

SENEGAL AND THE RIGHTS OF MIGRANT WORKERS:

Civil society shadow report on compliance by the Senegalese government with state obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Submitted to the 13th Session of the Committee on Migrant Workers for the review of the initial state report of Senegal

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Executive Summary

This civil society shadow report examines the respect by the government of Senegal of its obligations under UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). It was drafted by: Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) (Africa/Senegal); West African Refugee and International Displaced Persons Network (WARIPNET) (West Africa/Senegal); PARI/CARITAS - Senegal (Point d'Accueil pour Réfugiés et Immigrés)(Senegal); ONG Association Nationale pour l'Alphabétisation et la Formation des Adultes (ONG ANAFA)(Senegal); Réseau Africain pour le développement Intégré (RADI)(Africa / Senegal); Centre Africain pour l'Education aux Droits Humains (CAEDHU)(Senegal); and Ligue sénégalaise des droits humains (LSDH) (Senegal), with the support of Justice Without Borders for Migrants (JSF-JWB Migrants)(Africa / Europe); International Federation of Human Rights (FIDH)(international); Pan-African Network for the Defense of Migrants' Rights – European Diaspora Section (International / Europe); Comisión Española de Ayuda al Refugiado (CEAR) (Spain); Migrants Rights International (MRI)(international / Switzerland), and Open Society Initiative for West Africa (West Africa / Senegal).

This shadow report provides information on the violations of rights contained in the Migrant Workers Convention for which the Senegalese States holds responsibility. These include those that affect migrant workers in Senegal, as well as Senegalese citizens outside of Senegal, as well as those in transit during attempted migration. It is being presented to the Committee on Migrant Workers for the review by the Committee during its 13 Session (22 November to 3 December 2010) of the initial State report presented by the Senegalese government.

The report describes a number of developments that have been severely affecting migrants rights in recent years, such as the contraction of European migration policy and externalization of European borders, criminalization of migration and adoption of a repressive migration policy framework, explosion of detentions and deportations, and increased deaths and abuses during transit and attempted migration, as well as the lack of transparency and consultation in the formulation of Senegalese migration policies.

The report then discusses the principles that help identify state responsibility, including those in accordance with general human rights principles and norms established by UN treaty bodies, States have the obligation to respect, protect and fulfill human rights. Thus, a State party has the negative obligation to respect the rights contained in the Migrant Workers Convention, that is, to abstain from all acts that violate or endanger rights, including adopting laws or policies that foster violations. Further, it holds the positive obligation to protect these rights against violations by others (such as by trafficking networks, criminal elements, employers, and private parties), as well as take measures to guarantee the full implementation of these rights. Further, under the Vienna Convention on the Law of Treaties, States have the obligation to interpret the Migrant Worker Convention in light of its context and its object and purpose, as well as of other international human rights treaties. According to the context of the Convention (which is evident in its preamble and drafting history), its object and purpose is to increase protections for the human rights of migrant workers and members of their families, in accordance with existing human rights instruments. The Convention was adopted to respond to concerns regarding human rights violations and exploitation of migrants that were increasing through new global dynamics like trafficking, clandestine migration, labor exploitation, and lack of sufficient protections. The Convention clearly extends protections to regular as

well as irregular migrants; asylum seekers should also be considered irregular migrants covered by the Convention (until they receive refugee status. Thus all migration policy, including those that govern entry and stay, detention, deportation, and asylum policy, as well as well as any efforts related to trafficking and irregular migration, must assure protection of the fundamental rights of migrants.

Senegal ratified the Migrant Workers Convention in 1999 as well as most of the principal human rights treaties of the United Nations. However, it has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on abolition of the death penalty, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, nor two ILO conventions that are key for migrant workers: Convention No. 97 (Migration for Employment Convention) and Convention No. 143 on Migrant Workers (Supplementary Provisions). Further, it adopted Law 2005-06 on 10 May 2005 regarding the combat of the trafficking of persons and similar practices and the protection of victims. This law makes clandestine migration, as well as its attempt, illegal, but creates problems of interpretation and arbitrary application because it fails to define the term "clandestine". Civil society groups have criticized this law for being vague and its application excessive, which had lead to numerous arbitrary detentions and arrests. Further, Senegal has signed bilateral agreements with Europe that foment violations of human rights, including agreements on management of migration, in 2006 with France and Spain, collaborating in this way with the European externalization of borders in Africa. All these measures are considered by many civil society organizations to violate or create risks to rights, including the right of all persons to leave a country (MWC Art. 8), the right to freedom of movement (MWC Art. 39), the right to life (MWC Art. 9), the right to security of person (MWC Art. 16), as well as commitments by Senegal under the ECOWAS Protocols on Freedom of Movement.

This report presents information on numerous violations of human rights that have been reported as affecting migrant workers, including: racial and ethnic discrimination; religious and cultural intolerance; harassment, arbitrary detention and raids against migrant workers and migrant communities; inhuman conditions of detention and related violations, including beatings and racial insults, overcrowding, unsanitary conditions, lack of medical care, sexual assault, and torture and other cruel and inhuman or degrading treatment; arbitrary and collective deportations (and other violations related to deportation, including mistreatment, emotional harm, death, family separation, loss of property and social rights, and denial of right to remedy); gender based discrimination and violence; labor and other exploitation; violations of economic, social and cultural rights; the denial political rights; and denial of the right to free expression. This is not an exhaustive list.

Further, the report highlights the responsibility of the government of Senegal for these violations, both when they occur against migrants within Senegalese territory, as well as against Senegalese migrants who are outside of their home country. The Senegalese government is clearly responsibility for rights violations that occur in Senegal, due to the actions of its agents within Senegal, as well as because of laws and policies that foment violations, or fail to adequately protect or fulfill rights. The Senegalese government also often holds partial responsibility for violations that occur outside of Senegal, against Senegalese citizens who are residing abroad or who are in transit during attempted migration. This is because it is often failing to adequately protect the rights of Senegalese citizens abroad – it often does not provide adequate consular assistance as required by articles 16, 25, and 63 of the Migrant Workers Convention. Further, it is actively collaborating with European policies, that are leading to violations of rights. For instance, rather than defending its citizens against arbitrary or collective deportation, it has been signing repatriation agreements and facilitating expulsions by issuing deportation authorizations (titres d'expulsion), with very little investigation or standards, nor concern whether rights are being respected in the deportation. Further, it has done little to promote access to justice for Senegalese migrant workers who have suffered rights violations; it is even alleged in at least one instance to have discouraged a Senegalese citizen (M. Seck) from refraining from filing a complaint when he suffered inhuman treatment at the hands of Spanish immigration officials. Senegal also holds partial responsibility for the violations of right to life and security of person that is caused by attempted migration, because it has failed to adequately protest European and North African policies that cause these violations. It has

also not taken effective measures to seek to eliminate the root causes of forced migration. (This is demonstrated, for instance, by the criticisms by the UN Committee on Economic, Social and Cultural Rights that the government of Senegal has not been complying with its obligations under the International Covenant on Economic, Social and Cultural Rights).

The report issues a list of recommendations directed at diverse actors, including:

- To the government of Senegal: Respect migrants rights contained in the Convention, and adopt legislation that respects these rights (including repealing or adequately amending Law 2005-06 that criminalizes irregular migration); develop migration policies that are coherent and facilitate respect for migrant rights (including not collaborating with European policies that foster violations of rights); adopt strong positions against discrimination against migrant workers as well as taking measures to reduce risks of human rights violations, including opposing widespread detentions and deportations; to actively protect and provide assistance to migrant workers in its territory and its citizens abroad, including to facilitate and assist the pursuit of justice when violations have occurred; to ensure protections for migrant, asylum seekers and refugees within its territory;
- To African governments: to respect human rights of migrants, including respecting the African Charter for Human and Peoples' Rights, as well as ECOWAS protocols on free movement, and all international human rights instruments, and to not collaborate with European policies that facilitate rights violations;
- To European countries: To ratify and respect the Migrant Workers Convention and the fundamental rights of migrants; to stop their policy of repression and criminalization of migrants, including the use of widespread detentions and deportations and the externalization of European borders; to instead assist in addressing the root causes of forced migration through fostering genuine and sustainable development; to assure transparency in operations of Frontex and other European bodies and institutions; to pursue justice for violations that occur against migrants within European territory as well those that occur outside of Europe as a result of European agents or policy; to expand opportunities for legal migration, including to assure family unity, and economic development at the national, community and individual levels.
- To the international community: halt producing governmental policies that facilitate the violation of the rights of migrant workers and their families; achieve universal ratification of the Migrant Workers Convention; and create an international regime in which there are “sound, equitable and humane conditions” in international migration, and migration policies that respect, protect and fulfill human rights.
- To the Committee on Migrant Workers: To interpret the provisions of the Migrant Workers Convention in light of its object and purpose of increasing rights protections for migrant workers, in accordance with progressive evolution of international law and human rights principles (such as General Comment 15 of the Human Rights Committee on the position of aliens (1994); General Recommendation 30 of the Committee on Elimination of Racial Discrimination on Discrimination against Non-citizens (2004); General Comment 27 of the Human Rights Committee on Freedom of Movement (1999); General Recommendation 26 of the Committee on Elimination of Discrimination Against Women on women migrant workers (2009); General Comment 6 of the Committee on the Rights of the Child on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin (2005)); take into consideration the concerns and recommendations in this report during the review of the initial report of Senegal and issuance of concluding observations, and conduct follow-up to their implementation.

To download the full 59-page report, see www.jsf-jwb-migrants.org (original in French; translations available soon.)
For further information, contact Sadikh Niass at sniass@yahoo.fr or Naomi Onaga at justice@jsfjwb.org

ANNEX 1. LIST OF ORGANIZATIONS THAT HAVE CONTRIBUTED TO THE DRAFTING OF THIS REPORT (ABRIDGED)

Centre Africain pour l'Education aux Droits Humains (CAEDHU)(Senegal)

Address: B.P 10507- Sicap Liberté 4 - Villa n°5022 - Dakar Liberté, Senegal
Tel : (221) 33 825 38 78 / Fax: (221) 33 824 28 46
Contact: Fatou Dème Diouf : ndewdiouf@yahoo.fr

Comisión Española de Ayuda al Refugiado (CEAR) (Spain)

www.cear.es
Contact: Mauricio Valiente, mauricio.valiente@cear.es, Maria Esparcia, maria.esparcia@cear.es

International Federation of Human Rights (FIDH)(international)

www.fidh.org
Contact : Katie Booth, kbooth@fidh.org

Justice Without Borders for Migrants (JSF-JWB Migrants) (Africa/Europe)

www.jsf-jwb-migrants.org
Contact: Naomi Onaga, justice@jsfjwb.org

Ligue sénégalaise des droits humains (Senegal)

Contact: Me Assane Dioma Ndiaye

Migrants Rights International (MRI) (International / Switzerland)

www.migrantwatch.org
Contact: Pablo Ceriani, cerianip@hotmail.com

ONG Association Nationale pour l'Alphabétisation et la Formation des Adultes (ONG ANAFA)(Senegal)

www.au-senegal.com/ONG-ANAFA.html
Contact: Ndèye Daro Fall: fallndyedaro@yahoo.fr

Open Society Initiative for West Africa (OSIWA) (West Africa / Senegal)

www.osiwa.org
Contact: Bose Muibi, bmuibi@osiwa.org

Pan-African Network for the Defense of Migrants' Rights – European Diaspora Section (International/Europe)

Contact: Khady Niang, rpddm.diaspora.eu@gmail.com

PARI/CARITAS - Senegal (Point d'Accueil pour Réfugiés et Immigrés)(Senegal)

Contact : Aloise Sarr : caritaspari@arc.sn; tel : 221-775281942

Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) (Afrique / Senegal)

www.raddho.org
Contact: Sadikh Niass, director of Refugee and Migrants Department, sniass@yahoo.fr

Réseau Africain pour le développement Intégré (RADI)(Africa / Senegal)

Address: B.P. 12085 – Colobane, Dakar – Senegal
Tel: (221) 825 75 33 ou 824 33 37, Fax: (221) 825 75 36, Email: radi@sentoo.sn
Contact: Kébir Ndiaye : nkabyr@hotmail.com; tel: 221-775531860

West African Refugee and International Displaced Persons Network (WARIPNET) (West Africa / Senegal)

Contact: Sadikh NIASS, director of Refugee and Migrants Department, sniass@yahoo.fr