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THE AFRICAN UNION EFFORTS TO PROTECT THE RIGHTS OF AFRICAN ILLEGAL MIGRANTS

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Abstract

Migration appeared on the international scene as a social, political, and economic phenomenon, which created many repercussions and effects; it turned into a legal phenomenon in which multiple parties were involved, primarily the countries of origin, transit, and receiving ones, in addition to international organizations active in this regard. With regard to countries of origin, governments are powerless to provide appropriate conditions for their people to prevent them from migrating, and for the receiving countries or transit ones, each country is responsible for setting its own migration policy. These countries often invoke national sovereignty or the protection of national security, to establish policies and procedures that violate the rights of migrants, while international organizations and relevant institutions are powerless to fulfill their promises towards migrants. This study aims to discuss the AU efforts to protect the rights of African illegal migrants.

Keywords: African union, african illegal migrants**,** migration policy, Sub-Saharan Africans, African society, international community

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The African Union Efforts to Protect the Rights of African Illegal Migrants

Introduction

The issue of migration has emerged more acutely in the international scene and become one of the main topic in many discussions within the international community. From this point, migrant occupied a large part in the center of international public policies, while the illegal crossing of the Mediterranean by the African migrants is one of concern to the international community, especially the African society. The new aspect in the African migrant phenomenon is that Sub-Saharan Africans have made North Africa a bridge to join Europe by boats since 2000. These flows led to unnatural results that directly affect migrants as a result of clear violations of their fundamental rights. This reality imposes the international and African community, represented by the AU, the necessity of bearing entire responsibility to protect the rights of illegal migrants through legal legislation and international and regional mechanisms to confront this phenomenon.

1. Concepts and Limits

The concepts related to the migration as a multifaceted phenomenon are associated with many factors that affect the meaning of the word migarant; therefore, there are many different definitions of migration in this regard, as well as the conceptual frameworks differ according to the background of those interested in migration. In addition, due to the rapid spread of the phenomenon and the diversity of influence areas, including countries, organizations, and people, each according to its influence degree.

1.1 Conceptual Frameworks of Migration

According to demographics, migration is the movement, individually or collectively, from one place to another in search of a better social, economic, religious, or political status. İt is an old phenomenon that developed with human life, and this is what made the term very complex in the point that it is difficult to find a standard definition agreed upon by interested scientists. Despite all, the definitions almost agree that it is a temporary movement of individuals and groups, so migration is "an old social phenomenon in which an individual or a group moves from one place to another, leaving his homeland for a new homeland in pursuit of livelihood, whether that is by his own will or due to circumstances beyond his control".[1]

The most important thing that concerns us in this study is the legal standard of migration, as stated in the United Nations recommendations on statistics of international migration, that an international migrant is every person who changes his or her country of usual residence, and in the same recommendations, it was also stated that a long-term migrant is every person who moves to a country other than that of their usual residence for a period of not less than twelve months, and a short-term immigrant is every person who moves to a country other than that of their usual residence for a period of at least three months but less than a year (12 months) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business, medical treatment. The International Convention on the

[1] Mustafa Hafiz, Illegal immigration concept, scale and legislative confrontation, Cairo University, Vol 2, No 2 (2013) P. 45 - 114

The African Union Efforts to Protect the Rights of African Illegal Migrants

Protection of the Rights of All Migrant Workers of the United Nations, in Article 2, defines a migrant worker as "a person who practices, or will practice, or will continue to engage in a remunerated activity in a In a country to which he is not a citizen".

In addition to legal international migration, there is illegal migration, which means "illegal entry" crossing borders without complying with the requirements for legal entry into the receiving state,[2] or it is the movement from the home country to another country for permanent residence in a way that violates the rules regulating migration between countries following the provisions of domestic and international law.

Basing on this, it is possible to identify three types of illegal migrants:

a- People who illegally enter receiving countries and do not regularize their legal status.

b - People who legally enter the receiving countries and stay there after the expiry of the legal residence period.

c- People who illegally work during their legal residence.

According to the broad meaning and the definition of the International Organization for Migration, the category of illegal migrants includes all migrants who violate the regulations of the country of origin, transit, or destination, whether they entered the territory of a country illegally or remained there after the expiry of the residence permit period, or that they avoided the implementation of the deportation procedure.

[2] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 25 fifty-fifth session of 15 November 2000.

1.2 Contexts and Scopes of the Illegal Migrnat Phenomenon

Despite the antiquity of the migration, illegal migration has emerged over the past years, especially since the Fall of the Berlin Wall in 1989. İf the phenomenon of illegal migration is a problem for the receiving countries, it is also generally seen as a problem for the transit countries as well. However, countries of origin are not stranger to this phenomenon, especially concerning their international commitments regarding their citizen rights' protection abroad.

In the same vein, the International Organization for Migration considers that smuggling and trafficking, which are crimes in violation of the rights of migrants, affect all countries, whether they are countries of origin, transit, or destination; it creates problems in migration management, conflict with the laws organized migration, promote irregular migratory movements. Moreover in some cases it make the existence of international criminal organizations possible.[3] İf illegal migration, which is taking a large scale in Africa, it is the result of the armed conflicts that affect several African countries today, in addition to the closure of borders practiced by some countries as a result of the legislation enacted to control the migration flows, which considered a violation of the state sovereignty.[4]

According to the statistics of the United Nations Department of Economic and Social Affairs, the number of international migrants has reached 232 million people, which means 3.2% of the world population,

[3] Eduardo Geronimi, Aspects juridiques du trafic et de la traite des travailleurs migrants, Secteur de la Protection Sociale Programme des Migrations İnternationales Bureau İnternational du Travail Genève, P. 4

[4] Ghosh, B. "Huddled Masses and Uncertain Shores: Insights into Irregular Migration", Martinus Nijhoff Publishers/OIM, The Hague, 1998.

and two-thirds of all international migrants live in Europe, where there are 76 million migrants, while an estimated third of migrants are of African origin.[5]

In a report issued by the United Nations in 2017, the number of African migrants by country of origin increased from 21 million in 2000 to 36 million in 2017.[6] However, the data collection on the numbers of illegal migrants is too difficult due to the nature of the situation of these migrants. African migrants take different regions to cross to Europe, such as the Gourghour crossing in northern Morocco or across the Mediterranean from Libya and Algeria. In July 2016, the number of illegal migrants who passed through Libya to Italy reached 23,522, while some estimates indicate the loss of more than 1,400 migrants, according to United Nations figures.[7]

2. The AU and the Protection of the Rights of Illegal Migrants

The rights to be respected for migrants fall under the fundamental public rights of every human being, as they are not exceptional rights, the migrant must enjoy economic rights such as the right to work, property, and disposal, and social rights such as the right to form a family and social security, and all other fundamental rights such as the right to life, freedom, justice, and movement without discrimination. This rights are guaranteed by the international

[5] African Union Migration and Development Experts Meeting April 2006 Algeria.

[6] International Migration Report 2017: Highlights, Department of Economic and Social Affairs, United Nations New York, 2017.

[7] 4 dead, some 10,000 migrants rescued between Libya and Italy in 4 days, https://www.thelocal.it/20170528/54-dead-some-10000-migrants-rescued-between-libya-and-italy-in-4-days 28 May 2017

agreements and national legislation. In this regard, studying the rights of illegal African migrants requires invoking the general legal framework for illegal migrants and then detailing the framework for the regional efforts represented by the AU.

2.1 The General Framework for The Rights of İllegal Migrants

The law stipulated in the international bill of human rights includes all the rights that an illegal migrant should enjoy. At the forefront of these laws we find the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The Office of the United Nations High Commissioner for Human Rights has identified nine major international human rights treaties, some of which provide optional protocols that address specific issues and set out a series of instruments adopted in the context of the International Labor Organization and international standards in the field of labor law. Accordingly, we understand that it is not a question of protecting people for the sake of others or of defending morals but as an international legal obligation.

In general, international human rights standards apply to anyone, regardless of their multiple status of human bing. Therefore, human rights generally apply to migrants in an irregular situation unless they are expressly excluded from the scope of a particular provision. At the same time, the key instruments of the International Labor Organization apply to all migrant workers without any discrimination. Arguably, the main normative text at the international level is the United Nations

The African Union Efforts to Protect the Rights of African Illegal Migrants

Convention against Transnational Organized Crime and the Protocols Thereto, one of which aims to prevent, suppress, and punish trafficking in persons, especially women and children, and the other to combat the smuggling of migrants by land, air, and sea. For further detail, international human rights instruments define the right of "everyone to the enjoyment of the highest attainable standard of physical and mental health....."[8] To protect migrants, international law imposes improving their health status, avoiding bad treatment and long-term health and social costs, protecting their public health, facilitating integration and contributing to social and economic development.[9]

In the practices of states, we find a paradox in the applications when it concern the illegal migrants, due to the prevailing national and international behavior in criminalizing illegal migration. Sometimes it amounts to violating the rights of the migrant, and even more than that, it may even amount to punishing those who try to provide humanitarian aid to this marginalized group. For example, some European Union countries, which are a likely destination for many African illegal migrants, impose sanctions on humanitarian assistance, deemed a means of facilitating the entry and residence of irregular migrants. In Italy, on 8 August 2007, seven Tunisian fishermen were imprisoned for having rescued and landed 44 shipwrecked migrants.[10]

[8] Pacte international relatif aux droits économiques, sociaux et culturels, article 12 (1).

[9] Organisation mondiale de la santé, «Santé des Migrants - La voie à suivre: rapport d'une consultation mondiale», (2010).

[10] La criminalisation des migrants en situation irrégulière: un crime sans victime, Rapport 1 Commission des migrations, des réfugiés et des personnes déplacées Rapporteur: M. Ionuț-Marian STROE, Roumanie, Groupe du Parti popul

2.2 The nature of human rights violations

African illegal migrants are vulnerable to human rights violations due to the precarious conditions they face. Whether the migrant enters the country of destination or transits with permission or without documents, his rights are less compared to the rights of country citizens, while human rights should not be denied and should not depend on citizenship.

In the concept of State sovereignty, the state has broad powers to protect its borders and define its laws. For example, states have the authority to decide whether to admit non-citizens into their country, detain migrants, and deport non-citizens. However, although a state has the decision-making power about managing migratory flows into and out of its territory, it is obligated under international law to defend the rights of individuals within its territory.

If we observe closely he fragility of the situation of immigrants, the following table shows the groups most vulnerable to human rights violations at the African level.

commissionaire européen, Renvoi en commission: Doc. 13165, Renvoi 3955 du 26 avril 2013.

The African Union Efforts to Protect the Rights of African Illegal Migrants

Women	Migrant women exposed to human rights violations during human trafficking and after their arrival, they are at risk of coercion from trafficking networks (mainly for sexual or labor exploitation). Some migrants reportedly sell their children for adoption rather than pay the trafficking fee. ONUDC, 2010.
Children	Children, especially unaccompanied minors, are particularly vulnerable to the dangers of illegal trafficking and the risk of recruitment by criminal and trafficking networks. Children are often unable to report abuse.
Refugees & Asylum Seekers	Smugglers are often the only way for asylum seekers to escape war and persecution. The illicit trafficking process can exacerbate the pre-existing vulnerabilities of refugees and asylum seekers, and smuggled migrants are usually recruited from refugee camps and reception centers.
People with disabilities	People with physical or psychological disabilities require special care. However, sometimes they become easy targets for trafficking. Given the significant increase in the number of smuggled migrants among the population fleeing war and violence, the people with disabilities rate among migration flows is also likely to increase.
Older People	Older people who are poor, childless, frail, or reclusive constitute a high-risk group in terms of vulnerability.

In recent reports, more than 20 percent of the migrant fatalities recorded by IOM's Missing Migrants Project since 2014 occurred in Africa; in

total, more than 30 percent of Missing Migrants Project records include the death of an African migrant.[11]

2.3 AU Efforts to Protect the Rights of African Migrants

Despite the converging demands on the need for development assistance in African countries to curb migration and especially illegal migration, it is still difficult to appreciate the efforts undertaken by the African Union. The main reason for this is based on the fact that the AU appears paralyzed by its divisions, unable to resolve the conflicts spawned on the continent, and thus combat trafficking in women and children. Although the AfricanUnion has established charters to protect migrants and refugees, the problem lies in their implementation.

In the first attempt by African countries to establish an approach to migration in general, the MIDA (Migration for Development in Africa) program was established at the request of 20 countries that met in Libreville in April 2001, led by the International Organization for Migration (IOM) and based on lessons learned from the RQAN program (Return and Reintegration of Qualified African Nationals). This program was originally launched in 1983 to assist highly qualified professionals wishing to return and reintegrate into the country of origin.[12] As we note in this approach that it takes into account the economic dimension of migration and neglects a significant aspect of the illegal migration phenomenon related to the rights of migrants.

[11] Julia B. The Data Question: The Challenge of Measuring Irregular Migration in Africa, Africa Migration Report Challenging the Narrative, International Organization for Migration, Addis Ababa, 2019.

[12] Savina A. Gestion des migrations et politiques de développement: optimiser les bénéfices de la migration internationale en Afrique de l'Ouest, Secteur de la Protection Sociale Program des Migrations İnternationales İnternational du Bureau Travail Genève.

The African Union Efforts to Protect the Rights of African Illegal Migrants

In an advanced initiative, the Migration Policy Framework for Africa was adopted in 2006 and renewed in 2018, included guidelines for African states and Regional Economic Communities regarding various other aspects of migration, including labor migration, border management, irregular migration, forced displacement, internal migration, and cooperation between states.

In line with their recommendation for the AU commision to update the MPFA and formulate a plan of action for its implementation, the "MPFA Plan of Action (2018 – 2030)" is a revised, strategic document that builds on the achievements and challenges of the previous MPFA to guide Member States and RECs in the management of migration, reflecting the current migration dynamics in Africa. It is the result of an inclusive and participatory process involving different departments at the AUC.

The initiative has not overlooked the aspect related to illegal migration, as it is closely associated with migrant smuggling and other forms of international organized crime, including human trafficking, and can undermine stability and security at the national and international levels. However, the initiative does not have any mechanisms towards protecting the rights of legal migrants.

2.4 African human rights mechanisms and its approach to illegal migration

The principal African human rights treaty is the African Charter on Human and Peoples' Rights which is also known as the Banjul Charter, signed by 53 African countries, and the charter recognizes three categories of rights: civil and political rights, social and economic rights, and collective rights. Then,

the African Commission on Human and Peoples' Rights was established under the African Charter on Human and Peoples' Rights. Although the Commission is the only African mechanism for human rights protection, its agenda does not attach much importance to the rights of illegal migrants in particular.[13] It merely issues reports and recommendations towards African countries, and most of these recommendations and resolutions are not adhered to by states. The AU Commission has indicated in its reports that the implementation rate of treaties and resolutions is only 10% and has increased by only 1% in the past five years.[14]

This means that criminality is exacerbated at the expense of migrants, with human traffickers, enslaved people, and human rights abusers exploiting loopholes in which the supposed protection of illegal migrants is not available.

Conclusion and recommendations

Structural and political challenges to achieving comprehensive and sustainable African integration in Africa still exist on the continent and have caused the diversity of mechanisms and tools; Weak coordination in addition to lack of financial resources, prioritization, and weak institutions; and the lack of harmonization of national laws and policies that impede freedom of movement. This means that vulnerabilities and criminality are exacerbated at the expense of illegal migrants. The efforts undertaken by the AU are very feeble compared to the scale and aggravation of the problems of illegal migrants. The AU, as the principal institution of the continent, must activate

[13] Charte africaine, article 30

[14] Achieng A. and Rosette Nyirinkindi K., Pan-Africanism, Regional Integration and Migration, Africa Migration Report, International Organization for Migration, Addis Ababa Ethiopia, 2019.

its legislation and establish effective mechanisms to ensure the necessary measures in protecting the rights of illegal migrants.

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The African Union Efforts to Protect the Rights of African Illegal Migrants

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