Dr. Bahija Jamal

Protecting Unlawful Migrant Women in Morocco:
Law and Practice

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Introduction:

Today, women constitute almost half of all migrants worldwide. UNFPA report on women and migration shows that migrant women are 94.5 millions, 49.6% of total international migrants worldwide. Women migrate for different reasons, following different routes of migration. Regularly or irregularly and legally or illegally, some women are forced to leave their homelands alone or with their children and relatives for either a well-off life or security and peace which are lost in their countries of origin.

For many centuries, and due to its geographical location, Morocco has been a pole of attraction for migration flows. In the recent years, it has become a transit country for a large migrant inflows coming from Sub-Saharan Africa towards Europe crossing some Arab Maghreb countries. Since the mid-90s, Sub-Saharan African migrants and refugees have increased sharply. Women represent a significant proportion of them. In general, journeys to Morocco are often more dangerous. During these journeys, women are exposed to persecution and violence that may lead in some cases to their death.

The significance of selecting the subject under study rises as the unlawful migration phenomenon has generally generated security and socio-economic challenges both in receiving or transit countries of unlawful migrants. In addition, this phenomenon has created humanitarian and human rights challenges for unlawful migrants particularly the most vulnerable ones i.e. women and children.

During crises, and due to their vulnerability in their communities, women are the most agonized group. What is more, consequences and dangers may increase during migration. Thus, we shed light on a sub-group of migrant women i.e. unlawful migrant women coming from sub-Saharan Africa, crossing Morocco towards Europe.

This study aims at casting light on the reality lived by the African unlawful migrant women in Morocco in order to discuss the following problem: what is the nature of the protection of the African unlawful migrant women in Morocco?

Discussion is developed through the following themes:

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1 UNFPA (2006), State of World Population 2006, A Passage to Hope: Women and International Migration, New York, UNFPA
2 Mehdi Lahlou, « les migrations irrégulières entre le Maghreb et l’Union européenne : les évolutions récentes » Le Consortium Euro-méditerranéen pour la recherche appliquée sur les migrations internationales, Rapport de recherche, CARIM-RR 2005/03
3 In this research, unlawful migrant women coming from Sub-Saharan Africa are taken down in shorthand to be the African unlawful migrant women
The nature of unlawful migration in Morocco
The living conditions of the African unlawful migrant women in Morocco
The existing legal framework and the protection of the African unlawful migrant women in Morocco
The existing institutional framework and the protection of the African unlawful migrant women in Morocco
Conclusion
First, The nature of unlawful migration of women in Morocco:

Primarily, unlawful migration has to be defined, and compared with other migration forms which may look similar. Consecutively, lights are shed on the phenomenon of the feminization of migration, and the academic approach to it. Then, the determinants of unlawful migration of women in Morocco are discussed.

A- The meaning of unlawful Migration:

Migration is a natural phenomenon representing the human dynamics. Migration in the simplest sense is the mobility of individuals or groups from one place to another seeking for a social, economic, religious or political status better than that provided by their country of origin.

Migration is classified into several types: If we consider migration geographically, it is either internal or international migration. If it is considered in terms of population density, it is either individual migration or mass exodus. In terms of freedom / compulsion of mobility, it is either voluntary or forced migration. In terms of regularity, it is either regular or irregular migration. In addition, migration may be classified in terms of legal determinants into legal or illegal migration.

The aim behind mentioning the types of migration is to define the type that frame in this study. We decided to tackle the international irregular migration of women coming from Sub-Saharan Africa to Morocco either individually or in mass exodus.

1- Unlawful Migration: Irregular migration or illegal migration:

This study tackles the unlawful migration which includes the following types according to the contexts: Irregular migration or illegal migration. The irregular migration is an unorganized spontaneous migration. It does not occur in line with the existing laws organizing the crossing of international borders of a particular country in order to reach another country. This migration usually occurs in secret without the knowledge of the authorities of the receiving countries.

Illegal migration violates laws and the migration law, particularly, in terms of foreigners' entry, exit, and residence in a specific country. Thus, illegal migrants leave their countries of origin, premeditating to breach the governing laws of migration.

Irregular migrants are clandestine migrants or migrants without documents, who enter a specific country without having the related legal documents which should be held by any migrant. Illegal migrants are also clandestine migrants, but they cross international borders with illegally-issued forged travel documents with forged

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4 The regional report of the Arab labour migration, 2006, Population Policies and Migration Dept./ The Social Sector, the League of Arab States, page 43
6 The same reference
personal information. Illegal migrants then leave the countries with travel documents of which they are not the original owners. In addition, illegal migrants may enter the receiving country with the required documents, such as visas; however, they do not leave the country after the expiry of the residence period stated in their visas.

Regardless of the intention of irregular and illegal migrants when crossing international borders, and regardless of the methods they use to facilitate their mobility, both of them reach the countries of transit or destination with unlawful methods. Therefore, the term of Unlawful migration is used in this study to investigate the status of African woman migrants coming from Morocco irregularly and illegally.

2- The importance of the differentiation between illegal migration and irregular migration:

In this differentiation context, it is noteworthy that the irregular migrants are aware that they are violating the migration law, and therefore when they reach the receiving country, they take the necessary steps to legalize their presence within this country. As an example for this, asylum seekers who are in contact with the related authorities in the receiving countries to settle their legal status so that they get rid of their secret life, and enjoy a recognized legal status. Another example in this context is the irregular migrants residing in some countries, who after a brief period of residence in those countries apply to related authorities to settle their legal status. These measures are adopted by the receiving countries from time to time, as the case of some illegal migrants residing in European countries.

Unlike the irregular migrants, the illegal migrants are aware that their migration is unlawful. However, they refuse to settle their status in the migration authorities of the receiving country. This type of illegal migrants is clearly reflected in the countries of transit where they wait in order to reach the countries of destination.

From what is previously mentioned, and even though irregular migrants left their countries illegally, we conclude that they are not illegal. This conclusion is very significant, because the specific type of migration determines the legal status of migrants including their rights and duties.

In the context of mixed flows, the differentiation between irregular migrants and illegal migrants are rarely conducted on the one hand, and the legal framework, which is supposed to apply to those are rarely implemented on the other hand. This lack of differentiation, often leads to conceptual confusion between these two forms of migration. Therefore, irregular migrants are criminalized and prosecuted as if they are illegal migrants.

In this context, IOM noted that illegal migration raises several problems. The previous definition contradicts with the principle of free mobility approved by the charters of human rights and confirmed by the international system in more than one event within UN, and within the conferences and the decisions of the ILO and OECD. It may be

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7 The regional report of the Arab labour migration, 2006, a previous reference, page 43
8 The same reference
9 http://www.iom.int/jahia/Jahia/lang/fr/pid/536
appropriate here to use the term *irregular migration*. As a consequence of calling the irregular migration as a clandestine or illegal migration, is the legal effect of criminalization, trial, and prosecution of these migrants.\(^\text{10}\)

**B- The feminization of migration, and the academic approach to it**

Till recently, and unlike the international migration of men, women were not of interest to migration researchers. What is the most important for the researcher while dealing with women's position in the migration dynamics, is the almost absence of these women from the debate and discussion on migration at the level of academic studies, in most countries. This circumstance had lasted till the mid 1970s when the emergence of the first research related to migrant women in general.\(^\text{11}\) However, the refugee women had not attracted the scientific attention until the end of 1980s. Violence and discrimination suffered particularly by women; resulting in their forced migration, and bad living conditions in all displacement stages, attract the attention of researchers and those who are interested in forced migration. Scientific forums have been held on refugee women. In addition, other subjects which were not until recently tackled are discussed, such as refugee women's special needs, and their legal, social and health conditions.\(^\text{12}\)

While most women historically migrate for marriage or for family reunification, the past decades have witnessed an increase in the number of married/unmarried women who migrate individually, with other women or with migrants of their countries but not relatives. Women are always in mobility worldwide.\(^\text{13}\)

**C- Determinants of unlawful migration of African women:**

Due to the geographic location, Morocco has been an attraction of migration flows of various types. In the last years, Morocco has been a country of transit of mixed flows of unlawful migrants coming from Sub-Saharan Africa towards Europe. Since the mid-90s and after the events of Congo, and the Great Lakes Region, the Sub-Saharan African migrants and refugees have increased sharply. Other flows have come from Sierra Leone, Nigeria, and Côte d'Ivoire due to the political conditions in these countries. Currently, Guiné-Bissau, Mali, Liberia, Sierra Leone, Nigeria, Guinea, and Senegal are the countries of origin of most of unlawful migrants residing in Morocco.\(^\text{14}\) In 2005, the Directorate General of National Security in Morocco estimated the number of foreigners formally residing in the Moroccan territory as about 62,348 foreigners.\(^\text{15}\) The Directorate of Migration and Border Surveillance

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\(^{10}\) The regional report of the Arab labour migration, 2006, a previous reference, page 43


\(^{12}\) Bahija Jamal, Protection of Refugee Women: Reality and Challenges, A Ph.D thesis, 2005, Faculty of Law, Hassan II University, Casablanca

\(^{13}\) UNFPA, State of World Population 2006, a previous reference

\(^{14}\) Specific Groups and Individuals: Migrant Workers”, Report submitted by Ms Gabriela Rodríguez Pizarro, Special Rapporteur on the Human Rights of Migrants, Addendum Visit to Morocco, Commission on Human Rights, Sixtieth session, Item 14 (a) of the provisional agenda, p. 4.

\(^{15}\) Mohamed Mghari, « Maroc : la dimension démographique et économique des migrations » Mediterranean Migration 2006-2007 report, Philippe Fargues(edited), Projet de coopération sur les questions liées à l'intégration sociale des immigrés, à la migration et à la circulation des personnes,
estimated the number of migrants coming from sub-Saharan Africa, and living in
Morocco unlawfully around 10,000 migrants\textsuperscript{16}. Migrants and refugees from sub-
Saharan Africa become more visible in the various cities of Morocco. Their numbers
have increased after the lawful migration has been blocked in front of normal labor
due to the strict migration policy adopted by the EU. By virtue of geography and
common interests, Morocco finds itself obliged to apply this strict policy.

As in research and studies related to migration in general, and to the African
migration coming to Morocco in particular, there is no accurate data about migrant
numbers and their social conditions, including data classified by gender\textsuperscript{17}.

The discourse on the lack of statistical data in this context, induce us to refer to the
study conducted by The Moroccan Society for Studies and Research on Migration.
The study discusses the living conditions of 1000 migrants coming from Sub-Saharan
Africa, and living temporarily in Morocco. According to the study, despite the
difficulties faced by researchers in finding migrant women because they seek the
protection of their male partners, it was found that women represent 20.3\% of 1000
migrants\textsuperscript{18}.

In the same context, in a document of UN office for refugees in Morocco, it is stated
that until 2008, the office granted the refugee status to 766 asylum-seekers. The
refugee women recognized according to this statistics are 136 refugees, 18\% of the
total refugees\textsuperscript{19}. The countries of origin of refugees in general are primarily Côte
d'Ivoire (37\%), The Democratic Republic of the Congo (28\%), and other countries.

The African migrant women wish for security, freedom, and comfort of living which
they believe that they are available in Europe. Wars, stifling economic conditions and
human rights violations, mainly the gender-based persecution, violence and
discrimination always push women to leave their countries of origin away from the
African continent, even if it is done illegally.

\textbf{Second, the Living conditions of unlawful migrant women in Morocco:}

Unlawful migrant women represent a significant percentage of migrants. Even though
the displacement imposes burdens and difficulties on all migrants, women bear the
big share of them. Perhaps it is due to their weak constitution on the one hand, and
their social status reflected in their marginalization and absence in the socio-economic

\textsuperscript{16} These are the available data disseminated by \textit{Maghreb Arab Presse} in January 2006. In contrast, the
human rights organizations think that these data are exaggerated: unlawful migrants do not exceed
8000 migrants.

\textsuperscript{17} In this regard, we recall the note stated in the regional report of the Arab labor migration: "lack of
data on migration, the difficult estimation of numbers, and the difficult identification of characteristics
precisely are among the major challenges faced by both of planners and researchers interested in
migration." The regional report of the Arab labor migration, 2006, a previous reference, page 3

\textsuperscript{18} Afoulous, S., “AMREM, Première enquête sur le phénomène migratoire des subsahariens transitant
par le Maroc”, L’opinion, 26/1/2008.

\textsuperscript{19} An explanatory note issued by the UN office for refugees in Rabat, in January 2009.
field, and in their original societies, and in the transit and receiving societies on the other hand.

As all unlawful migrants, and due to the lack of enjoying the social and economic rights, and the difficult access to the basic materials such as foods, clothing, homes, and medical care, the African unlawful migrant women suffer from indigence in Morocco. The risk of arrest and the constant fear of refoulement to the country of origin are obsessions suffered permanently by the African unlawful migrant women in Morocco²⁰.

Besides the general problems suffered by unlawful migrants in general, there are specific problems always suffered by unlawful migrant women before and during the displacement, during waiting time in the country of transit, or even after reaching the country of destination. These problems are represented in violence, persecution, and discrimination.

Discussing the general problems suffered by the African unlawful migrant women is important. However, this study sheds particular light on the specific problems suffered by those women, mainly, those related to violence and persecution.

1- Risks faced by the African unlawful migrant women during their journeys to Morocco:

The African unlawful migrant women are the victims of violence in all phases of migration. Besides being one of the main reasons of migration, material and incorporeal violence always is suffered by the African migrant and refugee women during their journey to Morocco²¹.

According to the mentioned study conducted by The Moroccan Society for Studies and Research on Migration, sexual molestation and rape are the main problems faced by migrant women coming from Sub-Saharan Africa to Morocco.²² Due to the nature of violence, it is difficult to provide accurate statistics on violence expansion. However, this kind of violence is a reality feared by many unlawful migrant women.

The African unlawful migrant women travel to Morocco aboard buses. The journey is not an easy one. The migrants need a lot of money to pay to the smugglers and border guards. Many women may find themselves obliged to have sex with smugglers for facilitating crossing borders. In this context, we say that single women are more vulnerable to forced sex and other forms of sexual assault. Thus a woman deliberately tries to find a male partner to travel with. However, this partner may be a source of violence and sexual assault. In this case she is afraid to leave him for fear that she may be endangered by violence and sexual assault at the hands of others. In some

²⁰ Mehdi Lahlou, Escoffier, Claire and Najia Hajji (Equipe du projet) (November 2007), Evaluation de la situation de la mobilité et du VIH au Maroc, Ministère de la Santé Publique, study conducted with the support of UNAIDS.


²² “AMERM, Première enquête sur le phénomène migratoire des subsahariens transitant par le Maroc”, S. Afoulous, L’opinion, 26/01/2008.
cases migrants may be the victims of attacks of organized gangs. These attacks may be planned in collaboration with the smugglers themselves. Sexual violence and gender-based violence may be exaggerated. During an interview with Dr. Kalong on L’organisation Panafriacaine de Lutte contre le Sida (OPALS), he confirmed that many of the received migrant women had suffered from severe psychological crises due to systematic violence they suffered during their journeys. For example, the attack on an African migrant woman at the hands of a gang that stripped off her clothes in the presence of her companions. They savagely inspected her private parts to know whether she was hiding some money there.

24 Ibdem,
27 Le groupe antiraciste de défense et d’accompagnement des étrangers et migrants (GADEM) (2007), La chasse aux migrants aux frontières Sud de l’UE; Conséquence des politiques migratoires européennes, L’exemple des refoulements de décembre 2006 au Maroc. See also MSF Reports, AMERM Survey Results.

2- Dangers faced by The African unlawful migrant women during their journeys to Morocco:

Reaching Morocco is not always the end of the suffering journey of the African migrant women. Staying in Morocco is a phase that can last for years during which African migrants have to live in harsh conditions until they have the opportunity to go to the opposite bank. Besides the deplorable conditions faced by the African unlawful migrant women, which are primarily related to the daily life (employment, medical treatment, and housing), they suffer from difficult circumstances due to violence against them. This violence has many forms as mentioned below.

**Physical and Sexual Violence**

A total of 79 violence cases against African migrant women, the worst 34 of which included sexual assault, were reported in the period of June 2005 - October 2007, Doctor without Borders / Medicine Sans Frontiers (MSF) said. The victims’ age average is 25, including 7 minors. The highest number of battered women belonged to the Democratic Republic of Congo, followed by Nigeria (8 cases), Cote D’ Ivoire (3 cases), Angola (2 cases), Cameron (one case), and Chad (one case). It should be noted that among the victims were 7 UNHCR acknowledged refugees, and 16 asylum seekers. Based on statements collected by MSF, main violence perpetrators included human traffickers, Moroccan security forces as well as Moroccan and Algerian gangs. The head of the “Association of African Women and Children, Victims of Migration to Morocco” states “Most of those engaged in the Association have undergone a personal experience of sexual violence at the hands of migrants themselves and/or Moroccans and Algerians at the borders. We have cases of minors who forcefully got pregnant and single mothers with their children. It makes no difference for violence perpetrators whether it is an old woman or a young girl, their
ultimate concern is to fulfill their sexual desires."28 The “No Man’s Land” located between Algerian and Moroccan borders, just meters away from the border city of Oujda (which is, by the bye, one of the most important gateways of unlawful migrants to Morocco) is a misfortunate place for migrants and refugees. This spot is a breeding ground for trafficking networks, human smuggling and forging passports. These networks consist of unlawful migrants, particularly those of a Nigerian decent, Algerian and Moroccan gangs which hunt migrants upon their arrival to that place. Several cases of women, who were kidnapped, raped, or even slain in this area with no one held accountable, have been reported. According to MSF, active human trafficking networks in the region are well-organized impenetrable, being responsible for 52% of the violent assaults against migrants.29 45 cases of African migrant women were subjected to severe violent actions and sexual battery by these networks, MSF stated in its aforementioned report. For instance, a 29-year-old Congolese migrant woman stated that she was kidnapped by four Nigerians in the “No Man’s Land” area where she parted from her two children and was raped and tortured for a week.30

**Trafficking for Sexual Exploitation**

The 2007 UNAIDS report stated that prostitution among African migrant women in Morocco soared recently. Trafficking networks force most of these women to practice prostitution as they are initially heading to Europe. Rather, they find themselves stuck in cities such as Rabat, Tangier, and Casablanca with no other resources for survival.31 In the same context, MSF also indicates that most of these women have health problems while some of them are infected with HIV.32

**Violence of State Authorities: Forced Expulsion**

Many reports underline that security Moroccan and Spanish forces have, under the pretext of security safeguard, border control and migration inflow management, committed violent actions against unlawful migrants in Morocco. According to the MSF report, violence carried out by Moroccan and Spanish security forces account for a total 43.9% of the serious violations to unlawful migrants’ rights, 39.8% of which are committed by Moroccan forces and 4.1% by Spanish forces.33 During the forced expulsion of migrants in Morocco that took place in December 2006, pregnant women and children were arrested and refouled. Some reports allege that a pregnant woman suffered an abortion while being refouled.34 In October 2007, once again 100 migrants and asylum seekers including women were arrested in Rabat. Such action was carried out in the early hours of the morning as they were deported to Oujda to be

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28 An interview with Mrs. Selestine, a Congolese refugee residing in Morocco.
30 Ibidem.
32 MSF 2008 Report, op.cit., p.11.
33 Ibidem
once more preyed upon by gangs. The deported largely included pregnant women and children. Many of the unlawful migrants who are deported to the border area live under inhuman conditions; particularly in a forest some kilometers off Oujda. A Nigerian woman interviewed in this area said that she lost her child in open sea when she was riding a boat with many other migrants sneaking to Spain. After the boat capsized and they were rescued by Moroccan marines, she was deported to Oujda without receiving any medical treatment, in spite of her serious injuries, given that fact that she was in a shock characterized by fits of laughter and crying. The suffering endured by the migrants is exemplified by the story of a woman from Cote D’ Ivoire who was deported to Oujda, less than a month after giving birth to her child; she suffered physical and psychological pain during her journey which took 1000 kilometers from Tan-Tan, south of Morocco, to Oujda.

**Domestic violence**

African migrant and refugee women, who were interviewed in the framework of the aforementioned study, stressed that domestic violence is one of the most significant problem they face. It is said to be one of the factors that drive women out of their countries of origin. However, this kind of violence continues to haunt African migrant women after they reach countries of destination, as is the case in Morocco. Due to hard and unstable living conditions which migrants and refugees undergo, domestic violence aggravates because of the reversal of social roles of migrants. As migrant women become the main supporters of their families, husbands or partners feel that their power gradually subsides so they react by swearing and battering which, in some cases, lead to death.

**Third – Existing legal framework for protecting unlawful African migrant women in Morocco**

As it has been noted earlier, African migrant women suffer from hard psychological and living conditions in countries of temporary residence. Then, how far do the Moroccan migration regulating law – on the theoretical and practical levels – and the institutional measures – if any – provide protection for those women in a manner respecting human dignity.

It is worthy noting that the nature of protection provided by the Moroccan legal framework to unlawful African migrant women cannot be perceived unless the general context that crystallizes this framework is discussed.

A- General Context for Unlawful Migration Management in Morocco: African Migrant Women as Model

35 Jérôme VALLUY, "Contraintes et dilemmes des actions de solidarité avec les exilés subsahariens en transit au Maroc oriental dans le contexte créé par les politiques européennes d'externalisation de l'asile" (http://terra.zeo.net/niubrique42.html)
37 Ibidem,
First the larger context which includes the management of unlawful migration in Morocco will be briefly discussed. Then the channels through which this management is carried out will be denoted.

➢ **Unlawful Migration Management in Morocco.**

Moroccan geographic proximity to Europe and the semidaily flows of unlawful migrants heading to the old continent has made the issue of migration a mutual concern to Morocco and the EU states. In fact, this drove the two parties to exchange ideas and expertise to manage the flows of unlawful migration with a view to find common solution.

Moroccan-European partnership in the field of migration dates back to the mid 70s. Cooperation agreements between the two sides were then concluded, particularly that reached under European Neighborhood Policy (ENP), which heavily focused on the general migration management, specifically unlawful migration. Morocco is one of seven countries with which the EU is keen to formulate action programs within the framework of ENP. Migration management, including the issue of asylum, is one of the main pillars upon which the EU-Morocco Action Plan is based.

According to the action plan devised under ENP Morocco formulated a national strategy that takes into consideration the country’s strategic interests on one hand, and the fears harbored by the EU member states of the aggravation of unlawful migration on the other hand.

The Moroccan national unlawful migration strategy observes 3 levels when handling unlawful migration issues, according to a statement made by the Interior Ministry, Directorate of Migration and Border Surveillance official Khalid Zerouali.

The first level is the legislative system organizing admission and residence of non-nationals namely the legal text of article (03-02) which – besides imposing penalties on human traffickers – provides a framework which respects the rights of officially residing non nationals in Morocco. The second level is represented by the organizations designated by the Moroccan government to control state borders. The third level is security-based, represented by the state security precautions such as collecting information about unlawful migrants, early abortion of unlawful migration attempts as well as focusing efforts on the disintegration of human trafficking networks.

➢ **Legal Mechanism for Unlawful Migration Management in Morocco, and the Protection of African Migrant Women**

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38 To know more about EU programs concerned with Mediterranean neighboring countries, go to://www.eu-delegation.org.eg/en/index.htm
39 Khadija Elmadmad, « La gestion des frontières » Rapport de recherche, CARIM, 2007/0
40 Ibid.
41 In 2007, the Interior Ministry managed to dismantle 417 human trafficking networks, while 14449 unlawful migration attempts were aborted, according to a statement made by Mr. El Jilali Sghir, the Directorate of Migration and Border Surveillance official.
Jilali Sghir « Stratégie nationale de lutte contre le trafic des êtres humains » Table sur « La protection des réfugiés au Maroc, Conseil consultatif des droits de l’homme, 14 Février 2008
As has been noted earlier, Morocco follows a multifarious national strategy, with regards to migration. On 11 November, 2003 Morocco adopted a new law on the admission and residence of non-nationals which largely addressed unlawful migration. However, it is mostly perceived as a punitive rather than a protective law. What, then, is the kind of protection provided by this legislation for African migrant women, being at the same time unlawful migrants and females who are subject to sex-based violence?

**A- Moroccan Human Rights obligations for the Protection of unlawful Migrant Women in Morocco.**

First, it is noted that Morocco has, on an international level, actively participated in the drafting and ratification of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which it ratified on 21 June 1993 and entered into force on 1 July 2003. As for other major UN Human Rights international instruments, Morocco has ratified and/or acceded to: the Convention Against Torture and Cruel Inhumane and Degrading Treatment or Punishment (CAT), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child (CRC), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Optional protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

With regard to refugee protection, Morocco ratified the 1951 Convention Relating to the Status of Refugees. On the national level, it ratified 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, in addition to other Human Rights convention on both African and Arab levels.

On the national level, Morocco has enacted legislation on the protection of non-citizens living in the state territory. This is clearly seen in the law governing the admission and residence of non-nationals in Morocco (known as law 03/02) which entered into force in November 2003. This law regulates immigration into Morocco and penalizes any person who facilitates unlawful admission to or exit from the country, as will be seen later.

**B- Law 03-02 and the Protection of Unlawful African Migrant Women in Morocco.**

Reviewing law 03-02 stipulations, it is obvious that such law has stated strictly deterrent requirements with respect to unlawful migration of Africans including women. It, thus, can be said that penalty for disrespect of unlawful

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Migration/admission regulating law in Morocco has three dimensions: criminal, judicial, and administrative.

**Criminal Penalty**

Criminal penalties are provided for in articles 42-56 inclusive of law 03-02. For instance, article 42 states that “every foreigner who enters or attempts to enter Moroccan territories or remains after the termination of the period for which its visa permits, unless due to force majeure or acceptable excuses, in violation of the provisions of article 3 of this law, shall be fined for 2000-20000 dirhams (MAD), and imprisoned for one month to six months or shall receive either penalty. In case of recidivism, penalty shall be doubled.” A foreigner whose registration card or visa expires and is not renewed within legal periods, unless due to force majeure or acceptable excuses, such person may be fined for 3000 to 10 000 dirhams. In case of recidivism, penalty shall be doubled (article 44)

**Judicial penalty**

Judicial penalty is mainly extradition, a measure taken under international treaties according to which an offender is surrendered to a country which seeks his/her prosecution or conviction. In the event of unlawful migration, pursuant to article 45 of law 03-02, any foreigner who evades or attempts evasion of compliance with an evacuation order shall be imprisoned for 6 month to two years. In case of recidivism penalty shall be doubled. The court may ban the convicted from entering Moroccan territory for 2 to ten years. Banning admission to Moroccan territory results in refoulement of the convicted after his/her imprisonment expires.

**Administrative Penalty**

Administrative penalties mainly include expulsion, banishment, refoulement, or surveillance.

**Non-expulsion:** A principle legalized under article 33 of the 1951 Convention Relating to the Status of Refugees according to which a country shall not expel any refugee or asylum seeker to a country where such person is subject to persecution.

For clarity’s sake, law 03-02 does not allow for mitigation of penalty yet it stated that an alien without a permit or a person requesting to be taken in as a refugee during the time necessary for departure or for examination of such request in order to verify that same request is groundless, who arrive at Moroccan territory by land or by sea shall be held in waiting places at airport or seaport (article 38). However, migrant women and minors, under article 26/7 and 8, are exempted from such penalty as thus stated “No order of expulsion shall be made against non-national pregnant women and minors”

**Banishment** – addressed in section 4 of law 03-02 (article 20) – applies to persons posing a threat to public order and state security. A banishment order is made by the national security chief or national security department.
Refoulement: a penalty imposed by the department under a justified decision in special cases; for instance, if the alien is unable to justify that its admission to Moroccan territory is legal, unless its status is settled after its admission (article 21/1).

Morocco is party to regional and international Human rights instruments, nonetheless, in reality Moroccan authorities do not respect the obligations assigned thereto under these human rights instruments. On several occasions, Moroccan authorities may violate basic human rights of the unlawful migrants as has been demonstrated by the arrests, refoulement and deportation of pregnant women and children. Reviewing Moroccan international obligations, it appears that violations committed against unlawful African migrant women run counter to:

- ICCPR and ICESCR
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which provides protection for clandestine migrants
- UN Convention relating to Migrants (violation to the right of non-expulsion article 33)
- National legislation concerning migration (article 26)

Fourth, Institutional Framework for Protection of Unlawful African Migrant Women in Morocco

This part examines existing institutional measures on the government, governmental organization and international NGOs level, as well as the components of Moroccan civil society to determine the nature of protection that provide mechanisms for these components for the favour of unlawful African migrant women in Morocco.

A- Governmental Institution Measures

Besides the adoption of national legislation concerning migration, Morocco has taken other measures, some on the institutional level, such as the establishment of migration department, border-control, and the initiation of Interior Ministry Observatory for Migration. These measures are an important episode in the course of supporting of migration control and management, particularly of unlawful inflows. As for an institutional response to the status of African migrant women, it is noticeable that Moroccan government has not addressed any of the problems faced by these women. The African migrant women profile is addressed from a security-based and a deterrent perspective that does not observe human rights approach, as the case with the unlawful migrant men.

B- International Institution Response

1- United Nations High Commissioner for Refugees

The UNHCR is responsible, within the limits of its jurisdiction, for determining the refugee status, in the absence of a national institution designated for dealing with

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43 Article 5 (b) states that “For the purposes of the present Convention, migrant workers and members of their families are considered as non-document or in an irregular situation if they do not comply with the conditions provided for in subparagraph of the present article.”
refugees and asylum seekers. Thus, the UNHCR interferes whenever refugees or asylum seekers are subjected to detention, arrest or refoulement by Moroccan authorities. It also urges Moroccan authorities to issue residence documents and to respect the UNHCR resolutions to determine status of refugees. The commission also offers limited financial and social assistance to endangered refugees to enable them to meet their basic needs including shelter, health, and education. The UNHCR in Morocco is willing to further collaborate with the Moroccan authorities to help build the capacities to improve the application of international standards for the protection of refugees, introduce an effective asylum system supported by a sound legal framework, and provide permanent solutions for refugees. In 2006, during registration, several women in need of special aid were identified. Support included offering psychological, social and medical treatment, instructing and training on vocational skills as well as providing alternative residential places. Such support is provided through other UNHCR partners such as Conseil Africain des Organisations d’Action contre le SIDA and Fondation Orient-Occident. During registration and interviewing to determine status of refugees, special needs of asylum seekers are taken into consideration; these interviews are conducted and interpreted by women. The commission maintains that it is continuously working hard to raise awareness of the staff and executive partners about issues such as sexual and sex-based violence. The UNHCR has held training courses to determine the psycho-social needs of refugees with a focus on battered women.

2- International Organization for Migration (IOM)

The IOM has developed a program for voluntary return from Morocco. According to the IOM program official in Rabat, many of the migrant women who seek return to their country of origin were referred to the IOM office by non-governmental human rights agencies. The organization prioritizes in its projects the voluntary return of endangered women. Until 2007, the UN organization returned 50 women, ranging from 20 to 30, including 25 pregnant women or women accompanied by children. The office also provides documents to women who arrived at Morocco with no travel documents by contacting their respective embassies in addition to $6000 worth aid to start projects in their indigenous countries with the help of the IOM offices there.

C- CSO Response

Moroccan human rights CSOs’ concern with the problems that unlawful migrants face has recently grown. For clarity’s sake, these organizations do not have particular programs for unlawful migrant support; nonetheless, the CSOs’ activities are mainly concerned with exercising pressure on the Moroccan government and rallying support for migrants’ human rights through their reports in addition to supporting efforts stop human rights violations which impact all migrants and refugees in Morocco. Noticeably the CSOs’ activities pay little attention to the issue of unlawful African migrant women.

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44 Plan des opérations par pays, Sommaire pour le comité exécutif - Pays : Maroc, Année de planification: 2007
45 Ibidem
Moreover CSOs’ activities in the field of defending the rights of migrants lack coordination, which undermines their work as such that they do not stand as strong as pressure groups.

Conclusion

It is hard to be a migrant, particularly unlawful, and harder still to be an unlawful migrant woman. This is what unlawful African women migrating to Morocco experience on this account. It becomes worse when the guarantee of those women's rights depends on determining their legal status that is established by the types of unlawful migration (irregular migration and illegal migration). For Moroccan legislators and practitioners, African unlawful migrant women, whether irregular or illegal migrants are, illegal migrants just the same. In addition, they are subject to expulsion and banishment even when inconsistent with international, regional, and even Moroccan national human rights obligations. This can be seen in the aforementioned issue of forced expulsion of pregnant refugees and asylum seekers to the Algerian borders.

Having discussed the legal and institutional frameworks and their respective components, it may be noted that the protection of the African unlawful migrant women is deficient. To support it, integration of efforts is required on the part of several actors such as researchers (improving research on women migration is an imperative) and civil society components (effort networking). Thus pressure can be exercised on Moroccan authorities to fulfill their international and regional obligations in the field of migrants’ human rights, irrespective of the form of their migration, their race, or their nationality.