

MIGRATION CLIMATE AND THE RIGHT TO FREE CHOICE OF RESIDENCE IN MADAGASCAR

Mohamed SOILIH¹, Harimanana RANIRIHARINOSY²

¹ *PhD, Public Law and Political Science, Catholic University of Madagascar, Madagascar*

² *Senior Lecturer, Political Science, Catholic University of Madagascar, Madagascar*

ABSTRACT

Human rights, and in particular the right to free choice of residence, must not be forgotten. As a fundamental right, it must be protected in the face of the climatic constraints that generate numerous social upheavals, such as climatic migration. It is well known that the Antandroy population group is the benchmark for climatic migration in Madagascar. Research shows that the violation of the right to free choice of residence in Androy, the region of emigration of the Antandroy populations, is caused by climatic disasters, while in the regions of immigration, including Diana, it is engendered by professional and social discrimination against these immigrants. It is in this context that it is essential to devise a genuine social protection policy that focuses on the climate issue but also and above all on the consecration of interculturality with a view to building a Malagasy people who is concretely united and supportive.

Keyword - *Climate migration, right to free choice of residence, lack of basic subsistence resources, social upheavals*

INTRODUCTION

Migration remains one of the most hotly debated legal, political, economic and social issues on the international scene. All member states of the United Nations (UN) are confronted with it, both internationally and internally. That is why the “Comité Intergouvernemental Provisoire pour les Mouvements Migratoires d'Europe (CIPMME)” (Provisional Intergovernmental Committee for European Migration Movements [Our translation]) was set up in 1951, following the massive displacement of people in Western Europe after the Second World War. In 1989, this organization was renamed the International Organization for Migration (IOM) as part of the United Nations system, whose ultimate vocation is to manage migratory flows worldwide. Climate migration can be a further obstacle to peace and development within the international community.

The rise of this scourge has necessarily led to the development of international law, in particular migration law, and since the accentuation of global warming, environmental law, which can no longer be indifferent to it. This is why the IOM itself, in its work on migration, never ceases to take into consideration the climatic phenomenon that is ravaging all societies.

The legal system for migration is essentially being developed at the international level, where both international and national bodies refer to the International Organization of Migration's definition of migration as “The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification” [1].

In other words, it boils down to a cross-border move, without providing any further details on the circumstances that gave rise to it. Basically, it presupposes the existence of social, economic, political or environmental problems in

one region to the point of prompting departures to other regions. Migration flows can only serve to highlight interregional inequalities in the enjoyment of rights, in the realization of profits, or in the opportunity to lead a healthy and productive life.

These are all concerns in a society concerned with social order, democracy, human rights and the rule of law. These values are enshrined in positive Malagasy law, notably in the Constitution of the Fourth Republic of Madagascar of December 11, 2010. The preamble stresses “le respect et la protection des droits de l’Homme” (respect for and protection of human rights [Our translation]). Moreover, Article 1 of the Constitution states that “[...] la démocratie et le principe de l’État de droit constituent le fondement de la République” ([...] Democracy and the principle of the rule of law constitute the foundation of the Republic [Our translation]).

Climate-related persecution has been shown to have a greater impact on the ineffectiveness of human rights. These problems are less pronounced in high-income countries than in developing countries, where migratory phenomena are more significant [2-3], as in the Republic of Madagascar.

The right to free choice of residence is a fundamental right that must enable every individual to choose his or her residence or place of activity. Climatic persecutions, which are the essential manifestations of ecosystem upheaval, force individuals to leave their preferred place of residence. This migration affects lifestyles and ways of thinking and shapes political decision-making. The main objective of this research is to highlight the promotion, protection and real consecration of the right to free choice of residence in Madagascar and more particularly in the extreme south of the island.

RESEARCH METHOD

It is used for legal documentary research [4]. This methodology allowed us to analyze the concept of migration but also and above all to examine the enjoyment of the right to free choice of residence. It examines legal texts on the international, regional and national level which are devoted to the promotion and protection of fundamental rights and freedoms and in this case the right to free choice of residence.

These texts include the French Declaration of Human Rights of 1789, the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the United Nations Convention to Combat Desertification (UNCCD) of 1994, the African Charter on Human and Peoples' Rights (ACHPR) of 1981 and the Constitution of the Fourth Republic of Madagascar of December 11, 2010.

In order to know what is really the right to free choice of residence, a survey is carried out among young Antandroy migrant men from February 10 to April 26, 2023 in the Antandroy emigration region, the Androy region located in the extreme south of Madagascar and which continues from May 08 to July 11, 2023 in the Antandroy immigration region of the study located in the north of the island, the region of Diana. It is being carried out among 300 Antandroy migrant men, divided into 150 contact persons in each of these districts.

The choice of respondents is defined according to two selection criteria: age greater than or equal to 26 and having undertaken migration every year for the last five years. The importance of these criteria is to ensure that resource persons have experienced migration sufficiently for their testimonies to be reliable. It is important to stress that gender is not the main issue here, as Antandroy migrant men are often called upon to lend a hand in other parts of the island, thanks to their physical ability to perform both light and heavy work.

In the Antandroy immigration region of the study, an interview is also carried out with 50 natives during the same period of the survey in order to better refine the information of the migrants from Antandroy surveyed. The research includes an analysis between the protection of the right to free choice of residence and the actual enjoyment of this right in the context of the migration of Antandroy populations.

RESULTS AND DISCUSSION

1. Recognition of the right to free choice of residence

The recognition of the right to free choice of residence in the Republic of Madagascar is based on international, regional and national levels.

1.1 International and regional recognition of the right to free choice of residence

More succinctly, the right to free choice of residence is protected by the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and, in the Malagasy regional context, by the 1981 African Charter on Human and Peoples' Rights (ACHPR).

1.1.1 The principle of free choice of residence under the UDHR and the ICCPR

The UDHR of 1948 is essentially inspired by the French Declaration of Human Rights of 1789, born of the French Revolution, and the American Declaration of Human Rights of 1791. Therefore, it is an essentially Western-inspired declaration that emphasizes the importance of freedom. In legal terms, the content of an international declaration such as the UDHR is not binding on States but has only a moral value. Nevertheless, this value is considerable, reflecting a favorable opinion of good governance or criticism in the eyes of the international community.

On December 10, 1948, the General Assembly of the United Nations adopted resolution 217 A (III), which states in article 13, paragraph 1, that “toute personne a le droit de circuler librement et de choisir sa résidence à l'intérieur d'un État” (everyone has the right to freedom of movement and residence within the borders of each State [Our translation]). This freedom of movement also extends between states, as stated in article 13, paragraph 2, that “toute personne a le droit de quitter tout pays, y compris le sien, et de revenir dans son pays” (everyone has the right to leave any country, including his own, and to return to his country [Our translation]).

Indeed, it was essential to promote and preserve free choice of residence, especially at a time when dictatorship and other forms of discrimination were widespread throughout the world. The right to free choice of residence is based on the idea that it is fundamental to preserve the dignity of every individual to contribute to building a better world. No one has the right to freely choose another's place of residence. The only exception is in cases where arbitration on the free choice of residence is necessary to protect public order and/or morality.

On December 16, 1966, the right to free choice of residence took on a binding connotation at the international level with the adoption of the International Covenant on Civil and Political Rights by resolution 2200 A (XXI) of the United Nations General Assembly. In recognition of the importance and urgency of preserving freedom as a pillar of well-being, Madagascar ratified the ICCPR on June 21, 1971, even before its official entry into force on March 23, 1976.

Article 12, paragraph 1, of the Covenant states that “Quiconque se trouve légalement sur le territoire d'un Etat a le droit d'y circuler librement et d'y choisir librement sa résidence” (Everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence therein [Our translation]). State parties to the Covenant are legally bound to take the necessary measures to guarantee free choice of residence to all persons in their territories, without any form of discrimination.

Paragraph 3 of the same article is more precise, stating that “Les droits mentionnés ci-dessus ne peuvent être l'objet de restrictions que si celles-ci sont prévues par la loi, nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques, ou les droits et libertés d'autrui, et compatibles avec les autres droits reconnus par le présent Pacte” (The above rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant [Our translation]).

Thus, it is up to each individual, including the Antandroy populations, to freely choose the residence environment that best suits him/her, with due respect, of course, for other provisions of positive law. In this context, it is interesting to note that, in addition to the UDHR of 1948 and the ICCPR of 1966, the right to free choice of residence is also widely enshrined at the regional level in the African Charter on Human and Peoples' Rights (ACHPR) of 1981.

1.1.2 The principle of free choice of residence according to the ACHR

Given the undeniable importance of the right to free choice of residence, already enshrined in the 1948 UDHR and the 1966 ICCPR, the member countries of the African Union, formerly known as the Organization of African Unity (OAU), deemed it necessary to enshrine this principle in a binding regional text, in this case the African Charter on Human and Peoples' Rights of June 27, 1981. The latter came into force on October 21, 1986 and was ratified by the Republic of Madagascar on March 09, 1992. It should be recalled that the Organization of African Unity (OAU) was replaced by the African Union (AU) in July 2002, following a decision already made on the subject in September 1999.

The reasons that led Madagascar to ratify the 1981 Charter of Human and Peoples' Rights (ACHPR) are social, economic and political. The aim is to provide the Malagasy people with irreproachable legal protection against any form of discrimination relating to their choice of residence, not only in the eyes of the international community but also and above all in the eyes of the African community.

Article 12, paragraph 2, of this charter states that “toute personne a le droit de circuler librement et de choisir sa résidence à l'intérieur d'un État, sous réserve de se conformer aux règles édictées par la loi” (everyone has the right to freedom of movement and residence within the borders of a State, subject to compliance with the rules laid down by law [Our translation]). This freedom is equally valid at the international level, as stated in article 12, paragraph 2, that “toute personne a le droit de quitter tout pays, y compris le sien, et de revenir dans son pays. Ce droit ne peut faire l'objet de restrictions que si celles-ci sont prévues par la loi, nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques” (everyone has the right to leave any country, including his own, and to return to his country. This right may be subject to restrictions only if they are provided for by law, necessary to protect national security, public order, public health or morals [Our translation]).

Article 30 of the Charter led to the official creation of the African Commission on Human and Peoples' Rights on November 2, 1987, with the aim of ensuring the promotion, protection and defense of the provisions of the Charter in every State Party. It states: “Il est créé auprès de l'Organisation de l'Unité Africaine une Commission Africaine des Droits de l'Homme et des Peuples ci-dessous dénommée “la Commission”, chargé de promouvoir les droits de l'homme et des peuples et d'assurer leur protection en Afrique” (An African Commission on Human and Peoples' Rights, hereinafter referred to as “the Commission”, is hereby established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa [Our translation]).

In this respect, article 49 of the Charter provides that “[...] si un État partie à la présente Charte estime qu'un autre État, également partie à cette Charte, a violé les dispositions de celle-ci, il peut saisir directement la Commission par une communication adressée à son Président, au Secrétaire Général de l'OUA et à l'État intéressé” ([...] if a State party to the present Charter considers that another State, also party to this Charter, has violated the provisions thereof, it may refer the matter directly to the Commission by a communication addressed to its Chairperson, to the Secretary General of the OAU and to the State concerned [Our translation]).

Thus, there can be no doubt that negligence or deliberate violation of the right to free choice of residence by the Malagasy state is liable to be brought before the African Commission on the initiative of any state party. This was sufficient reason for the introduction of this principle into positive law. It is now appropriate to examine the enshrinement of this principle in positive law.

1.2 Establishing the right to free choice of residence at the national level

The right to free choice of residence is a fundamental right amply protected in positive law. This is clearly demonstrated by the Constitution of the Fourth Republic, which stipulates that the state must guarantee the right to free choice of residence to every individual.

1.2.1 The constitutional consecration of the right to free choice of residence

The constitution is the supreme reference document defining the legal order of a state. Madagascar is already in the era of the fourth constitution of its republic. Article 7 of this constitution states that “Les droits individuels et les libertés fondamentales sont garantis par la Constitution et leur exercice est organisé par la loi” (Individual rights and fundamental freedoms are guaranteed by the Constitution, and their exercise is organized by law [Our translation]). The purpose of this provision is to promote and protect fundamental rights and freedoms, including the right to free choice of residence for all individuals in Malagasy territory.

However, article 12 of the Constitution clearly states that “tout ressortissant malagasy a le droit de quitter le territoire national et d'y rentrer dans les conditions fixées par loi. Tout individu a le droit de circuler et de s'établir librement sur tout le territoire de la République dans le respect des droits d'autrui et des prescriptions de la loi” (all Malagasy nationals have the right to leave the national territory and to return under the conditions laid down by law. All individuals have the right to move and settle freely throughout the territory of the Republic, while respecting the rights of others and the provisions of the law [Our translation]). This is how the Malagasy constitution enshrines the right to free choice of residence.

It should be remembered that the constitution is at the top of Hans Kelsen's pyramid, which represents the hierarchy of legal norms [5]. Article 116, paragraph 1, of the Constitution of the Fourth Republic stipulates that the High Constitutional Court “statue sur la conformité à la Constitution des traités, des lois, des ordonnances, et des règlements autonomes” (rules on the conformity with the Constitution of treaties, laws, ordinances and autonomous regulations [Our translation]). Therefore, all legal and political texts, as well as the interventions of the Malagasy public authorities, must not be in contradiction with the consecration of constitutional provisions, and in this case with the right to free choice of residence. It is now time to examine the situation regarding the enshrinement of the right to free choice of residence as a democratic principle.

1.2.2 The consecration of the right to free choice of residence as a democratic principle

The term democracy is of Greek origin, composed of “demos” meaning people and “kratos” meaning power. Therefore, in the literal sense of the term, democracy is the power of the people [6]. In other words, it supports the idea that the people are sovereign to define political conduct on their own territory. The emphasis is on respecting the manifestation of the will of the people.

Democracy is the sum of the wills of the citizens living in a society. Democracy emphasizes the self-determination of each individual in all his or her decisions and actions. The Republic of Madagascar is a democratic state, as explicitly stated in Article 1 of the Constitution of the Fourth Republic of Madagascar of December 11, 2010. Thus, the Malagasy people are sovereign in the exercise of their fundamental rights and freedoms, and in this case the right to free choice of residence. The exercise of this right is a hallmark of democracy, since it protects the idea that every individual has the right to express his or her will by defining his or her place of residence. The democratic regime aims precisely to guarantee the recognition and respect of this principle.

Since the principle of free choice of residence coincides with the democratic hallmark, it follows that a state cannot be fully democratic without an absolute commitment to this principle. Furthermore, the enjoyment of fundamental rights and freedoms, and in this case the right to free choice of residence, must not undermine public order and/or morality.

In other words, restrictions on the right to free choice of residence can result in a violation of democracy, and vice versa. It is in this context that it was necessary to wonder about the interdependence between these two concepts to underline the importance of their consecrations in the Malagasy positive law.

In the context of Antandroy migration, let's look at what is concretely about enjoying this right following the survey of Antandroy migrants from February 10 to April 26, 2023 in the Androy region and from May 8 to 11 July 2023 in the Diana area. The same applies to the interview from May 8 to July 11, 2023 with natives of the study's host region, the Diana region.

2. Difficulties in implementing the right to free choice of residence

The legal recognition of a right in favor of each individual does not inevitably mean its enjoyment in practice in society. Such is the case with human rights, and in particular with the right to free choice of residence for the Antandroy population, which is experiencing several difficulties in its effective implementation: on the one hand, the impossibility of preserving the Androy residence, and on the other, the problem of integrating the Antandroy into the host region of the study, Diana.

2.1 The impossibility of preserving residency in Androy

The choice of residence emphasizes the search for means of subsistence, as well as the possibility of leading a healthy and productive life within it. In this context, preserving the right to free choice of residence is tantamount to protecting the means of subsistence and productivity in any residence in Madagascan territory. Unfortunately, the survey shows that the unavailability of subsistence resources is compounded by the impossibility of leading a healthy and productive life in certain regions of the country, in this case the Androy.

2.1.1 Unavailability of subsistence resources

The Androy region is characterized mainly by the unavailability of subsistence resources. Agropastoral activities, which are the main means of survival, are struggling to develop for climatic reasons [7]. Furthermore, all the Antandroy migrants interviewed stressed that, even if migration has cultural origins, at present the focus is mainly on the frequent prolonged drought and secondarily on the sandstorm known in the local language as “Tiokamena”. It's important to distinguish between drought and desertification.

According to article 1 of the United Nations Convention to Combat Desertification of June 17, 1994, drought is “le phénomène naturel qui se produit lorsque les précipitations ont été sensiblement inférieures aux niveaux normalement enregistrés et qui entraîne de graves déséquilibres hydrologiques préjudiciables aux systèmes de production des ressources en terres” (the natural phenomenon that occurs when precipitation has been significantly below normally recorded levels and which results in severe hydrological imbalances detrimental to land resource production systems [Our translation]), while desertification is “la dégradation des terres dans les zones arides, semi-arides et subhumides sèches par suite de divers facteurs, parmi lesquels les variations climatiques et les activités humaines” (the degradation of land in arid, semiarid and dry subhumid areas as a result of various factors, among which are climatic variations and human activities [Our translation]). The Republic of Madagascar signed this convention on October 14, 1994 and ratified it on June 25, 1997.

Despite the desire of many Antandroy to stay with their families in the Androy region, they are forced because of drought to generally migrate to the north of the island in search of means of subsistence. This situation in no way suggests that the persons concerned are free to choose their new residence.

In fact, farming activities mainly involve the cultivation of cassava, maize, sweet potatoes, sorghum, cowpeas, konoke and vegetables. Because of the aridity of the soil due to lack of rain, these crops often do not develop sufficiently to meet the subsistence needs of those concerned. It has been observed that even meager harvests are rare, condemning the Antandroy, who have no other sources of income or subsistence, for starvation.

The Antandroy minority with little financial means managed to grow these crops using innovative techniques such as the introduction of improved seeds, followed by the purchase of several cans of water for watering, at least once a week. The needy are then content to feed on the fruit and leaves of the “raketa” (cactus [Our translation]), which is extremely hardy and adapted to arid soils. On this subject, the interviewees pointed out that there are times during the year when even these “raketa” no longer exist.

The other main subsistence activity, pastoral livestock farming, is also experiencing major difficulties. Zebu, goat, sheep, cattle and poultry are still the best-known livestock, but their development is often hampered. The absence or inadequacy of watering, as well as desertification, is causing considerable difficulties for the growth of these animals.

As a result, neither agriculture nor livestock farming can meet the needs of the local population. As a result, the unavailability of subsistence resources inevitably triggers migration to other regions with favorable climatic conditions for these activities. This means that the unavailability of subsistence resources unquestionably leads to the impossibility of preserving the choice of residence. Now we come to the difficulties affecting the development of other forms of income-generating activities (IGA).

2.1.2 Difficulties in creating and expanding income-generating activities

According to the unanimous opinion of the survey's resource persons, the Antandroy people have long lived with insufficient income-generating activities. All those interviewed blamed climate change for the scarcity of job opportunities, which is a major cause of famine and undoubtedly an introductory step toward the impossibility of maintaining residency in the region. Such a situation can be seen as a violation of the right to free choice of residence, to the detriment of local residents.

On the socioeconomic front, the resource persons justify the inadequacy of income-generating activities by the anchoring of two realities. The first concerns the low level of public and private investment in the creation and expansion of small and medium-sized enterprises (SMEs). They acknowledge that this hesitancy on the part of investors stems from climatic constraints, essentially the frequent prolonged drought and the “Tioakamena” sandstorms, which considerably aggravate the socio-economic precariousness of the inhabitants. As a result, the existence of a good market cannot be increased.

In fact, there is only a small market for “brèdes” (brades fruits [Our translation]) and other foodstuffs in the Ambovombe district, while many inhabitants are starving for lack of the financial means to buy them. The only remaining alternative for SMEs is to import products. This would generate additional costs that would benefit neither sellers nor buyers.

The second reality is that the Antandroy do not generally seem convinced or enthusiastic about replacing agriculture and livestock farming with the expansion of other forms of activity, such as fishing. This determination to maintain a semi-nomadic shepherd's lifestyle stems from their traditions and from the need to celebrate customs and traditions with the help of pastoral livestock products, with zebu sacrifice at the center. It's important to emphasize that the development of other forms of activity obviously requires the participation and enthusiasm of the local population, which is unfortunately not forthcoming from the investigations.

It is in this context that they have only one way out if they are to survive: to migrate to other regions in search of a workforce, preferably agropastoral. Therefore, the decision to migrate is certainly not an expression of freedom but rather of the obligation to survive due to climatic persecution. In other words, the migration that takes place is a violation of the right to free choice of residence. The question then arises: what about the problem of integrating the Antandroy into the host regions?

2.2 The problem of Antandroy integration in host regions

The right to free choice of residence also implies equality of citizenship, regardless of one's place of residence. Investigations show that this right is undermined by the fact that migrants are often reluctant to be accepted into the new community by the local host population. Moreover, in the host regions, the Antandroy people are frequently victims of professional discrimination.

2.2.1 The reluctance of the local host population

The reluctance of the host population to accept a fair and equitable cohabitation with Antandroy migrants now constitutes a form of violation of respect for the latter's choice of residence. In fact, 91% of those surveyed who had begun migrating since 2006 had always experienced social rejection. They claim to be regarded by the local population as intruders or even undesirables seeking refuge from climatic persecution.

For the media, they tend to dramatize information about them. They give them a look of astonishment, curiosity and, at the same time, sorrow. Respondents were unanimous about the host population's lack of empathy toward them. Moreover, the failure of public and private authorities to observe proper reception formulas underscores the seriousness of the problem of integrating them into the destination areas.

It is important to specify that the effectiveness of the right to free choice of residence requires, on the one hand, individual expression of the choice of residence without external influence and, on the other hand, respect for it by others in the new residence. This means that the host population's reticence toward Antandroy migrants can be seen as an infringement of their right to free choice of residence.

To consolidate the claims of the migrants from Antandroy surveyed, it was necessary to question 50 inhabitants during the same period from May 08 to July 11, 2023 of the host region of the study, Diana. The latter confirmed this reluctance, explaining that it did not stem from bad faith on the part of the host population. Rather, it is a question of mistrust in the face of Antandroy customs, which are notorious for their insecurity, mainly through the “dahalo”. It should be noted that the concept of “dahalo” refers to the theft of zebus, a ritual with sacred value to symbolize virility of the young Antandroy man. The fact that a young Antandroy succeeds in stealing a zebu without being captured is a sign of maturity to symbolize his virility. This means that he has become ready to marry. Nowadays, young Antandroy men no longer steal to symbolize their virility, but rather to enrich themselves.

Added to this is the fact that host regions have no rational, efficient management of the various forms of pollution. As a result, many Antandroy migrants considerably increase pollution in the host regions. They do not hesitate to destroy forest plots to build housing estates. In other words, this reluctance is at the root of the Antandroy way of life's reputation for destroying nature and disrupting public order. At this point, it makes sense to take another look at the strictly professional integration of Antandroy migrants.

2.2.2 Professional discrimination as an obstacle to Antandroy integration

The unanimous opinion of those surveyed points to the existence of discrimination in the workplace. Antandroy migrants are rarely recruited into the formal sector for fluctuating, well-paid seasonal jobs. This is because employers prefer to offer the best jobs to natives of host regions, rather than to migrants. This attitude is underpinned by the bonds of friendship, solidarity, empathy, mutual aid and trust between inhabitants belonging to the same population group.

According to all the Antandroy migrants, the quantity and quality of the work they do is still devalued monetarily by their employers. They are not treated according to the same working conditions. This includes, for example, daily wages and the fact that no accommodation is provided by employers during their stay. Generally, only the most degrading jobs requiring the greatest physical effort in relation to the local population are provided in return for meagre income in kind or in cash.

They also point out that they have no means of protection, such as protective gloves or work shoes, to protect themselves in the event of an accident. Moreover, in the event of illness, they have no one to turn to but themselves. In such cases, they live with job insecurity. These precarious conditions, mentioned by Antandroy migrants, are essentially justified by the fact that they work in the informal sector.

Moreover, employers are aware of their socioeconomic vulnerability in the new region and, above all, of their extreme urgency to achieve even a meagre income in kind or in cash. This is only the first step toward their employers violating their right to free choice of residence. This type of professional discrimination is well known in Madagascar, although law n°2003-044 on the labor code explicitly prohibits all forms of discrimination in access to employment.

Article 261 of the code of law n°2003-044 states that “sera puni d’une amende de 1 tapitrisa Ariary ou 5.000.000 Fmg à 3 tapitrisa Ariary 15.000.000 Fmg et d’un emprisonnement de un (01) an à trois (03) ans ou de l’une de ces deux peines seulement, tout traitement discriminatoire fondé sur la race, la religion, l’origine, le sexe, l’appartenance syndicale, l’appartenance et les opinions politiques du travailleur en ce qui concerne l’accès à l’emploi et à la formation professionnelle, les conditions de travail et d’avancement, les conditions de rémunération, le licenciement” (A fine of 1 tapitrisa Ariary or 5,000,000 Fmg to 3 tapitrisa Ariary 15,000. 000 Fmg and imprisonment from one (01) year to three (03) years, or one of these two penalties only, against any person who is guilty of discriminatory treatment based on race, the worker's religion, origin, gender, trade union membership, political affiliation and opinions regarding access to employment and vocational training, working conditions and advancement, remuneration conditions, dismissal [Our translation]).

In sum, the right to free choice of residence is amply protected in positive law but its real consecration can be widely called into question in the question of climatic migration from Antandroy. The main causes of violation of the right to free choice of residence in the Antandroy emigration region include the unavailability of subsistence resources and the insufficient income-generating activities while in the Antandroy immigration region, include professional discrimination and social rejection by the host natives. Figure 1 summarizes the percentage of Antandroy migrants surveyed who identified each of these causes.

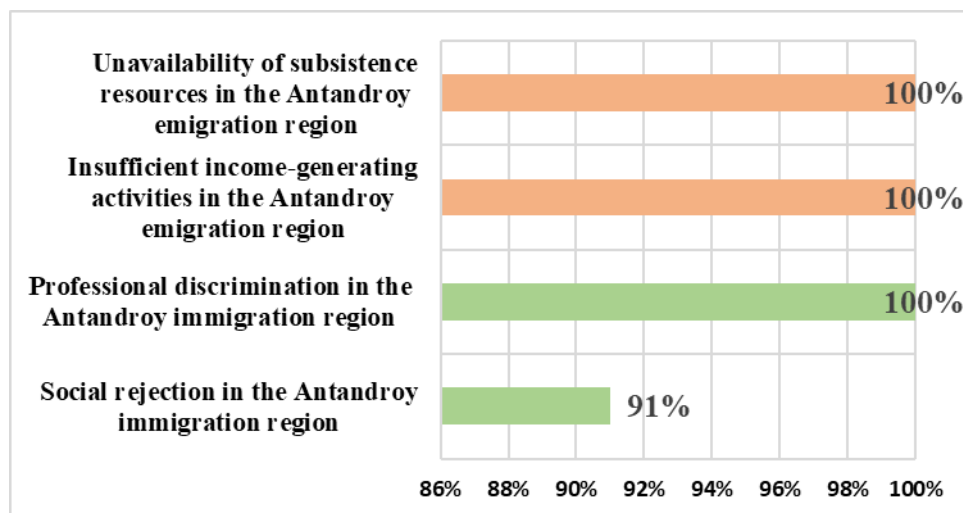


Fig -1: Percentage of responses from Antandroy migrants surveyed on the main causes of their migrations

Reminder: For the purposes of this research, the Antandroy emigration region is the Androy region in the extreme south of Madagascar, while the Antandroy immigration region is the Diana region in the north of the island.

CONCLUSIONS

Despite the legal arsenal at the international, national and regional levels relating to the promotion and protection of human rights, and in particular the right to free choice of residence in Madagascar, there are still transgressions that mark the flagrant ineffectiveness of positive law. These violations are caused not only by the recurrence of climatic disasters but also by cultural differences between Malagasy population groups, often resulting in a lack of interculturality. It is in this context that the fight against climatic disasters and the enshrinement of interculturality should become the two main pillars in the design of a genuine Malagasy social protection policy that respects fundamental rights and freedoms.

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