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migratiebeleid in landen buiten de EU

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Sub-Saharan African migrants and civil registrations in Morocco

How do sub-Saharan African migrants, both regular and irregular, deal with the major life events related to family law in Morocco, and how does that impact their human rights?

THE TRAJECTORY

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- Supervisors: dr. Nadia Sonneveld en prof. Adriaan Bedner
- Start research project: september 2019

1. Introduction

In my research, I focus on migration and family law; and my main research question is: how do sub-Saharan African migrants, both regular and irregular, deal with the major life events related to family law (marriage, birth, death) in Morocco, and how does that impact their human rights? Morocco has been mostly known as a sending or a transit country. Today, it is trying to establish itself as a destination country as well.¹ After adopting a securitarian approach to migration in 2003 with Law 02/03, Morocco introduced a new migration policy, with two regularization campaigns to help migrants in irregular situations in obtaining their residence permits.² This new approach is the result of a geopolitical shift in Morocco's diplomatic relations and foreign policy with its West- and Central African neighbors and also signifies the country's ambition to be a leader in migration management on the African continent, through the creation of the African Observatory of Migrations in Rabat. Regardless of this new approach, the European Union still wants to externalize its border control and outsource responsibility for border management and control to North African countries, while at the same time, ensuring the protection of the migrants' human rights. With Morocco being caught between agreements with the EU and agreements with other African nations, the question that arises then is: what are the consequences of all these

decisions on border management and prevention of irregular migration on the everyday lives of migrants residing in Morocco?

A fundamental aspect of human rights is the right to have a recognized legal identity, which is established through the registration of significant life events, most notably birth. However, when externalizing borders, it is crucial to understand the realities on the ground. The research project titled 'Living on the Other Side: A Multidisciplinary Analysis of Migration and Family Law in Morocco' tackles this important question by employing a socio-legal analysis of what formal and informal factors play a role in the way migrants deal with major life events.³ By using family law as a lens, the study aims to comprehend how both the state and migrants practically navigate these events. Through this comprehensive approach, and based on ethnographic fieldwork, the project aims to shed light on the rights and practices of non-citizens in North Africa, using Morocco as a representative case study.

I collected my data by conducting online fieldwork and on-the-ground fieldwork, and working with two fieldwork coordinators. During online fieldwork, which took place from November 2020 until July 2021, a group of 12 to 15 sub-Saharan migrants in Fes participated in remote language lessons in Moroccan Arabic and English. After meeting over two periods of 12 weeks, the participants received a certificate of completion with their names and photos on it. The main idea behind these language lessons was to work on reciprocity and build a rapport with them. In exchange, I could conduct interviews with them. Participation in these lessons was not conditioned by interviews, and they could refuse to be interviewed without losing their seat in the group.

I conducted on-the-ground fieldwork in the cities of Rabat and Fes, from September 2021 until February 2022. Overall, I interviewed 33 migrants, 21 men and 12 women, whose ages varied between 18 and 45. The majority of my interviewees did not have a regular administrative status.

1 Berriane, Mohamed, Hein de Haas, and Katharina Natter. 'Introduction: Revisiting Moroccan Migrations', *The Journal of North African Studies* 20, no. 4 (August 8, 2015): 503–21, <https://bit.ly/44KvJdp>.

2 Norman, Kelsey P. 'Inclusion, Exclusion or Indifference? Redefining Migrant and Refugee Host State Engagement Options in Mediterranean "Transit" Countries', *Journal of Ethnic and Migration Studies* 45, no. 1 (January 2, 2019): 42–60, <https://bit.ly/3PYEzW>; Benjelloun, Sara, 'Morocco's New Migration Policy: Between Geostategic Interests and Incomplete Implementation', *The Journal of North African Studies*, July 24, 2020, 1–18, <https://bit.ly/43sLgGS>.

3 This research was funded by a VIDI grant from the Netherlands Organization for Scientific Research (NWO). Dr. Nadia Sonneveld initiated the project. Fellow PhD candidate Judith van Uden is conducting the same research – see the article before in this special issue – but she focuses on a different target group.

2. Practical relevance for the Netherlands and beyond

The conventional portrayal of non-Western countries as passive actors in international relations, that only exist in relation to the foreign policy and political economy strategy advanced by Western countries, has been challenged by recent post- and de-colonial literature. This scholarship analyzes the foreign policy adopted by non-Western countries in its own right, considering them as autonomous geopolitical actors. Such a perspective broadens our understanding of foreign policy beyond the resistance/domination binary and recognizes the global South as a subject in international relations. Despite the structural dependency conditions, subaltern countries can still develop an autonomous diplomatic strategy. Similarly, early analysis of border scholarship viewed countries of ‘origin’ and ‘transit’ as passive recipients of border externalization politics.⁴

The only land borders shared by Europe with Africa are the fences surrounding the Spanish enclaves of Ceuta and Melilla. These enclaves serve as a testing ground for the European Union to experiment with various externalization policies. For instance, the creation of isolated areas from which individuals are not transferred to the continent has been a standard practice here for over a decade, preceding the EU-Turkey Statement which implemented a similar approach on the Greek islands. The Spanish-Moroccan Agreement on Readmission, signed in 1992, was one of the first bilateral agreements between an EU Member State and a third country to return migrants.⁵ Since then, Moroccan authorities have controlled entry into the last European territories in Africa with the construction of fences in the late nineties. This control is the most direct consequence of Spain’s externalization policy, as Moroccan forces outnumber Spanish ones and strategically detain Sub-Saharan Africans before they can reach the Spanish Border Asylum Office. It is evident that the Moroccan Government employs the border as a means of exerting political pressure, as more individuals were able to cross the fence in three days than in the preceding six months last February, leading up to the EU – Morocco negotiations on agriculture and fisheries.⁶

3. Findings

3.1 On marriage

A migrant’s decision to marry can be influenced by their legal status, thus stressing the importance of having proper legal documentation. In Morocco, the government has launched two regularization campaigns in 2014 and 2017 to address the situation of migrants who have been residing irregularly in the country. The first campaign focused on migrants who had been married to a Moroccan citizen for at least two years, those who had been legally employed for two years, and those who had lived in Morocco for a minimum of five years. The second campaign waived the requirement of a minimum length of marriage and was less strict.⁷

Identity documents, such as passports, have a high significance in the everyday lives of interviewed migrants, given the crucial role they play in claiming asylum, accessing public services and obtaining aid. The absence of legal documentation can exacerbate the registration of major life events, including marriage and birth. According to the Norwegian Refugee Council (NRC), the lack of

identity documents can substantially impact the lives of migrants.⁸ In order to hold a civil ceremony to marry in Morocco, the individual is required to provide a valid passport, a copy of the birth certificate, a certified copy of the deed of conversion to Islam or any other evidence of religion, an administrative certificate indicating civil status, a statement of profession and revenue, a certificate of residence, a medical certificate, and a copy of the criminal record. Thus, having the appropriate legal documents is critical when seeking to marry civilly. For migrants, obtaining these documents can be challenging due to obstacles such as geographic distance (and inaccessibility to such records) and financial constraints.

Although Patience and Amadou both started in Morocco as students, their experiences with birth registrations were very different: Amadou’s baby has a legal identity, and Patience is still fighting for Sandy’s.

Some unmarried migrants with irregular status in Morocco perceive their stay as an indeterminate postponement of their marriage plans. One such migrant from Cameroon, Roland, mid-40s, emphasizes the significance of a residence permit, stating that ‘everything revolves around the residence permit.’ He further elaborates that many cohabiting couples lack the resources to formalize their union without this permit. Roland’s usage of cohabitation refers to couples who reside together but are not legally married. He has been living in Morocco since 2015 and believes that it is not viable for him to marry and start a family in the country, since it would be a challenging experience for children to grow up in Morocco. For him, there is no room for mistakes and having children would be one due to the responsibility it carries. Roland fears that his children would be confronted to constant racism and discrimination from the host society, making them feel unwelcome.

3.2 On birth

Although many share Roland’s point of view, having children is part of life. Whether they have their legal documentation or not, migrants still have children in Morocco. However, a big problem arises when they want to register the birth of their children, either because they have passed the 30-day deadline to do so (for lack of awareness), or because they could not pay the hospital fees and retrieve the birth notification needed to register the birth at the level of the office of civil registrations.

For example, Patience, who is in her late twenties now, left Guinea-Bissau in 2013 to pursue her studies in management in the city of Fes. She finished her courses in 2017, but did not defend her final thesis because her father died and her family was no longer able to pay for her tuition fees. While in Morocco, she had two children, Sandy and Achille, born respectively in 2016 and 2018, and whom she is raising on her own. Sandy was born in a clinic and Achille in a public hospital. While Achille had his birth certificate, Sandy did not have one. In 2019/2020, Patience went back to the clinic to pay the fees related to her first delivery and to retrieve Sandy’s birth notification. When she took this document to the civil registry, she was told that the registration of the birth was not possible because the 30-day deadline had passed and she had to go to court to receive the approval of a judge to register. In April 2021, she was still waiting for her case to be solved.

Amadou, however, had a very different experience. He came to Tangier, Morocco, from Guinea as a student and met his wife

4 Gazzotti, Lorena. ‘Buying Morocco’s Collaboration in Migration Containment? Complicating the Use of Aid in Border Control Cooperation,’ European Institute of the Mediterranean, September 6, 2022, <https://bit.ly/3NRE1cF>.

5 Rodriguez Forrest, Jon Sebastian. ‘OPed: Cooperation with Morocco in the EU’s African Border – a Laboratory of Externalization,’ European Council on Refugees and Exiles (ECRE). *European Council on Refugees and Exiles* (blog), January 12, 2018, <https://bit.ly/3XRjtpf>.

6 Ibid.

7 Norman, op. cit.

8 NRC and IHRC. ‘Securing Status: Syrian Refugees and the Documentation of Legal Status, Identity, and Family Relationships in Jordan,’ Jordan, November 2016, see: <https://bit.ly/3KOWZwk>.

through a student association in the same city. They married after he moved to Casablanca where he found work in a bank. Thanks to this job security, he was financially stable and benefited from the advantages that come with it, such as insurance and additional health coverage. When his wife became pregnant, they did not need to worry about pregnancy and delivery expenses. His insurance allowed for a 100 % medical coverage in a clinic. After the birth, the clinic gave him a birth notification, which he took to the civil registry within the allocated 30 days. There, he presented the birth notification of his baby, as well as his and his wife's residence permits and the baby's vaccine booklet. One day later, he was able to pick up his child's birth certificate. Seven months after receiving the Moroccan birth certificate, he went to the Guinean embassy in Rabat to retrieve the Guinean birth certificate and pay a fee of 300 dirhams (30 euros).

According to Christoph Sperfeldt, legal identity has become a main topic for policymakers, especially after its inclusion in the Sustainable Development Goals (SDGs) with the 'legal identity for all by 2030'. As such, legal identity has become a field of policy and practice.⁹ The SDGs do not give a definition of legal identity, and neither does international law.¹⁰ Sperfeldt defines it as 'the recognition of a person's existence before the law, facilitating the realization of specific rights and corresponding duties. As such, legal identity is a status that arises from legal sources and encapsulate an individual's legal personality.'¹¹ The target set by the SDGs regarding legal identity may have unintended consequences. While the goal was to enhance social inclusion and equitable distribution of development opportunities, the principle of 'leaving no one behind' can inadvertently lead to risks of exclusion because it enhances the importance of having a legal identity even more, hindering human rights and development outcomes.¹²

3.3 On death

In the small literature available on death and migration in Morocco, the focus is largely on the Mediterranean and the border areas with Spain, even though there are migrants who die of natural causes in Morocco, and those who die in the desert. For European leaders, the Spanish-Moroccan border is a 'well-functioning' border, which has stopped the mobility of Black and Brown people who are trying to go North by violating migrants' rights and 'producing death and suffering'.¹³

When a body is found, the identity of the deceased person is first of all a quest. Residents of border areas, activists and migrants mobilize to collect information to give him/her a name and help restore the deceased to a place among his/her own family and peers. There is indeed no specific official protocol aimed at giving a name and an identity to the bodies of those who died at the gates of Europe.¹⁴

Whether the body is identified or whether it remains nameless, the said body becomes material proof of the violence of the contemporary border regime, which associations use to denounce European policies.¹⁵

The post-mortem identification process for deceased migrants in Morocco involves various actors, including the police, diplomatic representatives, and local associations. When unidentified bodies are found, the police prepare a report and collect personal belongings and physical characteristics. The bodies are registered as 'X ibn X' (X son of X) in a register, and a forensic examination is conducted.¹⁶ There is tension between Sub-Saharan diplomats and Moroccan authorities regarding the nationality of the bodies. While the embassies refuse to recognize their nationality, Moroccan authorities seek to establish their origin. This leads to the involvement of non-state and private actors in matters of the state, which the latter prefers to delegate.¹⁷ The *traceurs* act as intermediaries and have established administrative networks within the prefectures and municipalities. They work closely with state officials and have experience in working with migrants.¹⁸ Given the current literature and my field-work findings, there is a lack of research on the identification and burial procedures and practices of these bodies in Morocco.

Diplomats often refuse to recognize the nationality of a body without official papers, considering them as lacking legal existence. Diplomats act as civil registry agents, recording births, deaths, marriages, and issuing consular cards for their 'citizens.' They use these records to challenge the Moroccan police files that try to prove the legality of their citizens' presence in the country. The recognition of a body without papers becomes a way for the Moroccan state to quantify migrant deaths by country and potentially stigmatize certain nations. The way nationality is conceptualized (only recognized through a paper) not only serves as an alibi for diplomats to avoid political or moral responsibility for migrant deaths, but also contributes to the informalization of state action. It privatizes the identification process by placing the burden on individuals to contact families and the Moroccan state for information.¹⁹ For example, Pierre, one of my respondents, operates as a *traceur* in Fes. He very often has to identify the bodies of migrants who died in Fes, if they are not already known. He also takes on the responsibility of contacting the family members back in the countries of origin to announce the death, and arrange the burial, either in Morocco or by repatriating the body if the family can afford it.

The *Living on the Other Side* research project provides solid research necessary for European policymakers to make an informed assessment of the extent to which migration negotiations between the EU and Morocco are in line with the EU's human rights policy. And for Moroccan policymakers to understand what the realities of the field are and how law in the books differs from law in action. ◀

9 Sperfeldt, Christoph. 'Legal Identity in the Sustainable Development Agenda: Actors, Perspectives and Trends in an Emerging Field of Research', *The International Journal of Human Rights* 26, no. 2 (February 7, 2022): 217–38.
 10 Ibid.; Manby, Bronwen. 'The Sustainable Development Goals and "Legal Identity for All": "First, Do No Harm"' *World Development* 139 (March 2021): 105343.
 11 Sperfeldt, op.cit., 219.
 12 Ibid.
 13 Gazzotti, Lorena. 'Deaths, Borders, and the Exception: Humanitarianism at the Spanish-Moroccan Border', *American Behavioral Scientist* 64, no. 4 (April 2020): 408–35.
 14 Kobelinsky, Carolina. 'Les traces des morts : gestion des corps retrouvés et traitement des corps absents à la frontière hispano-marocaine', *Critique internationale* N° 83, no. 2 (2019): 21.

15 Ibid.
 16 Diallo, Alimou. 'Politics of the lifeless: An informal system for identifying "lifeless and undocumented migrants" in Morocco', *Politique africaine* 152 (2018): 141–63.
 17 Ibid.
 18 Ibid.
 19 Ibid.