

LEGALITY OF THE ALGERIAN MASS EXPULSIONS UNDER THE INTERNATIONAL FRAMEWORK

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ALGERIA AS A TRANSIT POINT FOR MIGRATION FLOWS

Algeria for the vast majority of its history has been an important transit point for migrant's looking to move from Sub-Saharan Africa towards Europe. Algeria shares its borders with Mali and Niger towards the South, with Libya and Tunisia in the East, and Morocco lies at its western border. This geographical location makes it a hub for migrant activities with most of the migrant flows towards Europe using this channel to transit across Africa and on to the Mediterranean Sea. The number of migrants coming into Algeria has steadily progressed since the civil war ended in 2002 and there are some 100,000 migrants from sub-Saharan Africa living in Algeria at any given time.¹ Recently it has gained importance as a transit country for migrants looking to move towards Europe ever since stricter border control has been enforced in neighboring Libya, which was previously the migrant hub. Many migrants who do not have money to cover the cost of their travel towards Europe often stop and live for indefinite periods of time in Algeria and Morocco. While Algeria has gained due to the cheap labor and economic benefits these migratory trends provide, it has not always been smooth sailing.

Trends in foreign labour statistics show that various projects undertaken by the Government of Algeria have benefitted greatly due to the focus of foreign labour employment towards these areas. Projects such as those of water and civil engineering along with health care and education infrastructure undertaken as part of the various five-year plans have benefitted from recruitment of foreign labour. The number of work permits issued to waged migrant workers registered with the social security system in Algeria had risen from 1,107 in 2001 to 62,976 by

¹ We Can't Stay Here': Inside Algeria's Mass Expulsions of Sub-Saharan Migrants

Leila Beratto. Aug. 7, 2018 <https://www.worldpoliticsreview.com/articles/25435/we-can-t-stay-here-inside-algeria-s-mass-expulsions-of-sub-saharan-migrants> accessed 10 Oct 2018

the end of 2014.² There are currently 77,266 foreign migrants working in Algeria. Of this total, 68,794 are in wage employment (This figure was 38.35 per cent higher than at the end of 2013)³ However, the number of irregular migrants has also increased with no official data on people who continue to stay in Algeria in hopes of continuing their onward journey to Europe. These migrant inflows have no doubt had a significant impact on the socio-economic fabric of Algeria. Migrants are increasingly facing stiff opposition from native Algerians due to a wide variety of reasons. The unemployment rate in Algeria is currently 30%⁴, heightening tensions between natives and immigrants over scarce employment opportunities. Some in high-ranking government positions have also adopted this hostile attitude towards the ever-increasing presence of migrants in the country. The head of the National Consultative Commission for the Promotion and Protection of Human Rights, a state institution that reports to the presidency, Farouk Ksentini, was quoted in the Algerian daily *Assawt Al Akhar* (The Other Voice) accusing migrants of spreading diseases like AIDS amongst other problems. “These diseases are commonplace in these communities,” he said, adding that the presence of migrants and refugees in several regions of the country can lead to many problems for Algerians, and that these migrants “don’t have a future in Algeria.”⁵ Ahmed Ouyahia, the current Prime Minister of Algeria was quoted in 2017 stating, “Foreigners who are illegally in Algeria are the source of crime, drugs and many more social ills.”⁶ There was intense backlash following a decision of the government in 2017 to grant residency rights and work permits to irregular migrants in the country.⁷ An anti-migrant online campaign – ‘No to Africans in Algeria’ was launched

² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families - Consideration of reports submitted by States parties under Article 73 of the Convention – Algeria, 6 January 2016. CMW/C/DZA/2

³ *ibid*

⁴ Algeria to give legal status to African migrants, Aljazeera, 2017, [http:// www.aljazeera.com/news/2017/07/algeria-give-legal-status-african-migrants-170704094113929.html](http://www.aljazeera.com/news/2017/07/algeria-give-legal-status-african-migrants-170704094113929.html). accessed 12 Oct 2018

⁵ Algeria: Halt Summary Deportations- Sub-Saharan Migrants Rounded Up; Some Bussed into Niger <https://www.hrw.org/news/2016/12/09/algeria-halt-summary-deportations> accessed on 10 Oct 2018

⁶ Algerian official sparks outrage with derogatory remarks about migrants, Lamine Ghanmi <https://theArabweekly.com/algerian-official-sparks-outrage-derogatory-remarks-about-migrants> accessed on Oct 10 2018

⁷ *Supra* 4

which accuses African migrants of taking jobs and spreading HIV/AIDS.⁸ While some in positions of power have come out in support, Former Prime Minister Abdelmadjid Tebboune called for greater protection and integration of migrants into the community, stating, “We are not racists. We are Africans, Maghrebis and Mediterraneans.” similarly Hasina Oussedik, head of Amnesty International’s Algiers office stated “We must react and show the people who make such comments that they do not reflect the whole of Algerian society.”⁹ However, the general environment prevailing is one of rising discrimination and intolerance against migrants.

The Start of the Expulsions

Beginning in 2014, some reports state even earlier, Algerian authorities began rounding up migrants and deporting them from the country. Most of these mass deportations were justified by the government as a reaction to its crackdown against crimes of weapon smuggling and human trafficking. There were reports that Nigerien migrants by the thousands had arrived in Algeria and set up makeshift camps in multiple cities. This attracted the attention of the local authorities and upon further investigation they determined that a trafficking network had promised them jobs in Algeria and smuggled the migrants into the country. Algeria and Niger as a result concluded an Expulsion Agreement between the countries whereby Algeria would repatriate the migrants.¹⁰ Thus began the first set of mass deportations of migrants from Algeria. In recent times migrants from all over Africa have become the target of such arbitrary arrests and deportations, with various organizations criticizing Algeria for the inhumane treatment of migrants and the arbitrary manner of these expulsions. There is a common pattern in all these deportations as has been discerned through communications with various migrants at the receiving end of these expulsions. Algerian authorities regularly raid residential areas and construction sites where migrants are known to stay and work. They round up and arrest these migrants before transporting them to the border with Mali and Niger and forcing them to march through the desert terrain towards these countries. Various Human Rights Watch and

⁸ Algeria to Grant Residency Permits to Sub-Saharan Migrants, The North Africa Post, 2017, <http://northafricapost.com/18648-algeria-grant-residency-permits-sub-saharan-migrants.html>. Accessed 10 Oct 2018

⁹ *Supra* 6

¹⁰ ‘We Can’t Stay Here’: Inside Algeria’s Mass Expulsions of Sub-Saharan Migrants, Leila Beratto <https://www.worldpoliticsreview.com/articles/25435/we-can-t-stay-here-inside-algeria-s-mass-expulsions-of-sub-saharan-migrants> accessed 10 Oct 2018

Associated Press reports along with statistics provided by International Organization for Migration back these claims.

After being rounded up the migrants are often taken to a police station for processing, following which they are placed on multiple buses heading to Tamanrasset (Algerian border town). From Tamanrasset, they board trucks and are driven to the border with Niger. They are then told to march across the desert towards the border town of Assamaka, in Niger.

The migrants the AP talked to described being rounded up hundreds at a time, crammed into open trucks headed southward for six to eight hours to what is known as Point Zero, then dropped in the desert and pointed in the direction of Niger. They are told to walk, sometimes at gunpoint.¹¹

While some were transferred to Niger rapidly, others were detained in military bases in Blida and Zeralda on the outskirts of the city of Algiers or in a compound in Oran before being transferred to Tamanrasset in southern Algeria. Conditions of detention are reported to be inhuman and degrading. From Tamanrasset, Nigeriens are transferred by bus to Agadez in Niger, while the others are crammed into big trucks to be transferred to the Nigerien border where they are abandoned and left to walk hours in the desert heat to cross the border into Niger.¹²

Human Rights Watch interviewed nine men who were among a group of about 70 migrants arrested together on March 26, in an Algiers suburb. Four said they were irregular migrants working on construction sites or as daily workers; one said he was an asylum seeker; one said he was married to an Algerian woman and had four children and a residency permit. Following their arrest, the migrants were jailed for two days. The 70 were all tried together for “illegal entry into Algerian territory” and “prostitution,” convicted the same day and given six-month suspended sentences. They consistently described a trial conducted in Arabic, with no

¹¹ Walk or die: Algeria strands 13,000 migrants in the Sahara. Lori Hinnant

<https://apnews.com/9ca5592217aa4acd836b9ee091ebfc20> accessed on Oct 10 2018

¹² See Generally Press briefing note on Algeria and Libya, Spokesperson for the UN High Commissioner for Human Rights, Ravina Shamdasani, 22 May 2018 available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23114&LangID=E>

interpreters or defense lawyers, and no real opportunity to defend themselves. After the court pronounced their sentences, the police took them to Zeralda, and from there to Tamanrasset.¹³

“They bring you to the end of Algeria, to the end in the middle of the desert, and they show you that this is Niger, if you can’t bring water, some people die on the road.”¹⁴ – Tamba Dennis

"Women were lying dead, men... Other people got missing in the desert because they didn't know the way, everybody was just on their own." - Janet Kamara. "There were people who couldn't take it. They sat down and we left them. They were suffering too much," - Aliou Kande¹⁵

IOM has estimated that for every person known to have died crossing the Mediterranean, as many as two are lost in the desert - potentially upwards of 30,000 people since 2014.¹⁶

Although initially focused on migrants from Niger, the authorities have widened their net to include all irregular migrants, often not differentiating them by the country of their origin and subjecting all to the same treatment. Algeria has come under severe criticism from various countries and organizations for its blatant disregard of human rights and its obligations as a member state to various international conventions. Nouredine Bedoui a minister in the Algerian government clarified that repatriations are being carried out at the request of their country of origin however diplomats and expelled migrants offer conflicting accounts.¹⁷ The Nigerien authorities have protested, contending that a large influx of migrants from other countries such as Mali, Guinea are increasingly being deported to Niger. Mohamed Bazoum, the Nigerien interior minister who signed the agreement paving the way for the first repatriations of Nigeriens in 2014, said, “We are ready to welcome all Nigeriens whom the Algerians no longer wish to see on their territory. On the other hand, we told the Algerian authorities to stop sending us all young Africans.”¹⁸

¹³ Algeria: Inhumane Treatment of Migrants, <https://www.hrw.org/news/2018/06/28/algeria-inhumane-treatment-migrants> accessed Oct 10 2018

¹⁴ *Supra* 11

¹⁵ *Supra* 11

¹⁶ *Supra* 13

¹⁷ Algeria: Inhumane Treatment of Migrants <https://www.hrw.org/news/2018/06/28/algeria-inhumane-treatment-migrants> accessed on Oct 10 2018

¹⁸ *Supra* 10

According to IOM estimates, since 2014, 35,598 Nigerien migrants have been expelled from Algeria to Niger, and the number of expelled migrants has increased steadily each year (from 1,354 in 2014 to 12,177 in the first 9 months of 2018).¹⁹ According to estimates, since September 2017, more than 8,000 West African migrants from Cameroon, Ghana, Guinea Conakry, Nigeria, etc. have been expelled from Algeria to Niger (4,666 between January and July 2018), with a pick of expulsions in spring 2018.²⁰

Algerian authorities however continue to be defiant in their approach. They maintain that the criticisms are part of a smear campaign that certain parties were leading against Algeria.²¹ They state that the expulsions are being undertaken keeping the security and integrity of the country in mind.

As of October 11 2018, Algeria has denied that it forcibly expels West African migrants to its border with Niger. A statement by the foreign ministry of the country stated that Algeria would continue expelling migrants living there illegally, adhering to international conventions and “with respect to (migrants’) dignity.”²²

VIOLATIONS OF INTERNATIONAL OBLIGATIONS

Migration of people is a process that is as old as time. People have migrated to other regions for reasons ranging from trade and economic opportunities to fleeing war and political instability in their native lands. The reasons for migration have remained the same, however due to technological developments there has been an exponential increase in the number of migrants. From a few thousand to the present day millions who now reside as migrants, migration has become a global phenomenon. The International Organization for Migration estimates that the number of migrants in the first decade of the 21st century grew from 150 million to 214 million worldwide and suggests that this growth is likely to continue into the

¹⁹ End of mission statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Niger (1-8 October 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=E>

²⁰ *ibid*

²¹ Algeria’s foreign minister, Abdelkader Messahel to Radio France Internationale. *Supra* 10

²² Algeria denies forced expulsions of migrants to desert.

<https://apnews.com/edf0392e987b483ea65064ecbfa6ae85> accessed Oct 11 2018

future.²³ Migration is an issue that no state can deal with alone, thus there has been a rise in the number of conventions and agreements between states with regard to the rights of migrants and the manner in which states shall deal with them.

The implementation of these conventions and treaties however has been questionable. There is a clear lack of the implementation of a human rights based approach towards migrants, which has led to various routine violations of migrants and their human rights. This affects irregular migrants even more, the recognition and protection of whom remains entirely out of the purview of the law. Discriminatory laws and attitudes have often led to denial of various civil and political rights of migrants, and they suffer exploitation and marginalization as a result.

The International community has developed various legal instruments to protect the rights of migrants and the respect for human worth and dignity is a non-derogable principle of international law, attaining the stature of *jus cogens*.

- The preamble of the UN Charter provides for the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person. Further the UN is to work towards promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion under Article 55(c)²⁴
- The Universal Declaration of Human Rights states that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.²⁵
- The UN General Assembly in 1985 adopted the Declaration on the human rights of individuals who are not nationals of the country in which they live. Reaffirming that states should encourage universal respect for human rights. Stating that no person be

²³ International Organisation for Migration (IOM), 2010. *World Migration Report 2010: The Future of Migration: Building Capacities for Change*.

²⁴ UN Charter, available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

²⁵ UDHR 1948, available at <http://www.un.org/en/universal-declaration-human-rights/>

subject to arbitrary arrest or torture and inhuman treatment as well as be guaranteed of the right to life and security²⁶

Algeria through its practices of mass deportations is in violation of its various obligations under international as well as domestic laws. There has been a blatant disregard of the rule of law and due procedure by the Algerian authorities.

- The law relating to Conditions of Entry, Stay and Movement of Foreigners in Algeria promulgated on June 25, 2008, gives authorities the power to expel foreigners who illegally entered Algerian territory or whose visas have expired. However it requires them to notify the person and provide for a period between 48 hours and 15 days to leave the territory. The person can even challenge this decision, the expulsion being suspended pending the decision of the court.²⁷ This law unfortunately has seen minimal to no application in the present circumstances prevailing in Algeria.
- Article 34 and 35 of the Algerian Constitution state that breach of human dignity is forbidden, as are infringements committed against the physical or moral integrity of a human being.²⁸
- Following its ratification in 1989, practical steps were introduced by Algeria to implement the Convention against Torture. This resulted in the incorporation of various new provisions into the Criminal Code by Act No. 04-15 of 10 November 2004. Chief amongst them were provisions 263 *bis*, 263 *ter* and 263 *quater*, which prescribed very severe penalties for perpetrators of acts of torture. If the perpetrators were public officials the penalties were 10 to 20 years' fixed-term rigorous imprisonment and a fine.²⁹ These have been overlooked and not implemented leading to gross violations and acts of torture by the Algerian officials.

²⁶ Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live 1985, available at <http://www.un.org/documents/ga/res/40/a40r144.htm>

²⁷ Law n° 08-11 of 25 June 2008 on the conditions of entry, stay and movement of foreigners in Algeria, Official Journal of the Republic of Algeria N° 32 of 2 July 2008

²⁸ Article 34, 35 Constitution of Algeria, available at http://confinder.richmond.edu/admin/docs/local_algeria.pdf

²⁹ This was also highlighted in the List of issues prior to the submission of the fourth periodic report of Algeria. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/DZA/4)

- Under article 132 of the Constitution, treaties ratified by Algeria take precedence over domestic laws and are superior to it.³⁰ Thus further strengthening the position that Algeria has completely neglected its obligations and has in the process violated the fundamental principle of rule of law upon which it is based.

Algeria has ratified The International Convention on the Protection of the Rights of Migrant Workers (ICRMW). The ICRMW recognizes that human problems involved in migration are even more serious in the case of irregular migration and assures the protection of their fundamental human rights.³¹ Migrant workers are considered as non-documented or in an irregular situation if they are not authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.³² The convention includes irregular migrants within the meaning of migrant worker and thus extends them the rights available under the convention. Algeria is breaching its obligations under the convention due to the manner in which the migrant deportations are taking place. The treatment meted out to people being expelled, the manner of their stay, transport is in direct violation of Article 10, which prohibits torture or inhuman treatment. Furthermore due to the arbitrary nature of arrests many of the migrants reported losing their belongings, not being allowed to collect wages owed them to and confiscation of meager savings during arrest. This violates Article 15 of the convention, which provides that no migrant worker be arbitrarily deprived of their property. There are large-scale violations of rights provided under Article 16 of the convention. Victims have stated that they have not been allowed to contact the diplomatic or consular authorities of their state of origin while being processed for deportations. No protection has been provided to them against threats and intimidation by public officials and they have been subject to arbitrary arrest and detention, as various accounts provided by the victims state. They have also not been provided the opportunity to appeal or challenge the decision of deportation through judicial means. Article 22 specifically deals with collective expulsions. They state that each case of expulsion be examined and decided individually. Various accounts have shown that in Algeria cases have

³⁰ Article 132, Constitution of Algeria. *Supra* 26

³¹ Preamble, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 available at <https://www.ohchr.org/en/professionalinterest/pages/cmwp.aspx>

³² Article 5, *Ibid*

been bundled together and mass judgments have been declared without any identification of individual cases. Further the article states that persons shall have a reasonable opportunity to settle claims for wages or entitlements due to them before expulsion, this however has also been ignored.

There has been total disregard by Algeria of its obligations under the convention and for the rule of law. There has been no individual assessment of cases let alone a forum for appeal, while migrants are routinely subjected to inhumane and degrading treatment in detention.

Additionally Algeria is a member to the Refugee Convention, 1951 and the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, 1987, however its actions in recent times belie its duty and obligations it agreed to undertake as a member to these conventions. Under these conventions Algeria is barred from removing any refugee or asylum seeker to a place where such person may face the threat of persecution or degrading treatment. Algeria, as is evident by the various claims made by the victims of its arbitrary expulsions, has failed to acknowledge the existence of such fears. In fact the manner in which Algeria has carried out these expulsions, has resulted in inhuman and degrading treatment of these victims. They have been bundled together in buses and forced out of the country. Left to fend for themselves, without any food or water and made to cover the treacherous terrain of the Sahara under sweltering heat with no assistance or aid of any kind. "Algeria is rounding up and deporting migrants in a degrading way and depriving them of the right to have their cases reviewed on an individual basis."³³ Although the Algerian law provides for various procedural safeguards to protect the due process of law in such conditions, however there seems to be no adherence to the law.

The international community has been forthcoming in its condemnation of Algeria's policies, however failing an effective enforcement mechanism much is still left to be done to restore the rights of these victims.

A UN Human Rights Team has also visited Algeria, interacting with various expelled migrants and confirming the inhumane and degrading manner of the expulsion. The UN High

³³ Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. Algeria: New Wave of Deportations, Allegations of Beatings in Round-Ups of Sub-Saharan Migrants, <https://www.hrw.org/news/2018/02/27/algeria-new-wave-deportations>

Commissioner for Human Rights has also called on Algeria to cease the collective expulsions, albeit to no avail.

Extracts from the press briefing note on Algeria by the Spokesperson for the UN High Commissioner for Human Rights follow –

Raids are reportedly carried out on construction sites in Algiers, as well as in neighbourhoods known to be populated by the migrants. Some also reported having been stopped in the street and detained.

What is particularly worrying is that most of the people we spoke to said that they were not subjected to individualised assessments, and were not informed of the reasons for their detention, nor were they allowed to pick up their belongings, passports or money before they were expelled.³⁴

The collective expulsion of migrants, without individual assessment or any due process guarantees, is deeply alarming and not in line with Algeria's obligations under international human rights law, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Algeria has ratified. According to international human rights law, migrants shall not be subjected to arbitrary arrest or detention. In case of arrest, detention and expulsion, due process guarantees including the right to legal advice and assistance, the right to consular protection, the right to information and the right to a remedy, shall be respected. They shall not be arbitrarily deprived of property or documents. Returns should be only carried out in accordance with international law, in safe conditions and with dignity.³⁵

Appointed by the UN Human Rights Council in June 2017, The UN Special Rapporteur on migration Felipe González Morales, also appealed to the international community to help, insisting that migration policies must have human rights as the central component.

During my visit I heard numerous testimonies of migrant women, children and men who have been victims of these illegal expulsions from Algeria to Niger. According to their accounts,

³⁴ See Generally Press briefing note on Algeria and Libya, Spokesperson for the UN High Commissioner for Human Rights, Ravina Shamdasani, 22 May 2018 available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23114&LangID=E>

³⁵ *ibid*

which reflect the same modus operandi, migrants from West African countries such as Cameroon, Ghana, Guinea Conakry, Mali and Nigeria, many of whom have been living and working in Algeria for years, with children born and schooled in the country, are raided in their homes by the police in the middle of the night, beaten up, arrested and brought to police stations, detained, identified, loaded in buses and transported until Tamanrasset, the last Algerian city before the border with Niger.³⁶

Let me be clear: these collective expulsions from Algeria to Niger are in utter violation of international law, including the fundamental principle of non-refoulement and due process guarantees, and must stop immediately. Therefore, I call on the Government of Algeria to abide by its international obligation and halt with immediate effect all collective expulsions of migrants to Niger.³⁷

He further stressed in his recommendations that the international community must step up its support and address the root causes of migration along with working towards providing safe pathways for migration. They should adopt policies that lead to protection of human rights and not their violations.

Algeria has not even paid heed to the many recommendations made by Committee against Torture. The committee had previously raised concerns regarding the allegations of collective expulsions of migrants being carried out in a manner that violates various rights. They pointed out that chief amongst them were the right to an individual review and appeal, that was being denied. It also expressed concern that some persons might have been expelled to states where they were at risk of being subject to torture, resulting in a violation of Article 3 and the principle of non-refoulement.³⁸

³⁶ End of mission statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Niger (1-8 October 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=E>

³⁷ *ibid*

³⁸ see generally CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION, Concluding observations of the Committee against Torture, CAT/C/DZA/CO/3 26 May 2008

The African Charter on Human and Peoples' Rights also contains important provisions with regard to upholding the international standard of human rights and maintaining the dignity of the individual. Algeria is also a member to the charter, and thus has various obligations to uphold under the charter. Article 3 and 4 reaffirm that every person is entitled to the equal protection of the law and that they cannot be arbitrarily denied of their right to integrity of person and respect of life. Article 7, of which Algerian authorities are in grave violation, provides that the individual has the right to be defence against an act violating his rights in front of an impartial court or tribunal. Victim accounts have shown that they are often not presented with an opportunity to be heard, and when such an opportunity does present itself, the impartiality of the court is often debatable. Mass expulsion aimed at national, racial, ethnic or religious groups is also prohibited under Article 12, an obligation that Algeria has conveniently ignored and repeatedly violated.

Despite there being evidence of multiple violations of various International obligations by Algeria it has continued to deny any wrongdoing. These assertions by Algeria coupled with the fact that the international community, specially the European Union, has been condoning these actions, instead of taking any concrete measures to rectify the situation raises serious concerns as to whether the human rights of these victims will be upheld.

Lazhar Soualem, Director of Human Rights of the Ministry for Foreign Affairs of Algeria, presented Algeria's second periodic report before the Committee on Migrant Workers. He maintained before the Committee that an individual could appeal against the decision of his expulsion to the competent authority. Further he stated that Algeria had made an effort to repatriate migrants in an orderly and humane manner, even providing them with financial and humanitarian kits.³⁹ Claims, which have been denied by various migrants that have been interviewed by the International Organization for Migration. He stated that Algeria however could not be held responsible for events transpiring beyond its borders. With regard to the expulsions, he stated that the Government had 600 air-conditioned buses to repatriate migrants in dignity and that they were not abandoned in the desert.⁴⁰

³⁹ see generally Committee on Migrant Workers examines Algeria's report, 11 April 2018 available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22943&LangID=E>

⁴⁰ *ibid*

RESPONSE OF THE EUROPEAN UNION AND THE ISSUE OF ALGERIAN SOVEREIGNTY

Migration trends and patterns show that most migrants are leaving the country of their origin for better economic opportunities; the opportunity to lead a better life than they were in their native countries. The main migratory patterns from Sub-Saharan Africa show routes towards Europe. In recent years Europe has had to face the brunt of the African migrant crisis, there has been an exponential growth in migrants reaching European shores. Therefore the role of Europe and specifically the European Union gains even more importance in managing the current crisis and ensuring that human right violations do not take place. However the reaction from the organization and European countries has been underwhelming. They have often become silent witnesses to the various atrocities committed against migrants and in some cases tried to circumvent their moral obligations.

Ever since the Union and Frontex (European border agency) have been successful in limiting the flow of migrants from the Libyan routes, Algeria and Morocco have experienced a significant increase in migrants using their borders to reach European shores. The controls over Libyan and Turkish migration routes have helped reduce the number of migrants arriving in Italy by one-third and by more than 70 percent in Greece last year, according to European border agency Frontex. According to the International Organization for Migration, more than 28,300 migrants entered Europe via Spain in 2017.⁴¹

So far Europe has been trying to contain the flow of immigrants by cooperating and funding various African Border States and providing training to their security forces, however this measure has widely been criticized as a method of avoiding legal responsibility and letting other countries do the dirty work. There have been well-founded criticisms that in this manner Europe has directly contributed to the hardships faced and derogatory treatment experienced by migrants, all the while turning a blind eye to these abuses. Policy analysts often argue that these measures do not stop migration but only result in changing routes, making it even more dangerous for migrants.

⁴¹ Migrants shift to old, risky route to Spain and Europe, Aaritz Parra available at <https://apnews.com/ce98a283bdf4469aa4d98c773fbbac3> accessed on 12 Oct 2018

This is where the case of Algeria gains even more significance. Its border with Morocco and the coast along the Mediterranean Sea have now become the preferred route of migration into Europe. Thus the policies these countries adopt gain even more significance in the global migration regime. So far the arrangements made by these countries have been far from satisfactory. Although Algeria has refused to take any financial aid from the European Union intended to mitigate the migration crisis, it has however received aid of about 111.3 Million from the European Union between 2014 and 2017.⁴² Algeria's mass expulsions have picked up since October 2017, as the European Union has renewed pressure on North African countries to head off migrants going north to Europe via the Mediterranean Sea or the barrier fences with Spain.⁴³

Several sources stated that Nigerien policy on migration is heavily influenced and pushed primarily by the demands of the European Union and its Member States to control migration in exchange for financial support.⁴⁴

With regard to the growing Algerian crisis the European Union has once again adopted a policy of non-intervention, turning a blind eye to grave violations of human rights. A spokesperson said the EU was aware of what Algeria was doing, but that "sovereign countries" can expel migrants and refugees as long as they comply with international law.⁴⁵

Various instruments adopted by the European Union, especially the European Convention on Human Rights, uphold the same rights and values that are being violated due to the migrant crisis. The European Union thus has an added responsibility and obligation to ensure that no such violations take place. The European Court of Human Rights has been at the forefront of developing the jurisprudence related Human Rights and its protection. The aim of the European Convention for the protection of Human Rights and Fundamental Freedoms is to secure the universal and effective recognition of these rights.⁴⁶ The convention protects the individual

⁴² <https://www.aljazeera.com/news/2018/06/walk-die-algeria-abandons-13000-refugees-sahara-180625064043040.html> accessed on 12 Oct 2018

⁴³ *Supra* 11

⁴⁴ End of mission statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Niger (1-8 October 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=E>

⁴⁵ *supra* 42

⁴⁶ See generally, European Convention for the protection of Human Rights and Fundamental Freedoms, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf

against torture or inhuman treatment while also upholding their right to life protected by the law. The right to a fair trial along with the right to liberty and security, which have been violated repeatedly by the African migrant countries like Algeria, are also enshrined in the convention. Protocol No. 4 to the convention prohibits the collective expulsion of aliens, yet there seems to be tacit acceptance of Algerian mass expulsions by the European Community. Motivated primarily by the fact that while these measures do involve the violations of human rights, they result in lesser numbers of migrants towards Europe.

The European court of Human Rights has elaborated in various judgments the actions that could be considered as violative of Article 4 of Protocol No. 4. The Court has established that collective expulsions take place primarily when aliens in a similar situation are expelled collectively without due examination of their individual circumstances.⁴⁷ In the case *Hirsi Jamaa*, certain migrants travelling from Libya had been intercepted at sea by Italian authorities. The authorities decided to send them back to Libya. The migrants presented their case before the Court and argued that they had been subject to collective expulsion and were provided with no remedy to that effect. The court ruled that Article 1 of the Convention became operative as the migrants fell within Italian jurisdiction after the ships were intercepted and before being returned to Libya. It ruled that where a State had, exceptionally exercised its jurisdiction outside its national territory, it could accept that there had been an exercise of extraterritorial jurisdiction. Noting that the expulsion had been carried out without any individual assessment it therefore concluded that the removal of the applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4.

It also found a violation of Article 13 (right to an effective remedy), because the applicants had been unable to lodge their complaints with a competent authority and to obtain a thorough and rigorous assessment of their requests.⁴⁸ Another important decision of the court was in the case of *Georgia v. Russia*. It involved mass expulsions of Georgian nationals from Russia. The court held that there had been a violation of Article 4 of Protocol No. 4. The Court pointed out that Article 4 of Protocol No. 4 was applicable, irrespective of whether the Georgian nationals had

⁴⁷ *Čonka v. Belgium* (no. 51564/99), Chamber judgment 05.02.02, available at

<http://hudoc.echr.coe.int/eng?i=003-491603-492872>

⁴⁸ *Hirsi Jamaa and Others v. Italy* [GC] (application no. 27765/09)

been lawfully resident or not, given that that Article did not only refer to those lawfully residing within the territory of a State. It also pointed out that even though a specific decision was made in respect of each expelled person, the high number of expulsions arose the suspicion that a reasonable and objective examination in each case was not carried out. It further underlined that although states had the right to establish their own migration policies, they could not be conflicting with their obligations under the convention.⁴⁹

The court has considered individual assessment of cases as one of the cornerstones of this right. When it has been fulfilled, the Court has often found no violation of the article. In *Andric v. Sweden* the applications before the court were rejected and declared inadmissible. It held that receiving similar orders does not lead to the conclusion that individual assessment had not taken place. In this case each applicant had the opportunity to present their case before the authority and raise arguments against their expulsion. The rejections were individual decisions and therefore could not be held as violative of Article 4 of Protocol No. 4.⁵⁰ In another recent and important case, the Court made it clear that a balance must be achieved between the protection of fundamental rights and border control. In *Khlaifia v. Italy* the Grand Chamber of the Court overruled the original decision. Tunisian nationals had been intercepted and detained by Italian authorities before being expelled. The Grand Chamber has ruled that this could not be considered a collective expulsion. The court stated that Article 4 of Protocol No. 4 did not provide for an individual interview in all circumstances. The requirements were satisfied if each individual had the possibility of raising arguments against their expulsion and where the authorities had examined those arguments. It stressed that in the present case such possibilities had arisen and therefore it could not be termed as a collective expulsion. It stressed that since the applicants did not allege any real risk of a violation of Article 2 (right to life) or Article 3 (prohibition of torture, inhuman treatment) in the country of destination, there was no violation of Article 13 (right to remedy) even if there was the lack of a suspensive effect remedy against the decision of removal.⁵¹

⁴⁹ *Georgia v. Russia* (I) [GC](application no. 13255/07), *Shioshvili and Others v. Russia* (application no. 19356/07)

⁵⁰ *Andric v. Sweden* 45917/99

⁵¹ *Khlaifia v. Italy* [GC](Application no. 16483/12)

While European countries abide by the decisions of the court and uphold the principles enshrined in the convention, they do so only on European territory. These same nations have shown scant regard for these principles with regard to the migrant crisis brewing in Africa and how those nations are dealing with the movement of migrants, especially irregular migrants. There is no doubt that EU has increased its efforts, but there is still much to be desired. The EU Commission issued a Communication on establishing a new Partnership Framework, The EU Partnership Framework. Under the framework there is a call for united action to address the issues of smuggling and trafficking, the manage migration in a sustainable way. The obligation to honour the principle of non refoulement, and to make migration safer along with combating its root causes. European states through various agreements with African states have in a manner shifted migration control on to these states, through the development of asylum offices in African countries. These states, where asylum centers have been set up, have a dubious human rights record to say the least. Thus European states have in a manner shifted legal responsibility onto African countries and have outsourced migration management. This has created an even harsher environment for migrants, while European countries circumvent legal responsibility through a lack of jurisdiction. These African countries often violate rules and procedure, as is evident from the numerous accounts presented by victims. Migrants detained in such a manner are often at the mercy of those who detain them. European states are guilty of having supported actions by African countries, which were incompatible with European obligations under various documents. Europe should not lower its standard of protection, but instead increase the collective sharing of this burden. Respect its obligations and maintain solidarity.

“As part of efforts to secure borders, European States have moved their border management activities beyond their territorial borders, extending them to the high seas and third countries. In my missions I have seen much European cooperation with transit countries aimed at implementing Integrated Border Management systems and building detention centers, but no cooperation aimed at supporting their national human rights institutions in order to protect the human rights of migrants and refugees on their territory. Externalising border controls has no impact on the push-and-pull factors determining migration movements: it responds neither to mobility needs nor to labour market needs. Therefore, it can only divert migration routes and make them more costly and more dangerous, as it pushes migrants deeper underground. Too often, externalisation is a thinly disguised attempt to ensure that the human rights

violations which are deemed necessary for effective deterrence and prevention of migration movements happen on another country's territory, thus avoiding the scrutiny of European human rights guardians.”⁵²

Algerian Sovereignty

The Algerian authorities have time and again taken recourse to the defense that being a sovereign country it has the power to remove people who reside in the country illegally. It is critical, they maintain, that they exercise sovereign control over their territory. From this control, stems the right to control migration. There is no doubt that a state has the authority to determine who may legitimately enter its territory and the duration of such a stay.

“It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to its self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.”⁵³

Algeria has increasingly referred to the fact that increased irregular migration has led to national security concerns, specially upsetting peace and public order. The migrants, according to the popular narrative, have become a source of criminal activities and danger. It is with an aim to protect the national security of Algeria, coupled with its sovereign powers that it is increasingly turning towards expulsion of migrants. The consequence of these practices has resulted in grave violations of human rights. Algeria is concerned that foreign intervention in these matters has resulted in a intrusion upon its sovereignty. It has stated that it would continue to expel migrants.

“When we want to talk about migration,” a European diplomat says, “the Algerians have a quick response: Sovereignty.”⁵⁴

⁵² François Crépeau, UN Special Rapporteur on the human rights of migrants, “Dialogue between judges, European Court of Human Rights, Council of Europe, 2016” available at https://www.echr.coe.int/Documents/Dialogue_2017_ENG.pdf

⁵³ U.S. Supreme Court, *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892)

⁵⁴ *We Can't Stay Here': Inside Algeria's Mass Expulsions of Sub-Saharan Migrants*

Leila Beratto, <https://www.worldpoliticsreview.com/articles/25435/we-can-t-stay-here-inside-algeria-s-mass-expulsions-of-sub-saharan-migrants> accessed on Oct 12 2018

The problem with Algeria's defense of invoking the principle of sovereignty is that it has only limited application in this matter. Algeria has ratified various international instruments that deal with migration and migrant rights, as a result there are certain international obligations it must adhere to. The existing international law on migration does not dictate upon states how to control migration flows, nor does it impose on how to formulate migration rules and regulations. It only prescribes that states should not infringe on fundamental human rights enshrined in the international law provided by various instruments.⁵⁵ There are certain rights guaranteed to all migrants irrespective of their legal status. Chief amongst them are

- The right to a fair and impartial hearing, so that they may present their case
- The right to a remedy against an order of expulsion
- Prohibition of torture or inhuman treatment
- The principle of non-refoulement
- To follow due procedure

Algeria has failed to uphold these rights with regard to the manner in which the expulsions have been conducted. Its constitution states that treaties ratified by Algeria take precedence over national laws, Algeria thus has been in violation of its own domestic laws as well. Algeria's law on migration and its actions need to be viewed keeping in mind international standards. It is Algeria's domestic and international responsibility and obligation to uphold human rights through its laws and their enforcement.

It must be taken into consideration that the effectiveness of international law rests on the premise that states surrender some of their authority to the international system. When a nation commits itself to a Convention, it does so as a sovereign act. It chooses, voluntarily, to respect its provisions.⁵⁶ So far Algeria has not respected its obligations. The Algerian government must stop the arbitrary manner in which it is conducting these expulsions, Human Rights must be upheld. The authorities responsible for overseeing migration should be sensitized on human right issues and legal provisions. The competent administrative authorities should ensure that

⁵⁵ Goodwin-Gill, G.S. 1989. International law and human rights: Trends concerning international migrants and refugees. *International Migration Review*, 23(3): 526-546.

⁵⁶ Challenges to sovereignty: migration laws for the 21st century, Catherine Dauvergne, Faculty of Law University of British Columbia <http://www.unhcr.org/3f2f69e74.pdf>

no human rights violations take place, they must ensure that the due procedure is followed and the law is adhered to.

RECOMMENDATIONS AND CONCLUSION

Migration is an issue that needs global cooperation. State policies are an important factor in managing migration flows. The implementation of human rights depends on the willingness of states. In recent times there have been various efforts taken by the international community to strengthen the law on migration, focusing on a human rights based approach.

The UN General Assembly in September 2016 adopted the New York Declaration for Refugees and Migrants. It is an effort to find a long term and sustainable solution to the issue, recognizing that the global community has a shared responsibility to manage the movement of migrants in a sensitive and compassionate manner. The states recognize that while they have rights and responsibilities to manage borders they must do so in conformity with applicable obligations under international law, including international human rights law and international refugee law. Additionally they made a commitment towards protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status. Through Annex II to the declaration they recognized the positive contribution of migrants to sustainable and inclusive development. They laid the foundation for launching a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration.⁵⁷

The final text of the Global Compact for Safe, Orderly and Regular Migration is to be adopted in Morocco on 10-11 December 2018. It contains a series of recommendations and objectives for states to sign in order to better manage migration at local, national, and global levels. The Global Compact for Migration is the first-ever UN global agreement on a common approach to international migration in all its dimensions. The global compact is non-legally binding. It is grounded in values of state sovereignty, responsibility-sharing, non-discrimination, and human rights, and recognizes that a cooperative approach is needed to optimize the overall benefits of migration, while addressing its risks and challenges for individuals and communities

⁵⁷ see generally New York Declaration for Refugees and Migrants, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

in countries of origin, transit and destination.⁵⁸ The compact is guided by the following principles⁵⁹

- People Centered – it promotes the well being of migrants and places individuals at its core
- International Cooperation – it is a non legally binding cooperative framework that recognizes no state can address migration on its own due to its transnational nature. It requires international, regional and bilateral cooperation
- National Sovereignty – it reaffirms the sovereign right of states to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law.
- Rule of law and due process – it recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance
- Sustainable development – it is rooted in the 2030 Agenda for Sustainable Development, and builds upon its recognition that migration is a multidimensional reality of major relevance for the sustainable development of countries
- Human Rights – it is based on international human rights law and upholds the principles of non-regression and non-discrimination. Focusing on the respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.
- Gender Responsive – ensuring that human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change
- Child Sensitive – it promotes existing international legal obligations in relation to the rights of the child, and upholds the principle of the best interests of the child at all times, as a primary consideration
- Whole-of-government approach - migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement

⁵⁸ Resolution adopted by the General Assembly on 19 September 2016 ,71/1. New York Declaration for Refugees and Migrants *ibid*

⁵⁹ GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION, INTERGOVERNMENTALLY NEGOTIATED AND AGREED OUTCOME,13 July 2018, available at https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government.

- Whole-of-society approach – promoting broad multi-stakeholder partnerships to address migration in all its dimensions. Involving active participation migrants, local communities, the private sector, parliamentarians, National Human Rights Institutions, the media and other relevant stakeholders.

Its chief objectives are to

- Strengthen international cooperation and global partnerships for safe, orderly and regular migration
- Enhance availability and flexibility of pathways for regular migration
- Minimize the adverse drivers and structural factors that compel people to leave their country of origin
- Address and reduce vulnerabilities in migration
- Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration

As a follow up mechanism the states have decided to setup the International Migration Review Forum. It is to serve as the primary intergovernmental global platform for Member States to discuss and share progress on the implementation of all aspects of the Global Compact. The review shall take place every four years beginning in 2022, with an aim at discussing the implementation of the Global Compact at the local, national, regional and global levels.

Although there seem to be various positive developments with regard to protection of migrant rights, a lot is left to be achieved so that events like the Algerian expulsion crisis do not take place.

During the inter-governmental discussion regarding the Global Compact on Migration, various objections were raised. The principle concern was that the Compact fails to distinguish between regular and irregular migration thus indirectly legitimizing disorderly and irregular migration. The United States of America has quit negotiations on the pact. Maintaining that the global approach to the issue was simply not compatible with U.S. sovereignty. “We will decide how

best to control our borders and who will be allowed to enter our country.”⁶⁰ The European Union insisted, throughout the development on the Compact, that it should not be a legally binding instrument.⁶¹ As a result, another opportunity to create an enforcement mechanism for the effective implementation of migrant rights was missed.

Further reforms that could be undertaken by Algeria to reform the current situation are

- Completely stop mass expulsions whereby migrants are released at the border without any aid or protection.
- Ensure that there are independent and impartial investigations with regard to abuses and violations that have taken place till date. Ensure that the guilty are punished and sensitizations are held so that further violations do not take place.
- Adopting a comprehensive national policy with regard to migration. Clearly identify the aims and objectives of the country and the actions it aims to take in order to implement its international obligations.
- Strengthen national institutions to better manage the crisis, focusing on a human rights based approach.
- Ensure that the due processes with regard to detention and expulsion proceedings are adhered to. Migrants should have the option to appeal expulsion decisions. There should an opportunity to a free and fair hearing.

The international community should work towards creating a global enforcement mechanism. This will help in effective implementation of human rights obligations by state and uphold the rights of migrants, while also creating a platform where issues can be taken up and discussed. There should be a system of penalties and incentives so that states maintain conformity with the law.

Migrants often find themselves as victims of neglect. They live in precarious situations, and face numerous human rights violations. International law aims to provide for their safety by

⁶⁰ Nikki Haley U.S. Ambassador to the United Nations, U.S. quits talks on global migration pact over sovereignty clash, Michelle Nichols Available at <https://www.reuters.com/article/us-usa-migrants-un/u-s-quits-talks-on-global-migration-pact-over-sovereignty-clash-idUSKBN1DX0Q4?feedType=RSS&feedName=topNews>, accessed 18 Oct 2018

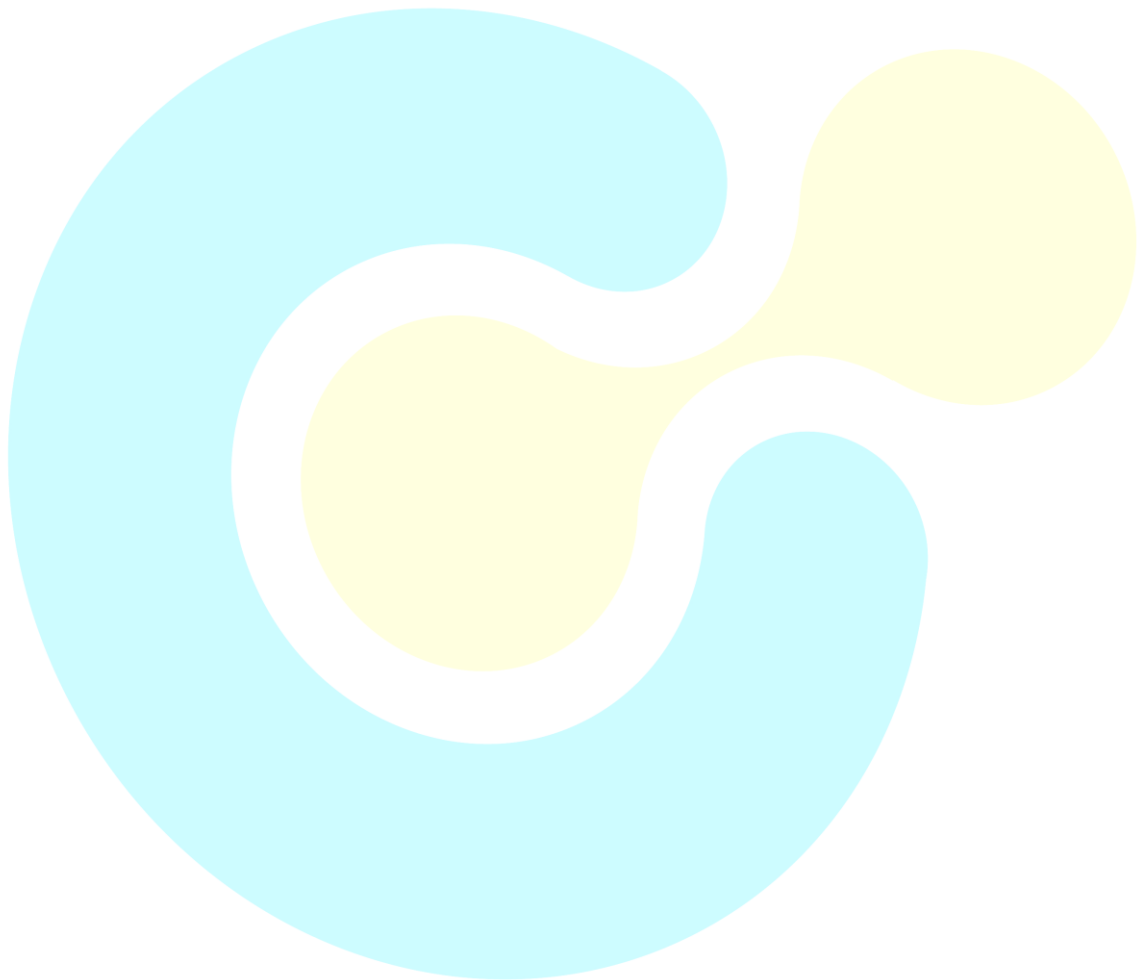
⁶¹ Tensions as the EU negotiates the Global Compact for Safe, Orderly, and Regular Migration by Elspeth Guild, Katharine T. Weatherhead, available at <http://eumigrationlawblog.eu/tensions-as-the-eu-negotiates-the-global-compact-for-safe-orderly-and-regular-migration/>

enshrining certain social, economic and civil rights. It is the moral and legal responsibility of states to protect and ensure these rights. The existence of people in an irregular migratory situation is one of the greatest challenges in the global scenario with regards to the development of Human Rights.

*Nationalist populist politicians are setting the current dominant narrative, offering simplistic solutions to complex issues, scapegoating migrants with total impunity and saying that migrants steal jobs and drain social budgets, that all refugees bring insecurity or increase crime rates, or that all foreigners change our values, assertions which have all been proven wrong by social sciences. Ranting against courts – and especially foreign tribunals – which prevent them from dealing with migrants as they wish will earn certain politicians political points in the polls. Some even claim that undocumented migrants should not be covered by international or European human rights law. They invoke their conception of a “crisis” to justify trampling the rights of migrants, forgetting that human rights safeguards were put in place to remind States of their obligations, not only in times of peace but more especially in times of crisis or war. What can be observed in the European political discourse and policy developments today is a regression of the human rights regime regarding migrants. At the political level, there is a trend towards eroding the rights of asylum seekers, refugees and migrants. Mobility is a natural part of human existence: it’s in our DNA. Migration is not a crime, not a problem and has the potential to be part of the solution to many of our economic and social problems. Migration governance thus cannot only be about keeping people out by resorting to means that violate their rights. It must also be about multiplying regular, safe, accessible and affordable migration channels, eliminating unethical labour recruitment practices, cracking down on labour exploitation, empowering migrants by clearly enforcing their human and labour rights, providing pathways to permanent residence and citizenship, promoting integration in host societies, and celebrating the current diversity of most of our societies.*⁶²

⁶² François Crépeau, UN Special Rapporteur on the human rights of migrants, “Dialogue between judges, European Court of Human Rights, Council of Europe, 2016” available at https://www.echr.coe.int/Documents/Dialogue_2017_ENG.pdf

As Immanuel Kant observed “Hospitality means right of a stranger not to be treated as an enemy when he arrives in the land of another”⁶³



⁶³ Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, 1795