, to replace the Ministry of Human Rights, a government body tasked with preparing and implementing government policy in the field of human rights defense in coordination with the ministerial sectors and bodies concerned.

The Inter-Ministerial Delegation proposes all measures aimed at ensuring that the conventions on human rights and humanitarian law enter into force, in addition to supporting the ministerial sectors when negotiating the projects of international, bilateral and multilateral agreements related to their competences, while contributing to the study and ratification of the conventions that the State intends to adopt regarding human rights and international humanitarian law.

In the same context, the Director of Legal Studies and International Cooperation at the Delegation, taking into account the competencies vested in the rest of the ministerial sectors, shall be entrusted with the following:

- Studying the legislative and regulatory texts in force to assess their conformity with the provisions of international conventions as necessary with the aforementioned conventions.
- Follow up on the directions and observations resulting from the examination of national reports by human rights bodies.
- Ensure the follow-up of reports issued by national or international human rights bodies in Morocco, and prepare draft responses thereto when necessary (29).

The Inter-Ministerial Delegation for Human Rights, in coordination with the National Human Rights Council, participates in the development of the national plan for the promotion of human rights in Morocco, and participated in the preparation of a thematic report on the situation of refugees in Morocco.

Through the above, the important role of national institutions in protecting the rights of irregular migrants and defending and respecting and promoting their rights is evident.

### **Second: Moroccan Association for Human Rights**

Founded in 1979 at the initiative of some political activists involved in the defense of human rights, the Moroccan Association for Human Rights

(AMDH) is an independent organization and is considered one of the most important non-governmental associations in Morocco. Chapter III of the Association's statute defines its role in defending human rights, as its role is to ensure respect for collective and individual freedoms, defend human dignity, condemn all human rights violations and defend their victims.

Among the issues it works on is the migration of sub-Saharan Africans, where the association monitors violations against African migrants in the form of chases, mass arrests, and mass deportations - without being subject to the procedures and laws in force in the field of migration.

The association also issues its report on irregular migration and the rights of migrants, especially sub-Saharan Africans in Morocco, and the association recorded, according to figures reported by the Ministry of the Interior of Morocco, that only 17,916 applications were approved out of a total number of 27,322 applications between January 2014 and December 2014 (30).

The Association issued a report on the trial session of two detained migrants on April 09, 2015 before the Court of First Instance in Oujda and they were prosecuted on charges of *flagrante delicto*, which was attended by members of the Migration and Asylum Committee of the Moroccan Association for Human Rights, after which the following observations were recorded:

- The lack of a defence lawyer for the accused migrants;
- The lack of a qualified person to carry out the translation process, and although the Court hired a female officer, it was noted that her ability to communicate was not suitable for the translation process;
- The presiding officer decided to provide legal assistance to the accused migrants, after informing them of their right to do so;
- After completing the data on the file of the accused migrants, and believing that the Moroccan Association for Human Rights contributes to the provision of fair trial conditions and guarantees stipulated in international human rights conventions ratified by Morocco (31), the Association assigned a lawyer from among its members in order to support migrants and ensure respect for the principles, conditions and guarantees of a fair trial.

### **The second topic: the Moroccan legal system and its compatibility with international laws**

This second section will be divided into two main demands, where the first requirement will discuss the problem of compatibility between international conventions and Moroccan laws, and the second requirement will shed light on the Global Compact on Migration.

### **The first requirement: international agreements and Moroccan laws, the problem of appropriateness**

The elements of a modern state that interacts with its time are based on respect for human rights, and as an embodiment of this trend, Morocco has ratified a set of international conventions on the human rights of migrants and affirmed its intention to abide by their contents in Law No. 02-03.

On this basis, this requirement will be divided into two paragraphs, the first related to the extent of the principle of the supremacy of international conventions over national laws (first paragraph), and the second related to the adequacy of Law No. 02-03 to international conventions (second paragraph).

#### **First paragraph: The principle of the supremacy of international agreements over national laws**

The principle of the supremacy of international conventions or what is also expressed in preference is one of the most important problems posed today to jurists of all positions, which has become one of the most important challenges before the legislator himself, with his explicit recognition in the newly issued laws, whether in areas related to human rights, or otherwise, and it is also the focus of attention of the judiciary.

For his part, the constitutional legislator answered these problems explicitly by explicitly stipulating the principle of the supremacy of international treaties over national law, responding to the recommendations of the Equity and Reconciliation Commission included in its report, especially those related to supporting the constitutional rooting of human rights, and in general the standards of international law over national laws. Thus, the Constitution (32) of the Kingdom of Morocco of 2011, in its promulgation, clearly stipulates that "international conventions as ratified by Morocco, and within the scope of the provisions of the Constitution, the Kingdom's laws and its established identity, shall prevail immediately upon their publication over national legislation and work to harmonize these legislations with what is required by such ratification, but at the level of ordinary legislation, there are several special laws that explicitly stipulate the preponderance of international agreements over domestic law, including, Law 02-03 The first article of which affirms that the entry and residence of foreigners into the Kingdom of Morocco shall be subject to the provisions of this law, taking into account the effect of officially published international agreements.

The wording of the first paragraph of the first article of the aforementioned law is general and comprehensive of all international conventions of universal origin and application, whether they are related to the Universal Declaration of Human Rights and the two international covenants related on the one hand to civil, political, economic, social and cultural rights, or



related to a specific category of people, such as conventions related to the most vulnerable persons, or specific to application in certain situations such as those related to armed conflicts... (33)

Thus, it is clear that this concept came to include all international conventions, whether bilateral or general, in addition to the basic principles of human rights as they are universally recognized, and this concept should not be narrowly interpreted so that it is not limited to general or bilateral agreements related to migration, as may be suggested by the content of Law No. 02-03.

At the constitutional, legislative or judicial level, Morocco enshrines the principle of the supremacy of international conventions over national legislation as expressed in the Vienna Convention on the Law of Treaties, article 26 of which stipulates that "every treaty in force shall be binding on its parties and they shall implement it in good faith" and article 27 of the same convention urges that "parties cannot invoke domestic law to justify the non-implementation of a treaty they have ratified".

#### **Second paragraph: The adequacy of Law No. 02-03 to international conventions**

Talking about the compatibility of Law No. 02-03 to international conventions requires examining its suitability with international human rights conventions before addressing international conventions on migrants.

Thus, Law No. 02-03 enshrines the right of migrants to move freely within Moroccan territory and to leave it freely as a general principle (34), in line with both the Universal Declaration of Human Rights, especially Article 13 thereof, which states: "Everyone has the right to freedom of movement and to choose his residence within the borders of the State, and everyone has the right to leave and return to any country, including his own." The first paragraph of Article 12 of the International Covenant on Civil and Political Rights, which states: "Everyone lawfully resident within the territory of a State has the right to freedom of movement and to choose his residence within that territory."

The manifestations of the impact of international conventions on the Moroccan Immigration Law have extended to include guaranteeing the rights of minors as defined by the International Conventions on the Rights of the Child (35), according to the first paragraph of Article VI of Law No. 02-03, a foreigner who does not exceed 18 years of age is exempted from the registration and residence card so that he remains in the status of a child, which is in line with Article I of the Convention on the Rights of the Child, taking into account the provisions of the second paragraph of Article VI of the Moroccan Migration Law, which A minor foreigner between the ages of 16 and 18 who declares his desire to engage in a paid professional activity is

entitled to obtain by force of law a registration card in the event that one of his parents has the same card, which is also in accordance with international standards for the practice of a professional activity, specified in ILO Convention No. 138.

It should be noted that in no case can a minor alien be deported, as stated in the last paragraph of Article 29 of the Moroccan Immigration Code, and thus this article is compatible with articles I and XVI of the Convention against Torture and Article VII of the International Covenant on Civil and Political Rights.

Article 29 of Law 03 states. 02 Promulgated by Dahir No. 1.03.196 of November 11, 2003 on the entry and residence of foreigners in the Kingdom of Morocco and illegal immigration as: "..... No alien may be deported to another country if he proves that his life and freedom are threatened or that he is exposed to inhumane, cruel or professional treatment", which is in line with the requirements of Articles 3 and 10 of the Convention, which stipulate, respectively, the obligation of States parties to the Convention to preserve the lives of migrant workers and to protect them and their family members from cruel, transitional or professional torture and treatment.

Reference can also be made to article 23 of Law No. 02-03, which stipulates that an alien whose deportation decision is taken from Morocco has the right to appeal against the said decision, which is in line with article 22 of the International Convention.

On the other hand, there are some provisions that Law No. 02-03 did not comply with the Convention, as it did not stipulate some of the rights of migrants included in the International Convention, including:

- In the event of the cancellation of the expulsion decision that has already been executed, the alien has the right to request compensation in accordance with the law and the previous decision may not be used to prevent him from returning to the designated country (36).
- In the event of expulsion, the alien must be given a reasonable opportunity before or after departure to settle any claim relating to wages and other dues payable to him (37).

It is clear that Law 02-03 on the entry and residence of foreigners in the Kingdom of Morocco and on illegal immigration was consistent with international conventions, by including important legal and injunctive requirements, but despite this, it is still marred by many shortcomings that require the Moroccan legislator to review Law No. 02-03 to fully comply with the international conventions and conventions ratified by Morocco.

#### **Second requirement: the Global Compact for Migration, Principles and Recommendations**

The Global Compact for Safe and Orderly Migration, which was adopted on December 10, 2018 at the intergovernmental conference organized by the United Nations in Marrakech, Morocco, constitutes a qualitative leap to deal with the worsening phenomenon of migration, which is one of the problematic issues between the poor source south and the rich future north.

The Charter represents the culmination of substantive consultations and discussions between Member States and actors, such as local officials, civil society representatives and migrants themselves, which have spanned years of disagreements between pro- and anti-Charter.

On its official website, "Refugees and Migrants" the UN defines the charter as "the first agreement negotiated between governments, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a comprehensive manner." In order to shed light on this document, it will be divided into two paragraphs, the first will introduce the principles of this document, while the second will address the recommendations of the Global Compact on Migration.

#### **First paragraph: Principles of the Global Migration Compact**

Representatives of some 150 countries adopted the UN Charter on Migration on Monday, December 10, 2018 in Marrakech. According to the United Nations, there are today more than 258 million migrants in the world, and this figure is expected to grow due to globalization and the facilitation of communication, transport and trade,<sup>38</sup> as well as the intensification of wealth disparities, demographic imbalances and climate change (38).

The UN says migration offers enormous opportunities and benefits both for migrants, host communities and communities of origin. But when migration is poorly organized, it can pose a major dilemma, so it needs to be safer, more organized and orderly.

The Convention gained momentum after Europe's migration crisis in 2015, which saw the largest influx of refugees and migrants since World War II, the fruit of previous human rights and development treaties and initiatives such as the Global Forum on Migration and Development, and stemming from a political commitment known as the New York Declaration on Refugees and Migrants, which was unanimously adopted in 2016 by the 193 members of the United Nations General Assembly (39).

In fact, the Universal Compact is a non-binding multilateral cooperation instrument aimed at developing common principles and recommendations on orderly migration, thereby reducing irregular flows of migrants.

It was prepared after a lengthy study of migration-related data as well as detailed consultations.

The Global Compact is based on the following set of comprehensive and interrelated guiding principles, which are ten principles related to the human being: status, international cooperation, national sovereignty (40), rule of law and due process, sustainable development, human rights, respect for a gender perspective, consideration for children, a whole-of-government approach (41), and a whole-of-society approach.

#### **Second paragraph: Recommendations of the Global Migration Compact**

The Global Compact for Safe, Orderly and Regular Migration is the culmination of more than 18 months of intensive consultations and negotiations, involving governments and other actors including civil society and the private sector. It is the first common global compact for international migration in all its dimensions.

The Global Compact for Migration represents a historic opportunity to improve international cooperation on migration and enhance the contribution of migrants and migration to sustainable development. Although not legally binding, the agreement sets out a cooperative framework for better migration management at the local, national, regional and global levels. It brings together principles, rights and obligations from existing international law instruments related to migration and better defines practices in all areas of migration (42).

The agreement consists of 23 objectives aimed at improving migration management at the local, national, regional and global levels, and to mitigate the negative and structural factors that hinder people from building and sustaining sustainable livelihoods in their countries of origin. These goals seek to reduce risks and address the vulnerabilities faced by migrants at different stages of migration by respecting, protecting, fulfilling and providing care and assistance to their human rights. It also seeks to address the legitimate concerns of communities, recognizing that societies. It strives to create favorable conditions that enable all migrants to enrich our societies through their human, economic and social capacities, thus facilitating their contributions to sustainable development at the local, national, regional and global levels (43).

Each goal includes a commitment, followed by a set of actions that are relevant policy tools and best practices, within the framework of achieving the 23 goals, in order to achieve safe, orderly and regular migration throughout the migration cycle, and relate to:

1. Collect and use accurate and classified data as a basis for evidence-based policies.

2. Reduce the negative motivations and structural factors that force people to leave their country of origin.
3. Provide accurate and timely information at all stages of migration.
4. Ensure that all migrants have proof of their legal identity and adequate documentation.
5. Enhance the availability and flexibility of regular migration means.
6. Facilitate fair and ethical employment and ensure conditions that ensure decent work.
7. Addressing and reducing vulnerabilities in migration.
8. Saving lives and coordinating international efforts on missing migrants.
9. Strengthen transnational measures to combat migrant smuggling.
10. Preventing, combating and eradicating trafficking in persons in the context of international migration.
11. Manage borders in an integrated, secure and coordinated manner.
12. Enhance certainty and predictability in immigration procedures for proper screening, evaluation and referral.
13. Use immigration detention only as a last resort, and work to find alternatives.
14. Strengthen protection, assistance and consular cooperation throughout the migration cycle.
15. Facilitate migrants' access to basic services.
16. Empower migrants and communities to achieve full integration and social cohesion.
17. Eliminate all forms of discrimination and strengthen evidence-based public discourse in order to influence public perceptions of migration.
18. Invest in skills development and facilitate mutual recognition of skills, qualifications and competencies.
19. Create conditions that help migrants and expatriates to contribute fully to sustainable development in all countries.
20. Encourage faster, safer and less expensive means of remittances, and facilitate the financial integration of migrants.
21. Cooperation to facilitate the return of migrants and allow their safe and dignified re-entry, as well as their sustainable reintegration.
22. Establish mechanisms for the transfer of social security benefits and earned benefits.
23. Strengthening international cooperation and global partnerships to achieve safe, orderly and regular migration (44).

The effective implementation of the Global Compact requires enhanced cooperation and concerted efforts at the local, national, regional and global levels in a spirit of solidarity, including ensuring 45 coherence within the UN system (45).

## CONCLUSION

The issues of illegal immigration have become a source of concern for decision-makers in exporting countries and in importing countries, given the multiple social and economic problems they cause, in addition to political problems between countries. Despite the integrated efforts of states at the official level, the problem of illegal migration is taking on new forms, as those working in organized crime have the awareness, attention and dexterity that enables them to follow any development that occurs in the world to harness and employ it for the purposes of their illegal trade.

It is certain that eradicating this phenomenon will be impossible unless all the main causes of migration are eliminated, by taking serious steps to reduce unemployment and reduce development deficiencies in order to reduce the development gap between the two banks.

From this standpoint, and in response to all the developments in the problem of migration in Morocco, the following conclusions will be given:

- A new law should be passed to repeal and replace Law No. 02-03;
- Decriminalization of irregular entry and residence in Morocco;
- Amendment of certain articles of national laws relating to the rights of migrants to bring them into line with the international conventions ratified by Morocco;
- Guarantee the right of migrants in an irregular situation to be arrested, placed in pre-trial detention or given a fair trial; Guarantee the right of migrants to resort when necessary to the Labour Inspectorate;
- Issuing a special law against racial discrimination against immigrants, criminalizing racial discrimination in accordance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

In summary, Morocco's approach to migration issues should not be an excuse that some neighboring countries may use to flood Morocco with migrants, so it is necessary to reconcile the requirements of stability and the country's limited capabilities with an approach that respects human rights.

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  17. the right to notify the person to whom he intended to go;
  18. Receive appropriate medical and health assistance;
  19. Notify the diplomatic authorities of his country;
  20. The right to appeal orders issued by the President of the Court of First Instance or the judge acting on his behalf in his capacity as judge of urgency
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