



Inter-ministerial Delegation for Human Rights

Subcommittee tasked with upgrading
the legal and institutional framework
on migration,
human trafficking
and asylum

Presentation on the draft asylum law

16 June 2015 – Rabat

1. NPM, Approach and guidelines.

- ▶ **High Royal Instructions** regarding the New Migration Policy (NPM) (cf. “humanist, global and compliant with our international commitments” 09 13); royal speeches (cf. new remits MMREAM 11 13)
- ▶ **CNDH (Commission nationale des droits de l'homme - National Human Rights Commission) recommendations** relating to the rights of migrants and refugees in Morocco/ Review of 1st CMW periodical report in 09 13
- ▶ **National Commission for the Implementation of the NMP:** 4 subcommittees; DIDH Subcommittee: 3 select committees for the drafting of draft proposals
- ▶ **The work of the ASILE (ASYLUM) drafting Committee (DIDH – Inter-Ministerial Delegation for Human Rights, MJL – Ministry of Justice and Liberties, MAEC – Ministry of Foreign Affairs and Cooperation, MI – Ministry of the Interior, DGSN – National Security Department and MMREAM – Ministry in Charge of Moroccans Abroad and Migration Affairs)** took place on the basis of the Subcommittee’s decision to draft a “specific law” on asylum alongside that on human trafficking and immigration, paying close attention to connections.

1.1 National Guidelines

- ▶ The Constitution of 1 July 2011 (art. 30)
- ▶ Law 02-03* on the Entry and Residence of Foreigners in the Kingdom of Morocco and its implementation decree
- ▶ Decree on the BRA (Bureau des Réfugiés et Apatrides – Office for Refugees and Stateless Persons) of 1957*
- ▶ Other provisions included in legal frameworks (Civil Registry, *Labour Code**, etc.)

1.2 International Guidelines

In particular:

- ▶ The 1951 Geneva Convention Regarding the Status of Refugees and its New York Protocol.
- ▶ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- ▶ Treaty body recommendations (notably CAT, CMW) and special procedures (notably RST).
- ▶ .

1.3 Comparative Law

In the framework of a comparative approach:

- ▶ French Code for the Entry and Residence of Foreigners in France and Right of Asylum (CEDESA).
- ▶ Belgian Act on Access to the Territory, Residence, Establishment and Deportation of Non-nationals.
- ▶ Swiss Asylum Act (AsylA).
- ▶ Spanish Act of 1994 on the Right to Asylum and Refugee Status.

Other laws which were studied:

- German law
- Turkish law
- Mexican law

1.4 Comparative Law/ European standards (“PS and PT”)

In particular, (non-exhaustive list):

- ▶ Directive 2001 / 55 / EC (temporary protection)
- ▶ Directive 2004 / 83 / EC (conditions for refugee or international protection status and the content of these statuses);
- ▶ “Qualification” Directive 2011 / 95 / EU
- ▶ 2013 EP and EC Directive laying down minimum standards for the reception of applicants for international protection

2. Key issues, constraints and difficulties.

- ▶ Morocco's geopolitical situation: strong migratory pressure, mixed flows, control of the EU's external borders, negotiations on readmission agreements, etc.
- ▶ Human, financial, material resources: capacity building; difficulties in forecasting the number of asylum seekers and the future operation of the asylum system;
- ▶ New concepts to be included in the OJI: restrictions connected to the legal system/tradition: co-existence of civil procedure rules for proceedings in administrative courts (delays, appeals, etc.); "common law" / "specific" provisions link; "culture" with regard to the amendment of legal texts (period of time between the adoption of a legal text and the regulations...)

3. “Problematic” issues *

**Extensively debated in order to arrive at a consensus in the Committee.*

- ▶ Definition of “refugee”
- ▶ “Inter-ministerial commission” vs. “Office”
- ▶ “Autonomy” vs. “independence”
- ▶ Tutelage
- ▶ “Fast-track” procedure at border posts/ “priority examination” of requests
- ▶ Impact of subsidiary protection and temporary protection (residence, work, RF?)
- ▶ Suspensory appeal vs. non-suspensory appeal, stage of the procedure
- ▶ “Placement” of asylum seekers
- ▶ Safe country list

4. General philosophy of the Draft Proposal (AP)

- ▶ The draft proposal contains appr. 40 articles: a series of *substantial* and *procedural* provisions; provisions laying down “guarantees” concerning refugees, asylum seekers and others concerned by other forms of protection. Objective: “simple” and “flexible”
- ▶ The draft proposal is intended to establish a genuine national asylum “system” in which *the asylum seeking procedure is at the heart of the system* and an “institutional framework is dedicated to asylum”.
- ▶ The Law should constitute the cornerstone of this system, which will evolve over time. Practice will of course shape the system over time, in terms of the public policies that will be designed and implemented with regard to asylum, case-law of the concerned jurisdictions, doctrine, etc.

5. Main options proposed by the Committee and contained in the AP

- ▶ “Basic” definition of the 1951 Convention
- ▶ Transposition of key elements of the 1951 Convention
- ▶ Explicit recognition of the principle of non-refoulement and non-discrimination
- ▶ Subsidiary protection
- ▶ Temporary protection (principle)
- ▶ An institutional mechanism dedicated to asylum: an “autonomous” structure in the form of an EPA (A Public Establishment of an Administrative Nature) with the specific task of investigating and ruling on asylum requests; with the capacity to have local representatives.
- ▶ Single instruction (DSR–Royal Security Department and PS)
- ▶ Rights, notably guaranteed during the procedure and the obligations of asylum seekers, are explicit
- ▶ Judicial appeal (full remedy): jurisdiction of the Rabat Administrative Court

**Thank you for your
attention**

