Law, Religion and the Family in Africa

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20 THE TRAGEDY OF AMINA: MIGRATION AS TOLD BY THE WIVES OF MIGRANTS

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INTRODUCTION

The pandemic that the world is experiencing at the moment must in no way make us forget that there is still another very worrying and quite deadly phenomenon that is taking and affecting people's lives: this is the phenomenon of migration, particularly that of Africans to Europe. We should recall this reality, even in the face of the serious health crisis of the pandemic. The United Nations High Commissioner for Refugees (UNHCR) says that at least five hundred people have died since the beginning of 2021, while trying to cross the central Mediterranean in an effort to flee Africa for Europe. The number of victims is more than triple that of the same period in 2020, when 150 deaths were recorded.² The most serious disaster of the current year occurred on 22 April 2021, a shipwreck which claimed the lives of 130 people.³

These are the victims who have been counted, but there is much more. There are those who die in the sands of Sahara Desert, in the waters of the Atlantic Ocean or Mediterranean Sea, or without witnesses and under the captivity and torture of the jailers in Libya. There are also victims of migration who have never themselves thought of, much less taken, the route of migration: the migrants' spouses and families. These are the ones who do not leave – they are the ones who stay. In particular, these are the wives of migrants whose husbands left Africa, sometimes years ago, without leaving an address and instead leaving their spouses waiting for news or even the slightest sign of life.

Migration certainly makes direct victims, but it also makes indirect ones. They are the ones who suffer for years, bearing the heavy burden of uncertainty and of an absence whose end never comes. It is this hidden world of thousands of tried and tested women whose stories this study seeks to present in a way that also raises questions about the civil law and customary law, the latter of which is inseparable from its religious dimension, and how these laws determine their situation. Does this body of legislation and religion support these women in their tragedy or further complicate their situation? That is the question of this chapter.

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2 UNHCR, "Mounting death toll in the Central Mediterranean calls for urgent action". Online at: <https://bit.ly/3qrlN67> [Accessed 25 April 2021].

3 "Libya shipwreck claims 130 lives despite SOS calls, as UN agencies call for urgent action", *UN News*, 23 April 2021.

TRADITIONAL LABOUR MIGRATION IN WEST AFRICA

African countries experience several types of migration. There is migration from one African country to another, such as the case of Beninese moving to Nigeria or Gabon or the waves of Nigerian traders – Ibo, most of the time – who came to settle in Benin. This is the intra-African migration. Then there is also the international or intercontinental migration that leads thousands of Africans, men, women and children, often unaccompanied minors, to destinations such as Europe, Asia and even Latin America.⁴

The first is often a traditional form of circular and cyclical migration.⁵ For example, since 1950, Nigerian migrants have been going to work in Libya or Algeria. They are often peasant masses, who are faced with unfavourable climate situations which have consequences for crops and therefore for food, along with environmental degradation and increased poverty. They migrate in search of paid work to pay for food and meet urgent needs. But once conditions improve, they return home. These movements are part of the traditional routes that have attracted workers from West Africa. These workers include carpenters and masons who emigrated to Tripoli and neighbouring regions that needed labour in sectors such as housing construction during the golden age of Libya from the 1980s to the 1990s.

These traditional labour migrations have many elements in common, particularly around finding a temporary solution to a food or economic crisis and returning home or sending money to family members who have remained in the village, so that they can meet their basic needs, such as the feeding, health and schooling of children. In these cases, it is the head of the family alone who leaves, but he maintains relations with his wife and children by sending money and letters, and when the opportunity is right, he returns from time to time to his family. Despite the suffering inherent in any separation, the bonds remain between the emigrant and his family, and each of them knows that they will eventually embrace again.

CHANGING PATTERNS OF INTERNATIONAL MIGRATION

The migration that we have been witnessing over the last two decades and that is making headlines is certainly not a new phenomenon, because Africans have always migrated to Europe. But the number of people involved and the endless human flows and tragedies of all kinds that this migration generates require special attention. For purposes of this chapter, it is migration to Europe that is the focus.

Starting from the countries of the Sahel (Niger, Mali, Burkina Faso, Senegal) and the West African coasts, migrants make their way to the Canary Islands and Spain or to Malta and Italy via Libya, Tunisia or Morocco, often paying a heavy price to

4 See Minvielle R. 2020. *Le bout de la terre: Migrants Africain á Buenos Aires* [The end of the earth: African migrants in Buenos Aires]. Paris: Harmattan.

5 Harouna M. 2015. "Sub-saharan Migrations towards North Africa and Europe: Origins and Contemporary Trajectories". Paper presented at the conference "Africa, Europe and the Mediterranean Migration Crisis", Rutgers University, 16 October.

the Atlantic Ocean, the Sahara Desert and the Mediterranean Sea. However, the present study does not focus directly on the “leavers”, but on those who remain, the wives that the migrants leave behind their wives to undertake this international migration.⁶ This is a group affected by migration with which sociological studies deal far too little.

AMINA'S TRAGEDY

The tragedy of Amina is that of the many women, often married at a very young age to a man whom they love and with whom they have given birth to children. One day the man decides to go to the city to find a better job, and this quest for employment leads them to be seduced by the tempting proposals of the networks of traffickers. The man announces to his wife that he is going to go further, to Europe, to earn more money in order to better provide for the family. The wife often remains reluctant and doubtful in the face of the unexpected departure of their man who leaves them with children in their arms.

At first, the concern is not necessarily to feed or take care of the children, because the husband promises to send money and much more of it than he sent from the city. Sometimes, before embarking on the “destination of all his hopes”, the husband returns to the village for a short sojourn with his family. But very often, there is only a telephoned goodbye, because time is pressing and the traffickers put time pressures on their naïve “customers”, who think the traffickers will lead them to employment. For these traffickers, time is money, and because they do nothing but for the euro, they do not leave a minute of respite for the men being trafficked to raise doubt or even think too much. The men have to leave very quickly, and they depart without leaving a forwarding address.

HOPE TURNS TO NIGHTMARE

Initially, while the migrants are still on African soil, in a host city, such as Agadez in Niger, Tripoli in Libya or Tamanrasset in Algeria, telephone communications with the family are still possible, so long as are not already in the hands of groups of kidnappers. Until then, the migrant can exchange words and calm the fears of his wife and children. But the rest of the adventure can turn into a nightmare.

Who is Amina?

Amina is a young woman barely 30 years old.⁷ She says she was married to her young husband when they were very young. They have three beautiful daughters. The firstborn is barely twelve years old. “When I moved into that room,” Amina

⁶ Indeed, much of the present study is inspired by narratives from the documentary film “Wallah – Je te jure”, Marcello Merletto (dir), International Organization for Migration (IOM) (prod), 2016.

⁷ Interview with Amina by JB Sourou, Benin.

says of beginning her life with her husband, "Idrissa only had a mattress. But despite that, I told myself, I'm going to stay with him, happiness is going to happen. We now have three children." "One day, from the city where he was working," she continues, "he called me to tell me that he wanted to go far, go to Europe, go to Barcelona to earn more money. Since that day, I have had no news of him. I have only learned that he was the victim of an accident and that he has died as a result of it." "Is it true? Amina doesn't know anything about it", says the young lady, now in tears. From time to time, when she is distraught, Amina laments: "Idrissa, where are you? You told me you were going to Barcelona. Where have you been since then, I don't see you anymore, I can't hear you anymore! When will you come back?" When I see the children," she says, "I often burst into tears and hide to cry." But my daughter says to me, "Mother, do not cry. God is great. Dad will come back."

Cases like that of Amina are numerous in the countries of departure of migrants: Senegal, Niger, Mali, Benin, Ghana, Nigeria, Burkina Faso and Eritrea, to name a few. We can add the cases of those migrants who, because they arrived illegally in Europe, have not been able to obtain the necessary documents, and therefore cannot consider leaving their host country, because they will never be able to return there again and cannot even think of family reunification.

MIGRANT BRIDES: FAMILY STATUS UNDER CIVIL AND CUSTOMARY LAW

In the studies carried out with these women for this chapter, it emerges that they live in a very ambiguous and complex social situation. Most of the time, the vast majority of migrants, before their departure, lived in co-residence with the husband's parents and maybe a brother. So, there should at least be support from the in-laws, one might think. But in the absence of their husbands, these women have no defined social status and very low status in families. Thus arises the question of their status arises under civil and customary law.

Are they widows?

In this situation, there are two sorts of situations that mainly arise: those under civil law and those under customary law. In Benin, for example, in the 2004 Code of the Person and the Family, Articles 18 to Article 32 detail the law of "Absent and Disappeared Persons".⁸ These are the laws that determine when a spouse's absence or disappearance has persisted long enough that there is termination of marriage under the civil law. The law prescribes that one year after one has more news of an interested party, one must refer the matter to a tribunal.⁹ After one year of investigation, the court may declare a presumption of absence.¹⁰ Two years after

8 Republic of Benin. National Assembly. Law No. 2002-07 on the Code of Persons and the Family, enacted in 2004.

9 Benin, Code of Persons and the Family, art 19.

10 Benin, Code of Persons and the Family, art 23.

the declaration of presumption of absence, the court may declare a judgment of absence, which allows the spouse to apply for divorce on the grounds of absence.¹¹ By this time, four years have already passed, but it can take as long as ten years from the day from receipt of the last news of the person concerned to declare his death, with all the legal effects that follow, such as the transcription in the register of civil status.¹²

In Senegal¹³ and Burkina Faso,¹⁴ the durations are the same as in Benin, and the legislation in Mali is also comparable.¹⁵ But these civil law provisions are not always available to women, particularly in rural areas, who may not know their rights under civil law and may lack access to courts of adjudication. This leaves them at the mercy of customary and religious law. According to customary law that often applies in the case of Amina and women in many ethnic groups in West Africa, a woman is declared a widow only when the husband's family ascertains her husband's actual death. Then begins the period of widowhood, with a series of rites that vary in content and duration from one family to another.

In Amina's case, it is a supposed death, so she cannot be declared a widow. Under customary law, she is considered still to be married. It is only with time and the acknowledgement of the prolonged absence of the husband, a period that her in-laws will decide, whether she will be allowed to remarry another man, if she wishes. But in the case of remarriage, she must leave her husband's house permanently. Before then, she cannot even be visited by another man, if he is not a member of the family. She may choose not to remarry and may then remain in her husband's house and take care of her children. If she chooses to remarry, the children will be entrusted to an uncle, aunt or paternal grandmother. Hence, many women prefer to wait to remarry in order to avoid another psychological trauma, unless there is a very good relationship between the mother and the family members to whom the children are entrusted.

What relations with the in-laws?

These relationships vary from one family to another and change according to the characters of the protagonists. Often in rural households, women living with their in-laws are subject to the orders of the latter: the mother-in-law, the brothers-in-law and the sisters-in-law. In some cases, it is the mother-in-law who manages the financial income. In cases like that of Amina and other women in her situation, relationships with the in-laws are often strained. On the one hand, she no longer

11 Benin, Code of Persons and the Family, art 24.

12 Benin, Code of Persons and the Family, art 25.

13 Republic of Senegal. National Assembly. Code of the Family, bk 1 ch III, p 8, arts 16 to 28.

14 Burkina Faso. National Assembly. Code of Persons and the Family of 16 November 1989, pt I, ch II, arts 8-20.

15 Republic of Mali. Law No. 2011-087 of 30 December 2011 on the Code of Persons and the Family, tit 3, ch I-II, art 61-83.

has her husband at her side to defend her in the event of excessive requests or calumnies on the part of other members of the family, especially sisters-in-law, who tend to subject the migrant widows to their orders, such that the migrant wife ends up asking to leave. On the other hand, if she rebels against this treatment, there can be serious repercussions, up to and including forcing the wife out of her husband's homes, so that the in-laws can take possession.

OTHER EFFECTS OF AN ABSENT OR DISAPPEARED SPOUSE

A precarious economic situation

Unless they are real “entrepreneurs”, that is to say women who know how to manage their affairs, through small business, agriculture or other small income-generating activities to meet their own needs and those of their children, such women very often find themselves in a very precarious economic situation. In the absence of their husband, who until then was the economic support for the whole family, they find themselves overnight and for an indefinite period to having to take charge, as far as being the sources of support for their family. This can prompt them to want to leave their in-laws and remarry.

Education and schooling of children

If it is true, as an African proverb says, that “it takes a whole village to educate a child”, then it is true that a good education begins at home. And very often in African traditions, boys learn from their father and girls from the mother. In a situation like Amina's, she is responsible for much of the children's education. Even if in some states, such as Benin, schooling is free, for girls, from primary to secondary school. While the parents do not have to pay school fees in public schools, it is still up to parents to buy school supplies, such notebooks, reading books, pens, pencils and other educational necessities. In the case of Amina's children, it is she who, in the absence of her husband, must take care of the schooling of the children, unless an uncle or aunt comes to the rescue from time to time. And, of course, it is money that is still to be subtracted from his meagre income.

The psychological consequences of separation

Amina said it so well: the tears, the anxieties, the nightmares, the exhausted waiting for a husband with whom she was willing to “wait for fortune”, but who has left for Europe and of whom there is no further news. This is not to mention the weight of managing the family's daily life, which is a great frustration and source of stress, to which are also added the pretensions and claims of the in-laws. The wives of migrants are very often vulnerable people, socially speaking, as well as within their families, because they no longer have their husbands to support and to shield them.

CONCLUSION

Migration as told or experienced by the wives of migrants shows that the problem Africa migration encapsulated in the stories of the migrants themselves is just the tip of a largely unseen iceberg of troubles. We see the deaths in the Atlantic Ocean, Mediterranean Sea, and Sahara Desert, and we are touched by the very difficult and degrading daily lives of migrants in Europe, but those who remain in the home country also experience tragedy. Laws exist to alleviate their pain somewhat, such as the provisions for absent and disappeared spouses in the Codes of Persons and the Family in Benin, Burkina Faso, Mali, and other African countries. Unfortunately, however, since most of these women live in rural areas and are illiterate, they are subject to the imposition of customary and religious decree. They experience the psychological, social and economic consequences that leave them, especially in the case of Amina, in a state of ongoing distress.

Migration is never a migrant's issue alone, and it often has major implications and repercussions for their families left behind. It is important to take these broader effects into account in studies and political and legislative decisions addressing issues of international migration phenomenon for the good of African populations – especially those who do not leave and are essentially abandoned in the sending nations. In particular, wives of migrants, especially in rural areas, should be made aware of their rights and they should be assisted, if necessary, by the courts, so as not to be subjected to the burden of custom.