

## Mass expulsion of migrants from Algeria to Niger: What does the law say?

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In 2014, Algerian and Nigerien authorities reached an agreement for the repatriation of Nigerien nationals living in Algeria. This agreement should allow Algeria to repatriate Nigerien nationals who are irregular migrants.

However, it appears that Algiers just meant to get rid of black people present in its territory. This was achieved through mass expulsions and arrests of West-African nationals, especially Malians, Guineans, Ivorians, Nigeriens and Nigerians<sup>1</sup>. As a result, up to 22,600 foreigners were sent back to Niger in 2020, the majority of them in deplorable conditions<sup>2</sup>. Indeed, beside the arrests followed by detentions, migrants are generally taken to the desert and left there, so they have to walk all the way to Niger. Such a situation raises concerns about respect for free movement and migrants' fundamental rights. Examining the legal framework that applies to expulsions of foreigners seems necessary since international law expressly bans such practices.

### THE BAN ON COLLECTIVE EXPULSIONS OF FOREIGNERS

Collective expulsion is to be understood as any measure compelling aliens, as a group, to leave a country<sup>3</sup>. In some cases, such a decision may be taken against multiple individuals or, as is the case in Algeria, they may be forcibly returned to the border without any consideration for their personal situation. Such an approach goes against several international legal instruments protecting the right to free movement. We can quote the African Charter on Human and Peoples' Rights and the International Convention on Migrant Workers, both ratified by Algeria. Article 12 of the African Charter seems more on point on this matter as it bans any expulsion "which is aimed at national, racial, ethnic or religious groups."<sup>4</sup> Such a provision protects foreigners against any systematic and common expulsion measure. The objective here is not to ban expulsions, but to limit the way they unfold as, according to the sovereignty principle, States can expel foreigners subject to certain safeguards<sup>5</sup>.

### SAFEGUARD OF INDIVIDUAL AND REGULAR PROCEDURES

The ban on collective expulsions allows every foreigner to undergo an individual procedure followed by a decision reached in accordance with the law<sup>6</sup>. That is even more important because Algeria has a legal framework regulating foreigners' expulsions. According to Law No. 08-11 of 2008, an expulsion can be decided against not only irregular foreigners, but also foreigners whose presence in the territory poses a threat to public order or national security. In these cases, the

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<sup>1</sup> INFOMIGRANTS, [Depuis janvier, l'Algérie a expulsé plus de 3 000 migrants vers le Niger](#), 25th March 2021.

<sup>2</sup> Ibid.

<sup>3</sup> ECtHR, *Khlaifia and Others v. Italy*, No. 16483/12, 15th December 2016, para. 237.

<sup>4</sup> African Charter on Human and Peoples' Rights, Article 12.

<sup>5</sup> Hennebel L., Tigroudja H., *Traité de droit international des droits de l'homme*, Paris, Pedone, 2nd ed., 2018, p. 989.

<sup>6</sup> Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1.

decision must be notified to the individual concerned to allow him to contest its enforcement before a judge<sup>7</sup>.

However, considering the facts, it should be noted that these provisions are not complied with even if this is necessary to legitimize expulsions and to provide a special treatment to women and children, as well as to people requiring international protection. It must be recalled that, according to the principle of non-refoulement, the latter category cannot be subject to expulsion.

#### ABIDING BY THE PRINCIPLE OF NON REFOULMENT

International law provides that: “No person shall be subjected by a Member State to measures which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened”<sup>8</sup>. This means that States shall not send foreigners back when there are serious reasons to believe that they risk suffering irreparable damage. In these cases, the individual can apply for asylum to national authorities, which will examine their application in good faith.

The presence of asylum procedures seems pivotal with respect to the mixed nature of migratory flows, characterized by a variety of factors contributing to population movement. Considering the security situation in the Sahel region, migratory flows can include at the same time economic migrants, asylum seekers and victims of trafficking. Such a situation requires individual examinations in order to allow people seeking international protection to apply for asylum.

Nevertheless, it is astonishing to notice that Algeria has no legislation on asylum, despite its ratification of the Geneva Convention relating to the Status of Refugees.

To conclude, it seems compelling for Algeria to abide by its international obligations in order to assure better treatment to foreigners because, even though States do have the right to restrict people’s free movement, that must obviously occur in accordance with established rules.

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<sup>7</sup> Republic of Algeria, Law No. 08-11 of 2008 governing foreign nationals’ conditions of entry, stay and circulation, Articles 30-32.

<sup>8</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 2 para. 3.