

INTERNATIONAL MIGRATION PAPERS

77E

Report on legislation concerning international migration in Central Maghreb

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With the collaboration of

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INTERNATIONAL MIGRATION PROGRAMME

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Foreword

This report comprises part of the ILO working paper series *International Migration Papers* that disseminates current research findings on global migration trends and seeks to stimulate dialogue and policy development on issues of regulating labour migration.

The importance and immediacy of better regulating labour migration in Africa motivated the ILO to establish a programmatic *Africa Labour Migration Initiative* in 2002. The evident starting point for this initiative was to expand the knowledge base as a proper foundation for effective technical cooperation and practical activity. As a result, this report comprises one of a special series of 31 regional and national studies from East, West and Maghreb Africa being published in 2006 as *International Migration Papers*, starting with IMP number 76, or posted on the Project website¹.

Migration has come to the top of the political and social agenda across all of Africa. In recent years, regional integration initiatives have made considerable progress in development of frameworks, legislation, and mechanisms for increased economic and social integration among concerned states. At the continental level, the African Union and the Economic Commission for Africa have both taken up the challenges of exploring greater labour mobility across the region.

Earlier ILO research demonstrated that the Maghreb region has been characterised for many years by strong migratory pressure due to prevailing demographic, labour market and political conditions. In recent years, the Maghreb region has increasingly become a transit zone for migrants from sub-Saharan Africa seeking access to and employment in Europe. A growing number of migrants remain for extended periods of time in Maghreb countries, often finding precarious employment in informal situations. The countries of the region thus face combined challenges of protecting migrants in their territories and addressing the labour market participation of migrant workers who may stay for varying periods, whether authorized or not.

In this context, international cooperation on migration has become ever more important for Maghreb countries. As a consequence, mechanisms for inter-State dialogue on migration matters have emerged, exemplified by the 5+5 Euro-Mediterranean Process and its accompanying Ministerial Conferences on Migration. However, until recently, some of the stakeholders most concerned by labour migration, namely employers, trade unions and some relevant departments of government, were not incorporated in the expanding international dialogue and cooperation on migration.

This report is the product of a process initiated by the ILO and supported by the European Commission on the basis of constituent recommendations and requests for engagement. An ILO project “Managing Labour Migration for Integration and Development in the Euromed Region, East Africa and West Africa” was established in 2004, supported by the EC budget line for cooperation with third countries administered by DG Justice, Freedom and Security. Following consultations with ILO constituent governments and social partners in the

¹ ILO-EU Project “Managing labour migration for integration and development in Africa” Website: <http://migration-africa.itcilo.org>

Maghreb countries, project activity has been ongoing over the last 18 months. Central aims of this project are:

- to enhance the capacities of ILO tri-partite constituents for managing labour migration as an instrument for development
- to promote social dialogue and to raise awareness among stakeholders regarding regional labour migration issues
- to obtain knowledge and data essential for governments and social partners to effectively set policy and regulate labour migration
- to enhance cooperation between East Africa, West Africa, North Africa and Europe on labour migration.

This report is one of a complementary series of three research studies, covering Central Maghreb countries, intended to assist governments and social partners to address the fundamental building blocks of effective policy and practice to regulate labour migration. This paper analyses existing national legislation on labour migration –the legal foundation for State action on migration-- and in particular notes the extent of incorporation of relevant international normative standards and potential harmonization with neighbouring countries. Another study assesses the current state of data collection and suggests specific measures to improve and harmonize collection and analysis of statistical data on labour migration and to more effectively use it in policy formulation. A third regional study examines a number of key linkages between migration and development in order to identify what action and what policy tools can contribute to ensuring that migration indeed enhances development.

The present report synthesises the findings from three national studies conducted under auspices of the project in Algeria, Morocco and Tunisia, respectively executed by Azzouz Kerdoun, Khadidja El Madmad, Monia Benjemia. It starts by outlining the rationale of international standards for the protection of migrant workers and by giving an overview of the recent history of labour migration in the Maghreb. The second chapter outlines the existing national legislation in the three countries, including an assessment of existing admission policies and regulations governing access to employment. This is followed by a look at the state of ratification of relevant international conventions and the provisions of regional as well as bilateral accords. Subsequently, a number of constraints and obstacles for greater harmonisation are identified that lead the authors to make several recommendations for legislative adjustments and improved regional cooperation on labour migration in the region.

As the research emanating from the project shows, there remain a number of obstacles to the effective management of labour migration from, through and into the Maghreb region. Key challenges concern the availability of accurate data necessary to make informed policy decisions, the need to fully incorporate relevant provisions of international standards in national law, and the establishment or improvement of institutional structures and mechanisms with specific competence and capacity to regulate labour migration. The suggested lines of response presume common interest in optimizing potential development benefits for both countries of origin and destination to be derived from effective administration of labour migration. We sincerely hope that this report will serve as a building block for our member governments and social partner constituents to address the migration challenges before them. We also hope that dissemination of these research findings will enhance regional policy dialogue and cooperation on labour migration.

We wish to acknowledge the diligent and arduous work of the researchers who prepared the respective national studies as well as the effective efforts of Prof. Saib Musette to synthesize the three national studies into this Maghreb regional overview. Appreciation is noted for the cooperation received from the various governmental offices in Algeria, Morocco and Tunisia that shared perspective, concerns and data essential to this effort.

Thanks are also due to the ILO Maghreb project team based in Algiers, Prof. Saib Musette, Mohammed Bouchakour, Selma Hellal and Nadjet Ezzeroug Ezraïmi --- for their support, editing and coordination efforts. Special thanks are due to the Director of the ILO Area Office in Algiers, Sadok Bel Hadj Hassine, and to Samia Kazi Aoul for their editorial review and liaison work with governments and social partners.

Patricia Isimat Marin, Senior Specialist on Legislation and International Labour Standards in the ILO Sub-Regional Office for Central Africa in Yaoundé (Cameroon) reviewed and edited this report to ensure its technical accuracy. Finally, we note the dedicated attention by David Nii Addy, ILO Africa Project Officer, to ensuring that the entire research, writing and review process was carried through to completion, and the editing and publication support by Céline Peyron.

Geneva, June 2006.

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Abbreviations

Algeria

OAT *Organisation Arabe du Travail* (Arab labour organisation)

ILO International Labour Organisation

Tunisia

FOPRODI *Fonds de promotion et de décentralisation industrielle* (Fund for the promotion and decentralisation of industry^o)

CNSS *Caisse nationale de sécurité sociale* (National social security fund)

OTE *Office des Tunisiens à l'Etranger* (Office for Tunisians abroad)

Morocco

AMERM *Association Marocaine d'Etudes et de Recherches sur les Migrations*
(Moroccan association for study and research on migration)

RAMED *Régime d'assistance médicale* (health insurance scheme)

1 Introduction

The objective of this present synthesis report is to provide a condensed overview of the results of the national surveys on legislation concerning labour migration in the countries of the Maghreb; and to discuss the extent to which the United Nations International Conventions are incorporated in the legislation of the Maghreb countries.

Realised by the ‘Project on Labour Migration for Integration and Development in Africa’², this report draws mainly on the national studies carried out by North African consultants³.

The report also makes use of other works on labour migration in the sub region to provide further relevant information and for the purpose of coherence⁴.

The report is presented in four chapters.

Chapter 1 formulates the problems of migrant rights in the Maghreb.

The second chapter reviews the content of specific legislation on migration in Algeria, Morocco and Tunisia.

The third chapter presents the current state of ratification by these countries of the international conventions and the regional and bilateral agreements directly or indirectly concerning migrant rights.

Finally, the fourth and last chapter expresses some thoughts on the constraints and obstacles slowing the process of ratification of the international conventions by these countries.

2 Problems of labour migration in the Maghreb

Introduction

The questions currently being raised in the Maghreb by labour migration are part of a much older and wider issue. In reality, the history of migration is intimately bound up with that of the formation of human society, with man’s discovery and conquest of new territories offering a better means of existence and greater well-being. The Mediterranean region has always been characterised by the great mobility of its populations, from Greek, Roman and Phoenician times up until our day, in a more or less violent context (pirates and slave trading). The phenomenon itself is therefore very old and quite natural; but what today is referred to as migratory movement raises a completely new question, that of migrants’ rights.

² For further information, cf. the project website: [http:// migration-africa.ilo.org/](http://migration-africa.ilo.org/)

³ Prof. Khadidja Elmadmad for Morocco, Prof. Monia Benjemia for Tunisia and Prof. Azzouz Kerdoun for Algeria. Provisional reports were presented and discussed with the representatives of the Tripartite – governments, employers’ organisations and trade unions – in a seminar on strengthening capacities, 4 - 6 April 2005 in Algiers. Following these discussions and observations formulated by the project team, the ILO Area Office in Algiers and the Migrant Department of the ILO in Geneva, additional information was supplied by the Consultants.

⁴ Note also that as part of the same project there are two other regional Summary Reports on the three countries in this survey (Morocco, Algeria, Tunisia): one on the question of migration statistics, the other on the link between migration and development.

Very soon after its creation the International Labour Organisation played a leading role in the action to guarantee equitable rights to migrants and to the members of their family.

2.1 Migrant rights and ILO action

As early as 1922, ILO proposed the adoption by its member countries of a Resolution (R19) on migration statistics. In 1926 it invited the member countries to adopt Convention N° 21 on the Inspection of Emigrants (set aside) and in 1939 Convention N° 66 on migrant workers (withdrawn). But it was not until after the Second World War, in 1949, that ILO proposed the adoption of Convention N° 97 on migrant workers. This convention only came into force in 1952 and at the present time it has only been ratified by 47 countries. Finally in 1975 ILO proposed the adoption of Convention N° 143, with complementary clauses. This last convention has received 18 ratifications to date.

The question of migrant rights has been at the centre of United Nations debate since the 1970s. In 1972 the United Nations CES observed with some concern, in resolution N°1706-LIII, the similarities between the exploitation of African migrants in Europe and slavery and forced labour. In the same year the United Nations General Assembly firmly condemned all discrimination against migrant workers (Resolution 2920 – XXVII, 1972); it invited governments to put an end to this practice and to embark on the procedures for ratifying ILO Convention 97. Since then, there have been numerous studies and seminars on the question of migration, dealing both with the illicit and clandestine aspects and with discriminatory practices with regard to workers legally admitted into the host country.

The idea of an international convention on migrant rights was put forward at the World Conference on the Fight against Racism and Racial Discrimination in 1978 (Geneva). In the same year the United Nations General Assembly adopted a resolution (33/163) on measures to improve the situation and enforce human rights and the dignity of all migrant workers. A working group was set up, open to all the member countries and all the competent bodies and international organisations; and this was reconstituted at each annual session of the General Assembly. As a result of its work in 1990 this group proposed a resolution on the protection of all the rights of migrants and of the members of their family (R 45/158), which was adopted by the United Nations General Assembly on 18 December 1990.

We have had to wait many years for this convention to reach the level of ratifications necessary for it to come into effect, which did not happen until 1st July 2003. At present, this convention has obtained 30 ratifications and 15 signatures, most of them on the initiative of developing countries. Three countries of the Maghreb (Morocco, Libya and Algeria) ratified this convention. These countries therefore have a common base for the management of migrants, in particular migrant workers in the region.

This return to standards is cardinal, as too many disparities with the conventions lead to chaos and total confusion. It is precisely this challenge that ILO and its constituents emphasised at the International Labour Conference (June 2004). The Director General of ILO, Juan Somavia, in his report, recalled the ‘ethical gap’ that characterises the context of globalisation⁵. The Conference Report⁶ thus became a reference document for the

⁵ Fair globalisation, the role of ILO. Report by the Director General at ILC 2004.

⁶ An equitable approach for migrant workers in a global economy. Report VI, ILC, 92nd session, June 2004.

constituents to advance the campaign for fair globalisation and to make decent work a universal objective for all workers without any distinction whatsoever.

2.2 Labour migration in the Maghreb: recent history and current characteristics

a) Recent history, some dates

As far back as we care to go in time, North Africa, in the wider context of the Mediterranean, has always experienced major population movements: the Roman invasion, Arab-Islamic expansion and the Ottoman occupation each caused a population flow and either a spontaneous exodus to escape war, epidemics and famine, or a forced exodus under slavery. But it is above all European colonisation (French and Italian) which has left a profound mark and still today marks the phenomenon of migration in the Maghreb. After the Second World War and particularly after independence, Algeria (a populating colony), Morocco and Tunisia, which were colonies of metropolitan France, and some other southern European countries became suppliers of labour for France and Italy.

During the colonial period, population movements between the two countries were controlled by laws and political rules invented by that regime, regardless of the Declaration of Human Rights (1948) and the first ILO Convention (C 97) on migrant workers (1949). After political independence, bilateral agreements were signed between these countries to set the framework for migration.

Apart from the North African enlisted in the French army during the First and Second World Wars, there are three main historical periods in the contemporary history of migration from the Maghreb to Europe:

- In the 1950s and 1960s, against a background of decolonisation of the Maghreb and European reconstruction, migratory flow were organised in the context of technical cooperation and in the form of a regulated trans-Mediterranean labour market. The labour needs of different sections of the European economy under reconstruction were controlled by a system of quotas.
- From the 1970s until approximately the end of the 1980s migratory flows from the Maghreb to Europe were shaken up in 1975 by France and other European countries unilaterally breaking with previous agreements, and adopting integration policies for migrants already there and for their descendants: the first generation with dual nationality. Algeria, which at the time had an ambitious industrialisation programme, tried to reinsert its migrant workers, especially those with qualifications. This break was however not total or immediate as families continued to join the workers, thus feeding the flow towards Europe. At the same time a process of feminisation of the North African migrant population started to be observed.
- Since the 1990s, there has been renewed dialogue around the question of migration between the countries on both sides of the Mediterranean, but in a new context marked by the creation of the Arab-Maghreb union (*Union du Maghreb Arabe - UMA*) in 1989 and the signature of association agreements between the European Union and Tunisia, Morocco and Algeria. The informal framework of the 5+5 Group which first met in 1990, immediately after the signature of the UMA Treaty, enabled regular meetings where the question of

migration was frequently raised. At recent 5+5 meetings in Tunis (2002), Rabat (2003) and Algiers (2004) there has been a certain political wish to go further in methods of regulating migratory flows and implementing measures to fight irregular migration to Europe, whether from the Maghreb or sub-Saharan countries or elsewhere. The new element in relations between Europe and the North African countries lies in the signing of association agreements between the European Union and the three Central Maghreb countries⁷, containing clauses on the management of migrant workers.

The recent history of migratory flows underlines how urgent it is to have better management of migratory flows in the EuroMed region, in an institutional context where the governments of the Maghreb countries maintain relatively firm positions concerning the universal standards for migrant rights, but disagree amongst themselves when it comes to national sovereignty. In the face of the Maghreb, the European Union, for its part, collectively and country by country, seems unwilling to ratify the international conventions on migrant rights, particularly the 1990 United Nations Convention.

b) Current characteristics

Migration in the Maghreb has gone through some significant changes, in rhythm and structure, in legal status and in new forms of expressing needs and plans. Over the years it has become a political issue of great importance for governments on both sides of the western Mediterranean⁸.

In the past, emigration from the Maghreb was mainly focussed on France (where it remains, for historical reasons, more visible than elsewhere); now the movement has expanded to other migration areas, in Europe, North America and the Gulf Arab states. At the same time as this diversification of migration destinations is taking place, migrants have begun to integrate more easily into the host societies where they settle⁹. As migration increasingly means permanent settlement in the host country, the myth of "return to the homeland" begins to fade. But this does not mean, for all that, a definite break with the mother country, as in spite of great distances, the links with the country of origin very often remain alive.

At the present time all kinds of migration can be found in the Maghreb: internal and international, voluntary and involuntary, regular and irregular. But the most important of these migrations is international migration for work (or migration of the labour force). This migration is becoming increasingly irregular or clandestine: North Africans leave their country to go and work abroad and foreigners (mostly from the sub-Saharan countries) migrate into the Maghreb either as a temporary stop before going on to Europe or to look for work. The Maghreb is therefore involved in the migratory movements in three different ways. It is considered not only a region with an outgoing population flow but also as a host region and more recently, as a transit zone for migratory flows.

With the closure of the European borders and the clamp-down on national labour markets in the Maghreb, would-be migrants, far from being dissuaded, are opting for procedures that are

⁷ Tunisia (1975), Morocco (1998) and Algeria (2005).

⁸ The governments of the Maghreb countries systematically seek the participation of their nationals in other countries in the big surveys relating to the future of the nation.

⁹ Cf. *Diplômés maghrébins d'ici et d'ailleurs. Trajectoires sociales et itinéraires migratoires* (ed. Vincent Geisse), Paris, CNRS éditions, 2000.

both irregular and dangerous, thus exposing themselves to administrative and penal sanctions and taking risks that put their own lives in danger.

The fact that the Maghreb is geographically so close to Europe, which has closed its borders and introduced entry visas for the territory of the European Union, makes it attractive to migrants, who are now arriving in an irregular and clandestine movement. The Maghreb has become a transit zone for Europe. As the transit time may be quite long, migrants apply to the North African labour market, but without much success, as they do not have recognised status.

In a context where economic globalisation and advances in the new information technologies have reduced distances and are tending to transform the planet into one big village, the potential of would-be migrants to countries where there is a better standard of living has increased and diversified. The worn image of the unqualified or barely qualified worker who leaves a country in the South to go and find work in a country in the North is obsolete. Emigration is now a movement shared by young people, the less young, those who are illiterate and those who are well-qualified, the employed and the unemployed, men and women and even children.

Overall, the migration phenomenon in the Central Maghreb has three chief characteristics:

- It is becoming more complex, with intermingled internal and external flows (departure zone, host country and transit area).
- It is becoming increasingly clandestine as migrants circulate and/or settle who would take any risk in order to be able to reach their destination¹⁰.
- It is diversifying inasmuch as it is opening up to new categories of migrant: the employed as well as the unemployed, older people as well as young people, women as well as men, those who have university degrees as well as the illiterate, etc.

Conclusion to Chapter 2

Discussions on migration questions have for a long time been coloured by a selective point of view and by security issues. The dialogue begun by the Informal Group 5+5 nevertheless seems to be moving away from this. It is taking a new orientation, still being developed, which is open to 'social dialogue' in the widest sense of the term.

In the face of the very segmented situation that characterises the western Mediterranean, it has become necessary for all the countries in the sub-region to have adequate legal instruments. Global treatment of the question of migrant workers and respect for their legitimate rights involves:

- Harmonisation of national laws: one of the conditions for a more meaningful dialogue on these questions. The chapter below shows how current legislation in the countries of

¹⁰ Irregular migration is little understood at the present time; there have been no in-depth studies on the subject. Nevertheless we may distinguish two categories of illegal migrant: (i) those who enter a host country legally and then try to stay on in an illegal manner when their visa or permit runs out. In this situation the migrants are often assisted by support networks who even undertake to provide informal employment in order to extend their stay; (ii) those who from the outset intend to enter a host country illegally. These are known as the '*haraga*', an Arabic dialect word meaning 'to burn' (i.e. the border). In this situation, the illegal immigrants are very often intercepted by airport staff, who send them back, but this has no effect on reducing numbers; on the contrary the numbers are rising from year to year.

Central Maghreb is far from meeting international standards controlling the world of migrant workers.

- It is necessary to re-adjust national legislation against these international standards in order to provide a better guarantee of migrant rights. Chapter III, which deals with the state of ratification by Algeria, Morocco and Tunisia of the international conventions, illustrates this necessity.

3 Review of Maghreb legislation on migration

Introduction

Each of the three countries of Central Maghreb has its own specific national legislation on modes of management and mechanisms to implement regulation of labour migration. This covers aspects related to emigration of citizens to other countries as well as immigration by foreigners coming into the country (including migration between countries of the Maghreb), and also populations in transit, often in an illegal situation.

3.1 Emigration from the Maghreb

The countries in this survey have examined migration in the Maghreb using different parameters, drawing in particular on 'implicit' emigration policies, bilateral agreements and the implementation of institutional management methods.

a) Legislation in Algeria for the maintenance of links with citizens resident abroad

Essentially, there have been two approaches:

- The first approach, adopted until the beginning of the 1980s, considered emigration as a temporary situation where the members were likely to return some day to live in their own country, on the assumption that the economic development of the country would guarantee reintegration of the migrants in their country of origin. But the economic situation in Algeria did not come up to these expectations, and the possibility of a definitive return to their own country was seriously reconsidered by the great majority of migrants, who progressively abandoned the idea.
- The second approach, learning from the failure of the first, concentrated on building institutional bridges to maintain links with the national population abroad. In 1995 Algeria organised the first conference on migration under the aegis of the ministry of foreign affairs. This resulted in the creation of a provisional Council for coordination and follow-up whose purpose was to defend the interests of citizens resident abroad. A sub-division was also set up under the ministry of foreign affairs, with responsibility for Algerian citizens resident in other countries. These are certainly laudable government initiatives; it remains to be seen whether the government is capable of meeting the needs of Algerians abroad and resolving their problems, in particular concerning their legal protection in the host countries.

With regard to legislation, protecting Algerian citizens abroad means taking account of different levels and quite dissimilar interests in the two major populations concerned: one, a population resident in another country and holding an official residence permit in the host country, i.e. a temporary population, and two, a population with dual nationality who live

abroad permanently. Several conventions and bilateral agreements have been signed with certain countries to control the situation of Algerian citizens resident abroad. The protection of citizens resident abroad is articulated principally around two types of instrument: bilateral agreements and the diplomatic and consular framework. In a subsidiary way, a third type of mechanism has been implemented involving organisation of the community in the defence of its social interests¹¹.

Regarding bilateral agreements between Algeria and the host countries, it is with France that they are the most complete. The Evian Agreements of 1962¹² were the first. They constitute the foundation for all further relations between the two countries. It is interesting to note that these agreements provided for the free circulation of persons and goods, but that in the course of time, many of their clauses became obsolete and it was necessary to draw up other agreements, such as the one on the exercise of liberal professions in 1963 or the protocol of 10 April 1964 on fixing quotas for the volume of workers, the 1968 agreement on labour, the amendment of 22 December 1985 to the agreement on labour and the convention on social security of October 1981¹³. This latter convention institutes and contains clauses that affirm the principle of equality of treatment of citizens from both countries with regard to the legislation of both countries on social security and social protection. In the same way as national workers, migrant workers also come under the social insurance system, whether they are salaried or non salaried. With regard to the system of contributions and the right to recover the cost of medical care and expenses, these rights exist on the basis of the reciprocity principle contained in the convention.

Other agreements with France relate to the teaching of the language and the culture of origin, signed in 1981; and to military service, signed in 1983¹⁴. An exchange of letters on 7 August 1994 dealt with entry into France by Algerians and their stay in the country. We should specially note the important agreement between Algeria and France of 27 December 1968 and above all the protocol in an annex dated July 2001¹⁵, on the subject of circulation, employment and residence in France of Algerian citizens and their families, which regulates all the conditions for circulation, employment and residence by Algerians in France.

¹¹ Concerning first of all the organisation of the national population, there was previously an organisational model represented by the '*Amicale des Algériens en Europe*', a type of association based on the French law of 1901. In its day, this organisation played a considerable role in raising political, social and cultural awareness in favour of Algerians resident abroad. It was the sole and compulsory representative of this community to the Algerian authorities.

Changes in the representation of Algerians resident abroad came in 1989 with the arrival of a multi-party system and the appearance of new associations. The diplomatic and consular missions had to deal with an increasing number of representatives. With such a variety of representation now in place, the government, or at least the institutions charged with the protection of the national population abroad, do not have much opportunity for intervention to control migration matters, the more so as they only have limited means of bringing together all the partners to take proper decisions on migration strategy.

¹² For a detailed survey of these agreements cf. Rédha Malek, *L'Algérie à Evian, histoire des négociations secrètes 1956-1962* Editions du Seuil, October 1995.

¹³ Convention ratified by decree n° 81-315, 28 November 1981, JO n° 48 of 1 December 1981.

¹⁴ Of all these agreements, one of the most sensitive related to national service, inasmuch as it granted dual nationality *in effect* by allowing young Algerians born in France to do their military service in either country. Currently France has abandoned the system of conscription in favour of a professional army, and Algeria is also moving towards the same solution.

¹⁵ Cf. France's decree 2002-1500 dated 20 December 2002 and the 3rd amendment to the agreement of 27 December 1968.

Like other countries, Algeria has found the need to sign conventions for the protection of its citizens in other countries. This was the case with Belgium, because of the existence of Algerian migrant workers in that industrial country. A 1968 social security agreement between the two countries allows migrant workers to receive social benefits and medical care. An agreement on the employment and residence of Algerians in Belgium was signed in 1970, and likewise a consular convention in 1979.

In the other European countries where there are small communities of Algerian migrants, as in Germany, Great Britain and Switzerland, Algeria has not signed any joint agreements. The Algerian residents in these countries have the same civic rights as all other foreigners, without any special distinction.

Protection of Algerian citizens at the diplomatic and consular level is guaranteed by the Algerian foreign missions, which have very good geographic coverage worldwide, notably in those areas where Algerian citizens reside. Nevertheless, the management by these structures of the Algerian community abroad is very often restricted to administrative aspects (registration of births, marriages and deaths) and electoral matters.

b) Legislation in Tunisia: using migration as a lever for development

There are no obstacles in the way of a Tunisian national who wishes to go abroad¹⁶. On the contrary, Tunisian law on emigration shows that the state is keen to ensure that part of the income derived from Tunisians working abroad be injected into the Tunisian economy, whether this revenue is used for consumer purposes within the family or for investment in activities that could accelerate economic growth and job creation (Article 1 of the Code to encourage investment). Emigration has a positive influence on the job market and unemployment; it should not however lead to a drain of skilled labour. Arrangements have been made with this in mind which consist essentially in maintaining the link between expatriate Tunisians and their country of origin and encouraging them to come back.

There have been a certain number of tax incentives, as well as financial and banking measures, in order to encourage expatriate Tunisians to invest in Tunisia¹⁷. The Code to encourage investment declares that these arrangements also apply to Tunisian promoters resident abroad. Materials and equipment which are not imported but acquired in Tunisia are exempt from VAT¹⁸. Decree n° 94-1743, 29 August 1994, which fixes the modalities for

¹⁶ Article 10 of the Tunisian Constitution guarantees all Tunisian citizens '*the right of free circulation within the territory, to leave the territory and to fix any place of residence that complies with the law.*'. Apart from the right to circulate internally, we see that the Tunisian Constitution allows international migration by allowing citizens to leave Tunisian territory. At the same time as the right to circulate freely is guaranteed within the country, the right to emigrate is guaranteed by Article 11 of the Constitution which forbids the penalty of exile or refusing a Tunisian the right to return to his own country.

¹⁷ Law n°92-122, 29 December 1992 as the finance law for 1993 contains an Article 115 on the harmonisation of advantages granted to Tunisians resident abroad in the case of permanent or temporary return. The text exonerates from tax and import duty all material and equipment (including a truck) imported by a Tunisian resident abroad on his permanent or temporary return. This exoneration is subject to a certain number of conditions: (i) The stay in another country should not have been for less than 2 years (ii) The materials and equipment must be used for a personal project or for participation in an enterprise that comes under the law to encourage investment.

¹⁸ These tax concessions are nevertheless subject to a certain number of conditions; in particular the material and equipment, including trucks, may not be sold for a period of 5 years from the date of granting the concession; and the project must be realised within 2 years from the date of granting the concession.

realising foreign trading operations, also has an Annex A on imports that are not subject to any formality under the laws on foreign trade and exchange. This type of import is covered by the decree in its new § 5 modified by decree n° 95-2434, 11 December 1995¹⁹.

There are numerous financial and banking incentives. The financial incentives are essentially contained in the Code to encourage investment and they differ according to the investment sector (purely export industries, project creation in the framework of FOPRODI (a fund for the promotion and decentralisation of industry), whose aim is to encourage the creation and development of small and medium size businesses or industry. The banking incentives consist essentially in the opportunity granted to Tunisians resident abroad to open accounts in convertible currency or dinars, with tax free allowances on the interest²⁰.

The incentives to return reside principally in the exoneration from tax and import duty on imported goods or the purchase of personal goods. Decree n° 95-197, 23 January 1995 fixes the tax concessions for Tunisians resident abroad and the conditions under which they apply; it settles the question by determining the notion of personal goods and the system of tax concessions. Various other texts are also quoted in this connection, such as texts on Tunisian nationality, management of the individual and family status of Tunisians resident abroad and texts on a social security system for Tunisians working in another country.

A Tunisian who lives and works in another country does not automatically lose his nationality by voluntarily taking on the nationality of another country (Article 30 CN)²¹. This clause shows that the Tunisian state likes to maintain links with its migrants. Concerning management of the individual status of a Tunisian in another country, the 1998 international code of individual rights gives rules for legal and legislative competence to determine the status of a person. The general meaning of the code is that the Tunisian courts are not competent to pronounce on the individual status of a Tunisian resident in another country, only in the case where the defendant resides in Tunisia. This rule may be explained by the wish of the Tunisian government to encourage integration of its migrants into the host country by subjecting them to the system of justice of that country²².

Decree n°89-107, 10/1/1989 applies to Tunisians working abroad whether salaried or otherwise and who are not covered by a bilateral social security convention or by any special rules with regard to their social security cover (this applies particularly to residents of countries which do not apply the rule of equality of treatment with their own nationals); the decree also applies to dependent members of their family who remain in Tunisia (social

¹⁹ The text specifies that any violation of the rules on goods importation will lead to payment of the tax and import duty from the date of importation or acquisition of the goods.

²⁰ A review of all these advantages is available in *Le guide du tunisien à l'étranger*, 2003, published by the *Office des Tunisiens à l'Etranger et du Ministère des affaires sociales et de la solidarité*.

²¹ The loss of Tunisian nationality is pronounced by decree. There is only one exception, in the case of a Tunisian who is a civil servant for a foreign country or in a foreign army. The loss of nationality takes place after a warning from the Tunisian government to cease this employment, if the warning is disregarded. Loss or withdrawal of Tunisian nationality covers situations such as sentencing for crime or an offence against internal or external Tunisian security, obtaining naturalisation on the basis of a false declaration or because the necessary conditions, following the declaration of naturalisation, appear not to have been fulfilled.

²² But as a corollary, the Code allows for easier recognition in Tunisia of a verdict reached on the matter by a foreign court. The fact remains that the Tunisian courts, in general, refuse to apply these rules and consider that they are the natural judges of the individual status of a Tunisian resident abroad, taking their competence as based on his nationality. Malek Ghazouani, *Nationalité et compétence judiciaire internationale des tribunaux*, in *Le code de DIP deux ans après*, CPU 2003.

insurance scheme). The scheme compulsorily covers the branches of social insurance and old-age, invalidity and survivors' pensions. Contribution to the scheme may be direct (by application to the national social security fund, CNSS) or indirect (through a Tunisian consulate in another country)²³.

Other measures have been undertaken such as teaching the Arabic language in the host country or encouraging participation in the national elections²⁴. We should also mention the place and the role of the office for Tunisians abroad (*Office des Tunisiens à l'Étranger* – OTE). This office is a public body with the following mission and legal powers: (i) supply the government with the elements and data required to implement a policy of training and assistance to Tunisians resident abroad; (ii) ensure the running of training programmes for Tunisians resident abroad; (iii) define and implement a programme of social assistance for Tunisians in other countries and their families in the country of residence and in Tunisia; (iv) elaborate and execute all types of cultural programme that develop and reinforce the attachment of Tunisian children resident abroad to their mother country; (v) institute a system of continuous information for the benefit of Tunisians abroad and ensure follow-up; and (vi) assist migrants in the realisation of their business plans by placing an assistance facility at their disposal in the institutions responsible for promoting investment.

c) Legislation in Morocco: a complete break with colonial rule

Up until 2003 migration was regulated by the *dahir* of 13 July 1938, replaced by the *dahir* of 8 November 1949 ruling on the emigration of Moroccan workers, and defining and completing the conditions²⁵. The 1949 *dahir* had provided for an emigration section in the department of labour and social questions, centralising the demand for Moroccan labour in all countries. It was this section which determined the categories of worker whose permanent or temporary migration out of Morocco was authorised and which fixed the conditions²⁶. This was also the central service which worked out the agreements with the labour departments in other countries and the employers or groups of employers, who organised the general selection, undertook all the administrative operations relative to the occupational movements and health of the workers, proceeded to arrange the transfer of migrants and checked observance of the conditions stipulated with respect to emigration²⁷.

For twenty years or so international migration constituted one of the solutions to the job crisis in Morocco. To reduce tension on the labour market throughout the period 1959-1975, the government turned to international migration, a quick and temporary solution but also

²³ Mouelhi (A.), *Traité de droit tunisien de la sécurité sociale*, La Maghrébine pour l'impression, l'édition et la publicité, 1st ed. 1997, p. 88 ; cf. also, Kasmi (M.S.), *Précis de sécurité sociale, Secteur privé*, Centre de recherches et d'études administratives, 1998, p. 29.

²⁴ On these questions, cf. *Le guide du tunisien à l'étranger*, 2003, published by *Office des Tunisiens à l'Étranger et du Ministère des affaires sociales et de la solidarité*, quoted above.

²⁵ This last *dahir* was repealed by the law of 02-03.

²⁶ Article 2 of the *dahir* of 8 November 1949 ruling on emigration of Moroccan workers.

²⁷ It was under these conditions that Moroccan workers went to the United Arab Emirates in the case of the affair known as '*Annajat*'. Both the government and the workers subsequently found out that the company Al Najat Marine Shipping, which had signed an agreement with private companies for the recruitment of Moroccan labour (with the full knowledge of the Moroccan ministry of labour) had no legal status whatsoever. Cf. A Belguendouz, *L'ahrig du Maroc, l'Espagne et l'UE*, Boukili Impressions, Editions et Distributions, Rabat 2002, pp.62-63 ; and the Arab monthly '*Fourasou al Amal*', special issue on the *Annajat* affair No. 2, 15 June-15 July 2003.

random and arbitrary, due to the fact that it was checked by the host countries. The idea of using international migration as a regulator for the labour market was adopted in 1957. From that time, the Ministry of Labour and Social Affairs tended to encourage emigration to ease the problems of unemployment and under-employment. To accompany this policy, labour agreements were signed with the principal European partners interested in employing Moroccans. Four conventions of this type were concluded between 1963 and 1969. This position with regard to emigration should however be qualified. It is generally admitted that after Moroccan independence the labour agreements that were signed with Europe were more at the demand of the latter than of Morocco.

- ✓ Convention of 1st June 1963 with France, containing an agreement on the situation of Moroccans in France and French citizens in Morocco and an annex on the recruitment procedure²⁸.
- ✓ Convention on the temporary employment of Moroccan workers in the Federal Republic of Germany, 21 May 1963.
- ✓ Convention with Belgium on the occupation of Moroccan workers in Belgium, signed in Brussels on 17 February 1964. The clause on social security was signed in 1970.
- ✓ Convention with the Netherlands on recruitment and placement of Moroccan workers in the Netherlands, signed in The Hague on 14 May 1969. The clause on social security was signed in 1970.

These legal instruments were essentially intended to organise the recruitment of Moroccan workers in the signing countries, at the same time recognising certain rights and principles after their admission (equality of treatment with nationals, family reunification, etc.). A report by the Emigration Bureau in the Ministry of Labour emphasised that 'the countries making use of Moroccan labour should also sign agreements in this respect, to negotiate certain difficulties resulting from immigration and to ensure a regular flow of labour corresponding to their needs'²⁹. These agreements were considered more of an administrative arrangement between contracting governments than genuine legal instruments with a real impact. Similar agreements were also signed with the principal monarchies in the Gulf, and there were more in the second half of the decade and in the 1970's. There was the case of Libya in 1965, Syria on 18 August 1972, Spain, Sweden and most of the Arab countries. By signing these conventions, Morocco was trying to control departures by rational management of the demand for labour coming from other countries and to ensure a balanced spread in relation to the different socio-economic situations and regional political orientations.

But after the mid-1970s the efficiency of this system considerably weakened. By the 1980s it had become virtually useless, although officially the successive five-year plans continued to rely on the safety valve of emigration. In truth, the role of safety valve remained a reality, but from now on emigration took other paths and strategies beyond the control of any government, thereby making any future plan quite random. The present situation is characterised by the existence of a continuous emigration flow which has become individual, spontaneous, uncontrolled and even illegal. Furthermore, new forms of departure have made their appearance. Amongst these we may observe the excuse of family reunification,

²⁸ Decree n° 63-779, 27 July 1963, J.O.R.F. 2 August 1963, p 7161. The clause on social security was signed on 9 July 1965.

²⁹ Report by the emigration bureau of the ministry of labour, March 1982.

emigration for study purposes, the brain drain³⁰ and the emigration of women³¹ and even of unaccompanied children.

The law of 02-03 repeals the *dahir* of 08 November 1949 without containing any specific provision for the organisation of migration out of the country. The question arises whether there is not a need for the new law to be completed by more detailed legislation on the subject. The new labour law of 2002 already does this by giving detailed regulations for the conditions of employing foreigners in Morocco and the conditions of Moroccans themselves. By putting the accent on penalties for migrants who do not follow the rules of entry and residence, the new law neglects the rights of migrants, whether these be foreigners or Moroccans resident abroad.

Nevertheless, management of Moroccans resident abroad has been entrusted to the Hassan II Foundation (*Fondation Hassan II*) which is a non profit-making institution with legal status and financial autonomy. Its aim is to maintain and reinforce the fundamental links which Moroccans resident abroad by helping them to deal with their difficulties and by intervening for their welfare³². The Hassan II Foundation is certainly not the only Moroccan institution to be active in protecting the interests of Moroccans resident abroad. There is also a minister of state reporting to the ministry of foreign affairs who is responsible for Moroccans resident abroad. There is also the Mohamed V Foundation, which offers hospitality to migrants during the summer season. Note also the existence of a Commission for Moroccans resident abroad reporting to the Consultative Council of Human Rights, and of the Moroccan minister for human rights with the former Centre for migrant rights, currently transferred to the minister of state responsible for Moroccans resident abroad.

3.2 Management of foreign migrants in the Maghreb

This section presents the various laws adopted by the countries of the Maghreb for the management of foreign migrants, with a particular accent on the rights of migrant workers³³. The analysis of the survey countries is fairly detailed and presents practically identical parameters on admission of foreigners, conditions of stay and conditions of access to employment.

a) Admission of foreigners

³⁰ AMERM (2002) : Report on the South-North Migration Colloquium: '*La problématique de l'exode des compétences*'. Association Marocaine d'Etudes et de Recherches sur les Migrations, Rabat, 27 - 28 April; Ed. Fondation Hassan pour les MRE.

³¹ Charef Mohamed (coordinator) : '*Les migrations au féminin*', in Les Actes du Colloque : '*Le Maghreb et les nouvelles configurations migratoires internationales : mobilité et réseaux*', Institut de Recherche sur le Maghreb Contemporain, Tunis, 2002.

³² This Foundation has, for the benefit of Moroccans resident abroad, one research centre (*Observatoire des Marocains Résidant à l'Etranger*) and operational poles: Cooperation and partnerships, Education and cultural exchanges, Sport and youth, Social assistance and prevention, Study and legal aid, Communication and business promotion. This last pole supports investment by Moroccans resident abroad and participation by the latter in national development, through information, training of Moroccan investors resident abroad and general support.

³³ The distinction between foreign migrants and refugees is worthy of more detailed study at a later stage.

In Algeria, the basic text on the subject is Rule n° 66-211, 21 July 1966, which is still in force³⁴. This rule gives a fairly broad definition of the notion of foreigner. A foreigner in the sense of Article 2 is ‘any person who does not have Algerian nationality or is stateless’. In choosing this definition, the rule distinguishes between resident foreigners and non-resident foreigners.

Thus, under the law, resident foreigners are persons who arrive on the national territory in order to settle, that is to fix their effective and permanent place of residence or exercise a professional activity. These foreigners are entitled to receive a residence permit. The second category corresponds to non-resident foreigners, in transit or short stay (maximum three months) or who do not wish to exercise any professional activity. Such a distinction is not without repercussions on the conditions and the formalities for entry, stay and circulation in the national territory of each of these categories of person.

In fact, whether they are resident or non-resident, foreigners who arrive in Algeria must be in possession of a valid national passport, in the case of those who have a nationality, and a travel authorisation. Whatever sort of travel document a foreigner has, this must contain a consular visa issued by the Algerian diplomatic and consular authorities abroad³⁵. The traveller is also required to produce a health card.

Should a foreigner reside or stay in Algeria for a longer period than that fixed by the consular visa he produces on entry into the country, he must obtain a residence permit, which is issued by the national authorities under certain conditions. Any change the foreigner makes in his place of residence must be declared to the police. The length of validity of a residence permit is usually set in accordance with current regulations at two years, renewable.

In Tunisia, illegal entry and exit across the Tunisian border comes under the 1968 and 1975 laws on passports, modified by the law of 2004. The 1968 law stipulates in Article 4 that entry into and exit from Tunisia may only be made at border posts determined by notice from the ministry of the interior. Any entry or exit outside these border posts is liable to penalties under the 1968 and 1975 laws, as modified in 2004.

Both Tunisians and foreigners must carry a passport or a travel authorisation. Foreigners must also have an entry visa except for citizens of countries that have signed bilateral agreements with Tunisia. Numerous agreements have been signed by Tunisia exempting foreigners from visas; they are thus entitled to enter on simple presentation of their passport or sometimes just a valid identity card. This practice has developed in order to encourage tourism: the dispensation is however only valid for a stay of not more than three months (Article 7, Law dated 8 March 1968).

Entering or leaving Tunisian territory without a passport or visa (for those who require one) or with a false document is subject to the penalties contained in the two laws of 1968 (Articles 23,1 and 24) and 1975 as modified in 2004. An illegal stay does not however come

³⁴ Note that from 1965 up until the 1976 Constitution the government legislated by Rules in the absence of an elected parliament with legislative powers, which did not arrive until 1976. Cf. the text of the 1966 Rule on the situation of foreigners in Algeria in *Journal Officiel de la République (J.O.)*, n°64, 29 July 1966.

³⁵ The various types of visa issued by the Algerian diplomatic and consular authorities abroad are determined by Presidential decree n° 03-251, 19 July 2003, discussed below. This decree modifies and complete decree n° 66-212 which applies Rule n° 66-211 on the situation of foreigners in Algeria.

under the field of application of the 1975 law as modified in 2004, which only mentions illegal entry into or exit from Tunisian territory. An illegal stay is only covered by the clauses in the 1968 law, which define this as (i) the case where a foreigner does not within the legal time limit seek an entry visa or a residence permit or does not renew them when the date of validity expires; (ii) the case where a foreigner continues to stay in Tunisia after his request for a visa or a residence permit has been refused or after refusal to renew these documents or after expiry of the date of validity (Article 23, 2 and 3)³⁶.

In Morocco, up until November 2003, the legal framework for migration was to a large extent contained in laws inherited from the French Protectorate, scattered around numerous texts. On 11 November 2003 Law no. 02-03 on foreigners entering and staying in Morocco and on irregular emigration and immigration was adopted. This law has the merit of having unified and ‘decolonised’ Moroccan law on migration.

Immigration of a foreigner into Morocco includes entry, stay and settlement. A foreigner is defined under Moroccan law as any person who does not have Moroccan nationality and who either has the nationality of another country or has no nationality (a stateless person).

The new law requires production of a passport or a travel authorisation to enter the country (Art.3). It details the modalities for border checks and defines the conditions for refusing entry. Thus, to enter the country, a foreigner must be in possession of a valid travel authorisation, must give his reason for coming into the country and prove that he has sufficient means to support himself (Art.4,1). Entry into the country may be refused to any foreigner who may present ‘a threat to public order’ (Art.4,2). The decision to refuse entry may be applied immediately and the foreigner who is the object of refusal may be detained in premises that do not come under the prison administration.

b) Conditions of stay

In Algeria, under Presidential decree n° 03-25, there are two main categories of visa, one where the entitlement to stay is relatively short and one where the right to stay is longer. The first category includes: diplomatic visa, service visa, courtesy visa, press visa, tourist visa, business visa, family visa, medical visa, cultural visa and collective visa. The second category includes visas relevant to immigration. These are mainly work permits and temporary work permits, as well as study visas. In order to work, there used to be no visa, a work permit was sufficient. The conditions for obtaining these visas are not the same in every case; they vary according to the framework in which they are delivered. Outside the other categories of visa which do not relate directly to immigration, a work visa or temporary work visa or a study visa are only issued if the holder also has a work permit or temporary work permit or proof of registration in an Algerian public or private educational establishment³⁷.

In Tunisia, a temporary residence permit, valid for one year, may be granted to a foreigner who has stayed more than three months without a break or six non-consecutive months in

³⁶ For an insight into the debate between Mme M. Benjémia, external collaborator, author of the national study on Tunisia, and the Tunisian ministers concerned, cf. the national study on Tunisia, which details the positions of the two parties.

³⁷ It would be interesting to find out whether the notion of expatriate worker exists in all the legislative systems of the countries in the survey.

any one year. A residence permit for more than one year may be granted on the special authority of the Ministry of Interior. An ordinary residence permit may be granted who has been temporarily resident for five years without interruption, to a foreigner married to a Tunisian, to a foreigner who has Tunisian children and to a foreigner who has rendered valuable services Tunisia. The length of an ordinary stay is two years, renewable. In both cases, temporary stay or ordinary stay, the authorities have discretionary powers and no appeal is available to a foreigner should his application for a residence permit be refused.

In Morocco, the new law 02-03 states that there are two types of residence permit: a registration certificate and a residence permit (Art.5). The first is issued to a foreigner who has lived in Morocco for more than three months, the second to a foreigner who has lived in Morocco uninterrupted for four years. Articles 9 -18 of the 02-03 law set the conditions for obtaining one of these cards and give information on the types of registration and residence cards and on those persons who may hold them.

The law has introduced three types of registration card: for visitors, for students and for migrant workers, with precise mention of their activity. The registration card must be obtained within 48 hours of arrival and is valid for a period of one year to ten years, renewable. Certain foreigners are exempt from the registration card: these are the agents and members of the diplomatic missions and foreigners staying in Morocco for less than 90 days.

A foreigner whose residence permit is refused or who receives a refusal to renew their card may contest the decision in the civil court within a period of fifteen days. This appeal does not cancel the decision to deport or expel the person. The conditions for granting a residence permit are governed by the law of 8 March 1968 and the decree of 22 June 1968.

c) Access by foreigners to employment

In Algeria, work done by foreigners is subject to specific legislation. It is controlled by Law n° 81-10, 11 July 1981 on the conditions of employment for foreigners in Algeria³⁸. This text also deals explicitly with the question of migration, as it determines the legal framework for a foreigner to work in Algeria, and therefore this includes immigrants. Other legal texts, such as Law n° 90-11, 20 April 1990 on work relations, control and organise the world of work in a general manner, touching indirectly on the situation of migrant workers³⁹.

Law n° 81-10, 11 July 1981, therefore, while instituting the right of foreigners to work, also determines the modalities and the necessary conditions for applying for a job in Algeria. It introduces basic conditions which must be met by any foreign worker in search of a job and puts similar obligations on the employer. The principal formal condition which must be met by a foreign worker is being in possession of a work permit or temporary authorisation to work issued by the Ministry of Labour. By contrast with a work permit, a temporary authorisation to work is only issued for a limited period of less than three months. A work permit as such is valid for a period of two years, renewable under the same conditions as those for obtaining it. There is no exemption from any of these rules, except by the application of measures contained in international conventions and agreements or in the case

³⁸ Law n° 81-10, 11 July 1981 may be found in *Journal Officiel de la République Algérienne* (J.O.R.A), n°28, 14 July 1981, p 683.

³⁹ Cf. this law in J.O.R.A. n° 17, 25 April 1990, p 488. It is worth considering to what extent this law is integrated in the Algerian labour code.

of *force majeure*. In the case of a temporary authorisation to work, employers must declare all foreigners recruited by them, together with a report on the reasons.

Law 81-10 on recruiting foreigners contains a limit on qualifications below which a foreigner may not be recruited: this is equivalent to the level of technician. Apart from this limit, there are other restrictions intended to restrain the employment of foreigners. For example, a foreigner may not be considered for a job which can be filled by a national, either resident emigrated (cf. the notion of national preference). A foreigner must also be suitably qualified for the job he seeks.

The law on the employment of foreign workers is limited to broad definitions on the question. Details on content and conditions are contained in the decrees on application. Thus the Algerian rules make a distinction between the exercise of a paid activity in the government services and the exercise of a liberal profession⁴⁰.

The exercise of a paid activity by a foreigner is not restricted to the economic sector of private enterprise; it is also authorised in government services, for local authorities, state institutions and public enterprises which have the possibility of recruiting in other countries.

Recruitment of foreigners into state institutions is subject to the conditions of Decree n° 86-276, 11 November 1986⁴¹. Recruitment takes place in a limited framework and is subject to clearly-defined conditions. Indeed, a foreigner may only be recruited into government services, a local authority or other public body on contract. This gives foreigners a different status in this respect from nationals, who have a stable career due to the fact that their working relationship with their employer is statutory and not contractual. Furthermore, even though the text of the decree seems to have general implications, certain limits are set concerning well-defined sectors in which recruitment may take place. These are essentially the teaching sector, at various levels (primary, secondary and higher) and the technical domain, where a foreign worker may offer a special service or training. But given that recruitment may only take place on the basis of a contract, the foreigner must be in possession of a work contract agreed with his employer. This contract constitutes the basis of the working relationship between the two parties.

There are other conditions with regard to the qualifications of a foreign worker. He has to provide proof of his level of qualification: at least equivalent to Category 14 on the standard Algerian scale. A foreign worker should also have at least four years' working experience. Nevertheless, it is possible to recruit a worker at technician level, but only in exceptional cases. In the recruitment conditions the certificates and qualifications of a foreign worker are assessed, as well as any jobs he has done in his field or specialty.

In the work contract, a distinction is made between the initial contract under which a foreign worker is engaged for the first time and a renewal. In fact, the initial contract is valid for two years from the date when the worker takes up his post; this is recorded in an installation

⁴⁰ A useful line of research would be to establish whether there is a jurisprudence on the subject and whether it is valid for all three countries concerned.

⁴¹ Decree n° 86-276, 11 November 1986 fixing the recruitment conditions for foreign personnel in government services, local authorities and public establishments, bodies and enterprises. Cf. J.O., n° 46, 12 November 1986, p 1280. This decree has just been modified by the executive decree n°04-315, 2 October 2004. Cf. J.O. n° 63, 3 October 2004.

report. The contract may be renewed an unlimited number of times, but only for one year at a time. Renewal must be requested by both parties to the contract before expiry of the current period.

Apart from work contracts for foreigners in the domain of education, which have to take account of the particularities of the sector, especially the school or university year, a work contract may be cancelled by one or other party by giving a period of notice that may not exceed three months.

Foreign workers, like their Algerian counterparts, are covered by a legal system that puts obligations on them, but which also grants them rights fully guaranteed by the law. The principal obligation of a foreign worker is inherent in his foreign status as such, carrying an obligation of a moral and political nature. This consists in total submission by the worker to the Algerian authorities, which prevents him from having relations with other authorities who might harm Algerian interests of whatever kind. The professional obligations on a foreign worker are the same as for other workers. Thus, as soon as he takes up his post upon signature of the contract, the worker has a duty to satisfy all the tasks assigned to him. Any failure in this respect, whether as a result of professional inadequacy or professional negligence, may lead to unilateral cancellation of the contract by the employer himself and break-off of the working relationship.

In Tunisia, employment of a foreign worker is governed by the labour code (*Code du Travail*)⁴² which stipulates in Article 258-2 that a foreigner may only occupy a remunerated post in Tunisia if he is in possession of a residence permit marked “authorised to take paid work in Tunisia”. Recruitment of foreigners must follow a certain number of conditions, both in form and content.

The formal requirements allow government control and follow-up of foreign labour. A visa must first be obtained from the Ministry of Labour (Article 258-2 CT). The contract must be set up and where necessary renewed according to a model dictated by the Ministry of Labour. If a contract is renewed, or if it is interrupted or cancelled, approval must be sought or information sent to the Ministry of Labour (Articles 258-2 and 262, new labour code). The contract should state the foreign worker’s profession and place of work. Once signed, the contract should be entered within 48 hours in a special register, which must be presented to the labour inspectors on request.

The conditions on content are, first, that recruitment should not duplicate skills that already exist in Tunisia (Article 258-2 CT), and second, that the employment contract should be fixed for one year, renewable once only (Article 258.2). Thus a foreigner may not, in principle, work for more than two years in Tunisia and must leave the Tunisian territory on expiry of his contract. Furthermore he may not accumulate more than one job⁴³. To draw up or renew a contract, the approval of the Ministry of Labour must be obtained.

⁴² Cf. Articles 258 – 269, Chapter II Book VII (labour code) headed ‘Employment of foreign labour’ (*emploi de la main d’œuvre étrangère*).

⁴³ Article 262 specifies that a foreigner may not enter into another job contract with a different employer unless he has cancelled the initial contract by agreement or by court action. The same article also specifies that an employer may not recruit a foreign worker before expiry of the employment contract tying him to the previous employer.

Article 260 of the Labour Code allows for the possibility of a dispensation scheme with regard to the use of foreign workers. This authorises ‘the percentage of foreign labour that may be employed and the time limits to regularise their situation in all or part of the national territory, for certain occupational categories, certain activities in general or certain specified industries’. At present, apart from the special schemes in the bilateral agreements, this is the only existing dispensation scheme and it is strictly reserved for export-only businesses as defined and governed by the investment code⁴⁴. The objective is to encourage the investment of foreign capital and export activities.

The dispensations relate to the length of contract, the number of workers and the procedure for drawing up the employment contract. For the rest, the contract follows civil law. The dispensation scheme is ruled by Decree n°94-79, 17 January 1994, fixing the modalities for recruiting foreign trainers and experts within the provision of the labour code.

By contrast with the civil law, a contract may be for more than 2 years. Article 258-2 of the labour code specifies in fact that a limited contract may be renewed for one year more than once ‘when it is a case of a foreigner working for his foreign company in Tunisia in a development project approved by the competent authorities’. Decree n°94-79 does not specify a maximum duration for this type of contract.

These companies may, with the prior authorisation of the Ministry of Vocational Training and Employment, recruit ‘four foreign trainers or experts, specifying their professional qualifications and the nature of the jobs to be filled’⁴⁵ in Tunisia. Beyond the number of four, it is necessary to go through a special procedure consisting in presenting a programme of recruitment and “tunisification”⁴⁶. The minister’s decision on this programme is notified to the company within 15 days from the date the file is received. Follow-up and control of this programme are done by the Ministry of Vocational Training and Employment, and the regional Bureau of Employment and Labour Inspection competent inland are kept informed. Recruitment of an employee within the framework of this programme is by an employment contract which is subject to the provisions of the labour code, except with regard to length and the need for a permit.

In Morocco, the provision in the new Labour Code, drawn up with the principles of the fundamental rights of workers in mind, incorporates the principle of racial non-discrimination. The new labour code takes account of the conventions adopted by the International Labour Organisation (ILO) and the instruments adopted by the Arab labour organisation (*Organisation Arabe du Travail - OAT*) which Morocco ratified.

⁴⁴ Export-only businesses are defined in Article 10 of the investment code as those whose production is entirely destined for other countries or those offering services in another country or in Tunisia for use in another country.

Also in this category are businesses working exclusively with these companies, those registered in the free economic zones (Law n°92-81, 3 August 1992) and financial bodies and banks working mainly with non-residents (Law n°85-108, 6 December 1985 which encourages financial bodies and banks working mainly with non-residents).

⁴⁵ Cf. Decree n°94-79 and Article 18 of the investment code.

⁴⁶ The content of this programme should indicate: (i) the total staff of the enterprise and the spread by occupational category, (ii) a description of the posts occupied by the four foreign trainers or experts, (iii) the number and description of jobs open to foreign trainers or experts who are to be recruited, as well as the professional qualifications of these experts, (iv) the conditions for Tunisian personnel who will be working with the foreign experts, (v) the length of training and proposed pay for Tunisians, (vi) the suggested date for replacing the foreign experts with Tunisian staff.

Under these provisions foreign workers have the same rights and obligations as nationals. The main clauses concerning immigrant workers are contained in Chapter V of the Code headed ‘Contracts with foreign employees’ (*De l’emploi des salariés étrangers*). The Moroccan Labour Code specifies in Article 516 that ‘*any employer wishing to recruit a foreign worker must obtain authorisation from the government body responsible for labour. This authorisation is granted in the form of a stamp on the employment contract and the stamp date is the date from which the contract is valid.*’ The Article further says that ‘*any modification of the contract must also be counter-stamped as described in the first paragraph of this present Article*’ and that ‘*authorisation may be withdrawn at any moment by the government body responsible for labour*’.

Under Articles 517 and 518, an employment contract specifically with a foreigner ‘*must conform to the model set by the government body responsible for labour*’ and ‘*should stipulate that in the case of refusal to grant the authorisation mentioned in the first paragraph of Article 516, the employer undertakes to bear the foreign employee’s return expenses to his country or his country of residence.*’

It is important to note that under article 520 of the Labour Code, in the case where international multilateral or bilateral agreements exist, their contents are taken into consideration in accordance with the law on the employment of Moroccan paid workers abroad or foreign employees in Morocco. Article 521 punishes any employer who infringes the provision in the preceding Articles with a fine of between 2000 and 5000 DH⁴⁷.

The texts specify that an employer may recruit the staff he needs taking account solely of the aptitudes and quality of the applicants and of their references. Nevertheless, current texts specify that all foreign workers must have an employment contract stamped by the labour department.

d) Social protection for foreign workers

In Algeria, foreign workers are protected in the same manner as Algerian workers. For example, they receive the pay related to their job as well as any increase. At the same time, bearing in mind the expenses of foreign workers, the law offers them the possibility of a refund for their travel expenses and those incurred by their family. Beyond the aspects relative to a work permit and temporary authorisation to work that come under Law n° 90-11, part of the legal framework applicable to foreigners, the law also extends to collective and individual working relations and relations between employers and employees whether nationals or non-nationals. In addition to these provisions, there are the texts of rules which also relate to the question of foreign labour and the applicable social security scheme (health, occupational illness, accidents at work, mutual health scheme) in a specific manner for defined sectors and activities. Social security contributions are compulsory in Algeria; there are penalties for non observation of this clause.

In Tunisia, equality of treatment is compulsory. The rule is contained in Article 263 of the new labour code (1996 reform) which directs that ‘a foreign worker benefits from the same rights and is subject to the same obligations as arise from labour relations and apply to Tunisian workers.’ This text should only be applied to migrant workers in a regular

⁴⁷ Equivalent to 216 to 540 dollars.

situation. This arises from the place the article has in the code, in the chapter on employing foreign labour, where regular work is given as a condition before the provisions in Tunisian labour law can be applied.

In Morocco, various legal texts have been published on workers' social rights. This protection is general, covering all workers, and relates to the traditional rights of workers, social security, social benefits and mutual health schemes.⁴⁸

A foreign worker in Morocco has the same social rights as are traditionally assured to Moroccan workers, such as pay, paid leave, a weekly rest day, public holidays and the right to join a union. The benefit of legal aid is granted as of right to a worker bringing or defending a case or to his representatives for any procedure before the social court, including an appeal. Labour law also covers the risks to which workers in general and migrant workers in particular are exposed. Moroccan law takes account of the ILO conventions on the subject to guarantee social risks. There are texts ruling on occupational health, accidents at work, occupational illness, social security and mutual health schemes⁴⁹.

The social security system and social benefits are open to Moroccans and foreigners working in Morocco without any distinction⁵⁰. Up until 2005, contribution to health insurance was optional. But Law 65.00 on basic medical cover, voted in 2002 and applicable from 2005, has constituted a real reform of the health sector in Morocco. It represents a great step forward in the social domain and a fundamental revision of the basic principles of medical insurance. Firstly, the code introduces compulsory sickness insurance based on the principles and techniques of social insurance for persons in a pensionable job, beneficiaries of a retirement pension, former members of the Liberation Army and students. Secondly, by setting up a medical insurance scheme, this new law aims at improving the state of health of Moroccan citizens and guarantee equality of access to healthcare for all levels of society⁵¹.

A foreign worker is guaranteed the same social protection as a Moroccan worker. Nevertheless, we note that this protection is sometimes quite limited. A foreigner does not always have access to certain services if he is not in possession of a national identity card or cannot speak Arabic, which is the case of most of the irregular migrants.

3.3 Irregular migration

The countries of the Maghreb differ in their legal structures for the management of irregular migration: the laws are not equally consistent or far-reaching. The laws apply to nationals as well as to foreigners in an irregular situation⁵².

The penalties vary under the law of each of the Maghreb countries; they cover entry and exit from the territory and disregard for the standards controlling the world of work. They apply

⁴⁸ This is specific and concerns, for example, the blind, the sight-impaired and the handicapped. For more developments, cf. REMAD (*Revue Marocaine d'Administration et de Développement*), (in Arabic), 'La Condition des étrangers au Maroc', N° 123, Rabat, 2005.

⁴⁹ Ibid., p. 226.

⁵⁰ The basic text is the Decree of 25 July 1960 published in B.O n°2493, 12 August 1960, p.1515 on benefits by CNSS, modified by a Royal Decree dated 1st August 1966 published in B.O n°2806, 10 August 1966, p. 900.

⁵¹ Half of all Moroccans will benefit from medical insurance.

⁵² For this section, it would be useful to have further information at a later stage, especially on means of control and their effectiveness (inspection at work, for example).

equally well to the employer as to the employee caught in the wrong. Algeria is the exception, but Morocco and Tunisia have recently adopted severe measures against the illegal employment of foreign labour and also against the irregular migration of North Africans to other countries.

In Algeria, the employment of foreign labour is part of a general framework controlling the situation of foreigners with regard to entering and settling on national territory. A foreign worker wishing to settle for this purpose is obliged to make a declaration to the Algerian authorities, in order to receive a residence permit⁵³. Any violation of these rules systematically leads to application of the criminal and financial penalties cited in the law⁵⁴. Other more specific rules control the employment of foreign labour in Algeria; and the non observation of these clauses leads to application of the published penalties, both against the employer and against the foreign worker himself.

Penalties against an employer. Recruitment of a foreign worker is subject to obtaining a work permit or a temporary authorisation to work.⁵⁵ For this purpose, an employer must follow the obligation to declare, by notifying the competent national labour department⁵⁶ and submitting for their approval any agreement or contract covering services or technical assistance which require the employment of foreign labour. Should the employer fail in his obligations to declare, the law provides for penalties against him. If the employer does not submit the contracts for scrutiny by the government employment department, all requests for a work permit or authorisation to work are refused. Furthermore, failure on the part of the employer to declare recruitment renders him liable to a fine of between 120 and 360 dinars⁵⁷. In addition, if the employer is himself a foreigner, this penalty may be associated with other administrative measures, plus an expulsion order which may be issued against him. Other penalties may be incurred in the case of an infraction, such as failure on the part of the employer to meet his obligation to declare within the time limit set by the law, given the changes that may affect the working relationship⁵⁸, or failure to keep quarterly lists of items and send them to the relevant authorities⁵⁹. Failure to conform with these formalities renders the offending employer liable to a fine of between 1,000 and 2,000 dinars, doubled if the offence is repeated.

Based on the principle that forbids an employer to recruit a foreign worker without a work permit, the law includes penalties of 5,000 DA to 10,000 DA⁶⁰ (directed at any employer who does not observe the legal requirements and who recruits a migrant worker not in possession of a valid work permit or temporary authorisation to work). The same penalty may be applied in the case where an employer changes the function originally described in the documents. Algerian law introduces, in addition, the notion of common responsibility, extending the penalty to any person who facilitates the illegal employment of a foreign worker. These penalties in the form of fines may be between 1,000 DA and 5,000 DA,

⁵³ Cf. Articles 11 and 12 of Rule n° 66-211.

⁵⁴ Cf. Articles 23 and 24 of the same Rule.

⁵⁵ Cf. Article 2 of Law n° 81-10, concerning the employment of foreigners in Algeria

⁵⁶ Cf. Article 3,3 of Law n° 81-10 and Article 16 of Rule n° 66-211.

⁵⁷ Cf. Article 25 of Rule 66-211.

⁵⁸ Cf. Article 21 Of Law 81-10.

⁵⁹ Article 22 of Law 81-10.

⁶⁰ Equivalent of between 68.5 and 137 dollars.

applicable as many times as there are infractions. Repetition of the offence increases the penalty, adding to the fine the possibility of a six-month prison sentence.

Penalties against a worker. A foreign worker may not claim to exercise any activity on the national territory without being in possession of a legal document authorising his activity. This ban applies to paid activities as well as liberal professions, and in each case there are penalties in case of the illegal exercise of an activity.

For failure to observe the legal provisions, Algerian law contains a certain number of penalties in Articles 24 and 25 of Law n° 81-10, which quote a fine of 1,000 to 5,000 dinars and imprisonment of 10 days to one month, in addition to administrative measures that may be taken against the worker. There are also more severe penalties, involving action in the criminal court in the case of offence by the foreign worker; and general professional obligations common to all workers including nationals, notably with regard to keeping professional secrecy. This does not in any way preclude the application of other disciplinary measures envisaged by the employing organisation.

There are also some less severe penalties, but which may have serious consequences for a foreigner's working situation in Algeria: withdrawal of his work permit or authorisation to exercise a paid activity. These documents are also withdrawn if, in order to obtain them, the applicant has supplied false information to the authorities, or if the duration of the permit is disregarded, or there is a change of activity or employer without declaring that fact.

With respect to penalties that may be applied in the case of liberal activities, the basic principle of Algerian legislation is to forbid the practice of any industrial, commercial, trade or liberal activity without a working authorisation. In the first instance, the penalty for failure to observe this obligation is a fine of between 360 and 7,200 DA or six months' imprisonment, or both⁶¹. Secondly, a foreigner may lose his authorisation to practise as a tradesman, industrialist or handicraftsman if he makes a false declaration, if he is sentenced in court, goes bankrupt or commits a crime or an offence. He may also receive an expulsion order⁶².

All these penalties contained in the legal texts form part of the way the law is applied with regard to employment and work in Algeria. But they are not as dissuasive as might at first appear concerning the expulsion procedures. There is provision in Algerian law for tolerance: the expelled foreigner may be granted a period of between forty-eight hours and two weeks to quit national territory. Even better, the foreigner may continue to stay in the country if he can prove that it is impossible for him to quit national territory. In this case, he will remain under house arrest while awaiting the verdict of the ministry of the interior and notification of the expulsion order.

In Tunisia, from the moment the rules governing civil law and its dispensations are broken, a certain number of penalties may be applied. These penalties are more severe in civil law: penal as well as civil penalties may be applied. Purely civil penalties are only envisaged in the dispensation clauses.

⁶¹ Cf. Article 29 of Rule 66-211.

⁶² Article 7,2 Decree 75-111, 26/09/1975 on commercial, industrial, trade and liberal professions practised by foreigners in Algeria.

Dispensation: civil penalties only. In the case of failure to follow the procedure for employing more than four foreigners in an export-only industry, or failure to follow a 'tunisification' programme, the penalty that may be applied is rejection of any renewed application for setting up a business or request for renewal of a foreign worker's employment contract for (Article 6, Decree n°94-79).

Civil law: penal and civil penalties against both employer and employee.

- the Tunisian employer: employing a foreigner without a residence permit and without an employment contract, or with an employment contract whose duration is longer than the legal allowance and which has not been stamped by the ministry of employment, is subject to a fine of 12 to 30 dinars per day and per worker. The employees should be suspended as soon as the irregularity is notified; if the employer fails to do this, the penalties are doubled. Furthermore, an employer who does not present the register in which he is supposed to record all foreign staff recruited may be punished by a fine of between 60 and 300 dinars. If he repeats the offence, the fine is doubled. Finally, employing a foreign worker before the employment contract tying him to a previous employer has expired is punishable by a fine of between 24 and 60 dinars per employee with a maximum fine of 5,000 dinars.

- the foreign worker: if the employee continues to work in spite of the ban on him following the work inspectors' report, he runs the risk of imprisonment for 1 to 15 days or a fine of 120 to 300 dinars or both. He may, in any irregular work situation, be the object of an expulsion order from Tunisian territory. A double penalty (imprisonment followed by expulsion) can only be applied if the employee does not obey a suspension order. It follows that a foreign employee in an irregular situation principally runs the risk of expulsion; it is only if he fails to stop working following notification by the Tunisian authorities that the double penalty (imprisonment and expulsion) may be applied.

Civil penalties: A contract which does not meet the residence and authorisation conditions as described in the labour code is punishable by absolute cancellation pronounced by the Tunisian High Court⁶³ in the name of public social order. The characteristic of the cancellation is that it is retrospective. As a consequence, a worker in an irregular situation is not protected by any of the rules of labour law (such as compensation in case of wrongful dismissal). The penalty is particularly harsh and excessive: with an unscrupulous employer no longer inclined to employ a worker without rights, the public social order intended to play a protective role in fact becomes a destabilising and exploitative factor for a foreign worker⁶⁴.

In Morocco, Article 521 of the labour code penalises any employer who has not obtained the authorisation described in Article 516, who employs a foreign worker without the said authorisation, or who employs a foreign worker whose contract does not conform to the official model. The fine may be between 2,000 and 5,000 DH. Several Articles of Law 02-03 describe the penalties. Articles 42 to 56 of this law concern infractions to Moroccan rules on migration and in particular illegal entry and stay by an individual or legal entity⁶⁵.

⁶³ Order n°59828, 2/2/1998, civil notice of the High Court, 1998, p.98.

⁶⁴ Such a solution is not necessary. The penal clauses are enough to dissuade employment of a foreigner in an irregular situation. Application of the civil law that annuls the employment contract and the fact that it becomes invalid in retrospect may also form part of the policy of dissuasion.

⁶⁵ Article 42, for example, contains a fine of 2,000 to 20,000 dirhams (DH) or a prison sentence of 1 to 6 months or both for any person who enters or attempts to enter without a valid travel document or who remains

There was no law on the expulsion of foreigners until 2002; this was by simple decision of the Director General of national security, as described in Law 02-03 which stipulates in Article 25 that an expulsion order may be pronounced by the administration against a foreigner if his presence on Moroccan territory constitutes a grave threat to public order. This is done by order of the Director General of national security and notified to the interested party by a police officer, while granting a reasonable time limit to leave the country. The order may be executed on the spot by the authorities (Art.28).

Article 26 of the same law gives the list of foreign persons who may not be the object of an expulsion order⁶⁶. Should the person refuse or should it be impossible to expel him, the foreigner is put under house arrest. Law 02-03, Article 34 allows for detention of a foreigner in a place other than a penitentiary for the necessary time before their departure. The foreigner is informed on his rights immediately after his transfer to such a location.

Conclusion to Chapter 3

The fixed elements (invariables) that emerge from Algerian, Tunisian and Moroccan law are:

First, migration of nationals to another country is controlled by laws which on the one hand recognise the right to migrate, and on the other control it by bilateral agreements signed with the destination countries. The questions of temporary or permanent return the contribution of migrants to national development are dealt with in the law, but approached with variable thoroughness and from different angles, depending on the history and socio-economic and political context of each country.

in the territory beyond the delay authorised by his visa. The penalty is doubled if the offence is repeated. Article 43 any stay without a registration or residence card by a prison sentence of 1 month to 6 months and a fine of 5,000 to 30,000 DH. The penalty is doubled if the offence is repeated. A foreigner who fails to renew his registration or residence card is punished by a fine of 3,000 to 10,000 DH and a prison sentence of from one 1 month to 1 year (Art.43). Any transporter who facilitates the entry of an illegal migrant is also penalised (Art. 47). Article 52,1 provides for a prison sentence of 6 months to 3 years and a fine of 50,000 to 500,000 DH for anyone who connives or assists a person illegally entering the country. The penalty is raised to 10 to 15 years imprisonment and a fine of 500,000 to 100,000 DH if these deeds are habitually repeated (Art. 52,2).

Article 50 of the new law concerns clandestine emigration from Morocco. It punishes with a fine of 3,000 to 10,000 DH or a prison sentence of 1 to 6 months or both (without prejudice from the provisions of the penal code in the matter) any person who illegally crosses the border by land, sea or air to leave Morocco. The organisers and those employed in the transport of illegal migrants are punished by imprisonment of 2 to 5 years and a fine of 50,000 to 500,000 DH (Art.51).

The means used for the illegal transport are confiscated and any legal entity associated with the illegal migration is also penalised (Art. 54 and 55). A national court may pronounce on any offence concerning immigration or illegal emigration, even if the crime or certain elements of the crime have been committed in another country (Art.56). If anyone who is being illegally transported into or out of Morocco becomes permanently incapacitated, the penalty is 15 to 20 years prison. The penalty is life imprisonment if the event has resulted in death (Art.52,5-6).

⁶⁶ These are: any foreigner who has regularly lived in Morocco from the age of 6; any foreigner who has regularly lived there for more than 15 years; any foreigner who has lived there regularly for 10 years (except in the case of a student); any foreigner married for at least one year to a Moroccan partner; the parents (father or mother) of a child who has acquired Moroccan nationality according to the Moroccan *dahir* of 6 September 1958 relating to nationality, on condition that they effectively practise the legal guardianship of this child and supply his needs; any foreigner regularly resident in Morocco and who has not received a sentence equivalent to at least one year's imprisonment; any foreign woman who is pregnant and any foreigner who is under-age. This last clause constitutes an innovation and a human advance in migration law in Morocco and could have important consequences for the protection of migrant women and their under-age children in Morocco, whose numbers are currently increasing, especially amongst illegal migrants from the sub-Saharan countries.

Second, the conditions for admitting migrant workers and their conditions of stay and access to employment meet the same standards. Admission and stay are strictly controlled by the law and expressed in equally strict administrative formalities. The same applies to access to employment, which moreover is only authorised in a very selective manner because of the priority given to national job seekers.

Finally, irregular immigration (admission and stay against the law) and undeclared employment of foreigners are prohibited and liable to severe civil and penal punishments which are increased if the offence is repeated and apply not only to migrant workers who enter and work in an illegal manner but also to persons who assist them (smugglers) and recruit them (informal employers).

4 Report on ratified conventions and introduction of international standards

Introduction

An examination of the law in the three countries of the Maghreb reveals that they largely derive from international standards with regard to three aspects of the management of international migration. It is important in the first instance to note the present state of ratification of the international conventions that broadly concern the United Nations principles of human rights; secondly, to consider the ratifications of ILO conventions; and lastly, the state of ratification of the conventions directly related to the rights of migrant workers.

4.1 International conventions on human rights

The table below shows clearly that the countries of Central Maghreb have ratified virtually all the international conventions on human rights, mostly during the 1980s. All these conventions militate against discrimination on the basis of nationality, race and sex.

Table 1. Ratification of International conventions on human rights by the countries of Central Maghreb

Description of United Nations fundamental convention	ALGERIA	MOROCCO	TUNISIA
International Covenant on Economic, Social and Cultural Rights, monitored by the Committee on Economic, Social and Cultural Rights (CESCR)	12.9.1989	3.5.1979	18.3.1969
International Covenant on Civil and Political Rights (CCPR), monitored by the Human Rights Committee	12.9.1989	3.5.1979	18.3.1969 -
Optional protocol for International Covenant on Civil and Political Rights (CCPR-OP1)	12.9.1989	NR	NR
International Convention on the Elimination of all forms of Racial Discrimination (CERD), monitored by the Committee on the Elimination of Racial Discrimination	14.2.1972	18.12.1970	13.1.1967
Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), monitored by the Committee on the Elimination of all forms of Discrimination Against Women	22.5.1996	22.6.1993	20.9.1985
Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), monitored by the Committee Against Torture	12.9.1989	21.6.1993	23.9.1988

Convention on the Rights of the Child (CRC), monitored by the Committee on the Rights of the Child	16.4.1993	21.6.1993	2.1.1992
Optional protocol to the Convention on the Rights of the Child, concerning the involvement of children in armed conflict (CRC-OP-AC)	NR	22.5.2002	22.4.2002
Optional protocol to the Convention on the Rights of the Child, concerning the sale of children, prostitution of children and pornography showing children (CRC-OP-SC)	NR	22.10.2001	13.9.2002
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (MWC) adopted by the General Assembly in 1990	29.12.2004	21.6.1993	NR

Source: UNESCO – updated (*) NR: not ratified

Note for Algeria, the non-ratification of two protocols: the optional protocols CRC-OP-AC and CRC-OP-SC. The Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1) remains unratified by Morocco and Tunisia. In addition, the latter has not yet ratified the 1990 United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Note that although Morocco ratified this last Convention in 1993 and Algeria in 2004, this does not mean that they have implemented suitable mechanisms. Note also that in almost every case (with the exception of CRC-OP-AC) Tunisia was always the first North African country to ratify these conventions.

4.2 ILO Fundamental Conventions

These conventions contain clauses relative to the management of migrant workers. The state of ratification of these conventions by the countries of the Maghreb is not without incidence on the treatment of migrant workers.

Table 2. Ratification of ILO Fundamental Conventions by the countries of the Maghreb

N° / Year	Title	Algeria	Morocco	Tunisia
C29 (1930)	Convention concerning Forced Labour	19.10.1962	20.05.1957	17.12.1962
C87 (1948)	Convention concerning Freedom of Association and Protection of the Right to Organise	19.10.1962		18.06.1957
C98 (1949)	Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively	19.10.1962	20.05.1957	15.05.1957
C100 (1951)	Equal Remuneration Convention	19.10.1962	11.05.1979	11.10.1968
C105 (1957)	Convention concerning the Abolition of Forced Labour	12.06.1969	01.12.1966	12.01.1959
C111 (1958)	Convention concerning discrimination	12.06.1969	27.03.1963	14.09.1959
C138 (1973)	Convention concerning the Minimum Age: 15 years	30.04.1984	06.01.2000	19.10.1995
C182 (1999)	Convention concerning the worst forms of Child Labour	09.02.2001	26.01.2001	28.02.2000

Source: <http://www.ilo.org/ilolex/>

We see that the countries of the Maghreb have ratified nearly all the ILO instruments, with the exception of Convention 87 by Morocco. These fundamental instruments have enabled the countries of the Maghreb, as we have already seen, to elaborate a national legal framework based on international standards. These texts are applicable without any form of

discrimination based on nationality. For example, C87 says in Article 2 that ‘Workers and employers, without distinction of any kind, have the right, without prior authorisation, to constitute organisations of their choice, and to join these organisations, on the sole condition of adhering to the statutes of the latter.’ Similarly, C105 Article 1 calls on the signing countries to commit themselves to ‘ending forced or compulsory labour and not make use of it in any form... as a means of racial, social, national or religious discrimination.’

4.3 Conventions directly concerning the rights of migrant workers

The United Nations and ILO have drawn up specific conventions on migrant rights. To date these conventions have not all been ratified by the countries of the Maghreb, as shown in the table below.

Table 3. Ratification of International Conventions specific to migration by the countries of the Maghreb

Country	ILO Convention N° 97 (1949)	ILO Convention N° 143 (1975)	United Nations Convention 1990
Algeria	19.10.62	NR	21.04.2005
Morocco	NR	NR	21.06.1993
Tunisia	NR	NR	NR

NR= not ratified

Source: <http://www.ilo.org/ilolex>

We can see that the three countries form a relatively harmonious block concerning their ratification of the general international legal instruments, but by contrast there are some differences with regard to the specific instruments on the rights of migrant workers (namely, ILO Conventions n° 97 and 143 and United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990)

The 1949 Convention 97 on migrant workers (revised) requires every member who has ratified the agreement to apply to immigrants who are legally within the confines of their territory a treatment which is not less favourable than that which applies to their own citizens in various matters which are listed, as far as these questions are governed by the law or depend on the government authorities. This convention has three annexes concerning the rights of migrant workers, in a cooperative framework, civil rights, and the right of a migrant worker to import effects and working tools. Ratification of the Annexes is optional but must nevertheless be justified.

ILO Convention 143 adds complementary clauses to C97, integrating the necessity to have a system to regulate migration, while at the same time adopting the means to fight against irregular migration and defining the ways and means of guaranteeing equity amongst all workers without discrimination of any kind.

The 1990 United Nations Convention assembles in a single text virtually all the conditions in the ILO Conventions, incorporating with them the clauses relative to the protection of the human rights of all migrants whether in a regular or irregular situation. These rights extend also to members of the migrants’ families.⁶⁷

⁶⁷ Cf. Our report on this convention for the countries of the Maghreb, ed Prof. El Madmad, with the support of UNESCO.

Morocco has not ratified Conventions 97 or 143, but it was nevertheless the first country of the Maghreb to ratify the 1990 Convention, on 21 June 1993. Algeria, which has ratified ILO Convention 97, recently ratified the 1990 United Nations Convention, by presidential decree dated 29 December 2004⁶⁸, making it applicable for the entire national territory (with the exception of certain clauses on which it has expressed some reserve (it would be worth examining these in detail). With regard to Tunisia, none of the specific conventions elaborated by ILO have been ratified.

4.4 Conventions agreed by the League of Arab States

There are also regional or bilateral agreements in the Arab world (League of Arab States) and in the Maghreb (Maghreb Arab Union) relative to migrant workers, which are more or less strictly applied.

The Arab Labour Organisation (*Organisation Arabe du Travail* - OAT) was set up in 1965 by the labour ministries of the Arab countries. In 1968, the Arab ministers of labour adopted the Arab labour charter, which contains clauses that guarantee the fundamental rights of workers and begin Arab cooperation on labour questions in order to harmonise labour law, social insurance and pay policies in the region. All three countries ratified this Charter and the OAT Constitution on 10 May 1974. OAT put forward a series of conventions on migrant workers. Periodically, there is an Arab Labour Conference in one or other of the Arab countries. The most recent, the 32nd, was held in Algeria on 12 February 2005 with the participation of 21 Arab states. A Declaration on migrants was adopted at this conference in February 2005: the Algiers Declaration on Migrants.

As early as 1965, the Arab council for economic unity (*Conseil de l'Unité économique arabe*) had put forward a resolution to facilitate the entry by any Arab citizen into the territory of any other member state. The member states then committed themselves to facilitating and encouraging employment of the citizens of other Arab countries in the Arab territories, by doing away with entry visas for countries in the Council and renewing residence permits when a work permit expired.

The Council also set up a Commission, in collaboration with the Arab labour bureau (*Bureau arabe du travail*), responsible for inter-Arab labour movements. In 1990, this Commission recommended the Arab states to ratify the Conventions on labour movements in the region and keep their commitments on the protection of migrant workers, i.e. to facilitate and encourage movement of workers, in particular by offering their families the opportunity for training and basic education, and by guaranteeing them fundamental freedoms, in accordance with the needs of economic development.

⁶⁸ J.O. n° 2, 5 January 2005.

Table 4. Ratification of Arab Labour Organisation Conventions by the countries of the Maghreb

Convention	Contents	Remarks
Convention N° 2, 1967, on labour movement	Objective: To realise the Economic and Social Union by implementing free circulation of persons between the states. The member states are committed to facilitating labour movement and to granting migrant workers the same rights and privileges as their own nationals, especially in the domain of labour protection (pay, hours of work, paid leave, social security).	No North African country has ratified this Convention.
Convention N° 4, 1975, on labour movement	Objective: To realise Arab Unity via labour movement. Each signing country should adopt medium and long term migration policies which conform to its economic and social needs. Includes also the right to family reunification and granting residence permits to members of migrant workers' families.	No North African country has ratified this Convention..
Convention N° 9, 1977, and Recommendation N° 2, 1977, on occupational training for workers	Objective: To counteract the problems of shortage of qualified labour in Arab countries. The countries are committed to facilitating the movement and employment of foreign workers. The recommendation is particularly aimed at application of the convention. In 1984, a Declaration of the Economic and Social Council of the Arab League states reaffirmed the necessity to grant to Arab immigrant workers and members of their families the same rights as nationals and to offer conditions that were favourable to the return of Arab "brains".	The main countries that import workers from the Arab world have not ratified this Convention. Neither have the countries of the Maghreb.
Convention N° 14, 1981 'concerning the right of Arab workers to social insurance when they move to find work in one of the Arab countries.'	Particularly concerns Palestinian workers. Provides rather limited protection for migrant workers and members of their families.	This Convention is currently in force. It was ratified by Morocco in March 1993.

Thus we see that there exist regional Arab instruments relative to migrant workers, but several of them have not been ratified by the three countries in this survey. Most of these instruments cannot therefore be quoted to be applied to migrant workers. Nevertheless, ratification by these three countries of the Arab Labour Organisation Constitution and the Arab Labour Charter should encourage them, at least in a relative way, to protect migrant workers according to the content of these two regional instruments.

4.5 Conventions relative to migration in the intra-Maghreb agreements

a) Maghreb Arab Union

As for sub-regional integration, this still remains weak. It is true that the preamble to the treaty instituting the Maghreb Arab Union (*Union du Maghreb arabe* - UMA), clearly sets out its ambitions:

- 'In response to the deep and firm aspirations of their peoples and their governments to establish a Union which will further strengthen the existing relations between themselves and will give them a greater chance to assemble the appropriate means to orient themselves towards greater integration

- Conscious of the effects that will result from this integration and which could give the Maghreb Arab Union the chance to acquire more weight, thus contributing more effectively to global stability, and consolidating peaceful relations within the international community and international peace and security in general
- Considering that the construction of the Maghreb Arab Union necessitates tangible realisations and the introduction of common rules to formalise effective solidarity between its constituents and increase their social and economic development⁶⁹.

Furthermore, Article 2 of the treaty stipulates that the countries of the Maghreb will work together *‘progressively to realise free circulation of persons, services, goods and capital.’*

However, with the exception of the agreement on social security signed in 1991⁷⁰, no other specific agreement or convention deals with the question of labour migration.

So in spite of some ambitious declarations, integration of the Maghreb countries remains laborious, encumbered by political questions.

b) Bilateral agreements between the Maghreb countries

Even though everything remains to be done at the level of regional integration, there do exist some bilateral agreements between neighbouring countries: there is indeed migration between the countries of the Maghreb, even if these flows are not often mentioned, no doubt because they reveal relations between states and therefore indirectly indicate the differences in development and the inequalities between the Maghreb countries themselves.

Free circulation of persons

On the basis of the lists of conventions supplied by each study, five blocks have been identified, summarising the most important bilateral agreements on the free circulation of persons between neighbouring countries. Even if Libya, for which there is no study, has not been integrated in the study, it is mentioned here inasmuch as its bilateral agreements involve Tunisia and Algeria.

Right to employment

Three bilateral agreements have been signed between Algeria and Tunisia, Morocco and Tunisia, and Libya and Tunisia. In these three bilateral agreements the right to employment of the citizens of the signing countries is guaranteed. This right is granted in an identical manner: *‘The citizens of each of the two countries have the right to work in the territory of the other country and to exercise any industrial, business or farming activity or any other recognised profession’*. But it is only in the agreement between Tunisia and Morocco that this right to employment is granted *‘in the same way as to nationals and with the same rights and obligations’*. By contrast, the agreement between Tunisia and Libya limits this right to a recognised priority for citizens of the host country. As to the agreement between Tunisia and

⁶⁹ For further details on the Maghreb Arab Union, cf. <http://www.maghrebarabe.org/fr/index3.htm>

⁷⁰ Presidential Decree (Algeria) N° 92-84, 29 February 1992 ratifying the Social Security Convention between the states of the Maghreb Arab Union, signed at Ras Lanouf (Libya), 23 and 24 *chaabane* 1411 H (corresponding to 9 & 10 March 1991, p. 374 in JORA N° 017, 04/03/1992).

Algeria, it is silent on the principle of equality of treatment with nationals. The result is that the clauses in the labour code relating to the employment of foreign labour ought to continue to apply to Algerians and Libyans but not to Moroccans.

It seems, moreover, that these agreements are not always applied in practice and that the free circulation of persons and particularly of workers is not yet effective in the member countries of the Maghreb Union.

There is a need for an update on these agreements, taking account of the new data relative to migratory flows and the political measures aimed at ensuring their effectiveness. In this respect, we note that a certain section of the population and some members of the political classes in the Maghreb are calling for wider cooperation on migration in general between the member countries of the Maghreb Arab Union. For a practical illustration of these agreements, which are still of a bilateral character, the tables below present the agreements that have most relevance to labour migration. Looking at these agreements, one can easily imagine the possibility of working out a multilateral agreement between the countries of the Maghreb⁷¹.

⁷¹ The countries in this survey have no jurisprudence on the various agreements.

Table 5. Bilateral agreements between Algeria and Tunisia

1	ALGERIA
TUNISIA	<p>Agreement dated 15 August 1966 on circulation of the citizens of both countries who are resident in the border zone</p> <p>The agreement defines the border inhabitants as the 'inhabitants of both countries living within a zone 15 km either side of the border who habitually practise their activity between one territory and the other in the neighbourhood of the border and who belong to one of the following categories: owners of real estate cut by the border line or situated in the other country, and their employees; holders of a valid pass; habitual users of the markets, i.e. producers, farmers and stock breeders at the border, with the exclusion of traders.'</p> <p>Apart from being exonerated from customs duty and all the other taxes on cattle and certain products described in Article 2 of the Agreement, persons crossing the border are subject to certain rules. They may do so on presentation of a personal identity card known as the 'border card'. This is valid for two years and is issued with the stamp of approval of both countries. It should state 'the identity of the bearer whose photograph is shown, any distinguishing features and the fingerprints.' (Articles 5 and 6). Children under 16 are mentioned on the border card of the head of household.</p> <p>The border crossing should always take place at the same customs office and via the same legal route both outward and on the return (Article 4).</p> <p>This border card may be withdrawn in case of abuse or if the border dweller gives cause for prosecution by the authorities in the destination country or the country of origin following information from the authorities in the country of origin. The card may not be used to cross the border when it is totally or partially closed and throughout the period of closure.</p> <p>Finally, an individual pass for a maximum of 3 days for a single trip may be issued by the border police of either country.</p> <p>- Regarding employment, and following the example of the agreements with the Kingdom of Morocco, the question of work is not dealt with in a direct manner but allusion is made by granting a guarantee of economic rights and freedom to exercise legal occupations. As for the exercise of the legal profession, they are reciprocal for judges and lawyers in both countries, for all nationals, guaranteed by the agreement on mutual assistance and legal cooperation. This arrangement also extends to the other free legal professions.</p> <p>Agreement on residence, 26 July 1963</p> <p>This dispenses with the residence permit for citizens of each of the signing countries. Article 1 states that 'a national of either of the two contracting parties in possession of a valid passport may freely enter the territory of the other party, circulate there, stay there, settle there or leave at any moment without being subjected to conditions other than those that apply to nationals, in accordance with the laws on public order.'</p> <p>Freedom to stay is nevertheless subject to registration at their own consulate and issue of an identity card by the host country.</p>

Table 6. Bilateral agreements between Morocco and Tunisia

2	TUNISIA
MOROCCO	<p>Agreement on the right to settle, ratified by Law n° 66-35, 3/5/1966</p> <p>This dispenses with the residence permit for the nationals of each of the signing countries. Article 1 states that 'a national of either of the two contracting parties in possession of a valid passport may freely enter the territory of the other party, circulate there, stay there, settle there or leave at any moment without being subjected to conditions other than those that apply to nationals, in accordance with the laws on public order.'</p> <p>Freedom to stay is nevertheless subject to registration at their own consulate and issue of an identity card by the host country.</p>

Table 7. Bilateral agreements between Algeria and Morocco

3	ALGERIA
MOROCCO	<p>In March 1963 Algeria signed a series of agreements and conventions with the Kingdom of Morocco, of which the main ones are:</p> <ul style="list-style-type: none"> - an agreement on settlement by citizens of either country - a diplomatic and consular agreement - an agreement on mutual assistance and legal cooperation - an agreement on technical, administrative and cultural cooperation - an agreement on economic and financial cooperation <p>All these agreements were ratified in Decree n° 63-115, 17 April 1963.</p> <p>The question of migration between Morocco and Algeria is dealt with in the agreement on settlement and has two aspects:</p> <p>1/ Article 1 of the agreement allows and guarantees free access by the citizens of either country to the territory of one or the other, with the freedom to stay and circulate including settling as a resident in the territory of either country. There are no particular conditions attached except a valid passport.</p> <p>2/ The agreement is not very clear on the question of employment. It barely makes reference to it in Article 5, where it speaks of the guarantee by the authorities of both countries of the exercise of this right, access without discrimination to all the economic rights and legal occupations. This amounts to the possibility of having employment in a paid or liberal capacity.</p> <ul style="list-style-type: none"> - With regard to the agreement on mutual assistance and legal cooperation, judges and lawyers of both countries have the right to practise in either country. Recruitment of citizens of either country to work in the civil service and similar domains is authorised by the agreement on administrative and technical cooperation, whereby it is possible for a national of one country to be recruited as an expert or similar by the other. In this case the person hired has all the same rights as a national of either country. <p>On the other hand there is no particular clause dealing with the question of border workers although there is intense circulation in the border zones.</p>

Table 8. Bilateral agreements between Algeria and Libya

4	ALGERIA
LIBYA	<p>Only two agreements have been signed. One is the Agreement on cooperation in labour and the use of human resources, 20 December 1987. The other agreement relates to double taxation of income, aiming to avoid double taxation on income by the citizens of either country, for income derived either from paid or liberal employment.</p> <p>The first agreement aims to facilitate the use of experts and technicians from both countries in the field of technical cooperation and assistance. This instrument encourages the signature of agreements and contracts between the relevant bodies in both countries in order to develop cooperation and mutual assistance between work forces, which implies the existence of a flow of labour between the two countries.</p> <p>By contrast, there is no border agreement between Algeria and Libya, just as there is no specific clause on the free circulation of persons or the right to stay, settle or work in the other country.</p>

Table 9. Bilateral agreements between Libya and Tunisia

5	TUNISIA
LIBYA	<p>Agreement dated 25 June 1965</p> <p>Article 9 allows the right of entry into the contracting countries for grazing in times of drought subject to obtaining an authorisation valid for 6 months in the grazing areas set by common agreement between the signing countries.</p> <p>It also allows for the owner of a herd to obtain an order from his own country to move his animals into the territory of the other country.</p> <p>Authorisations must be presented to the border authorities of both countries for a stamp of approval.</p> <p>Agreement dated 14 June 1961</p> <p>This does not exempt the citizens of each of the signing countries from the need for a residence permit. In fact Article 1 states '<i>The contracting governments enter into a reciprocal agreement to facilitate for the citizens of each party access, stay and circulation on the territory of the other party, for reasons which are temporary and legal, such as tourism and visits. These citizens are free to leave the territories at any time without being subject to conditions other than those that presently apply or may apply in the future to nationals or citizens of the more favoured state.</i>' It is clear that the clause on the more favoured nation only applies to the freedom to leave the country and not to stay there. Furthermore this agreement states in Article 2 that '<i>the clauses in this present agreement do not constitute a restriction on the prerogatives of the two contracting parties to forbid immigration and stop the arrangements that particularly concern admission and use of foreign labour.</i>'</p> <p>A second agreement was drawn up between Tunisia and Libya in 1974 on the right to own property, the right to work and practice professions and trades, the right to settle and the right to circulate between the two countries. This agreement does not exempt the citizens of the two countries from the need for a residence permit.</p>

4.6 Agreements with the European Union

The Arab world is certainly a region concerned by migration from the countries of the Maghreb, but Europe is even more so. The question of migration between Europe and each of the three countries is regulated by two types of agreement: bilateral agreements (engaging

only two countries either side of the Mediterranean) and more recently, associative agreements engaging all the EU countries with the signing country of the Maghreb.

a) Bilateral agreements with European countries

Each country in the Maghreb has signed bilateral agreements with European countries, generally those who harbour a large population from the emigration country. These agreements have been discussed in detail in Chapter 2, under the heading 'Emigration from the Maghreb.' There are no agreements in the other European countries with small migrant populations. The resident Algerians, Moroccans and Tunisians are subject, in the second case, to the same civil laws that apply to all foreigners without any distinction whatsoever. Nevertheless it should be noted that these countries, if they are members of the EU, must henceforward apply the clauses of the association agreement that Tunisia, Morocco and Algeria have each recently signed with the EU.

Algeria has two main partner countries with which it has signed bilateral agreements: France and Belgium. With France, a series of agreements (from the 1962 Evian agreements to the protocol annexed to the 1968 agreement, signed in 2001) set all the conditions for circulation, employment and stay by Algerians in France, and vice versa. With Belgium, there is an agreement (1968) on employment and stay, amongst others.

Tunisia, for its part, has signed bilateral agreements with France and Italy. A bilateral agreement modified several times (the last entry dates from 2004) was signed with France on 17 March 1988. Essentially it concerns family reunification in France, but also the conditions for French nationals to stay in Tunisia.

With Italy, Tunisia has signed three agreements. The first, which dates from 1996, relates to the conditions of residence and employment for citizens of both countries. Note that in this agreement the Italian government undertakes to apply to Tunisians the most favourable scheme currently in existence under Italian law concerning the citizens of countries which are not members of the European Union or which may be adopted in the future in matters of residence and employment. The second is a readmission agreement, signed in 1988, and which came into force in 1999. The agreement accepts the principle of equal treatment for Tunisians and Italians legally residing in each other's country. More importantly, it contains three provisions on irregular migration. The third of these concerns readmission of foreigners other than citizens of countries in the Maghreb Arab Union: it contains an undertaking by both countries to readmit a foreigner when it has been proven that this person has entered via the territory of one of the two countries, after having lived or transited there. Finally, the third agreement, signed in 2001, concerns the employment of seasonal workers.

Lastly, **Morocco** has also signed numerous labour agreements with those European countries interested in the employment of Moroccan citizens (France, Belgium, Netherlands), especially in the 1960s, at the time when immigration was a means of compensating for the job crisis in Morocco itself.

b) Association agreements with the countries of the European Union

Although the countries of the Maghreb are tied by bilateral agreements, from now on they are tied in a much wider way by the association agreement that each one has signed with the EU.

The association agreement between **Algeria** and the European Union was signed in 2001 and has just been ratified by the Algerian parliament and the national parliaments in the EU countries⁷². It now has to be applied. Articles 67 to 76 deal with migrant workers and their circulation. The plan adopted excludes all forms of discrimination towards workers with Algerian nationality. Thus, Article 67 of the agreement stipulates that ‘each member country grants workers of Algerian nationality employed on its territory a scheme characterised by the absence of any discrimination based on nationality by comparison with its own nationals with regard to the conditions of work, pay and dismissal.’ Paragraph 2 of the same Article extends this absence of discrimination to the conditions of work and pay for Algerian workers authorised to practice a paid professional activity. Paragraph 3 of the Article introduces reciprocity in the treatment by Algeria of citizens of the member countries occupied in its territory.

The scheme of reciprocal non discrimination applied by the countries who are party to the agreement also applies in the domain of social security for the citizens of the signing countries (Article 68 § 1). This social security is valid for various benefits: sickness, maternity, invalidity, old age pension, accident at work, occupational illness, death benefit, unemployment and family benefit. All of these benefits are available to workers and their families from the signing countries. Finally, a specific clause to the advantage of Algerian workers in Paragraph 4 of Article 68 concerns the free transfer of money to Algeria by migrant workers. None of these arrangement ‘affect the rights and obligations arising from the bilateral agreements binding Algeria and the member countries, where these offer more favourable conditions to Algerian citizens or citizens of the member countries’⁷³.

The agreement does not therefore affect Algerian bilateral relations; on the contrary, it seeks the most favourable scheme for migrant workers.

Another pertinent theme covered by the association agreement is that of commencing dialogue in the social domain. The participating countries seek ‘ways and conditions for making progress on the circulation of workers, equality of treatment and the social integration of Algerians and EU citizens who reside legally in the territory of another host country’⁷⁴.

This Article invites the following comments:

- The free circulation cited in the association agreement is still not authorised: it remains to be realised in the context of the social dialogue which could go on as long as the partners want it to go on, especially for the partners of the North, who remain intractable on this particular point of free circulation. The introduction of visas and the Schengen system are there to put brakes on the enthusiasm of persons to circulate⁷⁵.

⁷² Recent ratification in 2005 by the two houses of the Algerian parliament and also ratification by the countries of the European Union. The agreement came into force on 1st September 2005.

⁷³ Article 71 of the association agreement.

⁷⁴ Article 78 of the association agreement.

⁷⁵ It would be worth raising the question whether these agreements are held back by the fight against terrorism.

- With regard to equality of treatment, nothing is decided for the moment: there will have to be more dialogue before we can reach equality between Algerian workers and European workers. Admittedly the rule of non-discrimination applies, but this does not mean equality of treatment for mobility, job search, pay, etc.

- Finally the question of social integration of Algerian and EU citizens will also be the subject of dialogue between the parties. Article 72,3 of the agreement details the contents of the dialogue envisaged, which will essentially deal with the problems enumerated by the text itself and relating to:

« a/ living and working conditions of the workers and their dependents

b/ migration

c/ irregular immigration clandestine and conditions for returning persons in an irregular situation with regard laws on temporary stay and settlement applicable in the host country

d/ actions and programmes encouraging equality of treatment between Algerian and EU citizens, mutual awareness of culture and civilisation, the development of tolerance and the abolition of discrimination.’

In the provisions of the association agreement, the parties agree to enter into social cooperation actions in favour of migrants in the context of social development, whose realisation goes together with economic development. Thus Article 74,2 speaks of cooperation, identifying priority actions in this domain of which three are directly aimed at migrant workers. These are:

« a/ encourage betterment of living conditions, job creation and the development of training, particularly in the emigration zones

b/ reintegration of repatriated persons in view of the irregular nature of their situation under the law of the country in question

c/ productive investment or enterprise start-up in Algeria by Algerian workers legally established in the community’

Realisation of these cooperation actions is financed by the member countries, but may also be supported within the framework of coordination between the countries and the international organisations competent in the matter⁷⁶.

Morocco signed an association agreement with the European Union in 1996. This came into force in March 2000. Since the enlargement of the EU in 2004, we note that Morocco has put out a claim for an advanced or one might say special status, which would place it beyond a simple association, but short of membership of the EU⁷⁷.

In the part relating to social and cultural cooperation, the association agreement contains clauses on Moroccan workers. According to these, all member states of the EU guarantee the absence of any discrimination towards Moroccan workers with regard to pay, working conditions and dismissal. Article 64 of this agreement states that ‘each member state grants to workers of Moroccan nationality working in Europe a scheme *characterised by the absence of any discrimination based on nationality by comparison with its own nationals with regard to working, pay and dismissal.*’ The parties also agreed on the necessity to

⁷⁶ Cf. Article 75 of the association agreement.

⁷⁷ Cf. Latifa El Cadi, ‘*Le Maroc dans la nouvelle politique de voisinage de l’UE*’, in the Moroccan daily ‘*Le Matin du Sahara*’, 14 March 2005, p. 6.

reduce the pressure to migrate, notably by improving living conditions, creating jobs and developing training in the emigration zones. Morocco and the EU have also agreed on the necessity for more dialogue on irregular migration, and they consider that the social dialogue should deal with the problems relating to the conditions for returning persons in an irregular situation.

Furthermore, the agreement between Morocco and the EU envisages the installation in 2010, in a partnership context, of a free exchange zone, and the introduction of political and social dialogue with the EU. This dialogue is aimed at improving circulation and integration of Moroccan workers who are legally resident on European soil⁷⁸.

Finally, Tunisia signed an association agreement with the European Community in 1995. Chapter VI of the agreement, headed 'Social and cultural cooperation', is devoted to migration. The first principle to be set down is that workers in a regular situation should benefit from the same treatment as nationals, with Article 66 excluding citizens of the signing countries who live or work illegally in the territory of the host country.

The national treatment for permanent workers covers 'working conditions, pay and dismissal' and for temporary workers conditions of work and pay (Article 64). It also covers the domain of social security for workers as well as members of their family living with them. This is defined as follows: *'The notion social security covers the branches of social security concerning sickness and maternity benefit, invalidity, old age and survivor's pensions, accidents at work and occupational illness, death allowances, unemployment benefit and family allowances.'*

Tunisian workers benefit from the accumulation of periods of insurance, employment or residence collected in different member countries of the EU; and also old age, invalidity and survivor's pensions, family benefits, sickness and maternity benefit and health care for themselves and their family residing within the EU.

They are also eligible for family benefit for the members of their family living in the EU and to free transfer to Tunisia, at the rates applicable under the law of the debiting member country or countries, of old age and survivor's pensions, and accident at work and occupational illness benefits, and invalidity in case of accident at work or occupational illness, with the exception of special benefits of a non-contributory nature.

The same rules apply in Tunisia to workers from the EU countries engaged on its territory, and to members of their family, except of course the provision to maintain the rights accumulated by Tunisians working in various member countries of the European Community.

In Chapter 2, entitled 'Dialogue in the social domain', Articles 69 and 70 state that this dialogue is notably *'an instrument of research for ways and conditions of progress in realising the circulation of workers, equality of treatment and the social integration of Tunisian and European citizens legally resident in the territory of another host country.'* This dialogue should focus notably on living and working conditions of the migrant

⁷⁸ For further information on the association agreement between Morocco and the European Union, cf. the website of the European Commission.

communities, migration itself, irregular immigration and the conditions for returning persons in an irregular situation with regard to the laws on residence and settlement applicable in the host country; on actions and programmes favouring equality of treatment between Tunisian and EU citizens, mutual understanding of cultures and civilisations, the development of tolerance and the abolition of discrimination. Amongst the cooperation actions in the social domain with a priority nature, Article 71 quotes *'reduction of the pressure to migrate, notably by improving living conditions, creating jobs and developing training in the emigration zones'* and *'reintegration of repatriated persons in view of the irregular nature of their situation under the law of the country in question'*.

According to this agreement, citizens of the EU countries benefit from the rule on national treatment. As this agreement makes a distinction between 'permanent workers' and 'temporary workers', it follows that the rules of the labour code relative to foreign manpower only apply to this second category of workers. Permanent workers should, for their part, be governed by the same rules as those applicable to Tunisian workers benefiting from EU rights.

The association agreement further states in Article 67 that the provisions in this agreement do not detract from the rights and obligations arising from the bilateral agreements between Tunisia and the EU countries where these offer a more favourable scheme to Tunisian citizens or citizens of an EU country.

We see that the association agreement that each of the three Maghreb countries has signed with the EU is, virtually the same, at any rate as regards the question of migration. Two strong trends seem to emerge.

First of all: free circulation is far from being established. Migration and irregular immigration are in fact the *bête noire* of the European authorities. The latter are deploying considerable means to control the flows and fight against illegal entry, to the extent that they are trying to negotiate with the migrant sending and transit countries to set up detention centres to regulate the flow of immigrants and thereby filter them more easily. The 2004 meeting of the 5 + 5 in Algiers between European and Maghreb countries considered this question to respond to the complexity of migration trends in the western Mediterranean region, in particular irregular immigration to Europe, which constitutes a security issue. The Europeans are insisting on this point to convince their Maghreb counterparts of the need to combat this phenomenon together. But the countries of the Maghreb are themselves a source of immigration and do not wish to take on a police role. All three countries – at least this is clearly the case of Algeria – consider that repression alone is not enough and that it should be accompanied by cooperation and effective economic partnership⁷⁹.

This is in fact the second trend arising out of the association agreements: co-development is an important aspect. Cooperation measures are being planned, aimed directly at migrant workers and stimulation of the direct or indirect aid that they could give their country of origin and taking advantage of their possible contribution to the development of the country.

Conclusion to Chapter 4

⁷⁹ Especially in the framework of EUROMED.

Thus, Algeria, Morocco and Tunisia reveal relatively adequate legal systems to manage the rights of migrant workers. Their legislation, apart from some details that vary from country to country, is characterised by an undeniable wish to align themselves with the rules of international law (for proof, see the ratifications, by each of the three countries, of numerous international agreements); and by undeniable respect for the rights of regular migrant workers.

Nevertheless, it would be desirable to have better penetration of international standards, by more systematic ratification of the international standards, in particular the three specific conventions on migrant workers (ILO Conventions n° 97 and 143 and the 1990 United Nations Convention on the protection of the rights of all migrants and members of their families). In addition, it would be desirable to have more effective and concrete application of the law. In reality, these rights, inscribed in the law, are not always translated into fact.

Finally, circulation of the labour force clearly remains a big issue in the sub-region, in the Maghreb itself, and between the Maghreb and Europe. The association agreements linking each of the three countries with the European Union, even though they are far from establishing free circulation, no doubt represent, for the future of the sub-region, important frameworks for the management of labour migration.

5 Constraints and obstacles to ratification of international conventions

Before analysing the efforts that it would be desirable for each country to make towards better provision in their legislation for the rights of migrant workers, it seems important to note the following: all three countries have ratified the greater part of the ILO instruments, and this fact considerably influences the analysis.

5.1 Towards harmonisation of legislation

In effect, on closer examination we can see that even if these countries have not necessarily ratified the three conventions specifically dealing with the rights of migrant workers, the fact that they have ratified more than 50 ILO conventions makes up to some extent for the supposed failures in their respective laws concerning migrant workers.

The case of Tunisia is interesting. This country, by signing the 8 ILO fundamental conventions, has undertaken as an ILO member to follow and promote the 4 categories of principles and workers' rights defended by the conventions, namely:

- Freedom of association,
- Effective recognition of the right to collective bargaining,
- Elimination of all forms of forced and compulsory labour,
- Effective abolition of child labour,
- Elimination of discrimination in the workplace.

These rights are universal and applicable, in principle, to all individuals in all countries. They should therefore apply, de facto, to all migrant workers without distinction, whether their situation is regular or irregular. Further, we may note that even if Tunisia has not ratified the 1990 United Nations Convention, it has, on the other hand, ratified two ILO priority conventions: Convention n°81 concerning Labour Inspection and Convention n° 122

concerning Employment Policy. These conventions can act as resources, if they are properly and equitably exploited, in particular by the legal system, and may give foreign workers in an illegal situation the chance to benefit from the fundamental principles and labour rights. The same is true, for example, of the abolition of forced or compulsory labour. Tunisia has ratified the International Pact on Civil and Political Rights, of which Article 8 forbids slavery, slave trade and compulsory forced labour. It has also ratified Convention n° 29 concerning Forced Labour and Convention n° 105 concerning the Abolition of Forced Labour. There are very clear clauses in the Tunisian labour code penalising anyone who illegally employs a foreign worker, and measures in the criminal law of 03 February 2004 to punish any employer who reduces irregular workers to slavery or employs children who have illegally entered Tunisia. Thus, even if the United Nations Convention has not been ratified, these civil and criminal penalties ought to be able to protect migrant workers, including those in an illegal situation, who are often at the mercy of employers and exposed to numerous abuses (non payment, confiscation of passport and even physical violence).

This line of argument does not of course detract from the plea to support the ratifications. It is simply intended to show that as the three countries in the survey have ratified nearly all the international conventions on the protection of the fundamental human rights, the rights of migrant workers should, de facto, be respected. This is of course on condition that the countries turn their attention to harmonising their internal legislation with these international instruments. In practice, a close examination of the internal law of each country reveals that these provisions, at least those in Conventions 97 and 143, are not in general opposed to the internal legal texts of these countries or the treaties they have ratified. This means that ratification of these two conventions almost amounts to a mere formality. Under Tunisian internal law, for example, it would seem that very few of the provisions in the 1990 United Nations Convention pose a real problem. Amongst these, we may cite the provision in Articles 22 and 23, forbidding collective expulsion measures and offering guarantees for any expulsion measure (necessarily individual).

The work should be started of presenting a plea, even if each country in the survey is in a different situation. The observer is thus confronted with three possibilities, and in that sense the zone we are considering is like a laboratory. In effect, the situation in each country corresponds to a different 'degree' of incorporation of the international labour standards.

Consequently, the problem of what effort to make is specific to each. For Morocco, it will be a question of pleading for better integration of the provisions in the 1990 United Nations Convention into Moroccan law. For Algeria, which has only very recently ratified the Convention, it is rather integration itself of these provisions which should occupy their very special attention. Finally, for Tunisia, all the work still lies ahead: they have to put forward a plea for ratification itself.

5.2 Recommendations – legal adjustments and priority political perspectives

The situation in Algeria, Tunisia and Morocco reveals four major needs:

- a) Need for harmonisation of national laws around the principal guidelines contained in the international conventions

Better protection of migrant workers in the countries of the Maghreb supposes in the first instance harmonisation of national laws on migration and labour with the international undertakings in this domain and particularly by implementation of the fundamental conditions stipulated in the international conventions. When a convention is ratified, this harmonisation naturally follows. But ratification, although extremely desirable, is far from being a pre-condition. By ratifying the international conventions, the countries of the Maghreb catalyse modernisation and harmonisation of their national laws, while at the same time giving an example of good governance to their neighbouring countries which still hesitate to ratify⁸⁰.

Harmonisation of national laws is a first step towards a common Maghreb law on migration matters. Some important landmarks have recently been put in place: the decision taken in 1993 by the Moroccan government to ratify the Convention of 18 December 1990 on protection of the rights of all migrants and members of their families (as well as the decision to abolish visas between Morocco and Algeria from 20 July 2004) and the decision taken by Algeria in April 2005 to ratify this same convention and to abolish visas for Moroccans represent encouraging signs and significant steps towards future freedom of circulation and better protection of migrants in the region⁸¹.

Of course, ratification is one thing, and its application is another; and it is this phase which is a real challenge.

b) Need for Euro-Maghreb dialogue in the domain of migration

With the ageing of the European population, European Union will have lost 20 million workers by 2030 and there is a strong chance that there will be a shortage of labour well before that date. It is therefore predictable that it will be necessary to have recourse to legal labour migration from the Maghreb into Europe. For the time being, the framework for this call to immigration does not yet properly exist, and it is the subject of intense national debate (especially in France), but it should start to be on the agenda of the 5 + 5 meetings, and then move up to government institutions and NGOs (governments of labour importing countries,

⁸⁰ Ratification of the specific ILO conventions (C97 et C143) relating to migrant workers and the 1990 United Nations Convention is desirable and would help towards better management of migration flows, the more so as none of these conventions is an instrument of liberalisation of immigration policies. They do not propose any new rights specific to migrants but are concerned with the application of the fundamental labour rights and human rights to all migrant workers. For example, in Tunisia, where these rights are already guaranteed by the ratification of other international conventions, there is no legal obstacle to ratifying these specific conventions on migrant workers.

⁸¹ In Algeria this is the whole basis for the reform of the law and the legal system which is currently under way, to adapt to the changes introduced by globalisation and other new phenomena, notably those affecting labour migration, and in particular transit migration on which the law and the regulations are being drawn up to cover reception and residence of foreigners in a country which has much more a tradition of emigration than immigration. Furthermore, in Morocco for example, there is a noticeable need for revision of certain aspects of national law to facilitate the integration of certain foreigners living in the Maghreb countries. Integration of migrant workers should be facilitated by more flexible naturalisation procedures, especially for children born of a marriage between a foreigner and a Moroccan woman, which would require revision of the Moroccan nationality code. Certainly, the recent reform of the Moroccan family code or *Moudouyana* (3 February 2004) represents a new advantage for the Moroccan population in the countries of the West, but in spite of the introduction of major innovations, some clauses still remain problematic in relation to the international principles on absolute equality between women and men. In order to avoid application difficulties in non-Muslim foreign countries, it will no doubt be necessary to do some work on the articulation of western and Maghreb cultural principles.

ministries, NGOs, academic institutions, etc.), as well as other international bodies and foreign NGOs (specialised international organisations, various associations concerned with migration and migrant rights).

c) Need to find a solution to the brain drain

Faced with the difficulty of offering jobs and attractive careers to the masses of newly-qualified in a wide range of disciplines, the governments of the Maghreb countries simply watch feebly as they leave for other pastures⁸². This is both a financial drain and a skills drain; the damage to national resources is double, and yet it does not seem to unduly worry the authorities. Even worse, there would appear to be a quiet consensus around the simple theory according to which everyone is the winner, except of course the nation as a whole: the qualified person escapes unemployment (real or hidden), the government has reduced pressure on unemployment, the rest of the world gains skills that have not cost them anything. It is nevertheless urgent to find solutions for developing skills and putting them to the service of national development or even regional development, if we succeed in implementing suitable mechanisms to facilitate the circulation of skills between the countries of the Maghreb.

d) Need for a mechanism to control the application of laws and regulations

The purpose of setting up such a mechanism is to permit the respect of individual human rights and ensure greater efficiency in the treatment of cases that present themselves.

The conditions for legal migrant workers would not seem to pose major problems compared to those of foreign workers in an irregular situation. Certain rights granted to regular workers should be extended to irregular workers (such as protection against wrongful dismissal). A change of this kind would no doubt contribute to the emergence of a policy to dissuade the illegal employment of foreigners, and employers would be less inclined to employ a worker without rights. Furthermore, the notion of regularising certain clandestine workers ought to be considered, especially for those who have lived in the host country for a long time⁸³.

The creation of a regional government agency responsible for defining and implanting these mechanisms would cover in a wider way the missions of a migration observatory. Such an agency, placed under the aegis of a regional body, could coordinate the activities of the national observatories on migration and the labour market.

It could also supply and publish reliable, regular and continuous data on labour migration. By centralising the migration question in such an agency the government could, with the participation of its social partners, acquire the necessary elements to formulate policies on migration.

5.3 Urgency of concerted action at regional level

⁸² In this regard, cf. the powerful and relatively new attraction that a country like Canada exerts on skilled labour.

⁸³ The last census of September 2005 showed that Morocco is a country with an ageing population. Regularisation of certain clandestine immigrants could lead to a substitute form of labour in the future.

Harmonisation of the legal texts on migrant rights is an important action but which can only be realised in the long term, once the institutional framework for the Maghreb Arab Union is in place. Similarly, actions relative to the mobility of skills and/or creation of a control mechanism cannot be realised in the medium term. In the short term, urgent action is needed at regional level, on the management of transit migration and the management of irregular migration. This is truly urgent, given the human life situations involved. The phenomenon is continually worsening in the face of government weakness and the blunders committed during improvised action in unexpected situations.

In September 2005, hundreds of sub-Saharan migrants tried to enter the Spanish enclaves of Ceuta and Melilla, defying the Moroccan and Spanish forces. There were some wounded and dead (14). The Moroccan forces then proceeded to wide-ranging searches. Large numbers of migrants in an irregular situation were arrested and hundreds were conducted to the border and abandoned in the desert. The Spanish and Moroccan authorities both found themselves overstretched, in spite of the financial support of the EU to secure the borders between Africa and Europe. There has been no attempt to activate a mechanism for dialogue in the region.

There are many examples of this type of aberration in the Maghreb. Collective expulsions have been observed in Algeria, Tunisia and Libya – but these expulsions were not so widely reported in the media. Since the year 2000 there have been 2500 deaths between those who did not survive the crossing of the Sahara and those who drowned in the Mediterranean. This information, provided by the International Committee for the Development of Peoples (CISP)⁸⁴ based in Algeria, is illustrative of the drama that faces migrants coming from the African countries south of the Sahara.

Very many young people leave countries like Sierra Leone, Liberia, Mali, Niger, Togo, Benin, Cameroon or Congo to enter Europe clandestinely in ignorance of the immigration rules and risks and dangers that await them. The clandestine journey to Europe by the desert route (Sahara) and over the sea (Mediterranean) is full of hazards.

The other hidden face of this event is that of irregular migration from the Maghreb into Europe. This is on a much bigger scale than the flows coming from the sub-Saharan countries. Recent regularisation carried out by Spain made it possible to evaluate the number of North Africans in an irregular situation. Another eloquent case is the case of Italy. In spite of all this, regularisation of migrant workers transiting through Morocco is not yet on the agenda.

6 General conclusion

By the same token as the countries of the Maghreb wish to see the rights of their migrant workers in Europe respected, they are asked to grant the rights of foreign workers established on their own territory. This requirement is less urgent for migrant workers in a regular situation, as on the whole all the countries grant the rights which are due to legal migrants, even if it is somewhat difficult to obtain entirely reliable figures. It is particularly for those

⁸⁴ CISP is conducting an action on migrants in an irregular situation in Algeria with the financial support of the EU. This action consists in trying to obtain permanent and voluntary return on the part of the migrants to their country of origin.

who evolve in an irregular situation either side of the Mediterranean that the lack of rights is of some concern.

The United Nations Conventions and those of ILO remain the most suitable framework for global treatment of the question of migrant workers and respect of their legitimate rights. Redefinition of national legislation and elaboration of policies and follow-up mechanisms to manage labour migration necessitate the involvement of all the parties concerned, first and foremost the social partners⁸⁵. Adaptation of the different legislations to international standards should be based on the implementation of mechanisms to regulate and manage foreign workers settled in the Maghreb or in transit to Europe.

In practice, even though the principles behind the mechanisms for managing migrant workers currently being implemented remain marked here and there by a selective logic, with the emphasis on security, the dialogue that has been opened, in the framework of the 5+5 Informal Group, seems to take a more global approach. This new orientation, still being developed, calls for mobilisation of all the actors and the automatic involvement of the social partners in the definition of a harmonised legal framework and the adoption of mechanisms based on social dialogue in the widest sense of the term.

What are the chances of success of such an initiative without a harmonised legal and political framework and without the involvement of all the interested parties in its implementation? Two axes, centred on the countries of the Maghreb, have been examined in this report:

- Harmonisation of national legislation is one of the conditions for a greater force of dialogue on the questions of international migration and migrant workers. The current legal provision in the countries of Central Maghreb is in fact far from being perfectly aligned with the international standards on the status of migrant workers.
- Redefinition of national legislation in line with international labour standards is still necessary in order to provide a better guarantee of migrant rights.

⁸⁵ The initial agreements along these lines are recorded in the Association Agreements passed by the countries of the sub-region with the European Union and in the Maghreb Arab Union treaty.

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