



**NEAR EAST UNIVERSITY**

**INSTITUTE OF GRADUATE STUDIES**

**DEPARTMENT OF INTERNATIONAL LAW**

**THE TREATMENT OF MIGRANTS AT NORTH  
AFRICANS' COUNTRIES BORDERS: AN ANALYSIS OF  
THE DEFICIENCIES IN THE PROTECTION SYSTEM**

**LL.M THESIS**

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**Nicosia**

**May, 2024.**

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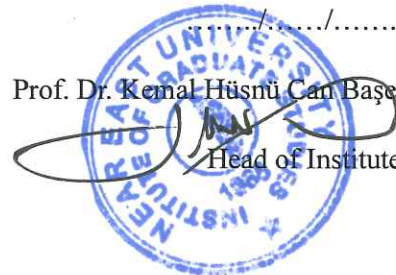
### Approval

We certify that we have read the thesis submitted by ..... titled “**the treatment of migrants at north Africans’ countries Borders: an analysis of the deficiencies in the Protection system**” and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Laws in International Law.

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### **Declaration**

I hereby certify that all data, materials, analyses, and conclusions in this thesis were gathered and presented in accordance with the academic standards and moral principles of the Institute of Graduate Studies at Near East University. I further affirm that I have properly cited and referenced any information and data that are not unique to this work, as required by these rules and conduct.

Lohofongnon Karidja Caroline Sekongo

12/ May/2024

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Lohofongnon Karidja Caroline Sekongo

## **Abstract**

### **The Treatment Of Migrants At North Africans' Countries Borders: An Analysis Of The Deficiencies In The Protection System**

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The greatest number of refugees and migrants nowadays are endeavoring access Europe through northern African countries, which exposes them to human rights crimes when they arrive in these nations. This document examines the main issues that migrants face, such as their inability to access asylum procedures, arbitrary imprisonment, refoulement, and appalling living conditions. In order to gather relevant information about the issue surrounding widespread violations of fundamental values like non-refoulement, non-discrimination, and the protection of vulnerable groups, the document made extensive use of qualitative research to achieve this through research field, legal analysis, and immigrant testimonies.

In order to control migration in the area, The statement outlines the creation of a worldwide framework based on international law and rights as soon as possible. The primary suggestions encompass the following: incorporating and endorsing the conventions on refugees and migrants; solidifying safeguards within domestic legislation; enhancing instruction on the implementation of immigration regulations; expanding opportunities for lawful immigration; simplifying humanitarian access; instituting civil society oversight; and fortifying regional collaboration concerning migration oversight and asylum duties. Providing development assistance to the countries of origin is another way that sustainable solutions must address the underlying issues.

The document's conclusion is that, despite governments' legitimate interests in border security and control, these needs must be balanced against their responsibility to protect refugees and uphold human rights under international law. Human dignity and life-threatening violations against migrants cannot be excused by a deficiency in governmental determination. To really improve an Africa-EU migratory partnership based on human rights values, concerted international initiatives are required.

**Keywords:** Migrants, North African Countries, Borders, Protection System.

## Abstract (Turkish Translation)

### Kuzey Afrika Ülkelerinin Sınırlarında Göçmenlere Yapılan Muamele: Koruma Sistemindeki Eksiklikler Üzerine Bir Analiz

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Günümüzde Avrupa'ya ulaşmaya çalışan göçmen ve mültecilerin büyük çoğunluğu bunu kuzey Afrika ülkeleri üzerinden yapmakta, bu da onları bu ülkelere vardıklarında insan hakları suçlarına maruz bırakmaktadır. Bu belge, sığınma prosedürlerine erişememeleri, keyfi olarak hapsedilmeleri, geri gönderilmeleri ve korkunç yaşam koşulları gibi göçmenlerin karşılaştıkları temel sorunları incelemektedir. Geri göndermeme, ayrımcılık yapmama ve savunmasız grupların korunması gibi temel değerlerin yaygın ihlallerini çevreleyen konuyla ilgili bilgi toplamak amacıyla, belgede nitel araştırmadan kapsamlı bir şekilde yararlanılmıştır. Bunu başarmak için araştırma alanı, yasal analiz ve göçmen tanıklıkları kullanılmıştır.

Bildirge, bölgedeki göçün kontrol altına alınabilmesi için uluslararası hukuk ve haklara dayalı küresel bir çerçevenin bir an önce oluşturulması çağrısında bulunuyor. Başlıca öneriler arasında şunlar yer alıyor: mülteciler ve göçmenlerle ilgili sözleşmelerin dahil edilmesi ve onaylanması; iç mevzuatta güvencelerin sağlanması; göç düzenlemelerinin uygulanmasına ilişkin talimatların artırılması; yasal göç için fırsatların genişletilmesi; insani erişimin basitleştirilmesi; sivil toplum gözetiminin tesis edilmesi ve göç gözetimi ve sığınma görevlerine ilişkin bölgesel işbirliğinin güçlendirilmesi. Menşe ülkelere kalkınma yardımı sağlanması, sürdürülebilir çözümlerin altta yatan sorunları ele almasının bir başka yoludur.

Belgenin vardığı sonuç, hükümetlerin sınır güvenliği ve kontrolü konusundaki meşru menfaatlerine rağmen, bu ihtiyaçların mültecileri koruma ve uluslararası hukuk çerçevesinde insan haklarını gözetme sorumluluklarıyla dengelenmesi gerektiğidir. Göçmenlere yönelik insan onuru ve yaşamı tehdit eden ihlaller, siyasi irade eksikliği ile mazur gösterilemez. İnsan hakları değerlerine dayalı bir Afrika-AB göç ortaklığının gerçek anlamda geliştirilebilmesi için uyumlu uluslararası girişimlere ihtiyaç vardır.

**Anahtar Kelimeler:** Göçmenler, Kuzey Afrika Ülkeleri, Sınırlar, Koruma Sistemi.

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### **List of Abbreviations**

**OAU:** Organization Of African Unity

**NGO:** Non-Governmental Organization

**UNGA:** United Nations General Assembly

**UNHCR:** United Nations High Commissioner for Refugees

**MSF:** Médecins Sans Frontières known as Doctor Without Borders

**LCG:** Libyan Coast Guard

**ICRMW:** International Convention on the Protection of all Migrant Workers and Members of Their Families

**ILO:** International Labour Organization

**GCM:** Global Compact for Migration

**FIDH:** International Federation for Human Rights

**IOM:** International Organization for Migration

**LADDH:** Algerian League for the Defense of Human Rights

**UNICEF:** United Nations Children's Fund

**EU:** European Union

**AMU:** Arab Maghreb Union

**UMA:** Union du Maghreb Arab

**ECOWAS:** Economic Community of West African States

**ASEAN:** Association of Southeast Asian Nations

**NAFTA:** North American Free Trade Agreement

**LGBTQI:** Lesbian Gay Bisexual Transexual Queer Intersex

**ICCPR:** International Covenant on Civil and Political Rights

**UNCAT:** United Nation Convention Against Torture

**GCs:** Geneva Conventions

**ECHR:** European Convention on Human Rights

**UDHR:** Universal Declaration of Human Rights

**UNHCHR:** United Nation High Commissioner for Human Rights

## CHAPTER I

### Introduction

#### Background of the Study

A phenomenon that is becoming increasingly prevalent in our society, migration refers to the common practice of anyone leaving their main residence to relocate, for a period of time or definitively and for a range of circumstances, elsewhere in their country or in a new country, thus spanning an international frontier. It is referring to “a clearly identified list of distinct legal types of persons, such as: (migrant workers, persons whose particular types of movement are legally defined, such as irregular migrants, and persons whose status and forms of movement are not explicitly defined by international law, such as international students)”. “It's a complex phenomenon that is growing with globalization, due both to interconnected structural factors that push populations out of their homelands, as well as developments in host destinations that attract or facilitate the arrival of people”<sup>1</sup>. Sarah Collins reinforced this idea by stating that “international migrations of people are more complex, more diverse and more interconnected than ever before also affecting any people” including (refugees and displaced persons) forced to undertake a migratory journey under the constraint of violence or discrimination resulting from the conflicts that are tearing several regions of the world apart. Moreover, between the development of means of transport enabling people to travel long distances, the relative improvement in living standards providing the material means to finance such a journey, and the growing importance of diasporas as relays facilitating settlement abroad, “many underlying factors stimulate migratory flows around the world and help to maintain bridges between both the home and the host nation”<sup>2</sup>.

In North Africa, the Maghreb countries southern borders have for several decades been the scene of major migratory movements via Africa's Sub-Saharan. whether in labor form,

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<sup>1</sup> Stephen Castles, “Understanding Global Migration: A Social Transformation Perspective” (2010) 36 Journal of Ethnic and Migration Studies 1565 p10.

<sup>2</sup> Massey DS and others, “Theories of International Migration: A Review and Appraisal” (1993) 19 Population and Development Review 431 p4

migration governed in the past by bilateral agreements between newly independent states, or in the more recent form of irregular migration through the Algerian, Libyan or Moroccan deserts, in the hope of reaching the Mediterranean and European coasts in reaction to the progressive closure of land borders and the imposition of visas. “However, external policies are influenced by transit migrants who decide to remain on their territory as a result of the EU's border fortresses”<sup>3</sup>. “Migration routes between Sahelian Africa and the Maghreb have thus adapted over the decades to the increasing restrictions imposed on travel by European and North African policies to combat illegal immigration, making desert journeys even more dangerous”<sup>4</sup> for increasingly destitute migrants, forced to rely on unscrupulous smugglers with criminal practices on the grounds that the expected benefits justify the risks incurred.

It is estimated that between 2 and 3 million Sub-Saharanans have transited, stayed in or attempted to cross the Maghreb in recent decades to changing economic opportunities or brutal border closures, such as violent mass refoulements by Algerian or Moroccan authorities. From 2014 onwards, in reaction regarding the scale of the migration dilemma, the authorities of Europe have been stepping up the number of treaties with North African countries, particularly Libya, to enable these states to act as Europe's "border guards", stemming the flow of migrants on their territory before they cross the Mediterranean<sup>5</sup>. This phenomenon of outsourcing migration control is highly controversial, as it is suspected of ignoring the violence and refoulements committed by the Libyan authorities. NGOs (non-governmental organizations) Others even outright accusing the European Union and its member states of participation in the arbitrary detention and maltreatment of thousands of migrants stuck in Libya and exposed to systemic

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<sup>3</sup> Daniel Wunderlich, “Differentiation and Policy Convergence against Long Odds: Lessons from Implementing EU Migration Policy in Morocco” (2010) 15 *Mediterranean Politics* 249 p3

<sup>4</sup> Bensaâd A, “Agadez, Carrefour Migratoire Sahélo-Maghrébin” (2003) 19 *Revue européenne des migrations internationales* 7 p5

<sup>5</sup> Andersson R, “Europe’s Failed ‘Fight’ against Irregular Migration: Ethnographic Notes on a Counterproductive Industry” (2016) 42 *Journal of Ethnic and Migration Studies* 1055

abuse. Investigations reveal the direct involvement of Libyan coastguards trained and equipped by Europe in illegal push-back operations at sea. “The fortress dimension of Ceuta and Melilla has been reinforced by a series of migratory crisis in the region. The most significant of these were in 2005 and 2014, when the border authorities responded to attempts by migrants to enter the region by taking violent action (with fatal consequences) to intimidate them. The border security authorities answered to attempts by migrants to enter by taking violent action (with fatal drawbacks) to dissuade them. The same happened in June of 2022, when a violent assault was carried out on an attempt to cross the Melilla border. The attack on the Melilla crossing, opposed by the Moroccan border authorities reacted violently, resulted in the deaths of 23 people according to other sources almost 40”.<sup>6</sup>

### **Statement of Problem**

The increasing closure of land borders and the tightening of restrictive entry policies, under European influence, have contributed to making these journeys more perilous and clandestine. Sub-Saharan migrants find themselves forced to take irregular routes, relying on the support of smugglers. This trend has increased their precariousness and the risk of exploitation, leading to violations of their fundamental rights. It is therefore obvious that, although there is legislation guaranteeing the most basic rights of mover, serious violations of these rights are systematically reported at the borders of North African countries. There seems to be a gap between established legal principles and their practical application in the field of migration. A balance needs to be found to ensure ethical and sustainable management of this global phenomenon. Therefore, the problem we face is a review of the protection of migrants' rights at the borders of North African countries.

### **Purpose of the Study**

The major aim of this study is to reconcile the issues of border control and respect for human rights. Through a comprehensive analysis of the deficiencies in the protection system for migrants at North African countries' borders. This research is driven by the urgent need to

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<sup>6</sup> Xavier Ferrer-Gallardo and Lorenzo Gabrielli, “The Fenced off Cities of Ceuta and Melilla: Mediterranean Nodes of Migrant (IM)Mobility,” *IMISCOE research series* (2023) p295

address the often precarious and vulnerable situations faced by migrants in these regions, where human rights violations and inadequate support systems have been repeatedly reported. By highlighting these deficiencies and their impacts, the research aims to inform policy discussions, advocate for enhanced migrant rights and protections, and ultimately contribute to more effective and humane migration governance in the region.

### **Research Questions**

in order to carry out this study, we will analyze the different problems which follow, namely:

What are the international, regional, and national normative sources establishing migrants' rights?

To what extent are these instruments incorporated locally and applicable in North African countries?

What are the obstacles to implementing a judicial protection system?

How can gaps between legal frameworks and the reality of the borderlands be bridged?

### **Significance of the Study**

The significance of this study lies in its potential to address critical human rights concerns and inform more effective, humane migration policies in North Africa and beyond. By examining the deficiencies in migrant protection systems at North African borders, this research contributes to regional stability, impacts international relations, and enhances our understanding of complex migration dynamics. Its findings can improve humanitarian responses, guide economic policies, and inform social integration strategies. The study's insights into security considerations and migration management practices have global relevance, offering valuable lessons for other regions facing similar challenges. Ultimately, this research serves as a crucial step towards upholding international human rights standards, fostering more compassionate approaches to migration, and promoting a deeper understanding of the multifaceted issues surrounding human mobility nowadays.



**Limitations**

The limits encountered in this research process lie in the difficulty of gaining direct access to irregular migrants, given the clandestine nature of their journeys. It will therefore not be possible to gather their views directly. Furthermore, the analysis will focus on the formal legal framework and will not assess the concrete impact of potential reforms. Finally, the case study will be limited to certain North African countries and cannot be generalized.

**Definition of Terms**

**Migrants:** Migrants are individuals who move from one place to another, crossing either international borders or relocating within a country, temporarily or permanently, for various reasons including economic opportunities, safety, education, or family reunification. This term encompasses both voluntary and forced movement, and includes people of diverse legal statuses and circumstances.

**North African Countries:** North African countries typically refer to the nations located in the northern region of the African continent. This generally includes: Morocco, Algeria, Tunisia, Libya, Egypt, Mauritania.

**Borders:** A border is a defined boundary separating different political or administrative areas, typically between countries. It can be land-based, maritime, or aerial. Borders mark the limits of national sovereignty, control movement of people and goods, and are key points for implementing immigration and security policies.

**Protection System:** A protection system refers to the set of laws, policies, institutions, and practices designed to safeguard the rights, safety, and well-being of individuals or groups, particularly those who are vulnerable or at risk. In the context of migration, it encompasses measures to ensure migrants' basic human rights, physical security, and access to essential services throughout their journey and in host countries.

## **CHAPTER II**

### **THE NORMATIVE FRAMEWORK FOR THE PROTECTION OF MIGRANTS IN NORTH AFRICA**

Analyzing standard framework of migrant protection in North Africa means presenting the international sources of migrant protection and the incorporation of international law into national law.

#### **International Sources Of Protection For Migrants**

We will analyze the Geneva convention on refugees and complementary texts, United Nations Convention on the Rights of Migrants and The OAU Refugee Convention.

#### **Geneva Convention on Refugees Of 1951 and It Protocol Of 1967**

(The 1951 Geneva Convention relating to the Status of Refugees and its Additional Protocol) remain the cornerstone of the judicial system to protect refugees forced to migrate around the world. Adopted Against a backdrop of significant population changes in Europe following (World War II) It consolidates and codifies fundamental principles governing the rights of refugees and States duties in their regard. It defined the term "refugee" and his or her rights, and formally prohibited any expulsion or refoulement of a refugee to a country where he or she would be threatened. It was supplemented in 1967 by a protocol designed to extend its application. More than half a century after its adoption by nearly 150 countries, its essential principles remain as relevant as ever, including in the context of the massive displacement of refugees across the African continent. The international asylum system, despite its persistent shortcomings, is also based on this historic convention.

We define the term refugee, the principle of non-refoulement and the economic, social and legal rights guaranteed.

### **Defining The Term “Refugee”**

A “refugee” according to (The 1951 Geneva Convention relating to the Status of Refugees and its Additional Protocol of 1967 art 1 A(2) “ )« any individual who, owing to a well-grounded fear of persecution for reasons of race, religion, nationality, membership of a particular social community or political opinion, is outside the territory of his or her State of nationality and is either unable or, owing to such fear, is unwilling to avail him or herself of the protection of the country of habitual residence as a result of any such occurrence, and is therefore unable or, owing to such fear, is unwilling to return to it. »<sup>7</sup>”. This Protocol eliminates territorial and time limits of the 1951 agreement, making it applicable to all refugees regardless of where they are located or when they escaped from their homeland. This is particularly relevant to migrations in Africa's northern regions, to apprehend situations as diverse as that of hundreds of thousands of refugees who flee political and civil conflicts and oppression in Somalia, South Sudan or the Democratic Republic of Congo, along with ethnical and religious tensions. minorities who are victims of ethnic cleansing, such as the Yezidis of Iraq. The Geneva Convention provides a vital protection base for these vulnerable populations forced to cross borders, many of whom cross the African continent and find themselves at the gateway to Europe via Libya or Morocco.

### **Non-Refoulement Principle**

The non-refoulement clause written into the (Article 33 of the 1951 Geneva Convention related to the Status of Refugees) is keystone of international protection for people seeking asylum and refugees.

This principle forbids signing nations from “turning back as far as possible or expelling ‘’, in any way, a refugee to the borders of countries where his life or freedom might be threatened because of his ethnicity, religion, nationality, membership in a specific social group, or political viewpoint.”<sup>8</sup>. According to “United Nations High Commissioner for Refugees Office, all states

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<sup>7</sup> The 1951 Geneva Convention relating to the Status of Refugees and its Additional Protocol of 1967 art 1 A (2)

<sup>8</sup> Geneva Convention Relating to the Status of Refugees (1951,) Article 33: accessed on November 23,2023 “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened

even those that are not parties to the 1951 Convention are required to abide by this customary international law regulation.”<sup>9</sup>“Many scholars even view non-refoulement as a legally binding norm, or a preemptive rule that cannot be derogated from and is binding on all subjects of international law”<sup>10</sup>. In concrete terms, this absolute and non-derogable principle prevents refugees and those seeking asylum from having to be forcefully repatriated to their nation, or to elsewhere where they could be subjected to cruel or barbaric penalties, such as corporal punishment, persecution or attempts on their lives. The only exception provided for by the Convention concerns individuals considered to pose a threat to the host nation's security, but not again the nation that is being persecuted. Non-refoulement thus aims to give effect to the rights of persecuted individuals to life, integrity, and human dignity who have fled their country. It embodies the essence of the protection conferred by asylum. Its violation remains one among the worst violations of international law pertaining to refugees.

### **Guaranteed Economic, Social And Legal Rights**

In addition to preventing refoulement, Chapters III to V of the Convention set out the fundamental Refugees and asylum seekers ought to be granted certain rights present on a territory. As David R. Cox and Alfred Van Amelsvoort in their book stating that “all people are entitled to welfare provisions; hence while they are on Australian soil it behoves Australia to ensure that basic needs are met”. The same should be applied in North African countries. These protections cover several crucial areas:

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on account of his race, religion, nationality, membership of a particular social group or political opinion.” accessed on November 23,2023

<sup>9</sup> UN High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (2007) <https://www.refworld.org/docid/45f17a1a4.html> accessed on November 23,2023

<sup>10</sup> Allain J, “The Jus Cogens Nature of Non-Refoulement” (2001) 13 International Journal of Refugee Law 533 p2

- The freedom of movement throughout the territory, unrestricted access to the tribunals, and assistance in law (art. 16 & 26 )<sup>11</sup>the refugees' unrestricted access to courtrooms to defend themselves against abuses and to assert their rights. As for the freedom to travel about the land as you like, it enables refugees to move without restriction within their host country and to access the social, medical and educational services they require. These rights are guaranteed by the Protocol for all refugees, regardless of their geographical location, which means that they are universal and applicable to all refugees without distinction.
- (The entitlement of refugee children to receive basic education and, in the same circumstances as citizens, post-primary education)<sup>12</sup> right to primary education means that refugee Children are entitled to free elementary education that is required of them. like national children. This includes the teaching of mother tongues and national languages, as well as training in values and citizenship. This education must be adapted to the needs of refugee children, who may have particular linguistic or cultural difficulties. The Right to post-primary education means that refugee children have the equal rights to secondary and postsecondary education as citizens. Additionally, this education needs to be modified to meet the requirements of children living as refugees., who may have particular difficulties in integrating local education systems.
- “Right to housing and public support under the same circumstances as citizens. The entitlement to housing guarantees refugees the ability to live in a home that is suitable for their requirements, like nationals. This housing must be healthy, suitable and affordable, and it must be located in a safe and well-serviced area. Refugees may also have the right to choose their own housing, insofar as this is possible. Public Assistance means that refugees possess an opportunity to utilize social and medical amenities, just like nationals. These services may include food aid, medical assistance, financial aid

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<sup>11</sup> Convention Relating to the Status of Refugees (Geneva, 28 July 1951) art. 16 &26. accessed on November 23,2023

<sup>12</sup> Ibid art. 22 accessed on November 23,2023

and legal aid. Refugees may also have the right to access social and political integration programs, as well as employment and entrepreneurial programs. This right is essential for refugees, enabling them to live with dignity and prepare for a better future.

- “Being entitled to welfare and lucrative jobs respectively means that Similar to citizens, refugees have equal access to do productive labor. Social security means that refugees have the privilege of using the same social services like citizens, such as pensions, health insurance, unemployment insurance and old-age insurance. This right is essential for refugees, as it enables to be treated with respect and to actively engage in the political and cultural life in their new nation. It also enables them to prepare for their professional and financial future. The goal is to ensure that refugees “the preferential treatment that foreign nationals receive under the given conditions”.<sup>13</sup>

### **United Nations Convention On The Rights Of Migrants**

Faced with the deficiencies of the 1951 Geneva Convention on the protection of refugees alone, and the widespread violation of the fundamental liberties to financial migrants, (“CRMW”, 1990) (UNGA), the main international treaty specifically aimed at regulating how economic migrants and their families are treated, regardless to their regular status on the territory. It aims to guarantee essential civic, electoral, financial, and cultural freedoms for migrants, including legal and undocumented. The convention thus provides for essential rights:

Treatment that is inhumane or humiliating is forbidden (Art 10)

Article 10 expressly “prohibits states from subjecting migrants to be subjected to abuse or other inhumane brutal, or humiliating acts. This regulation aims to protect immigrants' physical and moral integrity, regardless of their legal status.”<sup>14</sup>

This section, in particular, should carefully limit the use of violence and the conditions under which migrants are detained; moreover, outlaw physical punishment including sexual abuse.,

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<sup>13</sup> Ibid art. 7 accessed on November 23,2023

<sup>14</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by the General Assembly, resolution 45/158, 18 December 1990) accessed on November 23,2023

which are still all too frequently documented. The goal is to provide human treatment in accordance with The intrinsic dignity of each and every person.

the life rights and personal security (Art 9)

Article 9 establishes “each and every immigrant's freedom of life, declaring that nobody's life may be taken away without cause. This promise is meant to prevent avoidable migrant deaths, which frequently occur during perilous sea crossings or arduous desert journeys.”<sup>15</sup>

In real terms, states must protect the lives of migrants in difficulty at their borders by arranging rescue operations at sea, not abandoning shipwrecked persons, and providing water and emergency medical care along desert migratory routes. No policy can justify putting vulnerable people's lives in peril.

Document confiscation protection (art 20)

This provision makes it illegal for authorities to destroy or confiscate migrants' identity documents or personal property. Its goal is to safeguard them against the prospect of a legal vacuum, which would deprive them of their rights and expose them to new violations.<sup>16</sup>

In practice, it necessitates careful handling of migrants' belongings, banning the theft or destruction of documentation and sentimental items. The goal is to save vulnerable people from becoming completely impoverished.

Equal treatment in the workplace (Art 25)

It establishes migrants' entitlement to equal treatment with natives in terms of wages and other working circumstances. Its goal is to combat migrant workers' economic exploitation.<sup>17</sup>

In other words, migrants must be entitled to the same national minimum wage, social protection, and rest intervals as any other worker. This section seeks to prevent underpaid work as well as the overexploitation of migrants in undocumented and unprotected jobs.

Access to emergency care (art 28)

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<sup>15</sup> Ibid art 9 accessed on November 23,2023

<sup>16</sup> Ibid art 20 accessed on November 24,2023

<sup>17</sup> Ibid art 25 accessed on November 24,2023

According to this article, migrants have the right to urgent medical attention, even if they are in an irregular circumstance. This guarantee addresses a fundamental humanitarian concern: providing necessary aid to all people, regardless of their status.<sup>18</sup>

Finally, any migrant crossing a border must be rescued, and women must be able to give birth in a safe environment. Nobody on a national territory should be denied essential medical care. It is about protecting a fundamental right to health.

Access to fairness when there has been an offense against humanity (Art 83)

Finally, this article gives migrants the right to file a lawsuit, even individuals with questionable situation and file appeals if their rights are violated. The goal is to provide redress and punish wrongdoing.<sup>19</sup>

To put it another way, all migrants must be allowed to report police abuse and file complaints in the event of fraud or violence. To ensure successful access to justice, assistance services must be guaranteed. Its primary goal is thus to ensure that migrants have the same basic rights and protections as natives. Despite the constraints that prevent certain countries from ratifying it, it serves as the reference framework for migrants' rights. Its strict execution would obligate countries in North Africa and abroad to guarantee adequate migration protection in the face of persistent border violations. The goal is to end impunity for crimes and misdeeds.

### **The OAU Refugee Convention (Convention Governing The Specific Aspects Of Refugees In Africa)**

OAU Refugee Convention, approved on September 10, 1969, at the Conference of Ministers in Charge of African Integration in Addis Ababa, Ethiopia, in reaction to international refugee support system's inadequacy to the realities of forced relocation in Africa. The Convention was opened for signature on July 21, 1970, and became effective on June 20, 1974, after at least ten states ratified it. The primary goal of the Convention is to establish a single A set of laws to safeguard refugees across Africa and to harmonize duties of the States Parties regarding

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<sup>18</sup> the United Nations General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990 art 28 accessed on November 24,2023

<sup>19</sup> Ibid art 83 accessed on November 25,2023



refugee reception, support, and protection. The Convention also seeks to strengthen States Parties' solidarity in the mutual reception and aid of refugees, as well as to prevent and resolve border conflicts related to population movements. It is inspired by general refugee-related international legal concepts, including non-referenced to refugees' political or religious origins, respect for the non-refoulement rule, the freedom to select a different nation where they may live in security, the ability to work and a decent salary, the right to care for familial and personal intimacy, and the right to medical treatment plus education.

The Convention also includes safeguards for refugee women and children, as well as a requirement urging nations involved to give refugees having physical disabilities extra protection or mental disability. The Convention also encourages Parties to the agreement to take action to stop along with border problems related to population movements, as well as to establish mechanisms for inter-State cooperation in this area. This regional convention intends to strengthen the effective rights of African refugees by extending the protections entrenched at the universal level. It is groundbreaking in various ways:

To begin, ( art 1 paragraph 2) broadens concept of refugee to include anybody forced to abandon their home country " due to acts of assault, foreign occupation, foreign dominance, or situations that gravely disturb the peace of the community." <sup>20</sup>This definition takes into account the specific reasons of displacement in Africa, such as armed war, widespread violence, natural catastrophes, or state collapse.

Furthermore, the treaty solemnly enshrines the fundamental right to refuge on the continent, as well as robust assurances of protection such as the prohibition of refoulement. However, it also provides rights in hitherto unexplored areas, such as the safeguarding of refugees' belongings or the equal treatment policy when bestowing rights between nationals and refugees.

Above all (art 2(4)) declares all refugees possess the capacity of "resettle elsewhere" should they be incapable of going back to where they came from, making long-term resettlement an essential component of the protection system.<sup>21</sup>

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<sup>20</sup>Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 1001 U.N.T.S. 45, 10 September 1969 accessed on November 25,2023

<sup>21</sup> Ibid art 2(4) accessed on November 25,2023

The OAU Convention increases the legal, physical, and material protection of Africans forced into exile. Its strict implementation in North Africa would allow it to fill gaps and improve the actual situation of refugees in the region.

## **Incorporating International Law Into National Legislation**

We present an overview of national migrant protection systems and the gaps: the case of Libya and Algeria.

### **Overview Of National Systems For Protecting Migrants**

The process by which an international agreement becomes part of a sovereign state's domestic law is known as incorporation of international law. A country incorporates a treaty by enacting national law that gives the pact effect in its legal system. A country incorporates a treaty by enacting national law that gives the pact effect within its legal system. According to Antonio Cassese in his book "International Law" stated that international rules to be applied by States within their own legal systems generally need to be incorporated into national law. This is because the international community is composed of sovereign States, each eager to control the individuals subject to its jurisdiction and consequently to decide on the extent to which they may hold rights and obligations. Hence, whenever international rules need to be applied within a State, or by a state official, in most cases they must be turned into municipal law. therefore, a constant help, co-operation, and support of national legal systems is needed. Some jurisdictions adhere to a monistic system in which treaties have the power of law even if they are not incorporated provided their terms are deemed sufficiently explicit. This process can be as simple as a country passing a new law that incorporates a treaty into its domestic law, using the same form as the treaty. There are two major approaches to implementing international law into domestic legislation: "monist" and "dualist". "Monist states incorporate international law into their local legal systems. International law shall be applied immediately as if it were local law. Alternatively, dualist states regard international law as distinct from their own legislation. International law is defined to be the law among nations, whereas national law is the law within a state. International accords are so compulsory. requires all treaties to be incorporated before they may have any national legal impact"<sup>22</sup>.

In this sense, the Geneva Convention on Refugees and the New York Convention on the Rights of Migrant Workers, which serve as the foundation of the international normative framework

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<sup>22</sup> Schütze R, *European Union Law* (Oxford University Press 2021)

<https://european-union-law.schutze.eu/chapter/european-law-i-nature-direct-effect/content/>  
accessed on December 2,2023

for protecting migrants from abuses and violations, are being incorporated into North African legislation. The core of their applicability, however, rests in how they are integrated into the local laws of the signatory nations., which are responsible for giving their principles substance. However, an examination of North African national migration legislation reveals that several of the region's republics have only partially incorporated international conventions.

“The absence of national legislation on asylum or refugees in Libya is symbolic of the country's failure to incorporate the 1951 Geneva Convention, a party associated with it, into its domestic legal order”<sup>23</sup>. Migrants enjoy a total legal vacuum in this regard, depriving them of any formal status or rights. To bring Libya's legal system back into compliance with its international obligations, a thorough legal overhaul is needed.

Regarding the transformation of international migrants' rights into favorable law, Algeria as Libya tend to limitate their protection to “political refugee only with a legal right to asylum” according to his art 50 of his constitution<sup>24</sup>. The government still lacks its own legislation on the right to asylum and refuses to apply applicable conventions to vulnerable populations.

Tunisia, in contrast, has had asylum legislation that is generally in line with the international obligations to which it has acceded since 1957: more than 60 years ago, the country passed a law establishing a formal right to asylum for people fear persecution in their native country with good reason, as well as a national office dedicated to examining applications.

This framework also contains certain social and economic advantages concerning those seeking asylum, including their ability to work and schooling for their kids., as well as access to healthcare. As a result, Tunisia has the highest standards of protection for migrants in the region, which is generally consistent with the international duties it has assumed by ratifying the 1951 Geneva Convention and other pertinent documents.

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<sup>23</sup> Hamood S, “AFRICAN TRANSIT MIGRATION THROUGH LIBYA TO EUROPE: THE HUMAN COST” (Forced Migration and Refugee Studies, 2006) p20

<https://migreurop.org/IMG/pdf/hamood-libya.pdf> accessed on December 2,2023

<sup>24</sup> Algeria's Constitution of (2020) art50

[https://www.constituteproject.org/constitution/Algeria\\_2020.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2020.pdf?lang=en) accessed on December 2,2023

However, NGO reports note how this legal arsenal is still frail in practice and is far from being consistently converted into actual guarantees for all migrants present on Tunisian land. It takes a considerable time and effort to go through the immigration processes, and only a small number of applicants result in formal recognition of refugee status. Above all, migrants' access to nominally recognized rights is being increasingly restricted. In Tunisia, there are no closed detention institutions for migrants. However, in response to migratory pressure, controls, raids, and arrests have increased since 2011, with a security rationale far from the spirit of the 1957 law. The Tunisian model demonstrates that, on paper, a balance between strict border controls and respect for fundamental human rights is possible, but is compromised by the present social and political environment of the nation, which has recently not been kind to migrants itself undergoing a profound economic and identity crisis.

Morocco, for its part, has achieved tremendous progress in its domestic legislative framework on the sensitive issue of migration during t need to actually align the Cherifian monarchy alongside its worldwide responsibilities. The last decade, while more development is still required to bring the Cherifian monarchy genuinely in line with its international duties.

Under impetus of King Mohammed VI, Rabat adopted a national immigration and asylum strategy in 2013, filling a glaring legal void that had previously left the vast majority of migrants present in Morocco estimated at several hundred thousand people in a state of complex illegality on national territory.

In theory, guarantees on certain fundamental rights recognized irrespective of migratory status, such as accessibility to facilities for wellness and schooling to the kids of migrants, currently exist. Since “2014, several unusual regularization initiatives for long-term undocumented migrants have resulted in the one-time normalization of the administrative situation of around 17.916 immigrants. However, the reality on the ground remains marked by the persistence of heavy-handed migration controls, including violence, the destruction of informal migrant camps, and massive refoulement operations towards the Algerian border or Spanish enclaves”.<sup>25</sup> These methods, which are clearly illegal under international refugee law, to which Morocco is a signatory, persist until the present day, with little concern for migrants' lives or

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<sup>25</sup> Maroc. Entre rafles et régularisations. Bilan d'une politique migratoire indéfinie (2012) p 19-20 [https://www.fidh.org/IMG/pdf/rapport\\_maroc\\_migration\\_fr.pdf](https://www.fidh.org/IMG/pdf/rapport_maroc_migration_fr.pdf) accessed on December 4, 2023

safety. They highlight the gap that still exists in practice between the formal protective texts that have been established and their actual application at the borders by Moroccan security forces.

In brief, beyond the real but shaky progress made in Tunisia and Morocco, a radical shift in administrative and police culture toward migrants is still needed in the Maghreb to move from the incantatory proclamation of fine protective principles to their systematic concretization on the ground.

However, countries such as Egypt and Sudan continue to lack appropriate legislation that translates the rights established in international treaties upon defending the rights on immigrants, seekers of asylum, and refugees who are residing inside their nation. Normative framework in Egypt, the principal route for migrants and refugees emanating from the Cape of Africa, is woefully inadequate to meet the country's international commitments to protect these vulnerable people.

“Egypt didn't pass any actual national legislation governing refuge on its territory until 1954, when the country's Ministry of Foreign Affairs released brief memorandum effectively reaffirming the principles of the Geneva Agreement (1951). Refugee notion and processes for attaining refugee status, are not well defined”<sup>26</sup>. And this summary text has never been updated to reflect future developments in the international framework, such as the 1967 Protocol's enlargement.

As a result, the country continues to use an outdated notion, limiting the number of potential asylum seekers. Similarly, there is no adequate procedure in place to avoid the refoulement of rejected requests for asylum and provide a fair evaluation. of their personal situation.

Under these conditions, only a small percentage of the tens of thousands of Sudanese, Somalis, and Eritreans fleeing conflict obtain a stable legal status that allows them blending into their host communities. Consequently, the great majority stay in a legal limbo, vulnerable to all types of abuse: discrimination in access to job, housing, and critical services; and daily threats of illegal deportation or lengthy detention due to their irregularity.

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<sup>26</sup>“Egypt: Immigration Law Lacks Key Protections” *Human Rights Watch* (October 28, 2020) <https://www.hrw.org/news/2016/12/15/egypt-immigration-law-lacks-key-protections>

accessed on December 4, 2023

The Egyptian regime's tightening of security since the 2013 coup has only escalated de facto persecution of migrants and refugees, including documented ones, who are now regarded as a political threat and pursued. To put an end to this structural culture of rights violations that defy the most basic norms, ambitious legislative reform is required.

Despite being a signatory to the major international and regional refugee protection treaties, Sudan is failing to provide appropriate living Conditions for the massive number of refugees who have landed in its nation to flee regional unrest. Lack of resources, along with a broad view of national security, are impediments.

Unlike several of its neighbors, Sudan has had national legislation governing refugee reception on its territory since at least 1974, first meant for Ethiopian and then Eritrean refugees fleeing severe conflicts and repression in those countries. However, these texts have hardly changed since its initial publication and is clearly inadequate by today's standards. For example, the reasons for refusing or removing refugee status remain ambiguous and subject to broad interpretation based on political rather than legal considerations. In fact, Sudan's traditionally restricted view of national sovereignty has resulted in hundreds of thousands of refugees living in a precarious condition.

Sudanese camps are one of the world's least suitable conditions for refugees due to de facto confinement, limits Regarding being free of mobility while having the ability to work, insufficient services, plus humanitarian help. A method based on the control of undesirables rather than a humanitarian logic of inclusion.

Finally, Mauritania has ratified the major international refugee treaties, incorporated (the 1951 Geneva Convention and 1967 Protocol, as well as the 1974 "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa").

However, country lacks explicit national legislation on asylum that would translate these international commitments into domestic law. There is currently no legislative structure controlling asylum application procedures, refugee status in the country, or the concept of nonrefoulement. outcoming this situation, rights and obligations regarding asylum seekers and refugees in Mauritania are utterly unknown. It creates legal uncertainty and does not provide respect for these vulnerable people's fundamental rights or adequate protection against the risks of refoulement or illegal deportation.

Adopting a national law in accordance with the treaties ratified by Mauritania is a necessary step to ensure their full application. For numerous years, Mauritanian civil society has

advocated for such laws without success. A legal void that is harmful to the country's thousands of refugees.

Whether through archaism, incapacity, or repressive political doctrine, leading North African countries such as Egypt, Mauritania, and Sudan continue to keep their refugees and migrants in untenable situations of legal or material insecurity, in direct violation of their international obligations. Only far-reaching political reforms can address this systematic rejection of vulnerable communities' rights.

In short, the North African region appears to be distinguished by a chasm between the universal ideals espoused in broad strokes and their implementation in national texts that are supposed to provide them genuine applicability to the hundreds of thousands of migrants seeking legal protection. A lack of consistency can only feed the fiction of rights that are as pompously stated on a global level as they are ineffective locally, leaving migrant populations helpless impotent in confronting those fluctuations of migrating pathways, where they remain exposed to all the abuses specifically prohibited by the conventions whose inapplicability they are accused of. A complete revamp of the legal system is required.

### **Gaps: The Case Of Libya And Algeria**

We shall look at the internalization of international law in national laws in Libya and Algeria. Because these two countries are key migratory corridors between Europe and Africa, their examination will help us understand how this crucial location allows national sovereignty challenges to coexist with global migrant and refugee protection issues.

### **Libya Case**

Libya is an unacceptable legal gap that violates migrants' most fundamental rights. In the book "Age of Migration" Libya was a problematic country according to the fact that despite the existence of treaties designated to ensure protection and free circulation many mass expulsions were perpetrated thus violating the ILO standards. Libya is a textbook example of the significant gap that can exist Comparison of the solemn values established in international humanitarian agreements and their genuine significance to migrants, owing to poor local legislation that prohibits their implementation. Indeed, " The nation of Libya is not agreed



United Nations Convention on Refugees or its 1967 Protocol”<sup>27</sup>, but it should be recalled that the clauses that make up the United Nations Treaty on Refugees are contained within “OAU Convention on Refugees, to which Libya is a signatory”<sup>28</sup>. Libya is therefore obliged to comply. Furthermore, in accordance with Libya's Constitution of 2011, which is the country's current constitution, "The State shall guarantee the right of asylum in accordance with an Act of Parliament. The extradition of political refugees shall be prohibited".<sup>29</sup> In practice, However, it's essential to recognize that the reality on the ground may not always align with constitutional provisions. A claim to asylum shall be guaranteed by the State in compliance with a parliamentary act. It is forbidden to extradite political refugees. This complete failure to control the living and working circumstances of whole groups of people across Libya, some of whom have been there for years, contrasts sharply with the Libyan authorities' zeal to stem migratory flows on their territory at all costs, supposedly to combat illegal immigration. At the same time, Libya has amassed a comprehensive repressive armory in terms of border controls, interceptions, refoulements, and detention of irregular migrants coming on its country or attempting to leave it since the 1990s Libya has a full arsenal of repressive measures in place, including border controls, interceptions, refoulements, and detention of irregular migrants arriving on its country or seeking to leave. Indeed, Libya has been working with European Schengen countries to reduce migratory flows via its borders since the 1990s. Under the impact

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<sup>27</sup> United Nations Treaty collection “CONVENTION RELATING TO THE STATUS OF REFUGEES” (Geneva, 28 July 1951) [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en) accessed on December 14, 2023

<sup>28</sup> “International Law and Refugee Conventions: States Parties – LAWIN” (July 31, 2012) <https://lawin.org/international-law-and-refugee-conventions-states-parties/> accessed on December 14, 2023

<sup>29</sup>Oxford University Press, Inc., “Libya’s Constitution of 2011” (2011) p 4 [https://www.constituteproject.org/constitution/Libya\\_2011.pdf](https://www.constituteproject.org/constitution/Libya_2011.pdf) accessed on December 14, 2023

of European policies, the country has substantially invested in border monitoring and militarization.

In practice, Libya's over-trained and over-equipped coastguards conduct perilous interception operations at sea to divert or turn back migrant boats before they reach international waters. These maritime refoulements frequently turn violent, endangering lives. On land, security forces pursue and detain migrants and asylum seekers at any costs, imprisoning them in overcrowded, filthy detention facilities.

Everything is being done to prevent additional transit to Europe or to restrict entry to Libyan land. However, nothing is being done to recognize or defend the basic rights of foreigners and those seeking refuge in Libya already. This delusion demonstrates that Libya's primary concern is to externalize the "migration problem," with little respect for the international commitments it has made. The true message is thus one of uncompromising preservation of Libya's national borders, mixed with a rejection of the fundamental rights of any foreigner living within these borders and bearing the indelible imprint of the crime of illegal immigration. A framework like this could only lead to the worst abuses against people who have no formal status.

The most concerning and scandalous aspect is that the country has long been a signatory to several critical international instruments requiring it to adopt minimum provisions in its national law to protect migrants and refugees present in the country. Libya joined the 1984 (UNCAT) in 1989, with Art 3 clearly prohibiting the refoulement of a person in another country where they may be subjected to torture. But given unwavering rule of not being returned is specifically absent in Libyan legislation, allowing any kind of border violations.

Libya has also formally ratified the New York Additional Protocol, which extends the 1951 GCs dealing with Refugees Status 'protection. That text enshrines every asylum seeker's entitlement to have his or her case thoroughly reviewed before any deportation action is taken. Again, Libya's practical implementation falls short of effective asylum mechanism is a glaring violation of this pledge. The same is true of the 1969 OAU Convention, to which Tripoli is also a signatory but whose ideals, such as the right of any refugee to be resettled abroad after three years of unsuccessful residence, remain unfulfilled.

In the end, despite Libya's recurrent international pledges to safeguard migrants and refugees, including an absence for state legal frameworks for their implementation can only lead to the sacrifice of migrants' most basic rights on the altar of a kind of security *raison d'état*, reducing foreigners to second-class subjugated people. The texts must be completely rewritten.

### **Algeria Case**

Algeria, like Libya, is another obvious example of a country that has only very imperfectly and partially transferred the cardinal international and regional principles relating to migrants' rights into its domestic legal system, although voluntarily adhering to them. It refuses to acknowledge even basic rights, preferring a tight interpretation of its national sovereignty.

The Algerian system's first major problem is that, more than 60 years after independence, the country still lacks genuine national laws specifying the processes for exercising the right to refuge on its territory. No document outlines the criteria and processes for gaining refugee status for asylum seekers, the nature of the protection to which they are entitled, or the potential remedies. A legal gap could only result in the complete absence of any asylum claim that has been properly lodged and investigated by Algerian authorities. Due to the lack of an accessible legal framework, Algeria's fundamental A claim to a safe haven is essentially a meaningless document that fails to provide effective protection for persecuted people seeking sanctuary on national territory.

Regardless, major instances involving populations escaping violence and discrimination in neighboring countries, such as the recurring waves of Tuareg nationals fleeing Mali's crisis since 2012, should have resulted in the activation of asylum rights. However, in the lack of an internal legal framework, asylum applicants are turned away by authorities who have their heads buried in the sand. The fact that Algeria is a signatory to 1951 GCs specific to Refugees Status, alongside the 1969 (OAU), remains an especially troublesome characteristic regarding nation's blind spot on the critical issue of asylum.

These two major instruments, to which Algeria has freely agreed, require it to enshrine in domestic law minimal protections supports those seeking shelter, namely the prohibition on returning into nations that persecute them or denying them the exercise of fundamental social rights. Algerian authorities continue to deny, claiming that the country's security is more important than any protection of possible destabilizers. True, Algiers has awarded residency cards sparingly in recent years to select limited groups of foreign nationals, such as Syrian refugees escaping the war. However, these are one-time legalizations provided in dribs and drabs, outside of any legal framework for permanent refuge. As a result, progress remains shaky and reversible, as illustrated by recent summonses and deportation threats given to long-established Syrians.

In short, Algeria's continued lack of domestic legislation implementing international refugee treaties, combined with an expansive interpretation of national security imperatives to deny the

most basic rights to vulnerable migrants, creates a detrimental legal ambiguity. However, establishing a true asylum system should be a matter of humanitarian self-evidence.

## CHAPTER III

### THE FAILURE TO IMPLEMENT THE PROTECTION FRAMEWORK

#### **Research Methodology**

To pinpoint the protection of migrants' rights at the borders of North African countries, a doctrinal legal research methodology was used. This methodology involves comparative legal analysis, empirical data collection, case studies, socio-legal review, policy analysis and a human rights-based approach to their organization and analysis in order to provide a holistic understanding of the legal dimensions of migrants' experiences in the region.

#### **Violations Of Migrants' Rights At Borders**

We will analyze the documented violations such as: refoulements, detentions, violence, trafficking, etc. and Risk zones: land borders, transit zones, detention centers.

#### **Documented Violations : Refoulements, Détentions, Violence, Trafficking, Etc.**

we will consecutively analyze refoulements, detentions, violence, exploitation and trafficking as documented violations.

#### **Refoulements**

Refoulements are clear breaches of the right to refuge and the norms governing it, which require refugees should get humane treatment and have their rights upheld. The forcible repatriation of a migrant to the country's boundaries is known as refoulement. from which he or she originated or via which he or she entered. This involves expelling a foreigner from national territory before he or she has even had the opportunity to enter or reside in the country. These migrants confront significant hazards, including abuse, torture, a shortage of food and water, and death.

One of the most regular and unique abuses of migrants' and asylum seekers' fundamental rights at North African borders is collective and forced expulsion to neighboring countries. Indeed, many states engage in this approach, failing to review asylum cases on an individual basis before implementing deportation steps.

This poses major humanitarian issues and Numerous reports from non-governmental organizations (NGOs), human rights organizations, and migrants themselves testify to recurring "large-scale" collective refoulements., as returning migrants are regularly subjected to dangerous conditions, violence, or abuses Concerning their fundamental human rights in their native nations.

“The case **OF HIRSI JAMAA AND OTHERS v. ITALY** (Application no. 27765/09) is a good example. indeed, In their court filing, the petitioners seek redress on the grounds that Italy violated the European Convention on Human Rights by assisting Libya in allowing its coast guard to apprehend individuals at sea and return them to Libya. The petitioners have informed the court that individuals who are sent back to Libya are frequently subjected to torture and other forms of maltreatment there, including routine arbitrary imprisonment in detention camps. The European Convention on Human Rights, which forbids sending persons back to nations where they run the danger of human rights violations, was breached by Italy's practice of catching migrants at sea and compelling them to return to Libya, according to a 2012 ruling by the European Court of Human Rights. as a consequence, an infringement on the policy of non-refoulement through cooperation with Libya.”<sup>30</sup>

However, this practice is a clear and obvious violation of states' obligations to safeguard refugees and asylum seekers in accordance with "the 1951 GCs" and other relevant treaties, as it transgresses the essential and unbreakable "rule of non-refoulement," which forbids the transfer of people who are afraid of persecution to areas where they are secure. remains threatened. Because “In addition to the danger of being deported to third countries and subjected to more torture, refugees and migrants carried the prospect of being sent back to Libya. Chain refoulement is a practice that has raised serious concerns, particularly for individuals from Somalia and Eritrea who have been sent back to their home countries even though the UNHCR has granted refugee status to some of them.”<sup>31</sup>. Author Daniele Lochak

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<sup>30</sup> “ECtHR - Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09 | European Database of Asylum Law” February 2012 <https://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509> accessed on December 20, 2023

<sup>31</sup>Barnes J, “Torturous Journeys: Cruelty, International Law, and Pushbacks and Pullbacks over the Mediterranean Sea” (2022) 48 Review of International Studies 441 p10

made the same point, claiming that “2018, the Italian state, in partnership with the Libyan state, has been able to intercept and subsequently return thousands of refugees to Libya, condemning them to never find a less unpleasant place to live than the Libyan camps”.<sup>32</sup> These camps are not particularly safe, if at all, for the migrants and refugees.

The North African authorities are violating their solemn obligations to give concrete effect to the asylum protections they have approved in principle at the international level by carrying out immediate and collective deportations without any case-by-case examination of the individual's situation, and a fortiori to third countries where the threat may persist for certain profiles. While such illegal actions have been observed at many crossings throughout the region, the practice of arbitrary and huge refoulements has been widely documented along the southern land borders of Algeria and Morocco. “Algeria has been condemned for a number of motives, which include the reality that it conducts collective expulsions by NGOs in contravention of its global responsibilities. Actually, this is explicable via state's lack of a national asylum statute” according to the author Hassan Boubakri.<sup>33</sup> Algerian security forces are thus routinely indicted for inhumanely abandoning groups of migrants in the desert near the borders with Niger and Mali, in regions where their survival is in danger. Morocco is an excellent example of this trend. “In Melilla, which is one of bordering country with Morocco initiate most of those collectives’ expulsions of migrants and refugee that are carried out by Spanish authorities justified by stating that refugee migrants have yet to be determined to be on their soil”<sup>34</sup> according to Markel Redondo Ibarrodo. In fact, since 2013, the Moroccan government has been accused of engaging in systematic refoulements against migrants in collaboration with Spain. Migrants are frequently detained by Moroccan authorities and forced

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<sup>32</sup>Lochak D, “Violations Des Droits Des Migrants Aux Frontières : Pourquoi l’impunité ?” (2021) (Page 8)

<sup>33</sup>Hassan Bourbakri “ Les migrations en Afrique du nord, une position peu confortable entre l’Afrique subsaharienne et l’Europe” (2021) p 40

<sup>34</sup> Ibarrodo MR, “The Borders of Human Rights: Protection of Migrants and Refugees at the Spanish Enclaves in North Africa” [2015] Radboud P26-27

to cross the Spanish border in dangerous conditions, with little safety or aid. The military conducts virtual roundups of migrants in makeshift camps set up along the border highways and pathways to Algeria on a regular basis, before forcing them all onto busses destined for the border for rapid deportations, placing individuals at risk.

Tunisia, like Algeria, does not have an asylum statute; but it does have an agreement with the UNHCR that allows it to handle the asylum evaluation procedure. According to Vasja Badalič “Although the agreement with the UNHCR, before and after Tunisian Revolution authorities erected a number of obstacles that prevented undocumented migrants from requesting refuge, depriving individuals of their legal to seek refuge. The overarching campaign to deter irregular migrants from claiming for asylum included two strategies. The overarching campaign aimed at preventing irregular migrants from claiming for asylum included two strategies. The first technique, which included border refoulements and imprisonment, intended for preventing those seeking refuge from arriving upon arrival UNHCR office, while the second was to impede the activities of individuals and organizations that aid asylum seekers with protection status determination procedures.”<sup>35</sup>

Finally, we find that violating States have typically justified their border operations with rhetoric such as territorial sovereignty defense and combating illegal immigration. These reasons appear implausible in light of international law, which compels them to defend fundamental liberties for detained migrants, particularly those seeking refuge, who should never be subjected to unlawful refoulement. To put an end to this unethical behavior, a systematic judicial denunciation of repeated infractions is now required.

### **Detentions**

According to (ICCPR) of 1966 which constitute Each and every one of the North African member states is entitled to personal liberty and security. Nobody is allowed to be arbitrarily detained or arrested. Nobody may have their freedom taken away from them unless there are legal justifications and procedures followed. "An institutional deprivation of freedom applied as a precaution by law enforcement or a border agent to verify verification, determine the legal

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<sup>35</sup>Badalič V, “Tunisia’s Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights” (2018) 20 Journal of International Migration and Integration 85 P6



prerequisites of entry and living, or impose eviction orders" is what Jukka K on onen defines as "immigration imprisonment".<sup>36</sup> Detention, therefore should only be used as a last resort with a good justification. Detention without a clear purpose is considered arbitrary, As Susan Collenny claimed in her book that "Despite the fact that they have broken no laws and have not been charged with any criminal offence, asylum seekers have been driven back at sea, transported elsewhere or, if they make it to the mainland, undergo mandatory, indiscriminate and open-ended detention. They are deprived of their liberty. It attacks a fundamental right. It is a far more serious threat to freedom and our accepted way of life than any number of unannounced boat people." regardless of illegal entry. from the reported horrific treatment, the fundamental foundation of this broad incarceration approach raises severe legal issues under international law, which the governments concerned have nonetheless endorsed. "The Geneva Convention", for instance, prohibits the imprisonment of asylum seekers unless essential to community safety and requires an immediate court review. Similarly, detentions without a court review within three days are prohibited by the (ECHR).

However, it should be noted that the states party to these conventions are the same ones that violate them. In truth, there have been several reports of illegal detentions in the nations of North Africa of immigrants and refugees. Libya is the first country on the list that demonstrates this point. Libya, like Tunisia, deems unlawful entry into their country a felony, putting all refugees seeking asylum in these nations at risk. Numerous reports from international organizations have reported on the situation, showing the irregular detentions carried out in various nations under the excuse that these "migrants are illegal".

Based on Sarah Hamood's study, "the majority of those the duration of the interviews ranged from a couple of days until a few months. The majority of those interviewed had been imprisoned for short lengths of time, varying in length from a few days to several months, but several had been detained for up to a year. In virtually all cases, detainees were given no official reason or justification for their detention, but were informed informally by police officials or jail guards that they were being held for tahr ib (which means "smuggling" in Arabic). They saw this as an effort to escape Libya illegally via a smuggler. However, no formal charges were filed against them. Throughout their detention, they were refused legal representation and weren't brought before a court of law. Furthermore, no trial has been undertaken to determine

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<sup>36</sup>K on onen J, "The Waiting Game: Immigration Detention as the Waiting Room of Immigration Law" (2019) 9 Migration Studies 721 P2

their guilt or innocence, as far as they are aware.”<sup>37</sup> “Usually, captives are denied access to fundamental rights, resources, and protection. Their possibilities of being represented in politics are nonexistent, and their liberty of mobility is restricted. Furthermore, reporting or detaining migrants in nations in which they are potentially at risk is illegal under international law.”<sup>38</sup>

We can constat that the authorities have failed to respect the entitlements to shelter and the fundamentals underlying asylum, these detentions are frequently arbitrary and unconstitutional. Migrants are frequently arrested without cause or proof of a danger or harm to society, and they are Often detained over a lengthy amount of time lacking the opportunity for a trial or a lawyer. Indeed, in response to an increase in Mediterranean crossings. Jamal Barnes recent study showed that “When apprehended at sea, asylum seekers and refugees are not subject to examinations for refugee protection, nor are they entitled to file an asylum application. After being sent back to Libya, they were subjected to unfair and cruel incarceration.”<sup>39</sup>

Aside Libya, Tunisia also operating illegal detentions indeed, “The unlawful practice of preventing imprisoned non-regular migrants from reaching the UNHCR was made possible by the decision of Tunisian authorities to hold all irregular migrants in custody, notably asylum applicants.”<sup>40</sup> in accordance with Vasja Badalič.

To sum up, however, migrants captured forcibly in “North African centers are frequently imprisoned for months on end without any legal procedure, an admission that their irregular condition in no way justifies their long-term incarceration with no future prospects<sup>41</sup>”. To put

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<sup>37</sup> Ibid (n25) P32 accessed on March 17,2024

<sup>38</sup>Palm E, “Externalized Migration Governance and the Limits of Sovereignty: The Case of Partnership Agreements between EU and Libya” (2020) 86 *Theoria* 9 P6

<sup>39</sup> ibid (n 33) P7 accessed on March 17,2024

<sup>40</sup> Ibid (n37) P7 accessed on March 17,2024

<sup>41</sup> Sanchez G, “Beyond Militias and Tribes: The Facilitation of Migration in Libya” [2020] *Social Science Research Network* P18

an end to this widespread criminalization of migration, a comprehensive change of procedures is necessary.

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<https://deliverypdf.ssrn.com/delivery.php?ID=636105110097094067000020115118074108005045006058036003100112031070126068024097107089061030040044008109118027111002105030072070020059035013080125079115031069007088096039050008025125118068120078102078098023006114125064080102068124126004019070091124122092&EXT=pdf&INDEX=TRUE> accessed on March 17,2024

## Violence

The CAT, the UDHR, the ICCPR, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are international instruments put in place to uphold the dignity and rights of individuals against all forms of violence. These various treaties include many states parties, including the countries of north Africa, which constantly violate the human rights enshrined and protected by these instruments.

Observers have observed widespread “physical and psychological violence, tortures at the hands of security authorities, militias, and smugglers at the borders of North African countries”<sup>42</sup>. (Racist insults, purposeful humiliation, withholding of food and drink, simulated drowning or suffocation) at North African borders against migrants, a veritable system of extreme violence appears to be taking place, organized and minimized. Like in “Morocco where there was a relentless and violent hunt for African American migrants, irrespective of their immigration status... an exacerbation of the discrimination African Americans endured upon every day., including assault, abuse, and verbal aggression.”<sup>43</sup>

The continuation of widespread impunity for perpetrators of such acts encourages their recurrence. In Libya, “people have been subjected to purposeful violence, including physical assault with steel bars, sticks, and rocks; some suffer blindness and deafness as a consequence. It is mandatory for migrants to sit outside and gaze at the bright sun. and some have suffered (cigarette burns, electric shocks, and lashes while hanging from a tree). captives have described being subjected to the "falaka" torture technique, which involves pounding the soles of their feet and forcing them to engage in sexual encounters with other captives at gunpoint”.<sup>44</sup>

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<sup>42</sup> Amnesty International, “Libya: European Governments Complicit in Horrific Abuse of Refugees and Migrants” (*Amnesty International*, August 8, 2022)

<https://www.amnesty.org/en/latest/press-release/2017/12/libya-european-governments-complicit-in-horrific-abuse-of-refugees-and-migrants/> accessed on March 17,2024

<sup>43</sup> Richter L, “Moral Borderwork: Policies, Policing, and Practices of Migrant Smuggling at the EU-Morocco Border” (2021) P10-11

<sup>44</sup> *ibid* (n33) P14-15 accessed on March 18,2024

Same In Morocco, “Migrants are frequently hurt by barbed wire or fall while climbing over the six-meter-high barriers at the Melilla and Ceuta borders. Many have been beaten by Moroccan border officials wielding truncheons (Others have been injured by rubber projectiles fired by Spanish and Moroccan policemen when they tried to send the boats into the waters of the Mediterranean (frequently after they were taken over by the Spanish Guard Civil)”.<sup>45</sup>

There have been numerous reports of serious violence at borders. Migrants near Algeria's southern borders report to beatings, severe robberies, rape, and attempted murder committed with complete impunity by agents.

These systematic violations demonstrate the authorities “disregard for migrants” lives and dignity and how they struggle to maintain and respect migrants’ rights. Persecution of migrants has become state policy on the borders of North African countries. We must band together to restore their degraded humanity.

### **Migrant Exploitation And Trafficking**

In addition to direct abuse by authorities, vulnerable migrants traveling illegally to Europe are frequently at the mercy overseas mafia organizations carry out migrant smuggling and exploitation.

, a situation recognized by the UN as modern-day slavery. " A person who purchases unlawful entrance into a party's territory into where they are neither an immigrant nor a national, with the intention of obtaining a pecuniary or other material profit, is said to be engaging in "smuggling of migrants".<sup>46</sup>Regarding region’s lack of legitimate migration routes, many people are prey to these unscrupulous traffickers and smugglers. These organizations will employ violence and intimidation to exploit migrants and extort their families. Those apprehended at the Algerian or Libyan borders are sold to criminals who hold them captive for ransom in deplorable conditions. Many people die as a result of being beaten and hungry.

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<sup>45</sup> Gross-Wyrtzen L, “Contained and Abandoned in the ‘Humane’ Border: Black Migrants’ Immobility and Survival in Moroccan Urban Space” (2020) 38 Environment and Planning. D, Society and Space/Environment and Planning. D, Society & Space 887 P2-3

<sup>46</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 480, art 3(a) accessed on March 18,2024

Particularly susceptible to coercive prostitution and sexual assault are immigrant women., which armed groups exploit as "bargaining chips" when families are unable to pay. Sexual slavery is also common, with victims being sold and resold repeatedly. the testimony of "semira and Mariam is a tangible example: the two young women testify to having been kidnapped and sold between three groups of smugglers, then detained and raped in Libya".<sup>47</sup> also "African migrants held in slavery were portrayed as tenacious laborers who were traded to the most expensive price in southern Libya".<sup>48</sup>

Without access to safe avenues for dealing with unpleasant situations in West Africa, desperate travelers are at the whim of unscrupulous exploiters, who are assisted and helped by migration policies that are ill-suited to the reality on the ground.

"Sanchez conducts a detailed investigation on the migrant smuggling sector in Libya, documenting the violence endured by migrants intercepted and sold into slavery to local gangs. Many of the migrants polled claimed traveling through "torture houses" to extract ransoms from their relatives before continuing their journey. One-third of the women interviewed reported their traffickers had sexually abused them. However, because to its enigmatic character, the phenomena remain difficult to properly quantify".<sup>49</sup> Real scenes of horror occur in informal detention cells or among traffickers' links, including gang rapes, lengthy physical torture, public executions, and extortion that drives families to destitution. Some survivors manage to flee or are released at the border after payment, despite their severe trauma. These trafficking conditions increase the vulnerable situation faced by migrants and North African asylum seekers and the tragedies they experience, requiring immediate psychological and social treatment once rescued.

This brutal treatment, which is a crime against humanity, reduces victims to absolute commodification, simply a means of profit. They expose the atrocity of criminal exploiters who operate outside of state authority. To free migrants from this oppression, international mobilization is required.

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<sup>47</sup> Johanne knolle & James poskett "Migration" (2020) p79- 80

<sup>48</sup> Snel E, Bilgili Ö and Staring R, "Migration Trajectories and Transnational Support within and beyond Europe" (2020) 47 Journal of Ethnic and Migration Studies 3209 P2

<sup>49</sup> ibid (n44) P29 accessed on March20, 2024

### **Risk Zones: Land Borders, Transit Zones, Detention Centers**

it will present land borders, transit zones, detention centers as risk zones for migrants in a detailed argumentation.

#### **Land Borders**

The huge Saharan deserts have been the site of trans-Saharan migration and trade between North and Sub-Saharan Africa for millennia, using paths traversing permeable borders. However, in response to European pressure and the current concern with "flow control," North African countries have gradually barred access to their land borders during the 1990s, turning them into unfriendly environments for migrants. "However, unilaterally increasing border control in transit countries will not address the underlying causes of trans-Saharan migration. It only forces migrants to take increasingly dangerous routes to continue their journey, traversing through empty desert areas at the desire of smugglers or armed organizations operating with complete impunity. In general, the number of deaths from the number of desert crossings in the Sahara is thought to be a double amount large as in the Mediterranean"<sup>50</sup>. Fermenting the safer traditional routes does not stop the flow; rather, it increases its hazard. "Outlying desert areas are becoming the site of institutional brutality against migrants perpetrated by both security authorities and traffickers. Deadly chases, refusal of assistance to those in need, or systematic abandonment without water or supplies create a true endemic policy of letting people die on Europe's peripheries". Some competent authorities' security practices may result in severe violations of migrants' rights. Overuse of force by law enforcement officials or army, for example, may cause unwary individuals to die or suffer injuries. As was the case in Morocco, where "some migrants died, including two teenage Malians killed while on a southbound repatriation bus from Tangiers. While the bus was moving along, the migrants inside claimed both Malians were compelled onto the highway by the police".<sup>51</sup>

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<sup>50</sup>Brachet J, "Manufacturing Smugglers: From Irregular to Clandestine Mobility in the Sahara" (2018) 676 the Annals of the American Academy of Political and Social Science 16 p13

<sup>51</sup> Line Richter, "Moral Borderwork: Policies, Policing, and Practices of Migrant Smuggling at the EU-Morocco Border" (2021) 27 Geopolitics 1430 p11

Arbitrary imprisonment or torture can also be used to regulate migration flows or gather information about other migrants. Extreme poverty is common in border locations, increasing the vulnerability of both local inhabitants and migrants. Competent authorities might take advantage of this weakness to earn cash by charging excessive taxes or requiring migrants to pay to cross the border. Competent authorities may also claim poverty as a justification for using disproportionate force against migrants or denying them accessibility to basic needs like clean water for consumption and health services. Coastguards with navies along the Mediterranean coast are likewise willing to fire on homemade boats, resulting in fatal disasters far from cameras or witnesses. Extreme violence and mass criminality are committed with guilty complicity.<sup>52</sup> All of these restrictive measures undermine effective controls by creating an arbitrary power structure in which migrants, for the most part, lack access to the resources required to determine their status and access to justice.

### **Transit Zone**

On the covert pathways irregular migrants take to get to Europe via north African countries, marginal transit zones have devolved into lawless zones, where migrant populations suffer the worst abuses with impunity at the hands of criminal networks active in these remote regions beyond the reach of state authority. Indeed, the increasing closure of legal migration routes forces migrants fleeing poverty or persecution to use illegal channels, exposing them to grave dangers as they wander from makeshift camp to disused warehouse along migration routes controlled by traffickers and smugglers in a mafia-like manner<sup>53</sup>. In these isolated regions,

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<sup>52</sup> Salah H, “Already Complicit in Libya Migrant Abuse, EU Doubles down on Support” *Human Rights Watch* (February 8, 2023) <https://www.hrw.org/news/2023/02/08/already-complicit-libya-migrant-abuse-eu-doubles-down-support> accessed on March 20,2024

<sup>53</sup> Roueida Hage, “Human rights of migrants at international borders in North Africa and the Sahel” 21/07/2021, United Nations High Commissioner for Human Rights (OHCHR) Regional Office of the Middle east and North Africa, <https://romena.ohchr.org/en/node/322> accessed on March 2024



migrants run a high risk (of being kidnapped, tortured, raped and extorted) while crossing the Saharan desert, as in “Agadez”, where thousands of migrants have already died.

For the region's states, which have objectively failed to extend their control and monopoly of legitimate violence to certain peripheries of their territory, the mafia stranglehold on irregular migratory flows has frequently been accommodated, seeing it as a convenient way of externalizing border control at a lower cost.<sup>54</sup>

Some officials are no longer afraid to profit directly from these lucrative activities, reinforcing criminals' impunity. Nonetheless, a global security approach is required to retake control of these lawless zones and restore democratic order.

### **Détentions Centers**

Among the various disorganized zones along Africa's migratory routes, detention centers for irregular migrants are known for brutal and degrading treatment of its occupants, which is almost completely tolerated. Indeed, the failure to develop a comprehensive framework for migrant border protection has resulted in repeated abuses of their fundamental rights. “Such is the case in Libya, where, once in the hands of traffickers and militias, migrants are left with only one option for escape: bribe the forces of law and order might be sent to a camp for confinement. Numerous migrants who are stuck have expressed that they would prefer to perish at sea than to endure more mistreatment in these circumstances”.<sup>55</sup> Under pretext of containing

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<sup>54</sup> Ibid (n54) p5 accessed on March 21,2024

<sup>55</sup> Mehmet Enes Beşer and others, “Libya Detention Centres: A State of Impunity” [2018] AYBÜ Migration Policy center, P-8 [https://d1wqtxts1xzle7.cloudfront.net/58522033/Libya\\_Detention\\_Centres\\_A\\_State\\_of\\_Impunity-libre.pdf?1551401718=&response-content-disposition=inline%3B+filename%3DLibya\\_Detention\\_Centres\\_A\\_State\\_of\\_Impun.pdf&Expires=1715566337&Signature=XMhvUxxsnQgbqpOxqYkKbJw9OOR~5hvXMuXh4U8tXvJSoHOObTePXBDw36QyLm9d6JU7W6VNjnLVaMFVMPQQShbg82aA20XhxaZnKgliTAIlycKA~eZEvaq5AoMt7xISkUx9eYWoqWZfY8os8~QH8s36YuOvJyTDxSWBZQ-Gbr8gPqMvKJJop9oQeLdAcZjgB56SEQcEaAjMf4JJ198gKians0FPQGHK4vbHIsbkAzy45UtRnoaby4GHU59lsgAV2xH69n65DJecEvJi0YkIG3XAmTMfyY8nsOpkwwMiNmH4xL9s](https://d1wqtxts1xzle7.cloudfront.net/58522033/Libya_Detention_Centres_A_State_of_Impunity-libre.pdf?1551401718=&response-content-disposition=inline%3B+filename%3DLibya_Detention_Centres_A_State_of_Impun.pdf&Expires=1715566337&Signature=XMhvUxxsnQgbqpOxqYkKbJw9OOR~5hvXMuXh4U8tXvJSoHOObTePXBDw36QyLm9d6JU7W6VNjnLVaMFVMPQQShbg82aA20XhxaZnKgliTAIlycKA~eZEvaq5AoMt7xISkUx9eYWoqWZfY8os8~QH8s36YuOvJyTDxSWBZQ-Gbr8gPqMvKJJop9oQeLdAcZjgB56SEQcEaAjMf4JJ198gKians0FPQGHK4vbHIsbkAzy45UtRnoaby4GHU59lsgAV2xH69n65DJecEvJi0YkIG3XAmTMfyY8nsOpkwwMiNmH4xL9s)

migratory flows, “several countries in the region have gradually established a network of camps and centers dedicated to the prolonged internment of transit migrants intercepted on their soil or at sea, with the complicity and logistical and financial support of the European Union”.<sup>56</sup> Clearly, under political and financial pressure from European bodies, several Libya along with other North African nations, Algeria, Morocco have gradually established an infrastructure of camps and centers designed to accommodate irregular migrants intercepted while attempting to enter European territory. In practice, European funding from mechanisms The urgently needed Trustee Money for Africa, for example, has provided direct funding for construction plus equipping of these holding facilities, which are typically placed on the outskirts of towns or in distant desert regions. Example in Libya Storage facilities, jails, educational institutions, and transport containers were used as prisons by both government and unauthorized entities.”<sup>57</sup> The "gravely packed, without sufficient availability of bathrooms, laundry amenities, nourishment, or fresh water" environments of confinement institutions remain another issue. UN representatives claim that "some clinics are declining to care for migrants, claiming the threat of infectious illnesses and difficulty receiving cash".<sup>58</sup>

A condemned outsourcing of European border control, European aid has also taken the shape of supplies of border surveillance technology, training for paramilitary forces responsible for arresting and monitoring migrants, and even "readmission" deals for migrants arrested.<sup>59</sup> Undoubtedly, these programs were formally established to achieve humanitarian goals of caring for migrants. However, they have indirectly aided the spread of a deplorable regime of

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<sup>56</sup>Ibid (n58) p7 accessed on March21, 2024

<sup>57</sup> Al-Dayel N, Anfinson A and Anfinson G, “Captivity, Migration, and Power in Libya” (2021) 9 Journal of Human Trafficking 280 p10

<sup>58</sup> ibid (n58) p9 accessed on March 22,2024

<sup>59</sup>Andrijasevic R, “From Exception to Excess,” *Duke University Press eBooks* (2010), page 8.

arbitrary, opaque detentions throughout the region. According to “Doctors Without Borders” “In custody centers in Tripoli, Libya, migrants, refugees, and asylum seekers are frequently refused the provision of nutrition, water, sanitary facilities, and healthcare. They have been additionally abused, raped, and murdered. Both Abu Salim together with Ain Zara prison facilities' amenities and atrocities were observed by MSF officials during 2023, while they recorded these details. A multitude of people are still being imprisoned illegally, especially women and children. Lifesaving supplies and essential medical attention are often refused to detainees in Abu Salim and Ain Zara, in addition to living conditions that are deplorable and brutal.”<sup>60</sup>

To sum up, Extreme overcrowding in cramped quarters, horrifyingly unhealthy buildings, extreme malnutrition, and a complete lack of medical care, but above all, physical and psychological torture, sexual violence, and public executions are almost daily occurrences in these antechambers of hell, as described by migrant survivors and the few observers permitted to cross the secretly guarded walls. Some observers have described such organized degradation of humanity, reduced to its most basic commercial manifestation, as a crime against humanity. Culpable silence in the face of repeating exactions highlights the terrible dehumanization of persons who are only trying to find sanctuary or a better life.

Another important issue in transit zones is unable to obtain juridical assistance in addition due process. Many migrants are unaware of their rights and lack access to legal counsel, making it difficult for them to challenge arbitrary decisions made by authorities about their status or treatment. As a result, there have been examples of unlawful imprisonment, deportation without sufficient documents or appeal procedures, and other breaches of human rights. Aside from these issues, there is a lack of coordination among the numerous authorities in charge of controlling migratory flows at the borders. As a result, applications for asylum or other types of protection (subsidiary protection status, temporary protection, admission on humanitarian grounds, regularization for personal and family ties, refugee resettlement) are subject to misunderstanding, inconsistencies, and delays. For migrants who are already experiencing challenging conditions, this can lead to extended periods of uncertainty and distress.

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<sup>60</sup> “People Are Beaten, Sexually Abused and Killed in Libyan Detention Centres | MSF”  
(*Médecins Sans Frontières (MSF) International*)

<https://www.msf.org/people-are-beaten-sexually-abused-and-killed-libyan-detention-centres>  
accessed on March 22,2024

### **Structural Causes Of Violations**

We will investigate the structural reasons of migrant rights violations through the security framework that dominates migration policies. Lack of authority training and resources corruption and impunity.

### **Security Framework Dominating Migration Policies**

In North African migration strategies, securitization is a counterproductive paradigm. The term "securitization of migration" refers to "the perception of "migration" being a threat to the safety for a community or an entire nation. Authorities respond by implementing harsher measures toward migrants, such as enhanced monitoring, detention, and deportation."<sup>61</sup> Analysis of the structural elements fueling widespread abuses of migrants' fundamental rights in North Africa in recent years inevitably points to the region's countries' highly securitarian and oppressive public migration policies. The Moroccan state for example "uses both "hard" and "soft" approaches in its border security measures the "difficult tactics involve mass enforcement, compulsion to move, scientific frontier enhancements, and various types of physical repression."<sup>62</sup>The "hard" approach remains the one that produces a high percentage of abuses on migrant rights and refugees.

European political paradigms directly influence of assimilating irregular immigration to a vital threat that must be combated by all means in the same way that crimes such as terrorism or organized crime have caused a rise in the forced labor or enslavement among migrants and the trafficking in people by criminal groups or human traffickers. We can constat that those North African authorities have gradually apprehended the phenomenon of clandestine migration only under a security angle, to the detriment of a more balanced approach respectful of human rights

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<sup>61</sup> Tsion Tadesse Abebe, "Securitization of Migration in Africa: The Case of Agadez in Niger," vol 20 (2019) p3

<https://issafrica.s3.amazonaws.com/site/uploads/ar20.pdf> accessed on March 22,2024

<sup>62</sup> Ibid (n54) p9 accessed on March 22,2024

<sup>63</sup> Zardo F and Loschi C, "EU-Algeria (Non)Cooperation on Migration: A Tale of Two Fortresses" (2020) 27 Mediterranean Politics 148 *P16*

In concrete terms, we have seen an explosion of financial and human resources given to border monitoring, physical interception of migrants, administrative detention of migrants, to the detriment of respect for their rights or protection against abuse if stopped at the frontiers.

The term "rights sacrificed on behalf of state reasons" refers to a situation in which national interests are prioritized over fundamental rights and international commitments to defend human rights. This differential treatment reserved for populations perceived as a statistical anomaly that must be corrected at any cost contrasts sharply with the generous protections promised on paper against any attack on the worth of every person, irrespective of their citizenship or cultural heritage. In addition to socioeconomic marginalization, the abuse of basic entitlements including a right of existence, freedom, as well security has led to restricted or outright forbidden availability of essential amenities including drinking water, healthcare, and schooling.

Consequently, the preoccupation established as a lofty justification of state for tracking down migrants to meet European security wants culminates in a daily negation The Constitution captured people's absolute civil and political liberties. This battle's spectacularizing against migrant flows far surpasses the insignificant fact of the effective protections that must be provided to any individual discovered within the authority of a State.

### **Lack Of Training And Resources For Authorities**

While the deliberate desire to control migration flows at all costs clearly guides daily violations of migrants' financial rights in North Africa, the structural inadequacy of public administrations' operational capacities to address the migration issue in all its complexities also plays a role. According to UNHCHR, security agencies that as borders 'control in countries such as Algeria or Libya are frequently unaware of the specific difficulties caused by migratory flows. This is the example of "Moroccan border police who fired stones and tear gas at migrants and refugees in deserted regions. Many injured victims were still receiving punches while lying on the ground, partially unconscious and unresponsive. or having difficulty breathing"<sup>64</sup>.Checks frequently result in inadvertent abuse in the lack of proper training on the rights and

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<sup>64</sup> Amnesty International, "Morocco/Spain: Stalled and Inadequate Inquiries 'Smack of Cover-up', Six Months after 37 Deaths at Melilla Border" (*Amnesty International*, December 19, 2022)

procedures applicable to migrants. Foreign Affairs Services, customs and border police, and destitute local governments are the norm in isolated regions that are frequently undeveloped and struggle to control their own people. The entry of foreign migrants could only exacerbate the situation. Libya is also a great example indeed, “Humanitarian crimes targeting refugees, asylum seekers, along with migrants are allegedly committed by the LCG throughout maritime rescuing when interdiction missions. One such infraction is considering intentional weapons' use to wreck vessels. Additionally, LCG is said that it had conspired with contraband organizations.”<sup>65</sup>

There is also an obvious lack of training for public officials in direct contact with migrants in the international and humanitarian dimensions of the mobility phenomenon that they are responsible for regulating on a daily basis, which leads to the generalization of abuses due to a serious misinterpretation of the laws governing the protection of these at-risk people. Also, there are serious ethical failings that lead to the many violations of fundamental rights against migrants across European south frontiers. as professionals of transit country administrations; far from their duty to protect vulnerable people, security forces thus demonstrate an obvious failure of basic humanist values through practices of illegal pushbacks and conscious abandonment of migrants in critical danger, cynically sacrificing lives on the spot sacrifice of state reason.

Beyond this obvious lack of ethical concern for exiles' suffering, the chronic lack of training provided to agents on human rights in a migratory context, as well as the material capacities to legally assist them, exacerbates their proclivity to violations due to ignorance or constraint rather than malice. As a result, there is an urgent need for strengthened programs for authorities, both in terms of ethics and legal rights and obligations towards migrants<sup>4</sup>.

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<https://www.amnesty.org/en/latest/news/2022/12/morocco-spain-stalled-and-inadequate-inquiries-smack-of-cover-up-six-months-after-37-deaths-at-melilla-border/> accessed on March 22,2024

<sup>65</sup>Ferstman C, “Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent ‘Irregular’ Migration: European Union and United Kingdom Support to Libya” (2020) 21 German Law Journal 459 p5

Capacity issues cannot adequately explain, let alone justify, major and recurring ethical violations by sworn agents. However, major resource building and active teaching of basic rules are clearly required.

### **Corruption And Impunity**

If the previously mentioned factors shed some light on the dynamics that lead to recurring attacks on migrants' fundamental rights in North Africa, another explanatory factor lies in the sprawling influence exerted by various forms of systemic corruption, knowingly maintaining a real culture of impunity. Indeed, the proclivity of public officials, beginning with select senior political leaders and security personnel, to monetize their actions with migrants encourages abuse by prioritizing the wealthiest bidders over the most vulnerable. Furthermore, the fact that almost no consequences or investigations are carried out for crimes against migrants, even when they are documented, contributes to a damaging climate of trivialization of the most awful abuses. The simultaneous ethical degradation of the elites and the state apparatus, caused by avarice and carelessness, provides ideal ground for widespread abuses of human rights by agents who answer to no one. As a result, a comprehensive mental overhaul and zero tolerance for these atrocities are urgently required.

The emergence of lucrative migratory networks draining hundreds of millions of dollars each year with the multiplication of trafficking and human trafficking quickly appeared to many observers as an El Dorado for a new generation of state predators seeking to monetize their power. In states where the integrity of government is threatened. Elites are far from being the dominant norm. Many analysts have thus emphasized the close collaboration that has gradually developed in several countries in the region between circles of power and certain organized criminal groups controlling clandestine migration routes and cross-border transportation of migrants seeking passage. Various investigations in Libya have, for example, revealed how, under the guise of the fight against illegal immigration, several "official or unofficial authorities" <sup>66</sup>have monopolized certain human trafficking routes, themselves organizing the transit of migrants from the south of the country. countries to the Mediterranean in exchange

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<sup>66</sup> Laura Bartolini & Ivona Zakoska-Todorovska, "Vulnerability to exploitation and abuse Along migration routes from the Mediterranean to Italy", IOM 2018, p8.

for payment in tacit agreement with the central government, which turns a blind eye to these lucrative practices.

in Libya, “the Libyan Tubu militias, sometimes posing as official border guards, made money by taxing migrants and migrant smugglers at checkpoints”.<sup>67</sup>This infiltration of official migration control circuits by greedy mafia actors exemplifies post-Gaddafi Libyan state authorities’ propensity to compromise themselves in the lucrative polymorphous trafficking of the world’s new miserable, African migrants. One of the most sinister elements Due to disintegration in legal system. “A number of social movements have also documented an increase in racial prejudice in the nation, denouncing the reality that discriminatory acts towards migrants of color frequently go unsolved”<sup>68</sup>in Morocco.

But, beyond this level of collusion at the highest levels of the state, which certainly illuminates a number of incidents of targeted violence against migrants, there is a whole chain of borderline interdependence that has been built over the years between public actors, shady security forces, unscrupulous employers, and criminal groups specializing in the exploitation and dispossession of migrants. According to a United Nations report, “Migrants do not come forward either because some of the abuses are the work Any state servants whom could be actively participating with the illegal trafficking of the migrants concerned. border guards, police officers or staff working in detention centers”<sup>69</sup>.

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<sup>67</sup>Jérôme Tubiana & Clotilde Warin & Gaffar Mohammud Saeneen, “Multilateral Damage The impact of EU migration policies on central Saharan routes”, September 2018 CRU Report, Clingendael, Netherlands Institute of International Relations, p.36 <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf> accessed on March 22, 2024

<sup>68</sup> Tachfine Baida “Morocco ‘s Regional Policy and Implications for EU-Morocco Relations” (2020) p3

<sup>69</sup>“Violence against Smuggled Migrants Widespread, but Justice Is Lacking: UN Report” (*UN News*, June 30, 2021) <https://news.un.org/en/story/2021/06/1094932> accessed on March 22, 2024



A fertile ground ripe for the denial of rights owed even to vulnerable persons in quest of survival with perfect impunity. A constant mobilization against these predators is required, as is a complete cessation of the revenues gained by their atrocities, which are their main purpose.

## CHAPTER IV

### REINFORCING MIGRANT PROTECTION THROUGH STRUCTURAL REFORMS

Reinforcing migrants' protection through structural reforms required the strengthening: on the legal level, at institutional level and a regional cooperation field.

#### **On The Legal Level**

The protection of migrant's rights against abuses in north Africa can be ensured through universal ratification of convention and Internal legislative reforms.

#### **Universal Ratification Of Conventions**

Maghreb region of North Africa encompass nations such as Algeria, Tunisia, Libya, Morocco, Mauritania and Egypt, is at the crossroads of migration. As migrants cross this region in search of better prospects or to escape conflict, the imperative to safeguard their rights is becoming ever more pronounced.

The establishment of a strong international legal framework through universal ratification of the major migration agreements is a critical component in ensuring effective protection of migrants' fundamental rights. Several significant normative instruments have been developed over the years, defining minimum requirements that It is anticipated that each nation would include in their individual national laws. Ratification is a critical step in the incorporation of an international treaty into a country's domestic law. It is a key legal act in international law in which a state formally declares its willingness to be bound by an international treaty. It so represents The unwavering juridical commitment by any nation to respect the agreement's obligations. And it is only after ratification that To this nation, the agreement takes effect. and becomes legally binding on an international level. Ratifying international treaties to improve migration protection in North African nations necessitates a comprehensive approach that includes structural and legal reforms. (CRMW, UN 1990) <sup>70</sup>fits inside this framework as a

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<sup>70</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 accessed on March 23, 2024

comprehensive legal instrument aimed at establishing minimum universal standards regarding the way migrant laborers along with their households are treated. By establishing a fundamental a collection of migrant workers' and their families' civil, political, economic, and social entitlements. State acceptance and implementation of this Convention can provide a strong normative foundation dedicated toward defending "migrant workers' basic liberties, particularly individuals who are in precarious situations" and differentiates further rights for migrants in a regular situation, However, unlike other conventions of its type, the Convention on Migrant Workers has not been extensively approved around the world".<sup>71</sup> Indeed, in the context of our research, only Tunisia is not a signatory to this treaty. All other nations are parties, with Algeria and Morocco sharing the same reservation about "Article 12"<sup>72</sup> relating on the context of a dispute, to the power of court. Regarding "art 4 and 18" and the medical and consular services provided to migrant workers and their loved ones, Egypt has voiced concerns. Libya has acceded without reservations. However, the 1951 GCs and its 1967 Protocol are not ratified by Libya."<sup>73</sup>, which formulated its non-punishment and rejection policies regarding irregular immigration. Ratification would guarantee adherence to international standards for refugee protection while simultaneously encouraging a more humane and grounded in rights strategy.

Furthermore, non-ratification towards two (ILO) Conventions Nos. 97 plus 143 remains an issue. "Morocco ratified Convention No. 97 on Migration for Employment (1949) done on

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<sup>71</sup> Cenker M and Holder D, "Migration and Refugees: Applying Human Rights to 'Everyone'?" *Policy Press eBooks* (2020), p5

<sup>72</sup> United Nations, "INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES," vol 2220 (1990) p2-3

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-13.en.pdf>  
accessed on March 24,2024

<sup>73</sup> Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Refugee Protocol) [accessed on March 25, 2024](#)

2019, Algeria in 1962, while Egypt, Tunisia, and Libya have yet to do so”.<sup>74</sup> And “no country has accepted the Supplementary Provisions 1975 Convention No. 143 on Migrant Workers”<sup>75</sup>. However, these conventions complete this framework by establishing key principles such as equal treatment of national and migrant workers, the prohibition of forced Labour, and inter-state cooperation for the orderly management of migratory Labour flows. With ratifying and transposing these instruments into their domestic legal frameworks, states explicitly commit to aligning their national migration legislation and policies with internationally recognized standards. This significantly increases migrants' legal protection, promotes equitable treatment and non-discrimination, and fosters more harmonization of practices across borders. Universal ratification to these treaties would also enable improved multilateral cooperation for effective monitoring of their implementation, including methods for monitoring, reporting, and inter-state or individual complaints. Such measures would serve to strengthen States' admissibility and detect flaws or violations in order to correct them.

GCM<sup>76</sup> Contributes to this framework. This GCM, which was adopted during 2018, highlights a rights-centered method to managing migration including recognizes the imperative of human rights compliance, cooperation, and uniform points of access. Among the legal structures that GCM enhances is the ICRMW. It motivates nations to enact laws that put migrant populations' welfare and dignity first. Australia is a good example according to the author James Jupp in his book “Exile or Refugee”, “Australia policy meet with emergency welfare need.” It should also be the case to north African countries. Overall, “The Refugee Convention's definition of a

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<sup>74</sup>“Ratifications of ILO Conventions: Ratifications by Convention” (1949) No. 97

[https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312242](https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242) accessed on March 25, 2024

<sup>75</sup> “Ratifications of ILO Conventions: Ratifications by Convention” (09 Dec 1978) No.143

[https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312288:NO](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO) accessed on March 25, 2024

<sup>76</sup> “Global Compact for Safe, Orderly and Regular Migration” (2018) 30 International Journal of Refugee Law 774 p2

refugee, as well as those who fall outside of it, might have their rights to international protection strengthened by the GCM.”<sup>77</sup>

Finally, The Maghreb countries have made progress toward regional cooperation and bilateral agreements related to migration. However, these initiatives must aim to strengthen cooperation, exchange best practices, and overcome shared obstacles while ensuring that migrants are protected from abuse in all its forms. In this way, ratification would strengthen support for cooperation as the legal foundation for migrant protection, ensuring that regional efforts are in line with international standards. Also, as the author Michael Easson advanced in his book entitled “Australia and immigration able to grow?”, it is as well vital to open the debate over the potential of positive impact of migrants in our society.

### **Internal Legislative Reforms**

In order to guarantee that migrants are effectively protected, a strong national legislative framework that conforms with international human rights norms must be adopted. In this regard, many countries especially the North African ones that are part of our study need extensive legislative changes.

Firstly, an in-depth review of existing domestic migration legislation is needed to align it with the primary global legal frameworks, including the CRMW. In September 2013, Moroccan King Mohammed VI delivered a public declaration announcing a new comprehensive strategy to emphasize rights for humans as well as inclusion in border control and migration administration. This is an instance of how the law is being adopted in Morocco.”<sup>78</sup>. Still, this law is not yet a part of the nation's national legislation because it has not been adopted. Indeed, as stated in its claims towards sovereignty, " nations regulations guaranteed prioritize the economic interests of their nation. This stance will be reflected in immigration and employment

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<sup>77</sup> Bast J, De Oliveira PE and Wessels J, “Enhancing the Rights of Protection-Seeking Migrants through the Global Compact for Migration: The Case of EU Asylum Policy” [2024] International Journal of Refugee Law P2

<sup>78</sup> Norman KP, “Between Europe and Africa: Morocco as a Country of Immigration” (2016) 7 Journal of the Middle East and Africa 421. P9

regulations. Regarding human rights, international organizations will be particularly interested in the status of migrants and human mobility, which will be legally expressed in everyone's recognition of the right to travel freely. Reconciling two sets of standards some national, some international is required here"<sup>79</sup>. It would be possible to stop viewing migrants as criminals just because of their migratory status if the Maghreb countries adopted legitimate immigration routes and decriminalized movement in their national laws. In addition, it is imperative to provide a robust legal framework by integrating the UN trafficking prevention and anti-smuggling procedures into national laws to tackle the problems of migrant exploitation as trafficking. Due a yearly assessment on slavery in the globe, for instance, "Morocco enacted a legislation on fighting people exploitation throughout August 2016, in accordance with the suggestions of the UN Specialized Rapporteur and given that victims of person smuggling in Morocco are migrants." drawn up by the US State Department".<sup>80</sup>

In addition to making these actions illegal, these laws must also include provisions for the victim's protection, identification, and care. Legislative reforms must also guarantee that, irrespective of their immigration situation, migrants enjoy efficient and fair availability of essential services which involves medical treatment, schooling, and welfare. Eliminating administrative and legal obstacles to their social inclusion. National legislative frameworks controlling labor relations must also be reinforced in order to provide migrant workers including those employed in the informal economy with further protection from abuse, discrimination, and exploitation. An excellent example of this case is provided by the ILO (International Labour Office), which has reviewed the circumstances surrounding migrant

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<sup>79</sup> . BOUSSAID Leila, "Les conventions internationales sur les migrants et les migrations", (2023) RARJ, vol. 14, n°1 P4 [accessed on March 28 ,2024](#)

<sup>80</sup> EI-MAATOUFI.K. & ELCADI. L. (2024) « La migration et les droits de l’homme au Maroc : entre normativité et effectivité », Revue Internationale du chercheur “Volume 5 : Numéro 1 » pp : 949-964. P6  
<https://www.revuechercheur.com/index.php/home/article/view/907/771> [accessed on March 28 ,2024](#)

workers and pointed out that "migrant workers should not be employed under abusive conditions and should have the right to hold a job, even if they are in an irregular situation."<sup>81</sup>

In the end, in order for these extensive legislative reforms to be carried out effectively and long-term, they need to be supported by complementary initiatives like strengthening institutional capacity, providing sufficient financial and human resources, launching public awareness campaigns, and creating specialized training programs for the affected civil servants. The persistent mobilization of international organizations, legal specialists, and civil society leaders such as "FIDH; IOM; LADDH; UNICEF" is also essential in pressuring states to implement these reforms and in offering them technical assistance in these complex procedures of institutional and legislative change.

### **At Institutional Level**

At the institutional level, the protection of migrants could be guaranteed by monitoring and sanctioning violations, the training of border personal and the fight against corruption.

### **Monitoring And Sanctioning Violations**

Given the perilous situations in which migrants find themselves in North Africa, strong action is necessary to combat the widespread and systemic breaches of their fundamental human rights. According to Timothy J. Hatton and Jeffrey Williamson in his book "Global Migration And The World Economy Two Centuries Of Policy And Performance" Migration policies should be improved and well managed with a political will in order to put an end to the migration phenomenon. In the case of violences A dual approach is needed for an effective response: strict accountability in addition to tangible sanctions to hold offenders responsible.

First of all, it is critical that civil society and international organizations keep a close eye on the mistreatment of migrants. Scholarly investigations highlight that continuous field-based surveillance is necessary to find infractions, which frequently take place in unclear circumstances, even in distant border regions. In light of these extensively documented a culture of impunity for breaches of the rights of migrants is unacceptable. Research advises that: "While personal accounts hold enormous influence, a complete comprehension requires

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<sup>81</sup>ibid (n83), P7. [accessed on March 28 ,2024](#)

broad studies encompassed by information about the amount and nature of suspected violations, replies from Spanish authorities, and outside inquiries by civil rights associations." This means that in Algeria, concrete accountability measures are crucial. Furthermore, the Algerian the press's proactive involvement in drawing attention to these issues acts as a crucial watchdog system, guaranteeing openness and finding officials responsible. By putting pressure on administrations to respect their commitments under the human rights treaties and adopt respectful policies, this can help bring about beneficial reform".<sup>82</sup>

A potent instrument for encouraging quantifiable improvements in migrant protection is economic leverage through the conditionality of trade agreements and development assistance. This strategy entails tying the provision of aid and advantageous economic terms to the recipient nation's pledge to enhance migrant rights and welfare. Donor nations can incentivize significant policy changes that prioritize migrant protection by establishing unambiguous performance standards and connecting them to financial rewards. However, structural obstacles persist, with the recent academic article noting North African regimes' dependence on European security cooperation and economic partnership still limits their willingness to accept coercive pressures over migration governance EU nations have strengthened the oppressive authority of dictatorial governments in Africa's northern region, which they subsequently employ to prevent south of the Sahara migrants and other groups from entering EU territory. These regimes frequently deploy severe penalties that member states of the EU fail to enforce on themselves and adopt strategies which numerous EU people would find unacceptable. controversial. Therefore, "The European Union has traditionally had a Eurocentric stance when it comes to working with other parties, and its regional development initiatives, like the European Neighborhood Strategy, frequently serve as border policies. that serve EU

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<sup>82</sup> "The use of political information in the media: A study on illegal migration in the Maghreb" (2024), Volume: 09/ n°: 02 (2024), P 219-253 (p23). Hadir Mohamed National High School of Journalism and Information science. Algerian Scientifique Journal Platform.

[accessed on April 14,2024](#)



interests”.<sup>83</sup> It appears that all parties must firmly enforce a unified and legally sanctioned regional structure in order to bring about significant and long-lasting change. The most effective strategy for discouraging and punishing human rights breaches in North Africa is one that combines increased, impartial monitoring with realistic threats of legal, economic, and other penalties. In conclusion, it is critical to record violations and implement concrete consequences for offenders via a multifaceted accountability approach to uphold standards for human dignity while supporting legislative reform in North African region.

### **Training Of Border Personnel**

Unquestionably, one of the main causes of the pervasive abuses of migrants' rights during border control operations is the inadequate training of border forces. Strong human rights training represents an essential safeguard mechanism because, as cause studies have demonstrated, a lack of knowledge on migrant protection frequently results in "disproportionate use of force, unlawful pushbacks, and failure to appropriately recognize and direct those in need suffering from trafficking or refugees in need of international protection. Comprehensive training programs covering refugee law, non-refoulement principles, humanitarian protections, and guidelines on avoiding excessive force can, when properly implemented, tangibly reduce rights violations.

" In order to guarantee that the LCG with its Navy have rigorous screening processes and a thorough human rights component—which includes protecting refugees at disembarking points—the European Union ought to reconsider its scheme of training and support for them.”<sup>84</sup>

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<sup>83</sup> Cuttitta P, “Non-governmental/Civil Society Organizations and the European Union-externalization of Migration Management in Tunisia and Egypt” (2020) 26 *Population, Space and Place*/Population Space and Place p2

<sup>84</sup> Carla Ferstman, “Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent ‘Irregular’ Migration: European Union and United Kingdom Support to Libya” (2020) 21 *German Law Journal* 459 P27

But it's still very difficult to firmly establish human rights-based strategies with training alone. Border guards in North African nations ought to have a human rights-first mindset. As a result, for training to be effective, it needs to be ongoing, consistent across companies, and positioned within all-encompassing reforms that support human rights principles and supervision.

In conclusion, improving border personnel's human rights capacity through ongoing, standardized, and institutionally-anchored curricula is crucial to strategies to protect migrant protections during border management operations, even though training alone cannot address systemic issues. The research consensus emphasizes that mandating compliance and providing human rights training to frontline personnel is a critical first step towards the much-needed migrant rights reforms.

### **Fight Against Corruption**

One of the most significant barriers to defending the rights and dignity of migrants in north African countries is official corruption. Indeed, Bribes paid to officials increase the vulnerability of migrants to exploitation and trafficking, facilitate the smuggling of migrants, and enable violations of their rights. Abuse of migrants is closely associated with corruption. It is true that there is a substantial correlation between higher perceived levels of corruption in the north African countries public sector and a higher frequency of infractions such as arbitrary detention, refoulement, and official extortion of migrants. “In addition to evading border patrols, fraud also involves mistreating undocumented migrants including shielding their actions from police and legal action. Frequently, corruption is combined with assault and threats to aid in the trafficking of migrants and refugees”<sup>85</sup>. In Libya for example, the “corruption of Libyan institutions and personnel and their connection with smuggling and trafficking organizations are pushing migrants further attempts to irregularly travel across the

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<sup>85</sup> Marie Chêne & Jessica Schultz” Corruption at borders” (2018) U4 anti-corruption team p26  
<https://sohs.alnap.org/system/files/content/resource/files/main/corruption-at-borders.pdf>  
[accessed on April 16 ,2024](#)

sea.”<sup>86</sup> Thus, it is essential to implement strict anti-corruption measures that target governmental entities that are involved in managing migration. “Increasing employee sensitivity for fraud, raising understanding, and dealing with hazards of corruption by risk evaluation are all crucial preventative measures that may be reinforced by outside oversight cooperation. External monitoring organizations can support the development of efficient and well-coordinated anti-corruption measures, the consolidation of the administration's general honesty and improving the level of public transparency and openness.”<sup>87</sup>

Simultaneously, Corruption risks can be decreased by having strong internal supervision measures, open processes, sufficient compensation, and protection for whistleblowers. “Reports of any suspected misconduct—that is, any act or omission that is illegal, abusive, or capable of causing harm—will be welcomed”<sup>88</sup>. Comprised into migration field this could be a good method to combat corruption that is operating in these north African countries border.

Also, it's crucial that immigrants empower themselves, by Immigrants can denounce corrupt practices and demand accountability when they have better access to complaint procedures, legal aid, and support services. A few initiatives are in motion, such as the drafting of an anti-corruption plan issued in by the Coast Guard Agency of Europe in response to accusations denouncing involvement in the infringement of migrant rights. Still, stand-alone projects are inadequate if they aren't included in comprehensive, state-led anti-corruption plans supported

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<sup>86</sup> Morone AM, “The Cycle of Migrants’ Containment between Libya and Africa: Navigating Their Life among Dreams, Resilience, and Defeats” [2024] *Journal of Eastern African Studies* 1 p6

<sup>87</sup> World Customs Organization, “Integrity Development Guide” (2021 edition, 2021) P60  
[https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/integrity/instruments-and-tools/integrity\\_guide.pdf?la=en](https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/integrity/instruments-and-tools/integrity_guide.pdf?la=en) accessed on April 17 ,2024

<sup>88</sup> Marie Terracol and Transparency International, “INTERNAL WHISTLEBLOWING SYSTEMS” (2022) p5  
[https://files.transparencycdn.org/images/2022\\_PolicyBrief\\_InternalWhistleblowingSystems\\_English-1.pdf](https://files.transparencycdn.org/images/2022_PolicyBrief_InternalWhistleblowingSystems_English-1.pdf) accessed on April 24, 2024

by strong political will. “Building institutions that are capable, accountable, responsive, and well-functioning also contributes to the creation of a credible threat against elites who oppose redistribution, harass the impoverished in their immediate surroundings, and arm themselves against social disturbance eruptions”<sup>89</sup>.

Furthermore, as highlighted in High-ranking officials who enable and gain from corruption must also be prosecuted and sanctioned to destroy profitable patronage networks, anti-corruption campaigns that target only low-level officials are unlikely to be successful.

In summary, protecting migrant rights necessitates a multipronged assault on corruption inside migration enforcement agencies at every stage. Scholars contend that in order to break the "corruption-migration connection" that permits widespread human rights violations, it is essential to combine strong integrity policies, open procedures, whistleblower protections, and empowering migrants themselves to report abuses within a larger state-led anti-corruption architecture.

### **On The Regional Cooperation Field**

The regional cooperation field in north African countries requires the harmonization of procedure, the sharing of information's and the pressure from destination countries.

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<sup>89</sup> Matallah S, “Public Service Delivery, Corruption and Inequality: Key Factors Driving Migration from North Africa to the Developed World” (2020) 22 Journal of Social and Economic Development 328 p6

### **Harmonization Of Procedures**

The absence of harmonization in migration procedures and policies among neighboring countries poses a significant challenge to the safeguarding of migrants' rights in North African nations. Human rights breaches during cross-border migration are made possible by protection gaps created by inconsistent legal frameworks and spontaneous implementation. Indeed “Algerian possesses up till now adopted conservative regulations, while Morocco remains a member of the African innovative. Morocco became the pioneer nation in North Africa to have a formal asylum and immigration system.”<sup>90</sup>

“The regional governance level can thus be useful in solving collective action problems, i.e. migrant and refugee policies<sup>91</sup>”. Based on international human rights conventions, the state should create standardized processes for processing asylum claims, protecting victims of human trafficking, facilitating lawful labor mobility, and handling returns and readmissions. There is proof that improved implementation of regional cooperation and policy convergence leads to better outcomes for migrant protection. This is the context in which the AMU was created. However, “the organization of intra-Community movement has been restricted by political conflicts (especially between Algeria and Morocco) and the emphasis on promoting mobility outside the Maghreb. Legislative changes relating to migration that have been made at the national level since the early 2000s are more in line with the necessity of EU collaboration than with regional integration concerns. Ironically, each State's ability to

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<sup>90</sup> Stiftung Wissenschaft und Politik, “Profiteers of Migration? Authoritarian States in Africa and European Migration Management” (Anne Koch, Annette Weber and Isabelle Werenfels eds, 2018) p24

[http://www.dehai.org/dehai/assets/dehai/2019/270405-Profiteers\\_of\\_Migration.pdf](http://www.dehai.org/dehai/assets/dehai/2019/270405-Profiteers_of_Migration.pdf) accessed on April 26, 2024

<sup>91</sup> Philippe De Lombaerde, “Introduction to the Handbook of Regional Cooperation and Integration: Why, Where, and so What?” *Edward Elgar Publishing eBooks* (2024) p4

cooperate with the European Union is weakened individually when there is a lack of dedicated migratory cooperation at the AMU level”<sup>92</sup>.

Still, resistance from states unwilling to cede sovereignty, lack of enforcement mechanisms, and exclusion of civil society are common barriers to harmonization attempts. The UMA The disputes inside the UMA serve as an excellent illustration. That is, “the leaders of the Maghreb are fighting for leadership. refusing to make the commitment to work seriously together and to prioritize the interests of the region over their own”.<sup>93</sup> While fully harmonized regional cooperation would result in the establishment of a strong and competent regional tribunal or body to guarantee adherence to the law and the participation of stakeholders like NGOs.

In addition, “the leaders of international organizations are increasingly prioritizing the regional aspect in their research and initiatives. People's motion’s freedom in geographic regions procedures and plans for enhancing collaboration at this level have been the focus of various seminars held by the IOM. The limited number of countries involved favors the possibilities of cooperation agreements on complex aspects of migration dynamics," which justifies the greater focus”.<sup>94</sup> “Free intraregional movement of persons is already covered by agreements in regional organizations as ECOWAS, ASEAN, and NAFTA.”<sup>95</sup> Further agreements between

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<sup>92</sup> Alfred Ombeni “Migration governance in Africa” (2021) International Journal of Innovation and Applied Studies Vol. 31 No. 4, pp. 679-693 p 6 [https://www.researchgate.net/profile/Alfred-Ombeni/publication/348296745\\_La\\_gouvernance\\_migratoire\\_en\\_Afrique\\_Migration\\_governance\\_in\\_Africa/links/5ff6c04292851c13fef3937d/La-gouvernance-migratoire-en-Afrique-Migration-governance-in-Africa.pdf](https://www.researchgate.net/profile/Alfred-Ombeni/publication/348296745_La_gouvernance_migratoire_en_Afrique_Migration_governance_in_Africa/links/5ff6c04292851c13fef3937d/La-gouvernance-migratoire-en-Afrique-Migration-governance-in-Africa.pdf) accessed on May 7, 2024

<sup>93</sup> Ibid p6 [accessed on May 7, 2024](#)

<sup>94</sup> Bertrand Badie and others, « POUR UN AUTRE REGARD SUR LES MIGRATIONS » (Éditions La Découverte 2008) p46 [https://www.diplomatie.gouv.fr/IMG/pdf/Etude\\_gouvernance\\_globale\\_migrations.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/Etude_gouvernance_globale_migrations.pdf) accessed on May 7, 2024

<sup>95</sup> Ibid p52 [accessed on May 7, 2024](#)

states in the same region, this time encompassing migration from other regions, like the Maghreb countries, if they so choose, could deepen regional integration by establishing a uniform regional regulatory framework for the management of migrants and the upholding of their rights.

Furthermore, since standard establishing is a drawn-out and contentious process that is frequently hampered by the bilateral securitization of migration agendas, the creation of comprehensive regional governance frameworks necessitates political will and perseverance. Therefore, coordinated initiatives towards regional harmonization of migration procedures offer a crucial method of increasing migrants' rights, notwithstanding their undeniable difficulty. To effectively protect migrants across borders and in diverse migration circumstances, cooperative governance models require policy alignment through inclusive processes, the creation of regional monitoring mechanisms, and tenacity in the face of setbacks.

### **Information Sharing**

Protecting the rights of migrants, especially those traveling across borders, requires effective information sharing between nations. In their book “Immigration Policy and the Welfare System” Tito Boeri and others, stated that a coordinated policy with countries of origin could be a welfare system in order to manage well migration. Inadequate coordination in data exchange results in vulnerabilities in security, fosters networks of traffickers and smugglers, and violates the rights of migrants. Establishing mechanisms for information exchange is crucial. This was demonstrated during “the 2006 Canary Islands crisis, when EU and Spanish funding for capacity-building projects prioritized improved maritime border control between Senegal and Spain. These projects focused on information exchange to stop and combat human and goods trafficking, identify document fraud, and enhance border control point security”<sup>96</sup>. The field of “intergovernmental The field of handling migrations consultancy is rapidly

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<sup>96</sup> Ilke Adam and others, “West African Interests in (EU) Migration Policy. Balancing Domestic Priorities with External Incentives” (2020) 46 Journal of Ethnic and Migration Studies 3101 P12

growing, with region procedures established. throughout all regions. These processes are primarily concerned with enhancing state-to-state collaboration on The avoidance and oversight of unauthorized migration by means of enhanced border controls, information exchange, return agreements, and other strategies”.<sup>97</sup>

Strong regional information sharing networks are consequently necessary to provide migrant protection in intricate, multijurisdictional migratory patterns. To facilitate the monitoring of migrant’s rights, identify needs for protection, and thwart criminal activity, states must harmonize the collecting of migration data and exchange operational intelligence. But there are challenges, including lack of technical capability, security agendas that impede transparency, and worries about data sovereignty. In order to effectively enforce the rights of migrants, regional information-sharing systems must be combined with measures to foster trust through inclusive discourse, strong data protection measures, and assistance for the development of interoperable data infrastructures. In result, enhancing regional cooperation to exchange vital migratory information is a significant step in fortifying protective regimes for migrants traveling across borders, albeit being a formidable effort. The experts point out that in order to benefit from the experience of others, global initiatives to standardize data, guarantee transparency, develop capability, and foster trust are crucial.

### **Pressure From Destination Countries**

Large migration inflow destination nations can use their economic and political clout to advocate for more robust regional cooperation frameworks that protect migrants' rights along the course of their journey. Thus, the governments have a lot of diplomatic leverage to encourage regional harmonization of frameworks for managing migration that are compliant with international human rights and refugee laws.

“Regarding the instance of migrant corridors coming from unstable or underdeveloped institutionally, this leverage is especially significant. An incentive strategy should include

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<sup>97</sup> Patrick A Tarán, “Human Rights of Migrants: Challenges of the New Decade” (2001) 38 International Migration 7



economic assistance. It should raise recipients' standards of living and foster collaboration on migration among source, transit, and destination nations if implemented well."<sup>98</sup> "Economic aid is undoubtedly an essential instrument in the incentive's arsenal, but it is one of several that may be used. Additional diplomatic actions and forms of foreign aid give the donor even more power to influence change in the recipient nation"<sup>99</sup>. The "EU is now able should offer Morocco monetary aid so that it can promote integration initiatives and the creation of inclusive national laws and practices thanks to the Mobility Partnership. Morocco might become a more welcoming nation of migration from sub-Saharan Africa, relieving the EU of concerns regarding illegal migration through the Western Mediterranean"<sup>100</sup> route. the possible effects of applying such economic and diplomatic pressure through regional processes that are inclusive.

However, the goals purportedly associated with human rights may be compromised by the interests driving these outsourcing practices. That's what took place in Libya. "Initiatives from the EU and Italy help the numerous militias that overrun the nation of North Africa, seizing control of numerous ports and coastal cities in addition to the feeble central Libyan government in Tripoli. This financing resembles a bribe. The assistance was given in return for the response of the numerous armed groups in Libya that have attempted to prevent immigration from the country's shores. These groups' acts are a lot like those of organized crime. The numerous Libyan militias and their questionable activities have also been legitimized by aid from Italy

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<sup>98</sup> Abu Bakarr B and others "Migration Cooperation between Africa and Europe Understanding the Role of Incentives" (2022) Oxford Research Encyclopedia of International Studies.p7  
[https://drive.google.com/file/d/1QHhJqwSkt1jg-9boa81\\_Y7bRrqvmfmVx/view](https://drive.google.com/file/d/1QHhJqwSkt1jg-9boa81_Y7bRrqvmfmVx/view) May 10, 2024

<sup>99</sup> ibid (n102) p6 accessed [on May 10, 2024](#)

<sup>100</sup> Kelsey P Norman, "Migration Diplomacy and Policy Liberalization in Morocco and Turkey" (2020) 54 the International Migration Review/International Migration Review 1158 P11

and the European Union. The questionable activities of the militias in Libya”.<sup>101</sup> Similar to “Morocco the number of people traveling across the Mediterranean to migrate from Morocco and other countries has lately declined. as a result of North-South cooperation, which focuses primarily on offering incentives (such as foreign aid, diplomatic support, and legitimacy) to strengthen border enforcement and reduce migration-related push factors. Human rights breaches have resulted from this, in addition to the neglecting dealing with a few primary variables that lead to migration, which are mostly the lack to financial opportunity and bad governance in the countries of origin”<sup>102</sup>.

Thus, in order for destination states regional harmonization to effectively safeguard the rights of migrants, it needs to be deeply anchored in openness, involvement from a variety of stakeholders, including Rights for humanity should come first in civic life over security considerations.

To sum up, strong destination nations possess a great deal of potential to spark inclusive regional migration governance mechanisms that support migrant protection; however, in order to make sure that these processes actually protect human rights instead of outsourcing border controls, persistent advocacy, close examination, and a reorientation of protection as the primary goal through constructive multilateral engagement are necessary.

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<sup>101</sup> ibid (n 102) p 11 [May 10, 2024](#)

<sup>102</sup> Ibid p11 [May 10, 2024](#)

## CHAPTER V

### CONCLUSION AND RECOMMENDATIONS

#### **Conclusion**

To put it briefly, migration is a phenomenon that requires analysis and understanding comprehension so as to ascertain the best approaches to handle it despite violating the liberties regarding migrants. The ICRMW and the 1969 OAU Convention are international instruments that have established a normative field in international and regional matters. Other international standards adopted include the GCs of 1951, Protocol of 1967, which defines the term refugee as a category of migrants protected by international law and having a special treatment regime, as well as the introduction of the core principle in migration matters, namely comprehension in order to ascertain the best approaches to handle it without violating the rights of migrants. The non-refoulement principle and the rights legal, social, and economic that are assured. Our study indicates that while Algeria, Morocco, Tunisia, Egypt, Libya, and Mauritania are complying with these accords, Libya still violates the rights of migrants. However, the 1951 GCs has not been signed by Libya. indeed, many violations of migrant's rights still occur showing the failing of implementation of the migrant's protection framework. At north African countries borders, we can note some Documented Violations such as: Refoulements, Detentions, Violences, Migrant Exploitation and Trafficking and some Risk Zones: Land Borders, Transit Zones, Detention Centers where those violations have perpetrated. Aside that we can also note some structural causes of those violations like: Security Framework Dominating Migration Policies Lack of Training and Resources for Authorities; Corruption and Impunity. To address those violations, some modifications are needed. as remedies we can suggest reinforcing migrant protection through structural reforms firstly on the legal level through (Universal Ratification of Conventions and Internal Legislative Reforms); secondly at institutional level by (Monitoring and Sanctioning Violations, Training of Border Personnel, Fighting Against Corruption) and finally on the regional cooperation field through (Harmonization of Procedures, Information Sharing, Pressure from Destination Countries). According to Robert Davidson in his book "Migrants", "welfare is a major consideration in any immigration program. To understand how migrant welfare can best be administered it is necessary to know the different types of migrants."

To put it clearly, it is imperative to establish a global and regional rights-based framework, grounded in international law, among North African nations that oversees all facets of migration and balances security concerns with state sovereignty. It is also essential that the implementation be done consistently in practice with sufficient resources.

### **Recommendations**

future studies in this field should address the gaps and limitations identified in our research by:

1. learning more about the development of barriers, security voids, while coping mechanisms methods, longitudinal studies tracking the experiences of migrant populations crossing borders and territories in North Africa across time are recommended.
2. Researching on the unique experiences, vulnerabilities, and requirements for protection of specific at-risk migrant groups such as (women, children, victims of human trafficking, LGBTQI+ individuals, and people with disabilities) should be given priority.
3. Promoting research partnerships in North Africa with regional academic institutions, community organizations, and civil society organizations. Their access to immigrant populations and contextual expertise can enhance the quality and applicability of research.
4. Making ethical issues a top priority in your study on migration, including safeguarding research participants' privacy and safety, resolving any power disparities, and making sure that the findings are applied to the advantage of immigrant communities.
5. making the data accessible such as court decisions to the researchers. To gather more comprehensive in-depth data on migration patterns, routes, impact border experiences, researchers should also create and implement cutting-edge data gathering techniques including participatory mapping, digital storytelling, and remote sensing.

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