

Violations of human rights in efforts to combat irregular immigration in Niger

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After the fall of the Libyan regime in 2011, followed by the destabilization of Mali in 2012, Niger has unquestionably become the main migration route taken by citizens of ECOWAS member states¹. As a country of departure and transit at one and the same time, Niger is crossed by 300,000 people every year trying to reach Europe via Libya². This flow of people has seen the emergence of a series of economic activities but also constitutes a threat to the European Union which, in turn, has not hesitated to act in support of a new policy for managing migratory flows in Niger. Consequently, in 2015, following the Valletta Summit which brought together several states affected by migratory phenomena, the Parliament of Niger adopted, on the government's proposal, a law against illicit trafficking of migrants³. This law was presented as an instrument for the protection of migrants, but in reality is nothing other than means of limiting immigration while also serving as a framework for the implementation of various measures to combat it that raise serious concerns. In fact, in the effort to dissuade potential migrants from continuing their journey, authorities have used several means of repression, surveillance and even stricter conditions of entry into the country. Some believe that the adoption of these measures was influenced by funding to the tune of one billion euros promised by the European Union⁴. Apart such interference, several concerns have been highlighted regarding respect for human rights, especially as Niger has signed many international and regional commitments concerning human rights protection.

Analysis of the legal and operational framework implemented in Niger to combat immigration is therefore amply justified in order to verify the status given to human rights.

Are human rights effectively assured in efforts to combat irregular immigration in Niger? Are the authorities able to reconcile the objective of combating immigration with the protection of human rights? Is there perhaps not an imbalance to the detriment of human rights?

We will attempt to answer these questions starting from an analysis of migration policies in Niger. We are led to believe that the measures adopted by the State of Niger and its European Union partners constitute obstacles to free movement (I) as well as restrictions concerning civil and economic rights (II).

I. Obstacles to the free movement of ECOWAS citizens

As an ECOWAS member country, Niger belongs to a free movement area following the adoption of the ECOWAS Protocol in 1979. This agreement seeks to pursue regional integration and has

¹ Economic Community of West African States.

² IOM, *Statistical Report. Niger - Flow Monitoring Point*, December 2016.

³ Republic of Niger, *Law no. 2015-036 concerning illicit trafficking of migrants*, 26 May 2015.

⁴ Crisis Group, *Keep traffic in northern Niger under control*, Africa Report No. 285, 2020, p. 5.

abolished visas in the ECOWAS areas; it requires member States progressively to ensure free movement for citizens of the community by avoiding the creation of obstacles⁵. Nevertheless, despite this undertaking, various measures have been applied in Niger which lapse on freedom of movement. As is well-known, these include bans on activities related to mobility (A) and the intensification of road checks (B).

A. The ban, under pain of sanctions, of activities related to mobility

With the questionable aim of protecting the rights of migrants, authorities in Niger have adopted a repressive approach in combating immigration which has resulted in the criminalization of activities related to mobility and its corollary of responsibility. Hence Law no. 36 dated 2015, that currently prevents the transport of migrants in the territory of Niger. On pain of infringement, no transporter should ensure entry or exit from national territory to anyone in a situation of irregularity⁶, that is, without a travel document⁷. Such a ban makes no distinction as to the nationality of the carrier, the passengers and even less to the place where the infringement occurs⁸. Under this law, Niger's authorities have universal jurisdiction pertaining to smuggling migrants which allows them to prosecute anyone carrying irregular migrants⁹. This means that this interdiction measure goes beyond the national sphere to involve the ECOWAS community area.

Inasmuch, crossing borders is considered to be the material aspect of infringement. In other words, for transporters to be considered as traffickers, they must necessarily ensure border crossings for migrants, especially since international migration unquestionably involves passing from one country to another. This kind of interpretation therefore makes it possible to exempt responsibility for the transport of foreign citizens inside the country. Except that, in practice, one sees the arrest and indictment of transporters who only ensure movement of migrants inside the country. One can mention the example of a driver who transported Nigerian citizens from Zinder to Agadez, who was arrested during the journey and then convicted of complicity even though he had not had any contact with other transporters¹⁰.

Such application of the law suggests the idea of a ban on the movement of ECOWAS citizens in Niger itself, since the authorities seem to assume a criminal intention of transporters even before they cross the borders. In this context, a joint investigation team was set up to support legal action¹¹. It is made up of policemen from Niger, Spain and France and has three regional offices in Agadez, Niamey and Zinder¹². Searches, investigations and patrols carried out by this unit

⁵ ECOWAS Protocol on free movement, the right of residence and stay, Article 2.

⁶ Republic of Niger, Law no. 2015-036 relating to illicit trafficking of migrants, Article 10.

⁷ Republic of Niger, Decree no. 87-076/PCMS/MI/MAE/C dated 18 June 1987, Articles 2-3.

⁸ Republic of Niger, Law no. 2015-036 relating to illicit trafficking of migrants, Article 5.

⁹ Ibidem.

¹⁰ Zinder Court of Appeal, Criminal Headquarters, Public Attorney vs. Saley Zakary, sentence no. 516/2017.

¹¹ Florence Boyer, Pascaline Chappart, *European borders in Niger*, in "Association Vacarme", no. 83, 2018, p. 96.

¹² Gogé Maimouna Gazibo, *The Role of Niger in the fight against human trafficking and illicit smuggling of migrants*, communication presented at the third edition of the National Day of Mobilization against trafficking in human beings on 28 September 2017 in Agadez, p. 12.

contributed to the conviction of about sixty people between 2016 and 2017, as well as the seizure of a hundred or so vehicles¹³.

The ECOWAS Protocol on free movement defines that such a measure should have only concerned the northern border of Niger, as the border with the ECOWAS area, to allow the internal movement of foreign citizens. Yet it has to be noted that the movement of ECOWAS citizens inside the country itself is also hindered. In addition to the ban on transport and hospitality of migrants, the authorities have also installed numerous checkpoints.

B. Intensification of road checks

Niger has installed numerous checkpoints in its territory as a way of keeping migratory flows under control. Controls that were previously and essentially carried out at the border now extend to all major roads in the country and are particularly intensified on the Tahoua-Agadez and Zinder-Agadez routes¹⁴. These two routes are seen as the main migration lines in the country. They are used by people arriving from the south and the west, hence the interest in installing surveillance systems. Up to ten checkpoints have been counted between Niamey and Agadez¹⁵. These checks are normally carried out by national police forces trained and equipped by the European civilian mission (EUCAP-Sahel Niger)¹⁶. This mission, which was intended to support the fight against terrorism, saw its mandate extended in 2016 to include the fight against immigration¹⁷. Consequently, the European Union set up the EUCAP-Sahel headquarters in the Agadez region in view of its proximity to Libya¹⁸. Since then, the mission has helped the authorities in Niger find solutions to contain and combat irregular migration¹⁹. In this context, it now ensures the upgrading of the capacity of the police in Niger as regards territorial surveillance and border control.

Enforcement of these controls has given rise to several cases of expulsions and rejections carried out with urgency, despite the procedure envisaged by the Protocol on free movement²⁰. In fact, this Protocol requires that States must notify expulsion to interested parties and inform the States of which they are citizens, as well as the executive secretary of the ECOWAS²¹. Yet it should be noted that migrants are perceived as a threat to security that must be eliminated as soon as possible. This negative perception consequently deprives migrants of the rights due to them and subjects them,

¹³ Ibidem.

¹⁴ Ibidem.

¹⁵ A. Hoffmann, J. Meester, H.M. Nabara, *Migration and market in Agadez: economic alternatives to the migration industry*, Clingendael, CRU Report 2017, p. 29.

¹⁶ Adam Abdou Hassan, *The European Union's strategy of preventing illegal immigration in its relations with Niger*, in "Annals of Abdou Moumouni University of Niamey", International conference on migratory dynamics in West Africa: history, flows and current issues, 2018, p. 198.

¹⁷ Council of the European Union, "EUCAP Sahel Niger to prevent irregular migration", 2015, online at: <http://www.consilium.europa.eu/en/presse/press-releases/2015/05/13-eucap-sahel-niger>.

¹⁸ Ibidem.

¹⁹ European Council, *Decision (CFSP) 2016/1172* dated 18 July 2016.

²⁰ Gogé Maimouna Gazibo, *The Role of Niger in the fight against human trafficking and illicit smuggling of migrants* (see note 12, p. 12). According to this document, more than 10,000 people were pushed back in 2017.

²¹ ECOWAS Protocol on free movement, the right of residence and stay, Article 11.

along their journey, to numerous bureaucratic difficulties²², such as payments in money, which have become an additional condition for entry and circulation in the territory. Transporters are also obliged to bribe agents to avoid arrest, the seizure of their vehicles and prosecution²³.

As well as jeopardizing the free movement of ECOWAS citizens, these measures have had a harmful impact on the rights of certain individuals.

II. Restrictions on civil and economic rights

Civil and economic rights are assured by international legal texts such as the African Charter of Human Rights and the two international pacts signed in 1966. In the same way as the Protocol on Free Movement, these various instruments impose obligations on States as regards the protection of human rights. These obligations imply that States must act to ensure application of these rights and also adopt measures to prevent and respond to violations. However, this spirit is barely evident in the fight against immigration in Niger. The measures taken by authorities have brought about the loss of many jobs (A) and the exposure of migrants to all kinds of abuse (B).

A. The loss of income associated with migration

Measures to combat immigration in Niger have had a serious impact on the local and national economy. The Agadez region, which lived to the rhythms of migration, was massively affected after tourism activities were interrupted, since almost all socio-economic services were largely used by potential migrants, especially money transfer agencies, shops, restaurants, hotels and above all transport. The ratification and subsequent application of Law no. 36 in 2015 brought about a loss of income related to migration. The Municipality of Dirkou alone lost revenues of 20 million francs per month²⁴.

The transport sector suffered heavy losses as a result of the crackdown implemented by the authorities. The arrest of drivers and the seizure of their vehicles has contributed significantly to rising unemployment in the Agadez region. Many have also ceased their activities because of intimidation. This is the case for a driver who even went so far as to state, in a news report, that he preferred being arrested with drugs rather than migrants because migration has become such a security issue in Niger²⁵. The jurisdiction relating to the illicit trafficking of migrants is now

²² Abdoulaye Hamadou, *The management of migratory flows in Niger: commitments and limitations*, in "La Revue des Droits de l'Homme", n. 14, 2018, p. 8.

²³ Studio Kalango, *The fight against illicit trafficking of migrants: gendarmes arrested in Agadez*, 19 October 2016, online at: <https://www.studiokalangou.org/index.php/articles/8200>.

²⁴ Crisis Group, *Keep traffic in northern Niger under control*, Africa Report No. 285, 2020, p. 6.

²⁵ Droit Libre TV (YouTube), *Migration in Niger: Law no. 2915-036, the nightmare of the former passeurs of Agadez*, 20 March 2020.

recognized as reporting to the Niamey specialized judicial terrorism unit²⁶. Assimilation of this kind therefore makes it possible to attribute false legitimacy to interdiction measures, since before 2015 this activity was not perceived as a threat to public order. In Agadez, people simply had to pay taxes and ask for permits from the municipal authorities.

The objective of the fight against immigration thereby proved to be the real reason for the ban on activities in the migratory sector. The context of European interference and pressure in which the law is set reveals the idea of concern arising from irregular immigration and consequently an interest in criminalizing trafficking. However, this could not justify violations of the economic rights of certain individuals. Respect for human rights cannot be undermined except in the name of national security, public security and the upkeep of law and order²⁷. Consequently, the State has the duty to remedy the harm suffered by transporters and also offer them alternative solutions to protect the right to work.

Neither are bus companies spared from these measures. They suffer enormous losses because of the ban and the reduction of migratory flows. Just one year after the law was applied, the number of migrants crossing Niger has shrunk to 69,000²⁸. This has seen several companies, such as Rimbo, Sonef and Azawad, reduce or suppress departures to the Agadez region²⁹. Others have even gone out of business, such as Nijma and Air Transport³⁰.

B. Exposure of migrants to various kinds of abuse

Migration policies in Niger pose a threat to migrants. The repression against transporters and increased surveillance on the ground have had serious repercussions on the rights of migrants. People who continue their attempts to leave the country despite the many obstacles are now resorting to hiding, for fear of being arrested and then deported. Journeys now take place with discretion over much more dangerous routes as transporters adopt the strategy of bypassing the monitored areas to elude agents of the state. The route consequently became extremely risky for migrants given the long distances and the poor state of the roads. In addition, the price of passage and transport has increased. This situation pushes migrants to try and earn money by working for local populations, who often do not overlook the chance to exploit them.

²⁶ Niger, *Law no. 2016-19 amending the organic law defining the organization and jurisdiction of national courts*, Article 91.

²⁷ High Commissioner for Human Rights, *Human Rights*, Guide for use by Parliamentarians, no. 26, 2016, p. 50.

²⁸ IOM, *Statistical report - monitoring of flows in Niger*, December 2016, *op. cit.*

²⁹ Le Monde Afrique, *On the Niamey-Agadez axis: buses now carrying fewer people seeking the European dream*, November 2017, online at: https://www.lemonde.fr/afrique/article/2017/11/01/sur-l-axe-niamey-agadez-les-bus-transportant-les-candidats-au-reve-europeen-se-vident_5208801_3212.html.

³⁰ A. Hoffmann, J. Meester, H.M. Nabara, *Migrations and market in Agadez: economic alternatives to the migration industry* (see note 15), p. 28.

The fight against immigration has thereby paved the way for many violations of migrants' rights, such as trafficking, harassment and extortion³¹. Detention has also become a common practice³², since Law no. 2015-036 is not explicit about this phenomenon. The legislation is limited to providing (Article 30) assurances of protection for migrants who are arrested³³, without specifying the circumstances in which the arrest takes place. Such shortcomings therefore give rise to a margin of discretion when arresting migrants on the basis of Ordinance no. 81-40 dated 29 October 1981 concerning entry and stay in Niger, which envisages the detention of irregular foreigners³⁴. However, this appears to contradict Niger's commitments regarding various international legal instruments protecting human rights. No convention allows the detention of irregular migrants for the risk of violation of the right to security. In this context, States have only the right to refuse entry to their territories to persons who fall into the category of immigrants who are not eligible to do so under their current laws and regulations³⁵. Detention should not be a remedy, since it exposes migrants to various inhuman and degrading treatments.

Conclusion

This analysis makes it quite clear that the objective of protecting rights is not a priority for the State of Niger and its partners in the European Union. The threat of migration has brought about the adoption of several measures which are questionable in many ways. Not only are they contrary to legal instruments concerning human rights, but they are also inappropriate as regards national and regional realities. Authorities should take certain social and economic considerations into account before adopting these interdiction measures. It should be emphasized that this law relating to illicit trafficking of migrants, and its implementation, undoubtedly poses questions as regards regional integration within ECOWAS. Moreover, it has caused the loss of many jobs and increased the vulnerability of migrants. It would therefore be essential to review all these measures in a perspective of contextualization.

³¹ Abdoulaye Hamadou, *The management of migratory flows in Niger: commitments and limitations* (see note 22), p. 8.

³² *Idem*: Meeting with the Alarm Phone Sahara Association.

³³ Republic of Niger, *Law no. 2015-036 concerning illicit trafficking of migrants*.

³⁴ Republic of Niger, *Ordinance no. 81-40 dated 29 October 1981*, Article 11.

³⁵ *ECOWAS Protocol on free movement, the right of residence and stay*, Article 4.