

TRANSIT MIGRATION AND HUMAN RIGHTS

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INTRODUCTION.

In the last decade, migrations have been introduced as an important issue in the political agendas. This have given the opportunity to analyze the impact of migrations in both origin and destination communities. But, on contrary, the transit migrant's situation is often unheeded within migratory research, although owing to the vulnerability of these group, it should be analyze on the same way, specially regarding to Human Rights.

This article tries to contribute to the knowledge of this situation on the African context, specifically on Morocco, Mauritania and Senegal, key points of the African migratory routes where Human Rights have often been infringed. The research starts from the statement that every human being is entitled to all human rights without distinction of any kind, which brings up the next questions: What happens in the migratory routes? Which is the situation of migrant during the transit period? The initial hypothesis is that, in spite of the important of Human Rights in the international system law, this not always entails a real transverse of them in public policies, not on the migratory item. Due to this hypothesis, the object of the research is to analyze transit migrants Human Rights in three key countries of the African migratory routes: Senegal, Mauritania and Morocco. It is important to know that this article has a descriptive dimension, due to the impossibility of doing fieldwork and the difficulty of access to information. Therefore, the reader must be cautious in the reading of statistical data, which are approximate, as well as of the storylines, mainly coming from indirect sources. The present article concludes introducing an approach that helps working for the full realization of transit migrants Human Rights: The Human Rights Based Approach.

This article is based on the ongoing coordinated work of the Human Rights and Democracy and Migration, Gender and Development working groups of the University Institute for Development and Cooperation of the Complutense University of Madrid. It is mostly part of an investigation developed jointly with the Universidad Pontificia de Comillas and the Universidad Rey Juan Carlos, both at Madrid, where, in addition to the migration routes, it included an analysis of law instruments for migrant transit and other actors involved in the migrant process. The original and complete version was published by the Research University Network for Development Cooperation in Madrid and the Catarata Editorial.

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TRANSIT MIGRATION ROUTES IN MOROCCO, MAURITANIA AND SENEGAL. BRIEF INTRODUCTION.

Africa is characterized by an historical mobility since the very beginning of human being. The routes that began then have contributed to the settlement all around the World. (Iniesta. 2007) and, since then, a variety of migration routes and types have been shaping Africa's mobility, both within domestic and beyond its borders.

It is important to remember, as we can read in the UNDP 2009 Report, that most of the migration flows are not between developed and developing countries. "Only 37 percent of migration in the world is from developing to developed countries". On contrary, "about 60 percent of migrants move either between developing or between developed countries" (UNDP, 2009:21) and "despite the high levels of attention given to emigration from Africa to Europe, only 3 percent of Africans live in a country different from where they were born and fewer than 1 percent of Africans live in Europe". (UNDP, 2009:24). Opposite to the high rates of European emigration, the African emigration is lowest. And within this low rate, the 52,6% of African migrants live in African countries (with interesting differences in the three analyzed countries: 55,7% in Senegal, 75,9% in Mauritania and only 9,1% in Morocco).

Beyond the data, mobility is part of Africa culture. "In West Africa, migration is often not merely a vehicle for economic mobility but is also considered a process through which a boy attains maturity. For some groups in Mali, Mauritania and Senegal, migration is a rite of passage: it is through the knowledge and experience acquired from travel that young adolescent males become men". (UNDP, 2009:81). This has also implications for gender relations because in this scheme, women usually stay at home.

Definition and concepts

Migration routes can be defined as virtual corridors with people and different values moving in both directions, connecting origin and destination countries and integrating countries of origin, transit and destination. In North and West Africa these routes represent a continuum in shaping historical, political, economic and social development of both regions. Today we can identify shared migratory routes through Morocco, Mauritania and Senegal that include new and old routes, adapted to the contexts of the three countries and the continent itself and internationally.

To understand the African migratory routes it's important to realize the existence of other components that foster its development. These components refer to the existence of migration systems during the precolonial, colonial and postcolonial age. Mabogunge (1970) defines migration systems as a set of places linked by flows and backflow of people, goods, services and information that tend to facilitate trade, including migration between locations.

While Mabogunge studied rural urban migration in Africa, Portes, Borozc (1987) and Kritz (1992) studied international migration. International migration systems are countries (or locations in those countries) that exchange a large number of migrants, and are characterized

by feedback mechanisms that connect the movements of people between specific countries, areas and even cities, to flows of goods, remittances, ideas and information (Fawcett, 1989, Gurak & Caceres, 1992). Migration systems link people, families and communities through what today is known as transnational communities (Vertovec, 1999).

Today we can analyze the links between migration systems born inside a continent and those born from international migration, which have their destination in Europe, North America and the Gulf States.

Another important term to be considered in migration routes and origin and destination countries, is the migration transit as a phenomenon that takes place on a macro level of societies and countries. The word transit refers us to the idea of temporality, of movement and non-residence. When we talk about transit on migrant routes we refer to a transit route, where migrants are seen as moving people with a defined path (origin and destination) and without settlement.

This unselement leads to a vulnerability of Human Rights because there is a shady law over this situation. It's frequently assumed that a transit migrant is normally irregular, without law protection. However, even if there was an irregular situation, the migrant is entitled with rights.

Transit migration, according to the work done by De Haas (2008: 15), can be defined as the movement of people entering a country, remaining there for weeks or months, while they work to pay or arrange the next stage of their journey, but will leave to another country, within normally a maximum period of one year.

As for regularity or irregularity in transit migrants, we understand that both realities are related. However, the boundaries between regular and irregular migration are not always clear. First, it is useful to make a distinction between irregular entry and irregular stay. For instance, most irregular migrants enter destination countries legally, but subsequently overstay their visas, or engage in prohibited work, through which their status becomes irregular (Hein de Hass, 2008: 13).

We will define irregular migration in a broad sense as "international movement or residency in conflict with migration laws". For the purpose of this study, we will employ a more narrow definition focusing on the actual process of migration: "crossing borders without proper authority, or violating conditions for entering another country" (Hein de Hass, 2008: 13).

Linked to the object of study, "trafficking" is another central term. The term "trafficking in persons" is restricted to situations in which people are deceived, threatened, or coerced in situations of exploitation, including prostitution. "Human smuggling" implies that a migrant voluntarily purchases services to circumvent immigration restrictions, without necessarily being the victim of deception or exploitation (Carling, 2006). However, in practice, it is often difficult to make a sharp distinction between what is voluntary and what is forced. (Hein de Hass, 2008: 13).

Current African migration routes

To understand current migration routes we should think about the enormous mosaic that characterized the African continent, but also the importance of migration policies of both non African and African countries (bilateral, regional and international agreements).

The main European entrees from Africa are the Italian islands of Lampedusa and Sicilia; Malta, the Canary Islands, Ceuta and Melilla.

But before arriving to these destinies, migrants who make part of the trip alone, will need help from an intermediary who will provide everything they need in the last stage (passports, access to the boats or any other transport).

Therefore, depending on the way of transport, there are three routes of entry to Europe:

- The air route: Although is the safest, it is also the more expensive, so is the least used by Africans and Asians in transit to Europe or the U.S. It can be combined with other ways of transport, such as land routes or even other transit airports to those which have non-stop flights to Europe (Van Moppes, 2006). (West African cities: Accra – Ghana-, Abidjan –Ivory Coast-, Bamako –Malí-, Banjul –Gambia-, Casablanca – Morocco-, Conakry –Guinea-, Dakar –Senegal-, Yamena –Chad-, Douala –Camerún-, Freetown -Sierra Leona-, Lagos –Nigeria-, Trípoli –Libia-, y Sal -Cabo Verde-).
- The sea route: Where a variety of boats can be used, from canoes and boats, to large cargo ships coming from ports like Dakar (Senegal), Conakry (Guinea), Freetown (Sierra Leone), Abidjan (Ivory Coast), Takoradi (Ghana), Bissau (Guinea-Bissau) and Accra (Ghana). The chosen destinations focus on Spain (Canary Islands, Gibraltar and Analusia), Italy (Sicily and Lampedusa), Malta and Cyprus.
- The land route: The most restricted because the access to Europe can only be done through the Spanish cities Ceuta and Melilla, which are in Moroccan territory.

There are also other routes to Europe that refer to the ways migrant use:

- The West African route, through Liberia, Sierra Leone, Guinea, Guinea Bissau, Senegal, Gambia, Mauritania and Western Sahara to the Moroccan coast.
- The Western Sahara route to the Canary Islands through the north of Mauritania, Western Sahara and the south of Morocco.
- The Central Sahara route to the Canary Islands through the Algerian Sahara. This route divides itself into two more: the one that goes from Agadez (Niger) to the Canary Islands, and the one that goes through Western Sahara and the south of Morocco to Spain.
- The East Sahara route to Lampedusa, Sicilia and Malta. This route is quite popular among Sub-Saharan migrants. It comes through Agadez and divides to Tunisia and Libia.
- The Horn of Africa route through Libia, having Lampedusa, Sicilia and Malta as destinies. Migrants usually come across Sudan and enter Libia on the southwest. They use Al Jawf urban transport.

Although the two last routes mentioned are not studied in the present article because there are not situated in the three countries². We are only going to talk about those routes that go across

² There is a sixth route that goes through Turquie, Greece and the Gulf area. It is called the Asiatic Route.

North Africa, specially Morocco, Mauritania and Senegal.

Despite that these three countries are usually understood like emigration countries, the three of them are also part of bigger networks and are considered transit points along migration routes that cross the wider continent, ejectors and receiving countries at the same time. This situation makes it more complex and interesting for study.

So, when we talk about Morocco, Mauritania and Senegal we should study the land and sea routes above mentioned.

The transit as a part of the migrant project

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People usually identify the transit as a short period of not more than some hours. It is difficult to imagine that the transit can last for weeks, even months and, in some cases, even years before reaching destination. Most of these times, migrants families doesn't received any notice until the trip finish.

"I can do nothing. I have no support or facilities to bring him here, see him with my eyes, buried him if he is dead, finally confirmed if this is true. Sometimes I think he is still alive. I go out the street thinking he will appear. But I can do nothing. If he is dead I beg people to send me his corpse and Lord to reward his effort or bring him back to me if he is alive". (in Fibla and Castellano, 2008: 99).

The examples seen above show us that is the harsh reality for thousands of African migrants who have decided to look for better opportunities. A harsh reality that gets worst with the hard conditions during the trip, the state of neglect in which they live and the violation of their Human Rights.

To sum up, transit is unavoidable stage for every migrant who wants to achieve his migrant project. Is a stage than can be fast if you have the proper resources and contacts and, of course, a bit of luck; but it can also last for months or years and even change the initial migrant project. That's why during the transit stage many migrants work under different conditions. There are denounces about how mafias exploit migrants in clandestine garages and factories. But some more, after many difficulties, decide to go back home.

TRANSIT MIGRANT VIOLATED HUMAN RIGHTS.

The migrant journey is full of difficulties that degenerate in a constant violation of migrants Human Rights, mainly during the transit period. In fact, as the situation during the transit is so unpredictable it is also the most dangerous. However, the relevance of this situation is not always included in public policies. (Cabezas y Gilsanz, 2008: 124).

This invisibility is incomprehensible when "in this migrant World more than a million people leave their country every year because of economic or familiar reasons. More than 700000 migrant aspire for freedom by political asylum. 191 million people all around the World live in a different country from the one they were born. We can't also forget that there are 26 million people displaced inside their own country" (Bernard, 2010:116).

Since the very beginning of the migrant project and if every stage of it Human Rights are being violated. During depart because the main reason why migrant leave their countries is that they don't have the opportunity to reach a dignified life. During transit civil and political rights are the most violated. Finally, because destination countries doesn't admit the dimension of migrant phenomenon.

As the transit period is a stage with lots of uncertainty, it is also the most dangerous. Although migrants try to project the transit period as much as they can, there are many changes during the journey; and unfortunately, each of those changes includes the violation of a Human Right. We can't forget that, based in the principles of interdependence and interrelatedness, the violation of one Human Rights entails more violations of more Human Rights. For example, "when Right to security is violated, the right to not be subjected to cruel, inhuman or degrading treatment is also violated. When the right to freedom of movement is infringed, the right to a nationality is also neglected". (Cabezas and Gilsanz. 2009: 121).

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Infringed Human Rights

In the next pages we will try to explain the human dimension of the violation of Human Rights, going through those situations during the journey where there is a bigger risk of suffering.

Even if we are studying only the transit period is important to talk about the departure moment. One of the main reasons why migrants decide to leave their countries is because of poverty; poverty understand as a non access to resources and opportunities to yield a dignified life; something that has to do with Human Rights.

The Human Right par excellence is the right to life, included in the first article of the Human Rights Declaration (HRD) and developed in the 25th article: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

The second part of the first article of both International Covenants of Human Rights "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This article can be fine tune with the right to take part in the conduct of public affairs from article 25th of the International Covenant on Civil and Political Rights (ICCPR). Obviously, the absence of any capacity or option for a dignified life is a violation of Human Rights.

Even though Senegal, Mauritania and Morocco obtain their independence from Spain and France on the second part of the 20th Century following the International Law, many situations from that period make very difficult to achieve all the rights included in both International Covenants.

“... They come to West Africa and took away all our things, our gold, our *timba*. They took all our wealth to Europe. And so, Europe is nowadays Europe”. (In Fibla and Castellano, 2008:65).

Although the lack of access to resources and opportunities is one of the main reasons that make people become migrants, it is important to realize that migrant profile is not of the poorest citizen. The migrant profile is of a middle class person, because only they can achieve the high cost of the journey. (Global Commission on International Migration, 2005: 25). This supposes another risk, the brain drain, that although it doesn't mean a violation of a Human Right, it does hamper the fulfillment of the whole of them, because origin countries remain orphans from those people who can achieve the country problems.

It then starts the journey to a supposed better place based on a Human Right included on article 13th HRD and developed on article 12th ICCPR: the right to liberty of movement and freedom to choose his residence. Of course, the drafting of the document didn't include in this articles the right to enter a country different than yours.

This leads to a situation of vulnerability, irregular migration, which means a constant violation of Human Rights. Many people are in an irregular situation because there are no options, nor rules or regulations that promote migrants to enter a country. The risk of irregular migration doesn't finish when migrants arrive to destination or any other transit place. No discrimination, Security, no torture or cruel treatment, liberty, etc are only some of the infringed Human Rights.

Irregular migrants doesn't mean that migrant doesn't have an identity. But, when an identity card or document is the only way of keeping this identity “many migrants have their documents taken to requisition. Without documents that can prove their identities and even their regular situation migrants suffer more Human Rights violations. These violations include deprivation, arbitrary expulsion and contempt”. (International Amnesty, 2006:36).

Without any other options, many migrants succumb in trafficking networks for sexual or labour exploitation. It's easy to imagine the terrible situation of people subject to sexual exploitation, but those subject to labour exploitation are not in a better situation. In both, the violation of Human Rights is a chain reaction.

Even when migrants get through the risk of being trafficked, and even when they have an identity document, they are still exposed to Human Rights violations. Nowadays there is a whole informal framework to attend migrants during the transit period, but still there is a risk because they usually don't know they have to live with different customs and languages. The migrant ignorance about the different habits may cause rejection from the people around, what can lead into the infringement of the right to no discrimination and security, once again.

“We all go to the dump. Then we go to the road to beg for food. That is how we eat. They come and destroy everything everywhere, they burn everything, break the tents and take everything that has any value: clothes, shoes... Yesterday everything I brought they took it away and they wounded some of my friends. Many of them are still crying since yesterday. After beating us, they take everything they want and run away. That is how they visit us. (Fibla and Castellano, 2008:77).

Despite the aggressions they suffer and to avoid forced expulsions (that infringe articles 12th and 13th ICCPR) there are many migrant that don't denounce these attacks. But when they do, often another group of Human Rights are violated, those included in articles 9th to 17th ICCPR about liberty and security of person.

Many detention camps are now being denounced, not only because of the violations of the rights mentioned above, but because of the situation of overcrowding, racism and precariousness lived in them.

And often, migrants who are waiting for their repatriation are not even held in real detention camps. (Migreurop, 2009). There are also “detention centres” in airports, for those migrants who decide to make the journey by airplane:

“People in detention centres should have access to phone calls, to translators, legal service, or even to do some exercises every day... but they don’t. They should have medical service, social workers; and also written information in their mother tongue about what is happening and their rights and duties. It’s important they have the right to denounce that situation and ask about their legal situation”. (Fibla y Castellano, 2008: 127).

This situation is common for European and non-European countries, in transit countries. For example, in the Nouadhibou detention camp migrants who try to cross to the Canary Island by *cayuco* are kept under overcrowding. (International Amnesty, 2008:19-20).

When migrants get over rejection, aggressions and detentions they are still under risk. Without any resources it is difficult to obtain food, house, medical service or social services; all of them included in article 25th UDHR.

Many migrants then decide to turn to the authorities to regularize their situation and achieve a minimum of dignity. But regularization is not always easy in third countries. Borders have been reinforced, mainly in Europe, the destination point for the routes studied in this article and people are almost obliged to continue underground.

Again the infringement of article 25th UDHR causes more Human Rights violations. For example the right to education (article 26th UDHR). Without education a human being will not have any intellectual, cultural or scientific resources to develop a dignified life. Another example is the right to health. The right to health is the right of people to enjoy the highest attainable standard of physical, mental and social health. This means the access to medical services, but also the social commitment to contribute to the right of health”. (VVAA, 2009: 143).

Without documents and resources migrants will not have access to a work in the conditions required in article 23rd UDHR³. Many employers exploit irregular migrants to offer work under minimum labour conditions. We can find examples in the Spanish newspapers⁴.

If article 23rd is not fulfilled it causes the violation of the right of everyone to form trade unions (article 8th of ICESCR), the right to freedom of association with others (article 22nd

³ Article 23rd UDHR: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

⁴http://www.mundoanuncio.com/anuncio/oferta_de_trabajo_para_sin_papeles_1151057098.html,
<http://chapineseneuropa.com/index.php/20061012311/Papeles/Trabajar-sin-papeles-en-Espana.html>,
<http://www.trabajoahora.es/ofertas-de-empleo-sin-papeles-en-madrid/>.

ICCPR), the right to freedom of thought, the right to hold opinions without interference and the right to freedom of expression (articles 18th and 19th ICCPR).

But when working becomes the only way of reaching welfare is easy to resign those Human Rights than can be considered less essentials. However is important to remind the principles of Human Rights: indivisibility, interdependence and interrelatedness.

To short, anyhow your an individual, a member of a family or as part of a community, if we develop a checklist of compliance with human rights, unfortunately almost all of them have been subjected sometime during the transit.

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HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT.

When analyzing the situation of transit migrants human rights it is important to consider several aspects. The first would be, without any doubt, an analysis of the circumstances that cause these movements. We should also analyze the particularities of each migrant group in relation to resources, objectives and expectations of their life projects. And, of course, we should study the relation between other actors during the trip. However, the protection of their Human Rights should be a *sine qua non*. But how can we work to ensure Human Rights?

It arises in the cooperation for development system a new approach that combines a pragmatic and theoretical approach that creates a useful tool for a full realization of Human Rights. It is the Human Rights Based Approach (HRBA).

A HRBA is a conceptual and methodological framework, based on international Human Rights standards and operationally addressed to promote, protect and fulfill these rights (VVAA, 2008). It tries to promote Human Rights by the incorporation of the International Human Rights Law into development public policies. The first achievement of a HRBA was to endow development strategies with a solid legal basis, the Human Right, which from the international law justify development interventions. In this sense, the problem of interference might arise, reopening the debate over whether human rights protection needs to overcome barriers in domestic law. There is no consensus on the answer; however, it is true that the legal basis provided by Human Rights allows perceiving the development as an obligation of States.

Human Rights are then used, not only as an important goal in development, but also as a process. Human Rights represent both, the process and the end, since they are used as the main instrument for its own promotion and realization. Once the idea that the full development comes with the full enjoyment of human rights, we must begin to work with these rights. Therefore, HRBA involves a change of orientation, so that the person ceases to be an individual with needs that must be covered and becomes a subject of rights, able to require the State certain behaviors and actions.

For United Nations, a HRBA is characterized by:

1. Principles and standards derived from international Human Rights treaties should guide all development cooperation.
2. Accountability and transparency of those who have the duty to act.
3. Empowerment of people to fight for their own rights.
4. Participation.

5. No discrimination.
6. Main attention for most vulnerable people.

These elements are a glimpse of the dimensions and options of the HRBA, whose qualities include the ability to overcome the failure of the mainstreaming of Human rights into the triple obligation of States. The HRBA is a conceptual and methodological framework that uses the human rights standards for its implementation. It represents, therefore, an integral action tool focused on achieving specific targets in the day to day human rights.

One of the main achievements of EBDH is the identification of three types of agents: a) rights holders; b) duty bearers, in charge of Human Rights protection, enforce and respect and; c) holders of responsibility who have obligations that derive from their status as rights holders. Thus, the duty bearers are public institutions and the international community, since their main duty is to protect, respect and enforce human rights. Finally, social actors are also conceived as holders of responsibility due to its direct relation with Human Rights' enforcement. The main idea is that the progressive realization of Human Rights is a duty of all: governments, civil society and individuals. All of them have duties and so, every action is work in a holistic way.

In transit migration, actors can also be divided in these three groups. There are smugglers, who are one of the main Human Rights violators, although they are often considered as the only way for migrant transit to reach their project. There are also governments who doesn't admit transit migrants have the same Human Rights as any other citizen. And of course, there are citizens that, instead of helping transit migrants, take advantage of their situation.

It is important for transit migrants to see themselves as rights holders with the right, but also the duty to denounce any abuse and the possibility to receive humanitarian and international assistance. Governments, as duty bearers, should promote awareness about transit migrant situation and develop appropriate public policies and remove any link between them and smugglers.

In short, is all about using Human Rights to ensure their own performance and entitling people as the only responsible for their development without detriment to the obligations of other entitlements: Working all together in a complex reality: Transit migration.

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