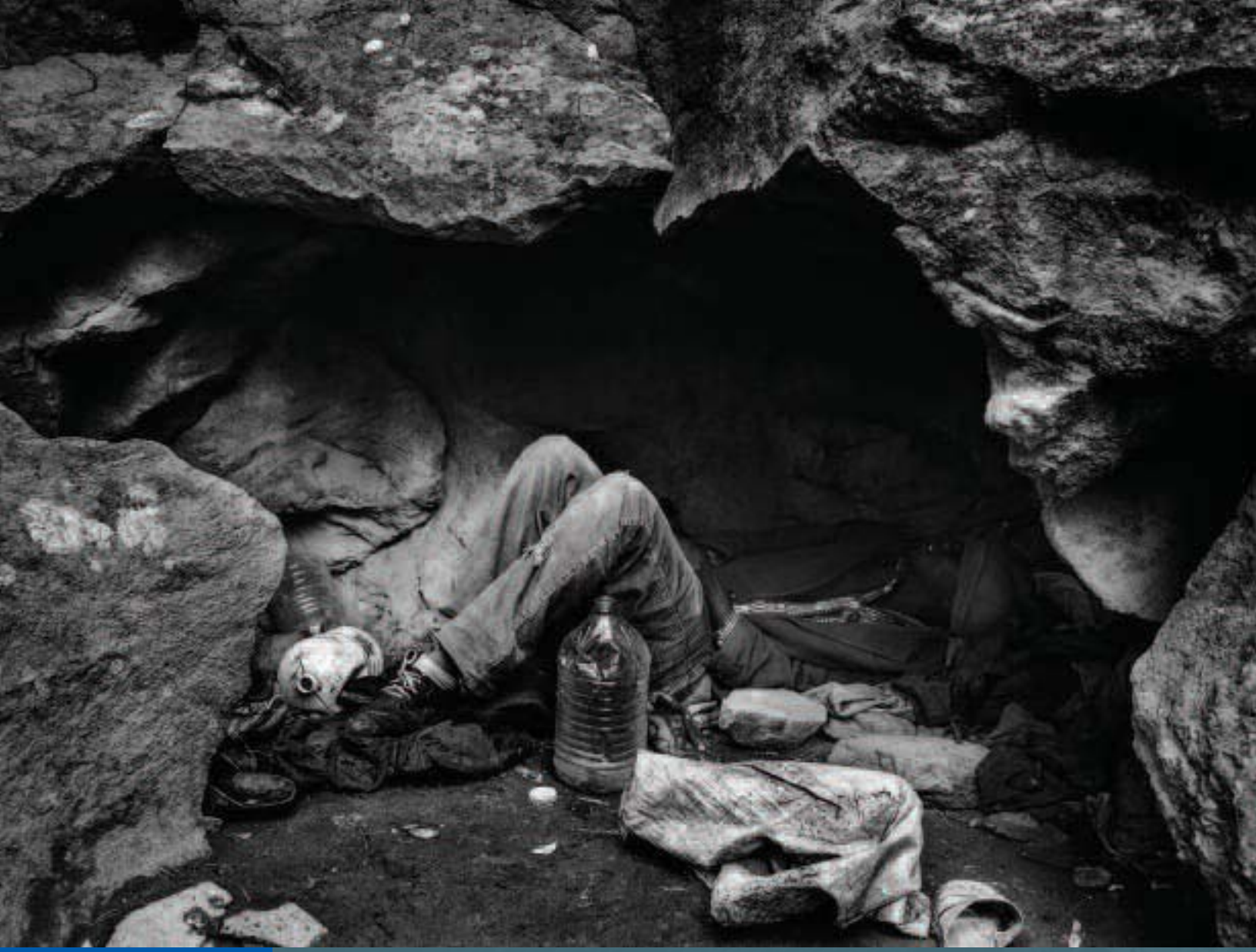


HUMAN RIGHTS WATCH

ABUSED AND EXPELLED

Ill-Treatment of Sub-Saharan African Migrants in Morocco

HUMAN RIGHTS WATCH

Abused and Expelled

Ill-Treatment of Sub-Saharan African Migrants in Morocco

Copyright © 2014 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 978-1-62313-0930
Cover design by Rafael Jimenez

Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: http://www.hrw.org

FEBRUARY 2014 978-1-62313-0930

Abused and Expelled

Ill-Treatment of Sub-Saharan African Migrants in Morocco

Map i

Summary 1

Recommendations 6
- To the Kingdom of Morocco 6
  - To the Ministry of the Interior and to the Ministry of Justice 6
  - To the Ministry of Foreign Affairs and Cooperation 7
  - To the Ministry of the Interior 7
  - To the Ministry for Social Development, Family and Solidarity 7
- To the Algerian Government 8
- To the Spanish Government 8
- To the European Union and Member States 9
- To the UN Special Rapporteur on the Human Rights of Migrants 10
- To the UN High Commissioner for Refugees 10

Methodology 11
- Terminology 12

I. Background 15

II. Police Abuse of Migrants in Informal Settlements 18
- Robbery 20
- Destruction of Shelters, Property, and Documents 20
- Violence during Raids 23

III. Collective Expulsions from Morocco to Algeria 25
- Moroccan Police and Auxiliary Forces Use and Threaten Violence 26
- Lack of Due Process for Adult and Child Migrants 27
- Collective Expulsions 29
- Choice of Destination Country 30
- Vulnerable Categories 31
  - Pregnant Women 32

Children 33
Expulsions or "Returns to the Border"? 34
Mistreatment at the Moroccan-Algerian Border 36
Violence and Theft Carried Out by Algerian Border Police 36

IV. Excessive Force against Migrants at the Moroccan Border with Melilla, Spain 38
Spanish Authorities' Use of Force and Summary Removals in Melilla 42
Expulsion of Children from Melilla 45

V. Refugees and Asylum Seekers: Gaps in Protection 47
Context before September 2013 47
Developments since September 2013 49
Challenges to Implementation 50
Forced Expulsions of Asylum Seekers and Refugees 50

VI. The Externalization of the EU's Migration Management 53
Cooperation in Migration Management 54
Readmission Agreements 55
EU Funding of Moroccan Migration Management 58
The Aeneas and MEDA Programs 59
The European Neighborhood Policy 61

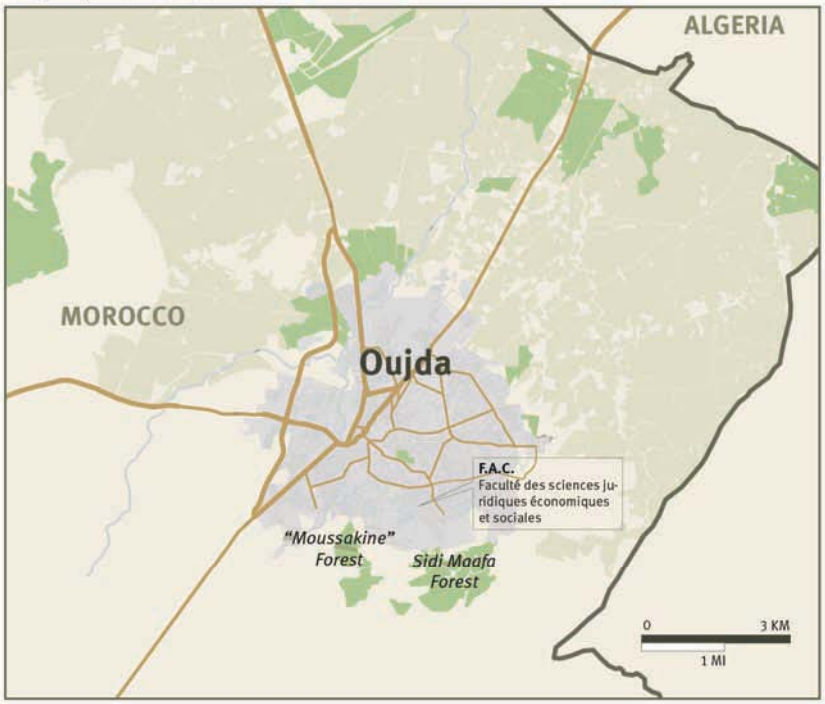
VII. International and National Legal Framework 63
Torture and other Ill-treatment 63
Moroccan and International Law Governing Migrants 65
Forced Evictions and Migrants' Rights to Housing 67

Acknowledgements 72

Annex 73

NADOR, MOROCCO

OUJDA, MOROCCO



© 2014 HUMAN RIGHTS WATCH

Summary

> We know … that we are clandestine migrants, illegal migrants. We know we don't have [some] rights. But we know we have human rights. Human beings need to be respected. We can't be mistreated.
> – *André P., 27, Guinea*

André P. is one of hundreds of sub-Saharan African migrants who live at any given moment in makeshift camps in the forests of Morocco. Like many of his fellow migrants, André, who traveled by foot and car over hundreds of miles from his home in Guinea, considers Morocco simply a way station on his journey to Europe. Sub-Saharan African migrants leave their countries for a variety of reasons: poverty, family and social problems, political upheaval and civil conflict, and fear of persecution—but they uniformly describe their goal as reaching Europe to create a better life.

Many migrants stay in campsites around cities near Morocco's borders with Algeria and Spain's north African enclave of Melilla. The migrants lack basic necessities living outdoors where they sleep in homemade tents and are exposed to cold and rain. Migrants with disabilities face even greater hurdles in accessing food, water, and toilets. Many migrants, having saved up their meager resources to escape poverty, persecution, or hopelessness, find themselves vulnerable to abuse rather than finding safety upon arriving in Morocco.

Human Rights Watch has documented cases where Moroccan police beat these migrants, deprived them of their few possessions, burned their shelters, and expelled them from the country without due process. Morocco's government insists that the police were enforcing national immigration policy and denied that the police perpetrated violence against migrants. However, statements from the migrants, corroborated by other sources, suggested many cases of abuse of sub-Saharan Africans in Morocco. This report focuses on the treatment of sub-Saharan African migrants currently in Morocco's northeastern region, between the Algerian border and the Spanish enclave of Melilla. Human Rights Watch interviewed 67 sub-Saharan African migrants living in unofficial campsites in this region around the cities of Oujda and Nador in December 2012, and another two sub-Saharan African migrants in Melilla.

Forty-two of the 67 migrants interviewed by Human Rights Watch in December 2012 described what they said were frequent police raids. Some of them said that during the raids the police arrested male migrants without charge, destroyed migrant shelters and personal property, and sometimes stole migrants' valuables.

Thirty-seven of the 67 migrants interviewed by Human Rights Watch said that Moroccan security officials also forcibly expelled them at the Moroccan-Algerian border without taking the appropriate legal measures, which require the police to assess whether the migrants had proper documentation, such as visas that would enable them to be in Morocco for three months; were seeking asylum to escape persecution; or were refugees with permission to remain in Morocco. Security forces also denied the migrants basic procedural rights under international law, including the right to consult a lawyer, the right to be notified of their impending expulsion, the right to appeal such an order, and the right to be assisted by an interpreter, if necessary. The security forces committed these abuses against regular migrants, as well as members of groups entitled to special protection under national and international law, such as children, pregnant women, asylum seekers, and recognized refugees.

In the 1990s, Morocco became increasingly popular as a transit country for sub-Saharan Africans. The Moroccan government has coordinated security measures and border management with European Union (EU) member states, especially Spain, since the 1990s, and the country has become an important partner in EU efforts to curb the number of migrants reaching European shores as part of what has been described as the "externalization" of EU migration policy. EU states have a particular interest in protecting entry into the Spanish enclaves, Melilla and Ceuta, as parts of the EU that are on the southern side of the Mediterranean Sea. Some argue that the introduction of Morocco's 2003 law on immigration (Law 02-03) was a response to EU pressures for stronger migration controls in Morocco.

Morocco and Spain's coordinated efforts have at times resulted in violence against migrants and expulsions from the Spanish enclaves to Morocco. Reports from nonprofit organizations and the media indicate that since December 2011, the Moroccan authorities have tightened pressure on sub-Saharan migrants, raiding areas where they are known to live, arresting migrants suspected of being undocumented, and conducting collective expulsions of migrants at the border with Algeria.

Most migrants enter Morocco either via Mauritania or by transiting through Niger and then Algeria. They largely choose to settle in Morocco, at least temporarily, because of its proximity to Europe. Via the Algerian town of Maghnia, many migrants who enter Morocco first reach the city of Oujda on the other side of the border. They then often try to make their way to Nador, a coastal city that is located 15 kilometers from the Spanish enclave of Melilla. Moroccan and Spanish border patrols monitor the perimeters of Melilla and Spain's other enclave on the southern Mediterranean coast, Ceuta, to prevent the migration of undocumented migrants.

The number of irregular migrants currently in Morocco is not known with certainty, but estimates range from 4,500 to 40,000. On November 11, 2013, the Ministries of Interior and Migration Affairs jointly announced a one-time program to regularize six categories of migrants during 2014, at which time they estimated the population of irregular migrants to be between 25,000 and 40,000. Previously, the Moroccan Ministry of the Interior had estimated the number of undocumented migrants to be between 10,000 and 15,000 as of 2012. Others have considerably lower estimates; *Médecins Sans Frontières* (MSF) determined in a 2010 survey that there were approximately 4,500 undocumented migrants in Morocco. According to 2013 MSF figures, there are between 500 and 1,000 migrants in Oujda and between 500 and 1,000 migrants in Nador.

To cross from Nador to Melilla, migrants who lack legal authorization to enter the Schengen Area (an area comprising 26 European countries with no internal border controls) must overcome three tall razor-wire fences separating Morocco and Spain or they might take an inflatable raft or boat from Moroccan waters to Melilla or across the Mediterranean. (Although Melilla and Ceuta are part of the Schengen Area, as they are Spanish territories, additional border checks still take place for any further sea or air travel to mainland Spain or other European destinations.) However, this does not deter migrants from attempting to reach the enclaves because they hope they might be transferred to mainland Spain once inside the enclaves.

Human Rights Watch interviews suggest that both Moroccan Auxiliary Forces and the Spanish *Guardia Civil* have used excessive force against migrants trying to enter Melilla. The *Guardia Civil* summarily removed migrants who entered Melilla and handed them over to Moroccan border patrols at the Melilla-Morocco border, at which point the Moroccan authorities beat the border crossers, including children. Migrants who were expelled from

Morocco to Algeria reported similar abuse at the hands of Moroccan and Algerian authorities, who, the migrants said, used force—or the threat of force—at the border.

For example, Frank D., who was 17 years old at the time of the interview, left Cameroon after his parents died to find a way to sustain himself. After a six-month journey traveling through Niger and Algeria, he reached Morocco. He tried to climb the fence around Melilla but cut himself on the razor-wire and fell back onto the Moroccan side. Moroccan border guards arrested him. Frank said that the guards beat and injured him with wooden batons, even though the fall had stunned him and he was not resisting or trying to escape. The police took him to the hospital, where he remained for two days under medical care. He was then released on crutches, put on a bus, and taken to Oujda to be expelled across the Morocco-Algeria border. Frank said he was not allowed to see a lawyer, use the services of an interpreter, gain information regarding the deportation decision against him, or appeal the decision. The authorities also disregarded the special rights and protections that attach to unaccompanied migrant children: they conducted neither an age determination nor family tracing for Frank nor assigned a guardian to represent his interests. Frank, in other words, was expelled in contravention of his right to due process, along with other violations of his basic rights.

While Morocco has the right to police its borders and enforce a legal regime for the processing of migrants, it must not engage in cruel, inhuman, or degrading treatment of migrants, beating them, robbing them of their possessions, and summarily destroying their makeshift shelters. Morocco also does not have the right to expel migrants without due process. In addition, Morocco owes a special duty of care to unaccompanied migrant children, ensuring that these children are protected from abuse and exploitation. Human Rights Watch finds the violence endured by some migrants at their informal settlements, and as they attempt to travel to Spain, amounts to excessive use of force that at times rose to the level of inhuman or degrading treatment, in violation of human rights law.

In September 2013, the Moroccan government announced it would implement a new migration and asylum policy, based on a set of recommendations formulated by the National Human Rights Council (CNDH) in September 2013 and endorsed by King Mohammed VI. The CNDH report highlighted human rights abuses against migrants, asylum seekers, and refugees in Morocco. While noting that the authorities have the right to control the entrance and the stay of foreigners; to protect the security of the national territory; and to fight against smuggling of migrants, trafficking in persons, and organized

crime; the CNDH also called on the government to respect Morocco's constitution and international commitments regarding the rights of refugees and asylum seekers, migrants, and victims of human trafficking. Despite Moroccan authorities' political commitments to a new migration and asylum policy, it was too early to assess how fully the government has implemented the CNDH's recommendations at the time of the publication of this report.

Human Rights Watch calls on the Moroccan government to remedy the violations delineated in this report as part of its new migration policy. The government should end the use of excessive force against migrants, stop the forced returns and expulsions of migrants without due process, and respect the rights of refugees and asylum seekers who wish to lodge a refugee claim. Morocco should, as party to the Convention on the Rights of the Child, respond appropriately to unaccompanied children who enter Morocco by ensuring that the best interest of the child is considered and that procedural safeguards are in place to guarantee that age determination procedures and family tracing occurs, as well as providing guardians, legal assistance, and social assistance to unaccompanied migrant children.

Human Rights Watch also calls upon the Algerian government to stop its border security forces from violently and summarily pushing back migrants expelled by Morocco at the border.

Human Rights Watch urges the Spanish government to ensure that migrants are not arbitrarily removed, including at the border. In addition, Human Rights Watch asks the European Commission to investigate and monitor Morocco's treatment of migrants who are attempting to cross Morocco into EU territory and ensure that any cooperation between the EU and its member states, and Morocco is in accordance with EU and international human rights standards. Human Rights Watch further calls on the EU and its member states to provide support to develop Morocco's ability to fairly consider asylum claims and to implement the integration strategy planned for refugees and migrants who will benefit from the announced regularization procedure to the extent that it is respectful of their human rights.

Recommendations

To the Kingdom of Morocco

To the Ministry of the Interior and to the Ministry of Justice

Instruct security forces to:

- Refrain from using excessive force against migrants at the border with Melilla in line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Minimal and proportionate force should only be used as necessary when no alternatives exist.
- Refrain from using force against migrants after they have been detained except when strictly necessary for the maintenance of security and order within the detention facility, or when personal safety is threatened, and only to the extent necessary to achieve a legitimate purpose and when other means are not effective.
- Hold accountable any officers who fail to uphold the law and violate migrants' rights to physical integrity.
- When carrying out evictions, including the destruction of makeshift migrant camps, follow appropriate judicial procedures, provide adequate notice, and allow for a timely appeals process.
- Prosecute or otherwise discipline police and security officials who steal or destroy migrants' possessions during raids of makeshift migrant camps.
- Carry out all confiscations of migrants' property according to the law and provide migrants with receipts for every confiscated article so they can be returned accordingly.
- End arbitrary and summary expulsions.
- Ensure that deportations of undocumented migrants who are not in need of international protection are conducted in dignity in accordance with international norms.

- Ensure that summary forced returns of refugees and asylum seekers do not take place by issuing orders that officers respect UNHCR-issued documents to refugees and persons of concern.
- Refrain from expelling unaccompanied migrant children, pregnant women, and members of other vulnerable groups that are protected by international and national law and hold to account any officers who expel such persons.
- Respect the right to family life of all persons, and refrain from separating children from their parents.
- Ensure that detained migrants, especially pregnant women, receive adequate and appropriate health care while in custody, including postnatal care for new mothers.
- Protect survivors of sexual violence and provide them with medical and psychological support.
- Sensitize all security personnel likely to come into contact with migrants to the rights of migrants, specifically to the rights of refugees, asylum seekers, pregnant women, children (including unaccompanied children), and persons with disabilities.

To the Ministry of Foreign Affairs and Cooperation

- Establish and implement a fair and effective national asylum system.
- Develop a system for the fair and legal processing of irregular migrants.
- Continue to facilitate the timely voluntary repatriation of migrants who wish to return to their country of origin.

To the Ministry of the Interior

- Establish reception centers for asylum seekers to ensure their basic needs—including shelter, nourishment, and hygiene—are met while their claims (or, for children, best interest determinations) are being processed.

To the Ministry for Social Development, Family and Solidarity

- Ensure that unaccompanied migrant children are provided guardians, legal assistance, and assistance with their basic needs, including shelter, nourishment, and hygiene, while their best interest determinations are being processed.

- Identify, in cooperation with UNHCR and relevant partners, persons with disabilities and their protection and assistance needs.

To the Algerian Government

- Ensure that border security enforcement officers only use minimum and proportionate force as necessary when no alternatives exist if they wish to prevent migrants from entering Algerian territory at the border with Morocco in compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Instruct border security officials to refrain from using force against children and to screen for unaccompanied children when engaging in border enforcement activities.
- Conduct deportations of undocumented migrants not in need of international protection in accordance with international norms, respecting their right to due process, and allowing access to counsel, interpreters, and an opportunity to appeal decisions.

To the Spanish Government

- Stop the forcible return of undocumented third country nationals and stateless persons to Morocco until such time as Morocco demonstrates it is capable of systematically protecting asylum seekers and refugees and providing humane treatment for migrants, including by refraining from abusing them and halting forced collective returns to Algeria.
- Ensure that the *Guardia Civil* engaged in border enforcement activities only use minimum and proportionate force as necessary when no alternatives exist in compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Instruct the *Guardia Civil* to refrain from using unlawful force against children and to screen for unaccompanied children when engaging in border enforcement activities.
- Implement the 2010-2014 European Union Action Plan on Unaccompanied Minors to ensure their protection and taking into account their best interest.

To the European Union and Member States

- EU member states should refrain from returning third country nationals to Morocco under existing bilateral readmission agreements, or otherwise until Morocco meets international standards with respect to the human rights of returned migrants, and demonstrates the will and the capacity to provide effective protection to asylum seekers and refugees.
- EU member states and the EU should refrain from signing any new readmission agreements with Morocco until it demonstrates that migrants will not be subjected to inhuman and degrading treatment, denied the right to seek asylum, or subject to refoulement if they are readmitted into Morocco.
- The European Commission should cooperate with other EU bodies, including the European Parliament Committee on Civil Liberties, Justice and Home Affairs, to monitor and evaluate existing readmission agreements between Morocco and EU member states and their compliance to human rights standards.
- The European Commission should monitor implementation of existing bilateral readmission agreements, including assessing whether the right to seek asylum and the nonrefoulement obligation is respected in Morocco and ensuring that all returned persons are treated humanely. This assessment should form an integral part of any decision to enter into an EU readmission agreement with Morocco.
- The European Parliament should scrutinize carefully the content and implementation of any planned EU-Morocco readmission agreement in light of the human rights abuses documented in this report.
- EU member states and the EU should combine financial and programmatic support to Morocco for legitimate border enforcement and migration management with capacity building for relevant sections of Morocco's government to better protect refugees and asylum seekers and to promote respect for the human rights of all migrants.
- The European Commission should pressure the Spanish Government to implement the 2010-2014 European Union Action Plan on Unaccompanied Minors.

To the UN Special Rapporteur on the Human Rights of Migrants

- Request an invitation to visit Morocco and the Spanish enclaves of Melilla and Ceuta to examine the treatment of migrants and asylum seekers, including at borders.

To the UN High Commissioner for Refugees

- Establish a more regular and effective presence in northeastern Morocco in the areas at and between the Algerian border and the Spanish enclave of Melilla to ensure that asylum seekers have access to UN High Commissioner for Refugees (UNHCR).
- Offer technical assistance to the Moroccan Government where possible to ensure the protection of unaccompanied child migrants.

Methodology

This report is based on research in Morocco and Spain from late November 2012 to mid-December 2012. Human Rights Watch researchers interviewed 66 migrants in the cities of Nador and Oujda in Morocco and 4 migrants in the Spanish enclave of Melilla. Two of the migrants in Melilla were Moroccan unaccompanied migrant children and one migrant was from Bangladesh. They were not included in the total of 67 migrants from sub-Saharan Africa referenced throughout the report.

Out of the 67 sub-Saharan migrants interviewed in Morocco and Spain, 37, including 4 women, had been expelled by Moroccan authorities at the border with Algeria and had returned to Morocco. Thirteen, including 5 children, had been expelled from Melilla.

Human Rights Watch interviewed 10 unaccompanied children, the youngest of whom was 12 years old. The oldest person interviewed was 52 years old. Two migrants were identified as having physical disabilities. Human Rights Watch interviewed 25 migrants who identified themselves as coming from Cameroon, 14 from Ghana, 7 from Nigeria, 7 from Guinea, 5 from Mali, 4 from the Democratic Republic of Congo, 2 each from Côte d'Ivoire and Morocco, and 1 each from Bangladesh, Benin, Senegal and Burkina Faso. Human Rights Watch interviewed 21 women and 49 men.

The names of all migrants and asylum seekers interviewed for this report have been changed in the interest of their security.

All interviewees were informed of the purpose of the interview and that their interviews might be used publicly. No incentives were offered or provided to persons interviewed. All interviews were conducted individually or, when conditions allowed no alternative, in a small group. Most interviews were conducted in private locations. The interviews were conducted in French, Arabic, or English.

Local activists and nongovernmental organizations (NGOs) that regularly work in the sites we visited helped Human Rights Watch to identify interviewees. We asked the governor of Melilla and the facility director for permission to visit *Los Centros de Estancia Temporal de*

Inmigrantes (CETI – Centers for the Temporary Stay of Immigrants) in Melilla, but received no response to our request.

Human Rights Watch interviewed, either in person or by telephone, officials of the United Nations High Commissioner for Refugees (UNHCR), the Delegation of the European Union in Morocco, and the International Organization for Migration (IOM) in Rabat, Morocco. We also interviewed staff members of NGOs in Morocco and Spain, including Médecins Sans Frontières Spain (MSF-Spain), the *Groupe antiraciste d'accompagnement et de défense des étrangers et migrants* (Gadem), the *Organisation Marocaine des droits de l'homme* (Moroccan Organization for Human Rights, OMDH, Rabat and Oujda sections), the *Association marocaine des droits humains* (the Moroccan Association for Human Rights, AMDH, Rabat and Oujda sections, *l'association Rif des droits de l'Homme* (the Rif Association for Human Rights), and the *Association Beni Znassen pour la Culture, le Développement et la Solidarité* (Beni Znassen Association for Culture, Development and Solidarity, ABCDS). Human Rights Watch interviewed representatives of Morocco's Interministerial Delegation of Human Rights and the *Conseil national des droits de l'Homme* (National Human Rights Council, CNDH).

Terminology

When describing law enforcement officials in Morocco, migrants interviewed by Human Rights Watch did not distinguish clearly among Moroccan military, police, and *gendarmes*, but their roles are indeed distinct. Police officers operate in urban areas, while *gendarmes* operate in rural ones.

The Auxiliary Force is a paramilitary force that, among other responsibilities, is tasked with assisting other security forces when necessary and guarding Morocco's borders in the north of the country. In this report, when migrants encounter security forces at the border with Algeria or Spain, they are usually encountering agents of the Auxiliary Forces. Often, when migrants encounter Moroccan security and law enforcement officials in urban areas or in informal migrant camps outside cities, they are describing police and *gendarmes.* Interviews with migrants indicate that Moroccan Auxiliary Forces provided additional support to the police and *gendarmes* when conducting raids on makeshift migrant camps outside of Nador and Oujda. According to migrant accounts, these three forces coordinate their efforts at various stages.

Both Auxiliary Forces and *gendarmes* usually take migrants to police stations in the larger city centers (Nador and Oujda) before expelling them. When migrants are expelled at the border with Algeria, they are usually handed over by the police or *gendarmes* to the Auxiliary Forces near the border.

Although international law defines "migrant workers," it does not define "migrants." In this report, "migrant" is a broad term to describe third-country nationals in Morocco. We use the term inclusively rather than exclusively; the use of the term "migrant" does not exclude the possibility that a person may be an asylum seeker or refugee.

An "asylum seeker" is a person who is trying to be recognized as a refugee or to establish a claim for protection on other grounds. Where we are confident that a person is seeking protection, whether in Morocco or Europe, we refer to that person as an asylum seeker. A "refugee," as defined in the 1951 Refugee Convention and its 1967 Protocol, is a person with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" who is outside his country of nationality and is unable or unwilling, because of that fear, to return. The 1969 Organization of African Unity Refugee Convention further defines refugees as persons who are compelled to flee "events seriously disturbing public order." Recognition of refugee status by a government or UNHCR is declaratory, which means that people are, in fact, refugees before they have been officially recognized as such.

In line with article 1 of the Convention on the Rights of the Child, the term "child" refers to a person under 18.[1] This report discusses children traveling with their families as well as unaccompanied children. When referring both to children traveling with their families and to unaccompanied children, the report uses the term "migrant children." This term includes children seeking asylum or those granted UNHCR refugee certificates. The definition of "unaccompanied migrant child" comes from the term "unaccompanied child" used by the Committee on the Rights of the Child. According to the committee's General Comment No. 6, "'Unaccompanied children' are children, as defined in article 1 of the

[1] Convention on the Rights of the Child (CRC), adopted November 20, 1989, GA Res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989).

Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so."[2]

[2] UN Committee on the Rights of the Child, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin," General Comment NO. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 7-8.

I. Background

> I am fearful of the police. I can't rent a home, I can't work. I have to beg. We stay in the bush, people living like animals.... [3]
> *–Omar S., 26, Nigeria*

Most migrants interviewed by Human Rights Watch in Morocco come from western and central African countries, which they have left because of poverty, family and social problems, political upheaval, civil strife, and, in some cases, fear of persecution. Interviews Human Rights Watch conducted indicate that there are two main land routes of migration into Morocco: one follows the West African coast via Mauritania; the other one, more heavily used in recent years, is inland through Niger and Algeria with an entry point to Morocco near the Algerian town of Maghnia.[4] Smuggling networks appear to play an important role in organizing transit through Niger and Algeria into Morocco. Most migrants who enter Morocco through Maghnia head toward Oujda, the closest city on the Moroccan side,[5] before heading to the areas surrounding Nador, if their aim is to attempt to enter the Spanish enclave of Melilla or to attempt a journey across the Mediterranean by boat.

In and around Oujda, migrants live in several sites, including the "Fac" site on the university campus in the city,[6] and, outside the city, the "Café Gala" area, the "Moussakine" forest, and the Sidi Maafa forest. Interviews with migrants and with local NGOs indicated that most migrants who enter Morocco from Algeria go to the Oujda Fac site to join other migrants and find smugglers who can help them on the next step of their journey.[7] Some settle in more

---

[3] Human Rights Watch interview with Omar S., Nador, December 8, 2012

[4] "The myth of transit: Sub-Saharan migration in Morocco," Institute for Public Policy Research, June 2013, http://www.ippr.org/images/media/files/publication/2013/07/myth-of-transit-morocco-ENG_June2013_11051.pdf (accessed 12 July 2013).

[5] Hein de Haas, "Morocco: From Emigration Country to Africa's Migration Passage to Europe," *Migration Information Source,* October 2005, http://www.migrationinformation.org/feature/display.cfm?ID=339 (accessed 29 October 2013).

[6] Migrants have set up camp in the Oujda Faculty of Legal, Economic, and Social Sciences (*Faculté des sciences juridiques économiques et sociales*). Migrants are occupying an abandoned lot in one corner of the university where few students appear to go. When Human Rights Watch was conducting fieldwork in Morocco, migrants reported that since September 2012-October 2012, the police had not bothered migrants within the walls of the university.

[7] As MSF explained in their March 2013 report (pp. 19-20), there is an extensive human smuggling and trafficking network in the region. Migrants cannot go through Maghnia (a border town on the Algerian side of the border) or Oujda without paying a fee to the smugglers. Médecins Sans Frontières' (MSF) report, "Violence, Vulnerability and Migration: Trapped at the Gates of Europe," of

secluded sites, such as in the forested hills and mountains outside of Oujda. While waiting to make the passage to Melilla, migrants stay in several sites around Nador: Mount Gourougou, the mountain on the Moroccan side of the border with Melilla; forest areas near Selouane, a neighboring town; and forest areas near the *Marjane* supermarket outside of Nador.

In all of these sites that Human Rights Watch visited, migrants live in tents improvised from sticks, branches, and plastic tarps. The makeshift shelters are often cramped, housing several families or large groups of unrelated individuals.

An unofficial migrant camp outside of the town of Nador. © 2012 Human Rights Watch

March 2013, http://www.doctorswithoutborders.org/publications/reports/2013/Trapped_at_the_Gates_of_Europe.pdf (accessed July 29, 2013).

Human Rights Watch interviews depicted conditions where migrants subsist without running water or electricity, or do not have sufficient protection from cold, rain, and wind. Far from city centers and lacking transportation, the migrants have little access to medical services when necessary, and they shy away from schools for fear of being noticed and apprehended by the police.

Migrants have limited options for earning money in Morocco. Many are undocumented, thus unable to work legally. While some find work in larger cities, there are fewer opportunities in rural areas. Most migrants interviewed by Human Rights Watch survive on the begging that some of them carry out. Because law enforcement officials are more likely to arrest male sub-Saharan migrants than females, according to those we interviewed, women more often go to the *medina* (the old city)—with children in tow—to beg for money and food, usually near mosques after Friday prayers.

II. Police Abuse of Migrants in Informal Settlements

> It's a very terrible life in the forest. I used to sleep but now I wake up at 3 a.m. to go to the school [to hide] because [the police] come and arrest us every day. They run after [us]. They burned our house. We had run away and when we came back, all the houses, the food, were burned down. There were many police that day.
> – *Anthony F., 17, Ghana*

Police conduct frequent raids on the makeshift migrant camps in the areas surrounding Nador and Oujda to apprehend undocumented migrants, including unaccompanied children, and subsequently expel them at the Algerian border. According to interviews with migrants, the frequency of the raids varies from daily to weekly. Migrants, anxious that the police will raid their camps, sleep very little from 4 a.m. to 6 a.m., when the police usually carry out their raids. "We don't sleep," said Luc F., a 27-year-old from Cameroon. "The police can come at any time. I run barefoot on the hill, we're tracked like monkeys. They come at 5:45 [a.m.], screaming. They try to rob, take everything."[8]

Of the 67 migrants Human Rights Watch interviewed in sites around Nador and Oujda, 42 migrants described frequent raids. Interviews with migrants at these various sites indicated a pattern of abuse by law enforcement officials during their raids: robbing migrants' money and objects of value, such as phones; burning their personal property and makeshift shelters; and using excessive force against migrants when apprehending them. In some cases, officials destroyed or confiscated passports and other documents without returning them.

Pierre C. is a 28-year-old migrant from Ghana who said he had arrived alone in Morocco eight months before being interviewed by Human Rights Watch in December 2012. At that time, he was staying in the Moussakine forest outside of Oujda with other Ghanaian men. He described living in constant fear of being arrested and forced to return to the Algerian border:

---

[8] Human Rights Watch interview with Luc F., Nador, December 7, 2012.

> There is no rest here. Every morning, the *gendarmes* come. Yesterday [December 2, 2012], I was trying to prepare food and they came. I asked them if they could wait until I ate a bit, knowing that I wouldn't have food, only a long walk after deportation [from the border back to Oujda], but they refused. It was 6:30 a.m. and I walked with them and obeyed because if you refuse, they will beat you up.[9]

After Pierre was arrested, the *gendarmes* took him to the Oujda police station, where he was fingerprinted and held in a cell with other migrants until 8 p.m. He said they were then taken by bus to another police post near the border with Algeria and handed over to Auxiliary Forces who walked him and other migrants close to the border and forced them to leave Morocco. After he walked away from the Moroccan authorities, he waited until he was out of their sight and started the six-hour walk back to his campsite.[10]

Mahdi S., who lives in the Sidi Maafa forest just on the outskirts of Oujda, described a similar situation: "There is no work; it's very hard to eat. I beg for money outside the mosque. The police come every day so I sleep for a few hours then go back. They burn our tents – like they are going to war."[11]

In Nador, the situation mirrors the one in Oujda. Antonin S. told Human Rights Watch about the daily morning raids he had encountered: "I have been in Nador since August 2012. I am choking with fear. My head is tormented because of the police. They don't give us peace. They don't pay attention to our legal status [in Morocco]. They don't respect women or children. We are not animals, even if we live here [in the forest]."[12]

In every one of the 42 accounts of Moroccan security raids, migrants described law enforcement officials arresting male migrants without conducting any type of identification or assessments of migrants' status in Morocco prior to arresting them, and, in the case of unaccompanied children, without conducting any form of age determination. They said that police officers routinely arrest male migrants indiscriminately, even if they have a visa

---

[9] Human Rights Watch interview with Pierre C., Oujda, December 3, 2012.

[10] Ibid.

[11] Human Rights Watch interview with Mahdi S., Oujda, December 4, 2012.

[12] Human Rights Watch interview with Antonin S., Nador, December 7, 2012.

or other documentation showing they have permission to stay. Also arrested are migrants from countries for which Morocco does not require entry visas—including Senegal, Guinea, and Côte d'Ivoire—whose nationals are allowed to stay for up to 90 days without a visa.[13] In contrast to migrants who told Human Rights Watch that police officers arrested them in Morocco's larger cities after stopping them in the street and asking to see their passport or visa, migrants who were arrested in raids or witnessed such arrests in the northeastern border region did not receive identity checks.

Robbery

The majority of migrants Human Rights Watch interviewed in Nador and Oujda reported that officers from the police, auxiliary force, and *gendarmes* often robbed them during raids of the informal camps and when transporting the men captured at the camps to the Algerian border.

Ismael M., who lives in one of the forests outside of Oujda, told Human Rights Watch how the *gendarmes* had been coming frequently since December 2011. Robbery is a routine part of the daily raids, he said: "The *gendarmes* look for men, they enter the tents and take phones. We migrants lose our phones every day."[14]

Ismael's experience is only one example of police theft of the valuables of migrants. Throughout the report, in chapters dealing with other forms of abuses, migrant interviews make reference to similar thefts by security forces, of which they claim they were victims.

Destruction of Shelters, Property, and Documents

In every migrant site that Human Rights Watch visited, in both Nador and Oujda, migrants said that Moroccan security forces summarily burned or destroyed their makeshift shelters and personal property without following any due process procedures for conducting evictions. Migrants told Human Rights Watch that in the months prior to the interviews, these raids occurred frequently, most often weekly, and sometimes several times a week.

---

[13] Consulate General of the Kingdom of Morocco in New York. "Visa Application" http://www.moroccanconsulate.com/visa.cfm (accessed August 26, 2013).

[14] Human Rights Watch interview with Ismael M., Oujda, December 3, 2012

Human Rights Watch observed the remains of several makeshift shelters and piles of belongings that had been destroyed by fire. Migrants told Human Rights Watch that the police had burned the shelters and belongings.

Two tents destroyed by Moroccan security forces at an unofficial migrant camp outside of Selouane, near Nador. © 2012 Human Rights Watch

Local organizations have previously reported on this type of destruction. In September 2012, the Council of sub-Saharan migrants in Morocco (CMSM - *Conseil des migrants subsahariens au Maroc*) and a group that fights for migrant rights and against racism, the Gadem, reported that police burned down an abandoned house where migrants had been squatting just outside of Nador.[15]

[15] GADEM (Groupe antiraciste d'accompagnement et de défense des étrangers et migrants), "Recrudescence de la répression envers les migrants au Maroc. Une violence qu'on croyait révolue," September 2012, http://www.gadem-asso.org/Recrudescence-de-la-repression (accessed April 29, 2013).

Human Rights Watch conducted several interviews of migrants who had been living in the abandoned house that the authorities burned down. Antoine K. from Benin had been living there during the summer of 2012. He told Human Rights Watch how police, *gendarmes*, and Auxiliary Forces raided the house on a regular basis over the summer, sometimes daily, until the migrants who were living there moved deeper into the forest because they felt unable to remain in the house due to the raids. He said in August 2012:

> The police started coming again every day. Some [migrants] would go up to sleep in the forest. One week later they came and expelled us. The police said they were going to burn the house down …. On August 27 [2012] they tried to expel us from the white house. We left. We were staying outside for a week to ten days. We kept getting pushed back further and further, first to the olive groves, and then to here in the forest. On October 6, 2012, the police showed us [where to go], they told us to go into the forest. We thought we would not have any more problems but after one week, they started coming again. They kept coming until they burned everything.[16]

While many migrants enter Morocco without the necessary documentation and visas, others do carry passports showing that they are lawfully present in Morocco, particularly those from other West African countries who do not need visas to enter Morocco. When the authorities burn or otherwise destroy their documents, however, they lose the proof that they are in the country legally. Antoine K. said that this happened when the authorities burned down the abandoned house outside Nador. "There were no negotiations; they burned our bags in the fire after searching them. They burned many passports."[17]

In another site, outside of the town of Selouane, Human Rights Watch interviewed 11 women who described a raid in November 2012 during which Moroccan law enforcement officials destroyed their tent, leaving them without shelter. Four of these women were pregnant when the shelter was destroyed. In reference to this raid, Sofia K., a woman from Cameroon, four months pregnant, explained: "I have been in Selouane four months. We

---

[16] Human Rights Watch interview with Antoine K., Nador, December 8, 2012.

[17] Human Rights Watch interview with Antoine K., Nador, December 8, 2012.

don't live well here. The police shake us up. I was traumatized when one day, a month ago, the police came in the morning and destroyed my tent."[18]

Another pregnant woman, Elizabeth S., also from Cameroon, lives in the same site. She described a similar situation, "The police come nearly every Sunday or Monday and the men run away. Women don't run away. They shove us around. Once they almost took me away but [then] took the others [to be expelled]. They burned all our tents. I stay here, I can't walk [she is eight months pregnant]."[19] The inhabitants of the camp were effectively rendered homeless.

Interviews conducted with the 42 migrants who experienced or witnessed a police raid of their campsite strongly suggest that Moroccan officials follow no formal procedure before dismantling unofficial migrant camps. One exception was a migrant who indicated that the police presented him with an eviction notice before removing him from a house where he were squatting in one of the Nador sites that Human Rights Watch visited.[20] Every other migrant interviewed by Human Rights Watch described raids that lacked any of the procedural steps required by international law, such as written notification and the right to appeal a decision.

By destroying the makeshift tents of migrants during raids, Moroccan enforcement officials may be rendering migrants homeless. Destruction without due process of shelters may constitute forced evictions, and may therefore constitute a violation of the right to housing, which is guaranteed by international human rights treaties to which Morocco is a party.

Violence during Raids

Of the 42 migrants who described to Human Rights Watch daily to weekly police raids, 12 said that Moroccan authorities used violence against them during raids; seven other migrants said they witnessed such violence.

One migrant with a physical disability who used crutches, Hassan N., described the excessive force he said police used during a raid outside Nador in the summer of 2012:

---

[18] Human Rights Watch interview with Sofia K., Nador, December 10, 2012.

[19] Human Rights Watch interview with Elizabeth S., Nador, December 10, 2012.

[20] Human Rights Watch interview with Andre S., Nador, December 8, 2012.

> My second refoulement was on June 20, 2012. We had changed our sleeping grounds and the police came with sticks. I was hit with sticks and asked why we were here. I was handcuffed and then they grabbed me and hit me 10 or 12 times on my back with a stick. I was bleeding.[21]

A female migrant, who said she was five months pregnant, told Human Rights Watch about similar violence she experienced during an early morning raid in one of the sites in early December 2012:

> The police came here last Tuesday at 5 or 6 in the morning. It was the *gendarmerie* and police together…. They came when we were sleeping and abused us. They asked me, "where is your husband" and they beat me. They kicked me in the stomach even though I told them I was pregnant. They said we are not welcome here. I yelled and eventually they left. They arrested 8 or 9 of the men.[22]

---

[21] Human Rights Watch interview with Hassan N., Nador, December 8, 2012.

[22] Human Rights Watch interview with Sarah F., Nador, December 7, 2012.

III. Collective Expulsions from Morocco to Algeria

Human Rights Watch interviewed 67 sub-Saharan migrants in the Oriental region of Morocco, 37 of whom had been expelled at the border with Algeria at least once. All 37 nonetheless returned to the informal settlements in Morocco. In nearly all the 37 cases, the migrants said that Oujda police transferred them east of Oujda to the Moroccan Auxiliary Forces stationed at the border with Algeria.[23]

Morocco does not have dedicated reception centers for migrants or unaccompanied migrant children comparable to the CETI (*Los Centros de Estancia Temporal de Inmigrantes*– Centers for the Temporary Stay of Immigrants) in the Spanish territories of Melilla and Ceuta or the Purisima centers in Melilla. Instead, the Moroccan authorities use cells in police stations to hold undocumented migrants.[24]

Some interviewees were apprehended during or after their attempt to enter one of the Spanish enclaves: 11 were summarily removed by Spanish authorities in Melilla and handed over to Moroccan authorities. Most were then taken to a police station; some were taken directly to the Morocco-Algeria border.

The Auxiliary Forces posted along the Algerian border east of Oujda escorted the arrested migrants toward Algeria and instructed them to walk straight ahead (*nishan* in Moroccan Arabic). One-third of the expelled migrants we interviewed described being forced to cross the border or threatened with violence if they did not leave Morocco.

Sometimes migrants were directly taken to the border late at night. The timing of these expulsions, usually carried out between 9 p.m. and 2 a.m., and the fact that the migrants were not handed over directly to Algerian authorities, suggest that expulsions take place unofficially.

---

[23] The Moroccan Auxiliary Forces is a paramilitary force that complements the work of the military, the *gendarmes,* and the police when these three forces need reinforcement. The Auxiliary Forces come under the jurisdiction of the Ministry of the Interior.

[24] Global Detention Project "Morocco Detention Profile," last updated April 2011, http://www.globaldetentionproject.org/countries/africa/morocco/introduction.html (accessed April 20, 2013).

None of the 37 migrants who had been expelled were provided access to a lawyer or an interpreter, they told Human Rights Watch. Generally, the police did not provide them with a statement or document charging them with any violation, or bring them before a judge, or provide any opportunity to challenge their impending expulsion. When the police did provide a statement to them, the migrants told Human Rights Watch that the police pressured them to sign it even though it was in Arabic, which they did not understand.

Gadem, a Moroccan anti-racist organization that works with migrants, evaluated the removal and expulsions of migrants from Moroccan territory between 2004 and 2008. Its report, "The Human Rights of Sub-Saharan Migrants in Morocco," found fundamental gaps in the protection of vulnerable groups from expulsions and violations of due process during the removals.[25] Human Rights Watch's research shows that these gaps remain.

This chapter examines how Moroccan authorities continue to expel migrants from Morocco at the Algerian border without following due process. Migrants' rights are violated at various stages, from the time they are arrested to their expulsion at the Algerian border.

Moroccan Police and Auxiliary Forces Use and Threaten Violence

Six of the 37 migrants who were expelled from Morocco at the Algerian border told Human Rights Watch that Moroccan Auxiliary Forces directly subjected them to violence; two migrants said they witnessed such violence, which included seeing Auxiliary Forces hitting other migrants with wooden sticks approximately 100 centimeters long.

One unaccompanied 14-year-old migrant boy from Burkina Faso who was arrested in Nador after attempting to enter Spain said:

> I was arrested once in Selouane. I went to the shop and someone in civilian clothing arrested me, handcuffed me, and took me to the commissariat of Nador. I was fed there. There were many people there. I told them [the officials] I was 14…. At 8 p.m., a bus took me to Oujda, straight to the

[25] Groupe antiraciste d'accompagnement et de défense des étrangers et migrants (GADEM)/Justice without Borders, "The Human Rights of Sub-Saharan Migrants in Morocco," 2010, http://www.jsf-jwb-migrants.org/documents%20-%20all/phaseI_studies/justice-Gadem-eng.pdf (accessed February 15, 2013).

> border…. In Oujda, they had dogs, they shoot [their guns] at night. We got off the bus and we were told to go. We left so that they wouldn't hurt us.[26]

Amin K. said he did not get a lawyer and was held in a cell with unrelated adults.

Another migrant, Nicolas E., 39, from Cameroon, said, "The Moroccan military pushed us toward Algeria yelling "Yallah! [Let's go!]." They treated me really badly, they kicked me so much that I am peeing blood as a result."[27]

Lack of Due Process for Adult and Child Migrants

> I was never offered a lawyer. […] They only asked if I have a passport.[28]
> –*Nicolas E., 37, Cameroon*

> I was arrested at the bus station, handcuffed, and taken to the *gendarmerie.* Then they took me to the central police station in Oujda and put me in a cell. [The police] asked my age and I told them I was 17… I was then put in a cell with 52 … men …. I did not have a lawyer and I was not told that I was going to be expelled….
>
> We were all taken by bus, including an Algerian woman and her [five-year-old] child. We were taken to a small house [at the border], where there were *gendarmes*. They asked for our [finger]prints and to line up…. We were asked to stand up [to leave Morocco and walk into Algeria]. They used some force on those who didn't want to go. They got slapped and punched. And we went towards the forest [where the border is].[29]
> –*Frank D., 17, Cameroon*

None of the migrants interviewed by Human Rights Watch who had been expelled from Morocco described receiving any information about their rights, nor did the authorities give

---

[26] Human Rights Watch interview with Amin K., Nador, December 7, 2012.

[27] Human Rights Watch interview with Nicolas E., Oujda, December 3, 2012.

[28] Ibid.

[29] Human Rights Watch interview with Frank D., Oujda, December 3, 2012.

them the opportunity to contact consular representatives of their country of origin. None of the unaccompanied migrant children we interviewed were treated as children, even when they declared their age, for example, by being given guardianship and legal assistance. As one migrant told Human Rights Watch, "The police told us, you have no rights here."[30]

Before expelling or "returning" migrants to the border, police sometimes issue them a *procès verbal,* a police report pertaining to their arrest. Only 5 of the 37 expelled migrants Human Rights Watch interviewed reported having received such a statement, and 2 of these 5 said they could not understand or did not get the opportunity to read the statement, but they were coerced to sign. One migrant, Eric P., described his arrest in Selouane, near Nador, and his subsequent expulsion:

> The police took us in vans to the Nador police station, where many others were put in cells.... The police asked us our names, nationalities. They got us to sign a statement (*procès verbal*) with finger prints. We hadn't read it.... The same day, around 6 p.m., the police took us to Oujda in a bus.... They drove us to the border.... They handed us over to the border guards who showed us the Algerian border and pushed us to cross.[31]

Anthony F., an unaccompanied 17-year-old child migrant from Ghana, made no mention of having received a *procès verbal* on the two occasions when he was expelled:

> I was arrested twice in 2012, in January and March [when he was 16 years old]. The first time I was taken to the police station, my prints were taken.... The police did not ask anything. I was not taken to a cell; [they took us] straight to the ... border. I ran back because the Algerian police were there, holding guns and telling us to go back. The second time, I was begging on a Friday and the police took me to the police station. They took my prints and then took me to the [border].[32]

---

[30] Human Rights Watch interview with Joseph M., Nador, December 8, 2012.

[31] Human Rights Watch interview with Eric P., Oujda, December 4, 2012.

[32] Human Rights Watch interview with Anthony F., Oujda, December 4, 2012.

Another migrant, Olivier S., a 28-year-old Cameroonian, described to Human Rights Watch how Moroccan police coerced him and other migrants to sign documents they did not understand:

> [The police] took us to the Nador Commissariat…. They took our [finger]prints and photos. I didn't see a lawyer. We were in the courtyard, with no toilets. The clandestine [migrant] has nothing to say. All the documents were written in Arabic and we were told to sign. If we don't sign, we get hit.[33]

The Euromed Human Rights Network (EMHRN) has noted that, "The lack of information foreigners have about the appeals procedures makes it very difficult, indeed impossible, for them to exercise their rights. Moreover, they are not made aware of their rights." [34] Indeed, Morocco's Law 02-03 does not require the authorities to inform migrants or foreigners of their rights, except in cases when they are detained following a judicial decision of expulsion or a return to the border.[35]

Collective Expulsions

> [In July 2012], I was taken to the Nador Gendarmerie [police station]. They didn't take my prints or my photo. It was a big refoulement, about 45 people. I was put in a refoulement cell after I was grabbed at night. And the next day, around 4 p.m., we were taken by bus [to the Algerian border].[36]
> – *Bouba L., 35, Mali*

Of the 37 migrants Human Rights Watch interviewed who were expelled at the border with Algeria, nearly all had been apprehended as part of a group, taken to the police station in a group, and brought to the Algerian border and expelled as a group. Collective expulsions documented by Human Rights Watch ranged from groups of 3 migrants to groups as large

---

[33] Human Rights Watch interview with Olivier S., Nador, December 7, 2012.

[34] Euro-Mediterranean Human Rights Network (EMHRN), "Asylum and Migration in the Maghreb - Country Fact Sheet: Morocco," December 2012, http://www.euromedrights.org/eng/wp-content/uploads/2012/12/EMHRN-Factsheet-Morocco_EN_15JAN2013_WEB.pdf (accessed August 23, 2013) p. 37.

[35] This point was raised by the EMHRN in "Country Fact Sheet: Morocco," December 2012, p. 37.

[36] Human Rights Watch interview with Bouba L., Nador, December 8, 2012.

as 52 migrants. In no case did the Moroccan authorities notify any of the individuals of a judicial decision to expel or return them to the border.

Article 22 of the Migrant Workers Convention, to which Morocco is a state party, prohibits the collective expulsion of migrant workers: "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."[37] Article 22 applies to all migrant workers and their families, irrespective of their status.

Choice of Destination Country

The decision to remove a migrant is distinct from the choice of country to which that migrant should be returned. As per article 30 of Law 02-03, "The decision establishing the country of return is separate from the decision of expulsion itself."[38] However, none of the 37 migrants Human Rights Watch interviewed who were expelled at the Algerian border were given the opportunity to choose or to discuss the country of their return. Gadem, an NGO that provides support to migrants in Morocco, observed that Morocco neither formally decides on the proper return country nor seeks or obtains Algeria's agreement to receive deportees prior to their expulsion:

> Apart from the fact that the administration has not seemed to have made any decision determining the return countries, it seems very hazardous to consider Algeria as a place where migrants who have been returned in such a manner would be "legally admissible," considering that said country has apparently not agreed to receive returned individuals.[39]

In fact, not one of the migrants Human Rights Watch interviewed said that the Moroccan authorities had officially handed them over to Algerian authorities when expelling them at the Morocco-Algeria border. On the contrary, after Moroccan officials forced them to cross into Algeria, they said that Algerian border control agents mistreated them. Every single

---

[37] UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, adopted December 18 1990, A/RES/45/158, art. 22, http://www.refworld.org/docid/3ae6b3980.html [accessed 17 January 2014].

[38] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196., art. 30.

[39] GADEM, "The Human Rights of Sub-Saharan Migrants in Morocco," 2010, p. 30.

migrant interviewed by Human Rights Watch whom the Moroccan authorities arrested and subsequently expelled at the Algerian border said that Algerian law enforcement officials they encountered forced them back to Morocco.

Moroccan authorities arrested Eric P., a migrant from Ghana, during a raid in Nador a few days before Human Rights Watch interviewed him. He described what happened after Moroccan authorities forced him and other migrants across the Algerian border outside of Oujda:

> On the other side, when we crossed, the Algerian border guards arrested us, searched us and took the money and phones they found on some of us. Those who had money were released, while those who didn't have money were beaten. I didn't have money so they took my jacket and beat me. We ran away and got back to Morocco the same day. We walked for five hours to reach Oujda by 6:00 a.m. the next day.[40]

Another migrant described what happened after Moroccan authorities arrested him and other migrants near Melilla and then expelled them at the Algerian border:

> When we crossed the Algerian border, the [Algerian] guards arrested us, searched us. They found some money and a cell phone on me. They gave them back to me and they pushed us back to the Moroccan border. We crossed and came back to Oujda.[41]

Vulnerable Categories

Moroccan national immigration law prohibits the expulsion of pregnant women, children, refugees, and asylum seekers. The latter three have specific protection under international law as well. According to article 29 of Law 02-03, "No pregnant foreign woman and no foreign minor can be removed. Similarly, no foreigner may be removed to a destination country if he establishes that his life or freedom are threatened or if he will be exposed to

---

[40] Human Rights Watch interview with Eric P., Oujda, December 4, 2012.

[41] Human Rights Watch interview with Mohamed J., Oujda, December 4, 2012.

cruel, inhuman or degrading treatment."[42] However, Human Rights Watch found that Morocco sometimes expels pregnant women, children, asylum seekers, and migrants with a potentially strong claim for asylum.

Pregnant Women

Most migrants Human Rights Watch interviewed indicated that Moroccan authorities generally do not arrest and deport or expel women, particularly not when they are pregnant.[43] However, Human Rights Watch found that there were nonetheless cases when Moroccan security forces arrested and expelled pregnant women in contravention of provisions in the national law on immigration. One woman told Human Rights Watch that security forces expelled her from Morocco after arresting her and her sister in Fez, on December 2, 2012 when she was three to four months pregnant.

In Oujda, Human Rights Watch interviewed the two sisters shortly after they found their way back to the 'Fac' campsite on the university campus of Oujda after walking back from the Algerian border the previous night. The sisters, ages 27 and 18 from Cameroon, had been living in the city of Fez until then; one said she was three to four months pregnant while the other had an infant child. When they went to get milk for the baby, the police arrested them. Despite their telling the police that the six-month-old baby was still at home, the police took the two women to the police station and held them there for four to five hours before putting them on a bus to Oujda. The police took them to another police station in Oujda, where the younger sister told the police she was pregnant. Nevertheless, the police expelled the two sisters in the middle of the night, at the Algerian border with a group of 30 other migrants. Human Rights Watch later heard that both women managed to return to Fez. The baby remained in Fez, where other migrants cared for him during his mother's expulsion.[44]

---

[42] By prohibiting return only if foreigners can show they "are threatened," Law 02-03, art. 29 appears to set a higher standard than the principle of nonrefoulement in the Refugee Convention, article 33.1, which prohibits states parties from returning refugees to places where their lives or freedom "would be threatened." The Refugee Convention nonrefoulement standard is future directed, as indicated by a refugee's well-founded "fear" that his or her life or freedom "would be" threatened. The Moroccan government has not provided an official English translation of Law 02-03. The French version of the law, however, substitutes the word "foreigner" for "refugee" (therefore removing the well-founded fear component) and uses the word "sera" instead of "serait." To bring Moroccan law into conformity with the nonrefoulement principle in the Refugee Convention, Law 02-03, art. 29 should be amended to prohibit refoulement.

[43] Only 4 out of 37 migrants interviewed by Human Rights Watch who had been expelled at the border with Algeria were women, one of whom was pregnant.

[44] Human Rights Watch interviews with Sylvie F. and Maryline F., Oujda, December 3, 2012.

Children

Moroccan law enforcement officials expelled eight of the nine sub-Saharan unaccompanied migrant children Human Rights Watch interviewed in Nador and Oujda. These children ranged between 12 and 17 years old at the time of their expulsion, according to what they told Human Rights Watch. The one who was not expelled was a 14-year-old girl, who said that the *gendarmes* were only arresting men during raids of the informal camp where she lived.

In none of these cases did the Moroccan authorities provide appropriate care or conduct age determinations after the children informed them that they were younger than 18 years of age. On the contrary, these children described being treated like everyone else from the time of apprehension to their expulsion.

A 12-year-old unaccompanied migrant boy from Cameroon, Jean-Luc, described the chain of events after his arrest in Nador in November 2012: "I spent one week in a cell with no food, with five, six other people, including adult men. There was no interview.... I never saw a lawyer. I was put on a bus and taken to the border behind the Gala café. We were given to the military in a small house [at the border] and the police threw us across the border. They did not hit us. They stole phones, six phones, and shoes."[45]

In February 2013, the UN Committee on the Rights of the Child urged states to "expeditiously and completely cease the detention of children on the basis of their immigration status," arguing that such detention is never in the child's best interest.[46] In 2006, the Committee stated that "unaccompanied or separated children should not, as a general rule, be detained," and "detention cannot be justified solely on... their migratory or residence status, or lack thereof." [47] The Convention on the Rights of the Child and the International Covenant on Civil and Political Rights require states parties to separate adults from unrelated children in detention, in the exceptional circumstances where

---

[45] Human Rights Watch interview with Jean-Luc M., Oujda, December 4, 2012.

[46] UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, February 2013, para 78 www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

[47] UN Committee on the Rights of the Child, General Comment No. 6, para. 61.

children are detained,[48] and the Committee reiterates the importance of this in the case of unaccompanied migrant children.[49]

Morocco does not provide unaccompanied migrant children in its territory with guardianship, despite its obligations under international law. The rapidity of the process, the lack of a translator and of legal representation prevents migrant children from having the opportunity to establish their age. In the expulsion of children from Morocco, Human Rights Watch found that no age determination procedure was conducted and that their status as children was ignored, even when they volunteered their age. In the cases Human Rights Watch examined, Morocco did not appear to consider the child's best interest when determining immigration cases, contrary to what the Committee on the Rights of the Child has prescribed:

> A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.[50]

Expulsions or "Returns to the Border"?

In 2011, the UN Committee Against Torture said that Morocco should investigate allegations that migrants had been subjected to "ill-treatment or excessive use of force" during expulsions and that Morocco "should take steps to ensure that the legal safeguards governing the practice of escorting undocumented migrants to the border and the expulsion of foreign nationals are effectively enforced…in accordance with Moroccan law."[51]

---

[48] CRC, art. 37(c), ICCPR, art. 10(b). The CRC only allows the joint detention of children and adults if it is in the child's best interest.

[49] "Special arrangements must be made for living quarters that are appropriate for children and that separate them from adults[.]" UN Committee on the Rights of the Child, General Comment No. 6, para. 63.

[50] UN Committee on the Rights of the Child, General Comment No. 6, para 20.

[51] United Nations Committee Against Torture, "Consideration of Reports Submitted by States Parties under article 19 of the Convention, Concluding Observations of the Committee against Torture, Morocco." CAT/C/MAR/CO/4, December 21, 2011, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MAR.CO.4_en.pdf (accessed April 30, 2013), para. 26. The Committee Against Torture is the treaty monitoring body established by the Convention against Torture and other Cruel, Inhumane, Degrading Treatment of Punishment to hear violations of that convention.

In response, the Moroccan authorities emphasized the distinction in its national law between expulsion and "returns to the border."[52] Moroccan authorities claimed that "the law [...] makes a distinction between a return to the border and expulsion. A return to the border is a legal act, accompanied by all the legal and procedural guarantees provided against any person who enters or exits Moroccan territory by exits or places other than border posts, or who remained on Moroccan territory beyond the authorized length of their visa."[53]

Similarly, in a letter to Human Rights Watch, the Moroccan authorities said that returns to the border were lawful:

> In accordance with the well-established rule of international law, *returns to the border*, taking due account of the need to respect the dignity and rights of migrants, as well as the rights of defense, including the exhaustion of appeals against the decision of removal, are carried out by transporting the migrant, subject to a legal measure of return to the border, to the last point of infiltration onto national territory. In this respect, one must remember that Morocco's land borders with Algeria, 1,601 Km long, are the infiltration point of virtually all foreigners entering the country illegally.[54]

The Moroccan authorities also deny expelling migrants or forcing them to leave Moroccan territory: "Within the framework of the management of migration, the Moroccan authorities, acting in strict legality, never forced migrants to leave the country and enter Algeria."[55] In this letter, the Moroccan authorities assert that they do not conduct any expulsions and also that any returns to the border are legal when they have followed the procedural requirements ensuring migrants' rights to due process, including their right to contest the decision of return. The Moroccan government previously emphasized this distinction and the legality of returns to the border in its initial report to the Committee on the Rights of

---

[52] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196.

[53] Government of Morocco. "Response by the Moroccan Authorities to the Concluding Observations of the Committee Against Torture" (« Réponse des autorités marocaines aux observations finales du Comité contre la torture ») 2011, CAT/C/MAR/CO/4/Add.1, http://www2.ohchr.org/english/bodies/cat/docs/co/comments/CAT-C-MAR-CO-4-Add1_fr.doc (accessed August 27, 2013), p 28.

[54] Letter from Mr. Mahjoub El Haiba, Interministerial Delegate for Human Rights, Inter-ministerial Delegation of Human Rights, to Human Rights Watch, March 13, 2013.

[55] Ibid.

Migrants, as well as in its response to this Committee's follow-up questions.[56] This distinction between expulsions and "returns to the border" does exist in Law 02-03 regulating immigration: articles 21-24 deal with "returns to the border," articles 25-27 with expulsions, and articles 28-33 with both, all of which outline procedural responsibilities on the part of Moroccan authorities for conducting either expulsions or "returns to the border."

However, in practice, the distinction between expulsions and "returns to the border" is far from clear. Migrants said they are either coerced to leave the Moroccan territory with the threat of violence, or pushed toward the Algerian border by Moroccan security forces. This treatment effectively expels migrants from Morocco, as opposed to "legal" "returns to the border" from which migrants allegedly entered the country. Contrary to the Moroccan government's claims, all the cases Human Rights Watch documented of forced removals of migrants from Morocco to the Algerian border were, in practice, expulsions.

As shown throughout this chapter, victim and witness evidence consistently show that law enforcement authorities who arrest migrants in the northeast region of Morocco transfer migrants to the Oujda police station with no opportunity to appear before a judge. The Oujda police then subject them to summary expulsion from Moroccan territory, often accompanied by violence, theft, and other abuses. The Moroccan authorities routinely violate migrants' rights to due process in this encounter.

Mistreatment at the Moroccan-Algerian Border

Violence and Theft Carried Out by Algerian Border Police

Of the 37 migrants who told Human Rights Watch that they were expelled from Morocco, 17 migrants, including 5 children, said that they had witnessed or were themselves the victims of violent interactions with Algerian border patrols after they crossed the border. Three additional migrants claimed to have witnessed such violence. These 17 migrants told Human Rights Watch that Algerian border patrols hit them with wooden batons and, in many cases,

---

[56] Government of Morocco, Initial Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/MAR/1, November 1, 2012, http://www2.ohchr.org/English/bodies/cmw/docs/CMW.C.MAR.1_en.doc (accessed August 27, 2013); Government of Morocco, Réponses du Maroc à la liste des points et questions à traiter à l'occasion de l'examen de son rapport initial, CMW/C/MAR/Q/1/Add.1, July 17, 2013, http://www2.ohchr.org/English/bodies/cmw/docs/CMW.C.MAR.Q.1.Add.1_.pdf (accessed August 27, 2013) paras. 59, 62.

stole any valuables they found on them. Algerian forces then turned the migrants back toward Morocco, where they then walked 20 or more kilometers to reach Oujda.

Olivier S., from Cameroon, recalled what happened to him after he was expelled from Morocco at the Algerian border in January 2012:

> We tried to cross into Algeria but the Algerian military were waiting for us. The Algerians told us to lie down or they would shoot. They took our phones, took all our money, and opened the seams of our pants. They said that if we cooperate, they would not hurt us and then they showed us the way to get back to Morocco.[57]

Another migrant, Anthony F., 17, from Ghana, described his second expulsion from Morocco, in March 2012:

> The second time [I was expelled], I was begging on a Friday and I was taken to the police station. They took my [finger]prints and then took me to [the border]. I got away but the Algerian military took my money. There were three Algerians; they hit me.[58]

---

[57] Human Rights Watch interview with Olivier S., Nador, December 7, 2012.

[58] Human Rights Watch interview with Anthony F., Oujda, December 4, 2012.

IV. Excessive Force against Migrants at the Moroccan Border with Melilla, Spain

> I took the train to Nador, three days before the attempt to go into Melilla. I ran with 85 others. I got hurt on the first fence, on the barbed wire, and fell back into the Moroccan side. One Alit [a member of the Moroccan Auxiliary Forces][59] stopped me and tried to take out the barbed wire that was attached to me. Others hit me with a baseball-bat-like [stick] on my knee and shins, [saying] "So you won't be able to walk," and also the elbows. [My bones] were badly fractured; I was hit for six minutes by more than ten men.[60]
> – *Frank D., 17, Cameroon.*

> In the morning I attempted to get into Melilla. Some got in. I climbed the fence and the [Moroccan] military threw rocks at my head. I lost my grip and fell. They hit me, there were eight people, hitting with a baseball bat.... I couldn't see because of the blood: my head was cut. They hit me lots.[61]
> – *Jean-Luc M., 12, Cameroon*

Human Rights Watch's research found that Moroccan authorities beat children and adults when they attempted to cross into the Spanish enclave of Melilla. These enclaves, located in the northeast region of Morocco, bring Europe's external borders to the southern side of the Mediterranean Sea. Both Moroccan nationals and third country nationals try to enter the Spanish enclaves by scaling the fences that protect the land borders. They also attempt to reach these enclaves or cross to the Spanish mainland on inflatable motorized boats. Melilla's borders are protected by three rows of razor-wire fences reaching six meters tall. The fences are monitored with the use of infrared cameras, and motion and noise detectors.[62] The surrounding terrain is rocky, hilly, and forested, with Mount

---

[59] Many migrants refer to Moroccan Auxiliary Forces as "Alit" and "Ali."

[60] Human Rights Watch interview with Frank D., Oujda, December 3, 2012.

[61] Human Rights Watch interview with Jean-Luc M., Oujda, December 4, 2012.

[62] Katharina Peters "Ceuta and Melilla: Europe's High-Tech African Fortress," *Spiegel Online International*, August 10, 2011, http://www.spiegel.de/international/world/ceuta-and-melilla-europe-s-high-tech-african-fortress-a-779226.html (accessed

Gourougou rising on the Moroccan side of the fence. The second enclave, Ceuta, has two fences and a similar infrastructure.

A migrant from Chad at El Hassani hospital in Nador who told Human Rights Watch that Moroccan security forces broke his leg by hitting him with a rod. © 2012 Human Rights Watch

Even though Melilla and Ceuta are part of the Schengen Area, any further travel to mainland Spain and Europe by air or sea is subject to additional border identity checks.[63] In spite of this, many migrants believe that if they manage to enter one of the enclaves and gain access to one of the migrant detention centers, they might be transferred to mainland Spain due to capacity concerns in the existing centers.

August 5, 2013). European Commission "Technical Mission to Morocco. Visit to Ceuta and Melilla on Illegal Immigration. 7th October – 11th October 2005. Mission Report." October 18, 2005, http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDF.pdf?docid=4aa6699d9 (accessed August 26, 2013).

[63] Spain's accession to the Schengen Agreement includes a declaration saying, inter alia, that Spain will "maintain checks on internal flights and on regular ferry connections departing from the towns of Ceuta and Melilla to a destination in another State party to the Convention." See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2804%29:EN:NOT (accessed August 19, 2013).

Most migrants interviewed by Human Rights Watch said that Moroccan Auxiliary Forces who encountered them as they tried to cross into Melilla used excessive force, not only to prevent them from crossing, but also, seemingly, to punish them. In addition to reporting that members of the Moroccan Auxiliary Forces beat them when they were caught trying to scale the fence into Melilla, many migrants, including children, also said that Moroccan security officials beat them after the Spanish *Guardia Civil* returned them from Melilla. Some said Moroccan border security officials beat them as soon as the *Guardia Civil* transferred them into their custody. Even if the use of force is sometimes necessary "if other means remain ineffective or without any promise of achieving the intended result,"[64] migrant accounts and other NGO reports indicate that Moroccan authorities use violent measures that go beyond necessary force to prevent migrants from entering Melilla or for apprehending migrants being returned.

In March 2013, *Médecins Sans Frontières* (MSF) released a report condemning the "institutional violence" faced by sub-Saharan migrants in Morocco at the hands of Moroccan and Spanish authorities, particularly at the borders with Spain and Algeria.[65] That same month, to protest police abuse of sub-Saharan migrants, MSF announced that it would pull out of Morocco "to demand that those responsible and capable of solving this problem take responsibility for it."[66]

Olivier S., another migrant from Cameroon, told Human Rights Watch that after he and a group of migrants reached Melilla on a motorized inflatable boat in April 2012, the *Guardia Civil* handed them back to Moroccan *gendarmes* who beat the men, even though they had full custody over them:

> Sixteen of us were given to 12 Moroccan *gendarmes*. As soon as they got us, they took us to the forest one hour away. We were told to lay on the ground on our stomachs with our hands above our hands, in a row. They started to hit us. Many of them were young, proud to hit us. Not all of them were in

---

[64] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

[65] MSF "Violence, Vulnerability and Migration."

[66] Agence France-Presse "MSF quits Morocco, protesting anti-migrant attacks," *Global Post*, March 13, 2013, http://www.globalpost.com/dispatch/news/afp/130313/msf-quits-morocco-protesting-anti-migrant-attacks (accessed March 14, 2013).

> uniform. They kicked us with their boots, slapped us, hit us with sticks, baseball bat-like sticks.[67]

Two other migrants, Bouba L. and Pierrot D., described similar violence on the Moroccan side of the border:

> They strike you with wood…. They beat you up routinely. I was told to lie on my stomach so they hit me on my back and butt. They searched me, but since I didn't have much they left me. They kept my clothes and sent me to Oujda.[68]

> The Moroccan military [Auxiliary Forces] took me [aside]. There were more than three of them. They hit me with [olive tree wood] sticks, very hard…. There were four [of us] and they hit all four of us for about 30 minutes and then took us to the town of Nador. I couldn't walk. They hit me everywhere. I was bleeding but I didn't see a doctor. I was taken to the police station, to the refoulement cell. In there, I was fingerprinted and photographed and then put on a bus at 5 p.m [to Oujda].[69]

Jean-Luc M., the unaccompanied 12-year-old Cameroonian boy, told Human Rights Watch of his treatment after being returned from Melilla:

> The Moroccans hit me…. and broke my arm. I was put in a police car and taken to the hospital. I received medical attention, and the next day, the police came to get me. I was barefoot and put on the [police] bus straight away. I was left behind the [Oujda] airport and came back to Oujda barefoot.[70]

Jean-Luc said Moroccan security forces hit him on three separate occasions.

MSF's March 2013 report, "Violence, Vulnerability and Migration: Trapped at the Gates of Europe," documents injuries from police violence sustained by sub-Saharan African

---

[67] Human Rights Watch interview with Olivier S., Nador, December 7, 2012.

[68] Human Rights Watch interview with Bouba L., Nador, December 8, 2012.

[69] Human Rights Watch interview with Pierrot D., Nador, December 9, 2012.

[70] Human Rights Watch interview with Jean-Luc M., Oujda, December 4, 2012.

migrants in Morocco's Oriental region. It says that MSF provided medical assistance to 500 people in Oujda and 600 people in Nador for violence-related injuries in 2012.[71] According to MSF, 64 percent of migrants claimed that their injuries were caused by direct violence by Moroccan security forces, 21 percent said that thieves assaulted them, and 7 percent said they were beaten by the Spanish *Guardia Civil*.

Human Rights Watch finds that this excessive use of force by Moroccan security forces at the border with the Spanish enclave of Melilla against migrants, and the violence migrants endured at their informal settlements, has at times reached the level of cruel, inhuman or degrading treatment, in violation of human rights law. Persistent abuses of this nature against migrants may cause serious psychological harm to them, in addition to the physical harm they may have already suffered.

Spanish Authorities' Use of Force and Summary Removals in Melilla

Many migrants travel to Morocco with the aim of reaching Europe, usually by attempting to enter one of the Spanish enclaves of Ceuta and Melilla. Migrants who try to cross into the enclaves hope to go undetected until they reach the CETI migrant detention center (*Los Centros de Estancia Temporal de Inmigrantes*– Centers for the Temporary Stay of Immigrants), which they perceive to be a potential stepping stone for reaching mainland Spain and being able to stay in Europe.

Fourteen of the 15 migrants interviewed by Human Rights Watch who succeeded in crossing the Melilla border reported that the Spanish *Guardia Civil* used force against them. Eight migrants said that the *Guardia Civil* at the border kicked them with boots and beat them with police batons when they crossed into Melilla.

Jean-Luc M., the 12-year-old migrant boy from Cameroon, told Human Rights Watch about police brutality that he said he suffered on two occasions, just after crossing into Melilla:

> In early October [2012 and November 2012], I got across the third fence and entered Melilla. The *Guardia Civil* hit me; they shocked me with a

[71] MSF, "Violence, Vulnerability and Migration," p. 16.

> neutralizer [apparently a Taser]. Both times I was hit with boots and belts…. . They didn't ask me anything and gave me back to the Moroccans.[72]

Another migrant, Omar B., described similar violence:

> My first attempt [to cross from Morocco to Melilla] was in April 2012 around 2 a.m., but the police used teargas and beat us on our joints. I was able to run away and hid in the forest [in Morocco]. My second attempt was in July, during Ramadan. We succeeded in jumping over the fence but the *Guardia* detained us before arriving to the camp where migrants live. We were 27 people. [The *Guardia Civil*] beat us with sticks and handcuffed our hands. They made us walk to the border gate and handed us over to the Moroccans. They [the Moroccans] later beat us on our legs with batons.[73]

François F., a 28-year-old migrant from Cameroon, made three attempts to enter Melilla, and was summarily returned each time. He said, "I made it to Melilla, but the *Guardia Civil* has heat sensors and arrested us. They hit three guys with sticks and told us not to come back."[74]

MSF also reported that the *Guardia Civil* used rubber bullets at the end of 2012 to prevent migrants from entering Melilla. As stated in their report, "In late 2012 MSF teams treated patients who stated that the *Guardia Civil* used rubber bullets to apprehend them and beat them."[75]

Of the 15 migrants interviewed by Human Rights Watch who successfully crossed into Melilla, 11, including 5 children, said the Spanish authorities handed them over directly to the Moroccan authorities without determining whether they were in need of international protection. (The other four migrants reported that they were returned to Morocco, but not directly handed over to the authorities). In doing so, the *Guardia Civil* contravened Spain's obligations under the EU Charter of Fundamental Rights, which includes a right to seek asylum, and the EU returns directive. This directive, adopted in 2008 by the European Parliament sets out minimum standards for the treatment of undocumented migrants

---

[72] Human Rights Watch interview with Jean-Luc M., Oujda, December 4, 2012.

[73] Human Rights Watch interview with Omar B., Oujda, December 4, 2012.

[74] Human Rights Watch interview with François F., Nador, December 9, 2012.

[75] MSF, "Violence, Vulnerability and Migration," p. 17.

during returns, and requires EU member states to ensure that any returns to countries outside the EU respect the principle of nonrefoulement, and take account of the right to family life and the best interests of the child.[76]

The migrants who spoke with Human Rights Watch said that the Spanish authorities followed none of these procedural requirements before handing them over to Moroccan authorities.

Summary removals put the migrants at risk of further violence by Moroccan security forces and at risk of being expelled into Algeria. Since numerous journalists and NGOs have reported abuses by Moroccan security forces, it is reasonable to expect that the Spanish authorities should be aware that migrants face a risk of ill-treatment at the hands of the Moroccan authorities.[77] For this reason, as well, these summary removals may also constitute a violation of Spain's obligations under EU and human rights law.

Several migrants told Human Rights Watch, they begged the *Guardia Civil* not to return them to the Moroccan authorities because of the violence the migrants expected to face in custody. One migrant, Nicolas E., described his encounter with the *Guardia Civil*:

> I was alone and I was running across to the third fence. The *Guardia Civil* intercepted me and told me that I would be taken to the *campo* [CETI] after the hospital [because he was injured] but instead they sent me back to Morocco. They told me, "Get the hell out! You know that if you come here, you know you get a caning…. You know you are going to be hit [by the Moroccans]."[78]

---

[76] CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, article 18. (2010/C 83/02) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF

DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of December 16, 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, article 5.http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF

[77] The Jesuit Refugee Service Europe, "Lives in Transition. Experiences of Migrants Living in Morocco and Algeria," December 2012, http://www.jrseurope.org/news_releases/LivesInTransitionMigrantsMoroccoAlgeria_NEWS05122012.htm (Violence, Vulnerability and Migration April 29, 2013); CMSM (Conseil des migrants subsahariens au Maroc) and GADEM (Groupe antiraciste d'accompagnement et de défense des étrangers et migrants), "Recrudescence de la répression envers les migrants au Maroc. Une violence qu'on croyait révolue," September 2012, http://www.gadem-asso.org/Recrudescence-de-la-repression (accessed April 29, 2013), MSF, "Violence, Vulnerability and Migration;" EMHRN, "Country Fact Sheet: Morocco," December 2012.

[78] Human Rights Watch interview with Nicolas E., Oujda, December 3, 2012.

Expulsion of Children from Melilla

In addition to subjecting children to violence, Spanish authorities have sometimes expelled unaccompanied migrant children without due process in violation of international human rights law, the EU returns directive, and the EU Action Plan on Unaccompanied Minors (2010 – 2014).[79]

As one unaccompanied 17-year-old migrant from Guinea, Loïc E., described his expulsion to Human Rights Watch:

> The *Guardia Civil* expelled me twice. There was no opportunity to give an interview or my story. They don't ask your age or anything, they just expel you. The *Guardia Civil* handed me over to the Moroccan military who hit me with wood everywhere [on my body].[80]

In the three cases examined by Human Rights Watch, Spanish border officials failed to screen adequately for unaccompanied children or to give asylum seekers the opportunity to lodge claims for international protection. By removing migrants so rapidly, Spanish authorities in Melilla violated the children's rights to see specialized service providers and interpreters and to receive information about applying for asylum.

Human Rights Watch interviewed two migrant children, 14 and 17 years of age, who had been living in La Purísima Concepción Fort, a reception center for minors in Melilla, for one year and seven months respectively, until two plainclothes inspectors apprehended them in the streets of Melilla outside of the CETI migrant detention center where they were visiting friends. As Amin K., age 14, explained to Human Rights Watch, they were then quickly and summarily expelled from Melilla:

> I left to visit friends in the big *campo* [CETI] – we have the right to walk around and the police don't usually bother you. I was with a friend and an inspector took us both. They were dressed in civilian clothing and asked us to go into

---

79 "Action Plan on Unaccompanied Minors (2010-2014), European Commission Communication to the European Parliament and the Council, Brussels, 6 May 2010, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF (accessed 15 September 2013)

80 Human Rights Watch interview with Loïc E., Nador, December 9, 2012.

> their car. They told us nothing was wrong, that they just had questions to ask. They told us nothing would happen. We sat in the back. There were two inspectors in the front of the car and they asked us how we got into Melilla. We told them that we didn't come today, but they wanted the color of the car and the name of the man who brought us to Melilla. We explained to them that we had been there for one year and that we were at the *Purisima*. They threatened to deport us if we lied. We assured them that we were not lying, but they took us straight to the border and called the *Guardia Civil* to open the door at the fence. When we arrived [on the Moroccan side], there were three Moroccans there and they talked to them in Arabic. They didn't let us call the center even though we had told them that they could call or we could go there with them so they could verify our story. We told them our age, we talked to them in Spanish. They gave us to the Moroccans.[81]

Amin's companion, Ahmed, age 17, gave his account of the same incident, saying that Spanish officials watched from their side of the border as Moroccan guards beat him after they turned him over to them:

> We got in the car and [the Spanish inspectors] drove and asked us questions. "How did you get into Melilla?" They wanted to know the name of the person and the car that brought us. We talked until we got to the border. They took us to the border discreetly, under a bridge. We thought they just wanted to scare us. There were two cars of the *Guardia Civil* with two people in each and two motorcycles. …We told them we were minors, but they expelled us from the car. They opened the fence at the border where cars go through and three Moroccans came, one military and two in civilian clothes. The inspector talked in Arabic, gave us to the Moroccans, and closed the fence. The inspector stayed watching [from the Spanish side of the fence] while [the Moroccan security force] hit us. We were making noise and then the inspector asked the Moroccans to take us away. They kicked us; they took our jackets and clothes. We were in socks and underwear.[82]

---

[81] Human Rights Watch interview with Amin K., Nador, December 7, 2012.

[82] Human Rights Watch interview with Ahmed B., Nador, December 7, 2012.

V. Refugees and Asylum Seekers: Gaps in Protection

Context before September 2013

On paper, Morocco appears to uphold international standards for the protection of refugees and asylum seekers. It is party to the 1951 Refugee Convention and its 1967 Protocol, ratified in 1956 and 1971 respectively. It is also party to the Convention Governing the Specific Aspects of Refugee Problems in Africa. The August 29, 1957 Royal Decree 2-57-1256 established the modalities for implementing the Refugee Convention in national law. The decree established the *Bureau des Réfugiés et Apatrides* (BRA – National Office for Refugees and Stateless Persons), the administrative body in charge of implementing asylum procedures and the specific role of UNHCR in these procedures. Article 2 of the 1957 Decree states that the BRA "recognizes the status of refugee of any person under the mandate of the UN High Commissioner for Refugees (UNHCR) or who meets the definitions from Article I of the Geneva Convention of 28 July 1951."[83]

Until 2004, asylum seekers approached the UNHCR honorary delegation, which registered their claim and conducted refugee status determination. After UNHCR recognized asylum seekers, they would contact the BRA to file a separate asylum application. However, recognition of refugee status by UNHCR had no official bearing for national authorities. In practice, the BRA usually confirmed UNHCR's recognition of refugee status, ensuring that recognized refugees would be protected, provided temporary residence, and the necessary documentation to lead their lives in Moroccan society.

The Moroccan authorities suspended this system in 2004 with no official notification. The absence of BRA activity since 2004 indicated that, in practice, UNHCR was the sole agency responsible for conducting refugee status determination from that point.[84] This absence effectively meant that the government was failing to implement the 1957 Decree, even though that law still authorizes the government to process asylum claims.[85]

---

[83] 29 August 1957 Royal Decree 2-57-1256 "Décret royal no. 2-57-1256 du 2 safar 1377 (29 août 1957) fixant les modalités d'application de la convention relative au statut de réfugié signée à Genève le 28 juillet 1951" http://www.unhcr.org.ma/spip.php?article52 (accessed 30 December 2013)

[84] Those refugees who were recognized before 2004 generally have residency in Morocco, as well as the right to work.

[85] Letter from Mr. Mahjoub EL HAIBA, Interministerial Delegate for Human Rights, to Human Rights Watch, March 13, 2013.

In a letter to Human Rights Watch, Moroccan authorities said that the Ministry of the Interior and the Ministry of Foreign Affairs and Cooperation manage the political and technical issues relating to asylum while the General Directorate for National Security is responsible for providing residency permits to recognized refugees. The Moroccan authorities also told Human Rights Watch that an ad hoc inter-ministerial commission was completing a major project to upgrade the Moroccan asylum system. [86]

UNHCR has been present in Morocco since 1959 but did not sign a cooperation agreement with Morocco until July 20, 2007.[87] UNHCR has recognized relatively few refugees in Morocco; there were 853 UNHCR-recognized refugees and 2,178 asylum seekers with cases pending with UNHCR as of September 2013.[88] Recognized refugees in Morocco mostly originate from Ivory Coast, the Democratic Republic of Congo, and Iraq.[89]

UNHCR officials informed Human Rights Watch that no government agency actually provided residence permits to UNHCR-recognized refugees.[90] Without these permits, UNHCR-recognized refugees have not had full access to housing, health care or education, which they are entitled to as recognized refugees (to the same extent that Moroccan citizens are).[91] Some NGOs, such as *Fondation Orient-Occident, Action Urgence,* the OMDH, and the Moroccan Association of Support for the Promotion of SMEs, try to assist migrants in accessing these services, but have limited capacity.[92]

UNHCR and the National Human Rights Council (CNDH), a state-funded institution that reports to the King, told Human Rights Watch that they were working with the Government to help develop a system that would ensure a stronger legal framework through which

---

[86] Letter from Mr. Mahjoub El Haiba, March 13, 2013.

[87] Decree n 1-08-90, 20 chaoual 1429 (October 20, 2008) adopting law 37-07 approving the ratification of the cooperation agreement signed by UNHCR and the Kingdom of Morocco.

[88] UNHCR, "2013 UNHCR regional operations profile - North Africa. Morocco," January 2013 http://www.unhcr.org/pages/49e4860d6.html (accessed August 27, 2013)

[89] Ibid.

[90] Human Rights Watch interview with UNHCR officials, Rabat, November 29, 2013.

[91] EMHRN, "Asylum and Migration in the Maghreb Fact sheet," p. 27.

[92] Ibid., p. 24.

recognized refugees would receive civil status rights allowing them to access services like health care and housing, as well as an opportunity to participate in the workforce.[93]

Developments since September 2013

In September 2013, the CNDH issued recommendations for a "renewed migration and asylum policy, humanist and respectful of Morocco's international commitments relating to migrants, asylum seekers and refugees," highlighting the plight of migrants in Morocco. The CNDH recommended that the government take measures to improve the human rights of migrants, both documented and undocumented, as well as the rights of asylum seekers and refugees. The CNDH endorsed the establishment of a "national legal and institutional framework of asylum."[94] In response to these recommendations, King Mohammed VI publicly welcomed the CNDH's recommendations, and ordered the government to prioritize a process for regularizing the status of migrants whose asylum claims UNHCR had already recognized. The government acted swiftly and the BRA was (re)inaugurated on September 25, 2013 in Rabat, working in coordination with UNHCR to examine asylum cases, prioritizing the 853 refugees UNHCR already recognized.[95] Several inter-ministerial commissions were created to implement Morocco's new migration and asylum policy, particularly to develop new legal and institutional frameworks for asylum, trafficking in persons, regular migration, and irregular migration. Other state bodies are also responsible for developing integration strategies and operational plans to ensure the integration of migrants and refugees into Moroccan society.[96] UNHCR has expressed its satisfaction with these new developments.[97]

---

[93] Human Rights Watch interview with UNHCR officials, Rabat, 29 November 2012 and Human Rights Watch interview with the CNDH official, Rabat, 7 December 2012.

[94] "Thematic report on the situation of migrants and refugees in Morocco.Foreigners and Human Rights in Morocco: For a radically new asylum and migration policy." CNDH September 2013

[95] « Maroc : Ouverture d'un bureau des réfugiés et des apatrides à Rabat » *Aujourd'hui Le Maroc*, 25 September 2013 http://www.aujourdhui.ma/maroc-actualite/actualite/maroc-ouverture-d-un-bureau-des-refugies-et-des-apatrides-a-rabat-105247.html (accessed 28 September 2013).

[96] « Immigration: les détails du plan d'action du gouvernement » *H24 Info*, 11 September 2013, http://www.h24info.ma/maroc/immigration-les-details-du-plan-daction-du-gouvernement (accessed 26 September 2013).

[97] « ...Et le HCR exprime sa satisfaction » *Info Maroc*, 26 September 2013 http://www.infomediaire.ma/news/maroc/et-le-hcr-exprime-sa-satisfaction (accessed 27 September 2013).

Challenges to Implementation

Human Rights Watch's research shows the challenges that many refugees, asylum-seekers, and migrants face in reaching UNHCR offices and registering for refugee status. UNHCR mainly works with those who are able to come to their office in Rabat, a difficult and risky task for most asylum seekers. UNHCR has an implementing partner in Oujda, the Moroccan Organization for Human Rights (Organisation Marocaine des Droits Humains, OMDH), but it is not well known to most migrants at this usual first point of entry from Algeria.[98]

Other local organizations in Oujda try to help newly arrived asylum seekers or recently expelled refugees and asylum seekers to travel to Rabat safely. However, as many migrants told Human Rights Watch, their darker skin makes them stand out on public transportation, which increases the likelihood police will stop them to verify their status in Morocco while they are en route to Rabat.

Although the Moroccan government and the Cooperation Agreement (*Accord de Siège)* assert that UNHCR "has free access to refugees and other persons of concern throughout the country" and "upon common agreement, the possibility to open other offices in the country," access to sensitive regions and airport transit zones is not yet systematic.[99] However, UNHCR told Human Rights Watch it is working with Moroccan authorities to establish a stronger presence in the Oriental region where many migrants enter Morocco.[100] CNDH had recommended improving UNHCR's access to refugees and other persons of concern.

Forced Expulsions of Asylum Seekers and Refugees

Even with UNHCR recognition, refugees and asylum seekers are vulnerable to forced expulsion from Morocco. Human Rights Watch interviewed two refugees recognized by UNHCR in Algeria and three asylum seekers who formally applied with UNHCR in Morocco.

---

[98] Human Rights Watch interviewed several migrants who wanted to or had already lodged an asylum claim with UNHCR but none of them had ever heard of the OMDH.

[99] Decree n 1-08-90, 20 chaoual 1429 (October 20, 2008) adopting law 37-07 approving the ratification of the cooperation agreement signed by UNHCR and the Kingdom of Morocco. *Accord de Siège* signed between the Kingdom of Morocco and UNHCR on July 20, 2007, p. 3

[100] Email exchange with UNHCR., March 2013

Hassan N., an asylum seeker with limited mobility, said Moroccan authorities expelled him at the Algerian border despite his having a UNHCR-issued asylum seeker certificate issued in Morocco, which he showed to Human Rights Watch during his interview. He told Human Rights Watch that the expulsion occurred after an August 2012 raid on an abandoned house near Nador where he and other migrants were living. Hassan described how the police ignored the UNHCR certificate he showed them: "I showed my HCR paper but I was [expelled] again. They said they didn't care and took me back to the border that same night…. Whenever I've been arrested and taken to the police station, and they ask nationalities, the police told me to put my HCR card away."[101]

Hassan N., a physically disabled asylum seeker in Morocco, shows Human Rights Watch his UNHCR-issued asylum seeker certificate. © 2012 Human Rights Watch

[101] Human Rights Watch interview with Hassan N., Nador, December 8, 2012.

Human Rights Watch interviewed six other migrants who appeared to have possible asylum claims but who either did not have enough information about how to seek asylum in Morocco or said they had been rebuffed by UNHCR's partner in the region, the Moroccan Organization for Human Rights (OMDH), when they attempted to contact that organization in Oujda.

Olivier, a Cameroonian, told Human Rights Watch that he could not return to Cameroon because he feared he would be killed by the authorities. Olivier said he had left the army rather than participate in, what he described as, the unjustified killing of civilians. He said when he spoke to the OMDH about applying for asylum in Morocco, "they told me that Cameroon is not a country where there is turbulence. I wasn't getting anywhere with my questions and I never saw the HCR in Rabat."[102]

Morocco's expulsion of refugees and asylum seekers violates its national and international obligations. Law 02-03, Article 29, specifically precludes the return of refugees and asylum seekers to places where they would be exposed to cruel, inhuman or degrading treatment or where their lives or freedom are threatened.[103] Morocco has an additional responsibility to ensure unaccompanied or separated children have access to asylum procedures, as stated in the Committee on the Rights of the Child's General Comment No. 6:

> In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of CAT.[104]

---

[102] Human Rights Watch interview with Olivier S., Nador, December 7, 2012.

[103] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196., art. 29.

[104] UN Committee on the Rights of the Child, General Comment No. 6, para 26.

VI. The Externalization of the EU's Migration Management

The human rights abuses committed by Moroccan security forces cannot be seen in isolation from the efforts of the European Union (EU) and individual EU member states to prevent irregular migrants from reaching EU territory. This is a core element of the EU's migration and asylum externalization strategy, which aims to shift the burden and responsibility for migrants, asylum seekers, and refugees away from the EU and onto its neighbors.

For more than a decade, the EU has been institutionalizing efforts to tackle irregular migration into Europe, particularly by enhancing the capacity of neighboring countries in the Mediterranean basin to prevent the entry and exit of irregular migrants. Like other countries just outside the EU's external borders—such as Libya, Ukraine, and Turkey—Morocco has become part of the buffer zone for the EU.[105]

The EU and its member states enter into readmission agreements with neighboring countries, participate in joint patrols, and link migration management by transit countries to development funding.[106] Through these measures, the EU and its member states have been able to shift responsibility for handling migrants to countries on the EU's periphery, including those with abusive policies and practices, to the detriment of the rights of migrants, asylum seekers and refugees.

---

[105] Human Rights Watch, *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers*, *Libya's Mistreatment of Migrants and Asylum Seekers*, September 2009, http://www.hrw.org/reports/2009/09/21/pushed-back-pushed-around-0, *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, September 2011, http://www.hrw.org/reports/2011/09/21/eu-s-dirty-hands-0; *Buffeted in the Borderland: The Treatment of Asylum Seekers and Migrants in Ukraine*, December 2010, http://www.hrw.org/reports/2010/12/16/buffeted-borderland-0; *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union* , November 2008, http://www.hrw.org/reports/2008/11/26/stuck-revolving-door-0. *European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees,* October 2006, http://www.hrw.org/legacy/backgrounder/eca/eu1006/

[106] Readmission agreements are bilateral agreements relating to migration that facilitate the deportation of migrants to neighboring and other countries through which they travelled to enter the EU. Through these agreements, countries agree to readmit their nationals, but sometimes also third country nationals. Sometimes, readmission agreements include safeguards for human rights.

Cooperation in Migration Management

Morocco and Spain cooperate bilaterally in the management of their shared borders and sea areas. Since 2004, the Moroccan *Gendarmerie Royale* and the Spanish *Guardia Civil* have worked jointly to patrol the Mediterranean Sea and the Strait of Gibraltar to prevent undocumented migrants from reaching European shores.[107] Some also argue that the introduction of Morocco's 2003 law on immigration (Law 02-03) was a response to EU pressures for stronger migration controls in Morocco.[108] Spain and Morocco have developed agreements on border management, often by negotiating on other issues, such as economic development. For example, article 7 of the 2007 agreement between Morocco and Spain on unaccompanied migrant children included Spain's commitment to "collaborate on the co-financing of prevention measures, namely those favoring the socio-economic development of regions with high migration potentiality."[109] The agreement came into force on October 2, 2012.[110]

Frontex, (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) was established in 2004 to coordinate the management of migration on the EU's external borders.[111] It has increasingly focused its activities on the Mediterranean as "the result of intense pressure from EU Southern member states."[112] From 2006 to 2012, Frontex carried out various maritime joint operations (JOs) in the Mediterranean Sea, including one between Spain and Morocco (JO Minerva) and another along the Atlantic on Morocco's western coast (JO Hera).[113]

---

[107] Sarah Wolff, "Border Management in the Mediterranean: internal, external and ethical challenges," *Cambridge Review of International Affairs*, vol. 21, n. 2, (June 2008) p. 262.

[108] Belguendouz, Abdelkrim. 'Le Maroc non Africain, gendarme de l'Europe? Alerte au projet de loi no. 02-03 relative à l'éntrée et au séjour des étrangers au Maroc, à l'émigration et l'immigration irrégulière' Plein Droit 57 GISTI, Paris, quoted in Liza Shuster "The Realities of a New Asylum Paradigm," COMPAS Working Papers series, WP-05-20, 2005, p. 13, http://www.compas.ox.ac.uk/fileadmin/files/Publications/working_papers/WP_2005/Liza%20Schuster%20wp0520.pdf (accessed July 29, 2013).

[109] Spain and Morocco, "2007 Agreement on cooperation in the area of prevention of illegal immigration of non-accompanied minors, their protection and their concerted return." Document on file at Human Rights Watch, provided by the Moroccan Government in letter from Mr. Mahjoub El Haiba, March 13, 2013.

[110] Platform for International Cooperation on Undocumented Migrants "Bulletin" 17 April 2013, http://picum.org/en/news/bulletins/39961/ (accessed 15 September 2013).

[111] Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[112] Wolff, "Border Management in the Mediterranean," p. 257.

[113] Frontex website, "Archives of Operations," http://frontex.europa.eu/operations/archive-of-operations/ (accessed August 28, 2013). A map of Frontex joint operations indicates that in 2010 Morocco cooperated with Frontex in joint operations EPN-

Readmission Agreements

Morocco concluded a Readmission Agreement with Spain in 1992, followed by a Memorandum of Understanding in 2003 and a Police Cooperation Agreement in 2012, all geared toward managing the return of third-country nationals and Moroccan nationals from Spain to Morocco.[114] Other EU member states have also signed bilateral readmission agreements with Morocco, including Belgium (1993), Germany (1998), France (1983-1993, 2001), Italy (1998), Portugal (2004), the Netherlands (1993), and the United Kingdom (2011).[115]

The 1992 readmission agreement between Spain and Morocco, still currently in effect, explicitly binds both parties to respect minimum human rights standards but the wording of the agreement appears to create loopholes to human rights compliance. For example, Article 3 (d) of the agreement stipulates that there is no obligation to readmit anyone who is recognized as a refugee by the requesting country in accordance with the 1951 Geneva Convention,[116] rather than saying the sending (requesting) state has an obligation not to return refugees. Similarly, article 8 (d) states that transit for expulsion "could" be denied if a migrant risks ill treatment in the destination country,[117] which makes nonrefoulement on the basis of risk of ill treatment discretionary instead of obligatory, as it is under the European Convention on Human Rights.

Other agreements have less ambiguous references to international human rights treaties: for example, the 2007 readmission agreement between Morocco and Spain on unaccompanied migrant children stressed the importance of treating these young migrants in

---

Minerva and EPN-Hera. "Frontex Press Pack," FRONTEX, May 2011, http://www.frontex.europa.eu/assets/Media_centre/Frontex_Press_Pack.pdf (accessed August 8, 2013) p. 13.

[114] Return Migration and Development Platform, The European University Institute, "Inventory of the agreements linked to readmission: Morocco," last updated February 2013, http://rsc.eui.eu/RDP/research/analyses/ra/maroc/ (accessed July 23, 2013). The 1992 Readmission Agreement between Morocco and Spain requires the requesting state to formally petition the requested state to readmit third country nationals, and to prove that third country nationals for whom it seeks readmission, in fact, entered its territory via the requested state. It also provides that the requested state will ensure that readmitted migrants will be sent back to their state of origin or to the state through which they travelled prior to reaching the requested state. "Agreement between the Kingdom of Morocco and the Kingdom of Spain on the movement of people, transit and the readmission of foreigners who enter illegally," (1992 Readmission Agreement between Morocco and Spain) 1992. Document on file at Human Rights Watch, provided by the Moroccan Government in Letter from Mr. Mahjoub El Haiba, March 13, 2013.

[115] Return Migration and Development Platform, The European University Institute, "Inventory of the agreements linked to readmission: Morocco," last updated February 2013, http://rsc.eui.eu/RDP/research/analyses/ra/maroc/ (accessed July 23, 2013).

[116] 1992 Readmission Agreement between Morocco and Spain.

[117] Ibid.

accordance with international law and human rights conventions, specifically referencing the Convention on the Rights of the Child.[118] In comparison, the 1992 readmission agreement contains fewer human rights safeguards and in practice even those protections are not respected, as described throughout this report. Regarding the 2007 readmission agreement on unaccompanied child migrants, Human Rights Watch has previously noted, "The readmission agreement with Morocco does not sufficiently spell out provisions that would ensure that all repatriation decisions are carried out on a case by-case basis, in full respect of procedural safeguards, the best interest of the child, and the principle of non-refoulement."[119]

On June 7, 2013, Morocco signed a Mobility Partnership Agreement with the EU, which reaffirms common objectives in managing migration and commits to open negotiations on the readmission of nationals and third country nationals through future negotiations.[120] The EU-wide agreement would facilitate the return to Morocco of Moroccan nationals and third country nationals who transited through Morocco to Europe.[121] In 2012, Morocco's then-Minister of Foreign Affairs and Cooperation Saad Dine El Otmani declared, "Morocco refuses to play the role of Europe's *gendarme*."[122] However, the high number of existing bilateral readmission agreements between Morocco and EU member states, as well as the EU's financial support of migration management projects in Morocco, indicate that the Moroccan government is ready to cooperate with the EU and its member states to prevent the departure of undocumented migrants from Morocco to Europe. [123]

---

[118] "2007 Agreement on cooperation in the area of prevention of illegal immigration of non-accompanied minors, their protection and their concerted return." Document on file at Human Rights Watch.

[119] Human Rights Watch, *Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children*, vol. 19, No. 4(D), July 2007, http://www.hrw.org/node/10818, p. 6.

[120] Euro-Mediterranean Human Rights Network, "EU Mobility Partnerships with Tunisia and Morocco: Guarantees for the respect of rights must be a prerequisite to any agreement," July 4, 2012, http://www.euromedrights.org/eng/2012/07/04/eu-mobility-partnerships-with-tunisia-and-morocco-guarantees-for-the-respect-of-rights-must-be-a-prerequisite-to-any-agreement/ (accessed August 25, 2013); "Migration and mobility partnership signed between the EU and Morocco," European Commission press release, Brussels, June 7, 2013, http://europa.eu/rapid/press-release_IP-13-513_en.htm (accessed August 10, 2013).

[121] The Council of the European Union, "Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States" Brussels, June 3, 2013 (6139/13 ADD 1REV 3) http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130607_declaration_conjointe-maroc_eu_version_3_6_13_en.pdf (accessed August 1, 2013), p 4.

[122] Mohammed Jaabouk, « Migration : Le Maroc n'est pas le gendarme de l'Europe, selon El Otmani » *Yabiladi*, July 25, 2012, http://www.yabiladi.com/articles/details/12071/migration-maroc-n-est-gendarme-l-europe.html (accessed March 20, 2013).

[123] Belgium, Germany, France, Italy, Portugal, the Netherlands, and the United Kingdom, "Inventory of the Agreements Linked to Readmission," Return Migration and Development Platform, The European University Institute, last updated February 2013, http://rsc.eui.eu/RDP/research/analyses/ra/maroc/ (accessed August 8, 2013).

In 2010, the Council of Europe Parliamentary Assembly Committee on Migration, Refugees and Population evaluated the use of readmission agreements by EU member states and, noting general deficiencies in the human rights guarantees of current readmission agreements, suggested that:

> All readmission agreements should contain clear provisions protecting the rights of irregular migrants and asylum seekers. These must include their rights to liberty and freedom from arbitrary detention, protection against torture or other ill-treatment, their rights to access to a fair and satisfactory asylum procedure, and protection from *refoulement* and return to a country or territory where they would be at risk of serious human rights violations. Monitoring should be aimed at the respect of these provisions.[124]

This report also said that irregular migrants should not be sent to a transit country where their basic social and economic rights would not be met. The report states:

> The sending country should always assure access to minimum economic, social and cultural rights for irregular migrants as long as they are still in the sending country. […] The rapporteur is of the opinion that it is contrary to the human dignity of irregular migrants to have them removed to a country which is not their country of origin and in which they are likely to be denied access to basic rights such as the right to housing, health care, primary education, work and social welfare, in particular if they can be supposed to become stranded in that third country.[125]

In a 2011 report on the EU's role in relation to migration flows stemming from instability, the European Parliament's Committee on Foreign Affairs "urge[d] the Commission to ensure that any readmission agreement signed by the EU and its Member States fully

---

[124] Council of Europe, Parliamentary Assembly Report, "Readmission agreements: a mechanism for returning irregular migrants," Rapporteur Ms. Tineke Strik (Netherlands, Socialist Group), March 16, 2010, http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12439&Language=en (accessed March 10, 2013), para. 74.
[125] Ibid. para. 60.

respects human rights and the principle of 'non-refoulement' and does not put at risk any persons in need of international protection."[126]

The Council of Europe and the European Parliament have both stressed that readmission agreements should operate in accordance with international human rights standards, particularly in relation to asylum seekers and refugees in need of protection under the 1951 Geneva Convention or migrants whose return to a destination country would expose them to the threat of cruel or inhuman and degrading treatment.

Before the EU enters into a readmission agreement with Morocco, as planned according to the EU-Morocco Mobility Partnership Agreement, the European Commission should monitor implementation of existing readmission agreements. This monitoring should include assessing whether nonrefoulement obligations are respected and whether all persons returned to Morocco are treated humanely and provided effective remedies for protection claims. This assessment should form an integral part of any decision to enter into an EU readmission agreement with Morocco, as well as when any such agreement comes into force.

EU Funding of Moroccan Migration Management

The EU provides funding to Morocco's migration management system. Through the Association Agreement, which entered into force in 2000,[127] and more recently the European Neighborhood Policy Instrument (ENPI) which solidified Morocco as a 'privileged partner of the European Union' in 2007, [128] the EU has created financial incentives for Morocco to cooperate on migration management.[129] In its September 2013 report, the National Human Rights Council (CNDH), a state-funded institution that reports to the King, acknowledged that the EU has contributed to Morocco's efforts to curb irregular migration to Europe:

---

[126] European Parliament Committee on Foreign Affairs, "Report on migration flows arising from instability: scope and role of EU foreign policy," Rapporteur: Fiorello Provera, March 22, 2011, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA7-2011-0075%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN (accessed August 27, 2013).

[127] Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part. *OJ L 70, 18.3.2000,* p. 2–204 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV) The EU-Morocco Association Agreement (AA) was signed on 26 February 1996 and entered into force on 1 March 2000. http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127906.pdf (accessed August 10, 2013).

[128] European Neighbourhood and Partnership Instrument. "Morocco: Country Strategy Paper (2007-2013)," European Commission, 2007, http://www.enpi-info.eu/library/sites/default/files/attachments/enpi_csp_morocco_en.pdf (accessed July 13, 2013).

[129] Finance, taxation, water, transport, health, education, the civil service, plus winnings and exchanges in services such as customs, the environment, youth, transport and justice.

> In 2003, a law on the entry and residency of foreigners, illegal emigration and immigration was adopted, followed in 2007 by the signing of an agreement with the UNHCR, delegating the review and the granting of asylum applications. Simultaneously, and with the support of the European Union, a policy of control of illegal emigration has been put in place, with real successes as evidenced by the numbers of arrests and the statements of satisfaction from various European countries.[130]

The Aeneas and MEDA Programs

The EU provided aid to Morocco through its Aeneas Program, a "thematic" program that ran between 2004 and 2006 and provided "financial and technical assistance to third countries in the area of migration and asylum."[131] One of the key aims of the Aeneas program was "the establishment in the third countries concerned of an effective and preventive policy in the fight against illegal migration."[132] Several projects funded by the Aeneas Program were structured to fight irregular migration from Morocco toward Europe. Project Seahorse, for example, funded border management activities including "training courses on illegal immigration,"[133] and "joint patrols with Moroccan Services."[134] This project ran from December 2005 to December 2008 with an overall budget of 2.5 million euro [$3.3 million USD],[135] with the *Guardia Civil* as the implementing partner in Morocco, Mauritania, Senegal and Cape Verde.[136]

---

[130] "Thematic report on the situation of migrants and refugees in Morocco. Foreigners and Human Rights in Morocco: For a radically new asylum and migration policy," CNDH, September 2013.

[131] "Programme for financial and technical assistance to third countries in the area of migration and asylum: Overview of projects funded 2004 – 2006," Aeneas Programme, European Commission http://ec.europa.eu/europeaid/what/migration-asylum/documents/aeneas_2004_2006_overview_en.pdf (accessed March 3, 2013).

[132] Ibid., p. 2.

[133] "Programme for financial and technical assistance to third countries in the area of migration and asylum: Overview of projects funded 2004 – 2006," Aeneas Programme, European Commission, http://ec.europa.eu/europeaid/what/migration-asylum/documents/aeneas_2004_2006_overview_en.pdf (accessed March 3, 2013), p. 12.

[134] Ibid.

[135] EC contributed 2 million Euro, Spain 0.5 million Euro, see in ""Seahorse" Projects: Present and Future" Presentation by Lt. Eduardo LEÓN (*Guardia Civil*) Fourth Working Group Meeting on Integrated Maritime Policy in the Mediterranean, November 23-24, 2011, http://www.imp-med.eu/En/En/image.php?id=125 (accessed April 20, 2013), p. 17.

[136] "Programme for financial and technical assistance to third countries in the area of migration and asylum: Overview of projects funded 2004 – 2006," Aeneas Programme, European Commission http://ec.europa.eu/europeaid/what/migration-asylum/documents/aeneas_2004_2006_overview_en.pdf (accessed March 3, 2013), p. 12.

A second component of Seahorse, the "Seahorse Cooperation Centres" project, also had an overall budget of 2.5 million euro [$3.3 million USD] and ran between January 2009 and December 2010.[137] In a 2011 press release, the Spanish government said:

> Development of the SEAHORSE Project was concluded in 2010. This project consists of the establishment between the countries along the Atlantic coast of Africa, Spain and Portugal of a communication network fitted with the most modern communication resources for the coordination and permanent exchange of information via secure satellite link on the issue of illegal immigration and other criminal activities carried out at sea.[138]

The EU has also underwritten Moroccan migration management through "geographic" programs, including MEDA I and MEDA II, named for the French "*mesures d'accompagnement*" (accompanying measures).[139] The MEDA program was the main financial instrument of the Euro-Mediterranean partnership. Under MEDA II, the EU provided 67.6 million euro (US$90.1 million) to the Moroccan Ministry of the Interior between 2007 and 2010 for the "management of border controls." The European Commission provided these funds "to step up Community support to Morocco in the field of migration."[140] The project was designed "to upgrade… the migration strategy of the Moroccan Government… to improve the management of migration flows and to strengthen the fight against illegal migration." [141] It included an emergency program that added resources to the Ministry of Interior's Directorate of Migration and Border Surveillance, upgraded border posts, and boosted capacity to conduct criminal investigations.[142]

---

[137] "Overview of projects funded 2007-2008," Migration and Asylum programme, Thematic Programme on cooperation with Third Countries in the Areas of Migration and Asylum, European Commission, 2010 http://ec.europa.eu/europeaid/what/migration-asylum/documents/migration_and_asylum_2007-2008.pdf (accessed 25 September 2013).

[138] "Number of illegal immigrants arriving on Spanish coasts falls by over 80% in one decade and returns to 1997 levels in Canary Islands," press release by the Spanish government, January 18, 2011, http://www.lamoncloa.gob.es/idiomas/9/gobierno/news/2011/19012011immigrants2010.htm (accessed August 28, 2013).

[139] "The MEDA Programme," *Euro-Mediterranean Information System on know-how in the Water sector*, http://www.emwis.org/overview/fol101997/fol221357 (accessed 28 September 2013).

[140] "The Commission gives budgetary support to reinforce the Morocco's new strategy for combating illegal immigration," European Commission Press Release, Brussels, 23 August 2006, http://europa.eu/rapid/press-release_IP-06-1121_en.htm (accessed 15 September 2013).

[141] Author's translation. « Programmes dans le domaine de la migration, (co-) financés par l'Union Européenne au Maroc » European Delegation in Morocco, document on file with Human Rights Watch, February 2013.

[142] Ibid.

The European Neighborhood Policy

The European Neighborhood Policy Instrument (ENPI) replaced the MEDA programs in 2007. The ENP-Morocco Action Plan outlines key actions for cooperation, one of which is the "effective management of migration flows, including the signing of a readmission agreement with the European Community."[143]

Morocco's participation in the ENP led to the June 2013 Mobility Partnership Agreement between Morocco and the EU, in which two of the stated objectives were "to strengthen cooperation on migration and development," and "to combat illegal immigration, networks involved in the trafficking and smuggling of human beings, and to promote an effective return and readmission policy while respecting fundamental rights."[144]

The EU has recognized some of the human rights concerns relating to the treatment of sub-Saharan migrants in Morocco. In March 2013, the EU high representative for foreign affairs and security policy reported on the implementation of the ENP, saying:

> The issue of international protection and asylum is now present among the actions identified in the Partnership for Mobility and it is likely that, together with the EU and participating Member States, this topic will receive strong support. A regular dialogue between the Moroccan government and the United Nations High Commissioner for Refugees (UNHCR) exists and the Moroccan government has indicated that a national law on the right to asylum is in preparation. However, several cases of expulsions of persons falling within the criteria for protection and cases of violence were reported.[145]

---

[143] European Neighbourhood and Partnership Instrument. "EU/Moroccan Action Plan," European Commission, 2006, http://ec.europa.eu/world/enp/pdf/action_plans/morocco_enp_ap_final_en.pdf (accessed August 2, 2013) p. 4.

[144] "European Neighbourhood Policy: Working towards a Stronger Partnership," Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, Brussels, March 20, 2013, http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_comm_conjoint_en.pdf (accessed March 10, 2013); The Council of the European Union, "Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States" Brussels, June 3, 2013 (6139/13 ADD 1REV 3) http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130607_declaration_conjointe-maroc_eu_version_3_6_13_en.pdf (accessed August 1, 2013).

[145] « Mise œuvre de la Politique Européenne de Voisinage au Maroc: Progrès réalisés en 2012 et actions à mettre en œuvre » European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, Brussels, March 20,

However, while the EU Commissioner responsible for enlargement and European neighborhood policy, Štefan Füle, acknowledged that the EU provides support to Morocco for border management, he emphasized that "there are no fixed annual financial allocations for migration-related programmes, either for Morocco or any country."[146] He also highlighted the EU's support of local and international NGOs that work to promote the human rights of migrants in Morocco and the EU's engagement in a dialogue with Morocco to improve human rights in the country.[147]

Nonetheless, providing support to organizations and projects to improve the situation of migrants in Morocco does not remove the EU's responsibility for ensuring it does not provide support for abusive border management to Moroccan agencies or practices that violate international human rights law. The EU bodies should assess whether ENP development-funded migration enforcement is consistent with the EU's commitments to human rights. Until Morocco ends the inhuman and degrading treatment of undocumented migrants and ensures that refugees are protected, the EU and its member states should refrain from signing any further readmission agreements with Morocco. EU bodies should investigate the human rights abuses documented in this report, and ensure that EU financial and programmatic support to Morocco for legitimate border enforcement and migration management is not used for unlawful purposes and that EU capacity building is also used to provide meaningful support for Moroccan government efforts to better protect refugees and asylum seekers and to promote respect for the human rights of all migrants.

2013, http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_maroc_fr.pdf (accessed March 21, 2013) pp. 14-15.

[146] Štefan Füle "To claim that the EU is keener to stop refugees than help them is wrong.

EU funds for Morocco help to protect migrants' rights, not to undermine them," *The Guardian*, 16 September 2013, http://www.theguardian.com/commentisfree/2013/sep/16/eu-refugees-morocco-migrants-rights (accessed 18 September 2013).

[147] Ibid.

VII. International and National Legal Framework

Torture and other Ill-treatment

Morocco is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD), which proscribe the use of torture, and cruel, inhuman, and degrading treatment, and require the criminal investigation and prosecution of those responsible.[148] Morocco is also party to the Convention on the Rights of the Child (CRC),[149] which specifies, "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."[150]

Article 16 of the Convention against Torture requires a state party to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." [151] Article 7 of the ICCPR specifies, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[152]

The 2011 Moroccan Constitution protects the right to life and to physical integrity of everyone, both nationals and migrants. Articles 20 and 22 enshrine this right, irrespective of one's legal status. The Constitution prohibits "all violations against a person's physical or mental integrity under any circumstances by any person, private or public. No person

---

[148] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Spain signed the Convention against Torture on February 4, 1985 and ratified it October 21, 1987. UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, http://www.refworld.org/docid/45f973632.html (accessed 13 September 2013), art 11.

[149] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

[150] Ibid. art. 37 (a).

[151] Convention against Torture, art. 16, para. 1.

[152] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976, art. 7.

shall inflict on another, under any pretext whatsoever, cruel, inhuman or degrading treatment or any treatment constituting an affront to dignity."[153]

The Moroccan government affirmed this commitment with respect to migrant workers in 2012, noting: "Morocco recognizes the right to life and prohibits all forms of violence and torture which could in any way violate a person's integrity or dignity, and has adopted legislation penalizing any violation of that right."[154] It also specifically referred to the right to life of migrants: "The protection of the right to life of migrant workers and members of their family is guaranteed both by the Constitution, which prohibits any violation of a person's physical integrity, and by the Criminal Code, which penalizes such violations."[155]

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide a useful guide on the limits of permissible force by police:

> Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.[156]

When law enforcement officials do use force, these UN Basic Principles recommend that "law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved and minimize damage and injury."[157]

Spain is bound by the European Convention on Human Rights, which stipulates in its third article that, "No one shall be subjected to torture or to inhuman or degrading

---

[153] Constitution of the Kingdom of Morocco, 2011, http://www.sgg.gov.ma/constitution_2011_Fr.pdf (accessed August 26, 2013), Art 22.

[154] Government of Morocco's Initial Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/MAR/1, November 1, 2012, http://www2.ohchr.org/English/bodies/cmw/docs/CMW.C.MAR.1_en.doc (accessed June 13, 2013), para. 88.

[155] Ibid., para. 89.

[156] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

[157] Ibid.

treatment or punishment."[158] Furthermore, Spain is a party to the Convention against Torture and International Covenant on Civil and Political Rights (ICCPR).[159] Spain is also a party to the 1951 Refugee Convention and its 1967 Protocol and to the Convention on the Rights of the Child (CRC).[160] As noted above, Spain is bound by EU law, including the EU Charter of Fundamental Rights, and the common European asylum system, including the EU returns directive.

Spanish national law on immigration, particularly the Royal Decree 557/2011, outlines the procedural requirements expected of border and security forces when removing migrants who enter Spain illegally. According to article 23 of this decree, the Spanish *Guardia Civil* should take migrants to the National Police Station for their identification and to initiate deportation procedures. During this process, migrants are entitled to legal assistance and an interpreter.[161] Article 190 further requires border officials to conduct age determination procedures for undocumented children and to transfer them to the competent services for the protection of children if applicable.[162]

Moroccan and International Law Governing Migrants

Morocco is a party to the 1951 Refugee Convention and its 1967 Protocol,[163] and to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which it ratified on June 21, 1993. Part three of the Migrant Workers Convention (articles 8 through 35) sets out the human rights of all migrant workers and their families, irrespective of their status in a State.[164]

---

[158] European Convention for the Protection of Human Rights and Fundamental Freedoms, 213, U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3,5,8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, art. 3.

[159] Spain signed the Convention against Torture on February 4, 1985 and ratified it October 21, 1987.

[160] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

[161] Spanish Royal Decree 557/2011 of 20 April, approving the Regulation of the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social Integration, http://extranjeros.empleo.gob.es/es/ContenidosHOME/Derecha/InformacionInteres/documentos/BOE-A-2011-7703.pdf (accessed August 27, 2013), art.23.

[162] Ibid., art.190

[163] Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

[164] The Migrant Workers Convention defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."

The national legal framework largely consists of the national law on immigration, "Law 02-03 on the Entry and Residence of Foreigners in Morocco, Emigration and Illegal Migration[s]."[165] Law 02-03 sets out the rights of undocumented migrants in the processes of deportation, "returns to the borders," and expulsions. It also establishes the legal framework within which foreigners can legitimately enter, stay in, and leave Morocco.

Article 42 of Law 02-03 criminalizes the entry and presence of foreigners in Morocco without proper documentation: "Any foreigner entering or attempting to enter Moroccan territory, in violation of Article 3 of this Act, or who remained on Moroccan territory beyond the period authorized by his visa, except in cases of overriding circumstances (*forces majeures*) or excuses recognized as valid, shall be punished by a fine of 2,000 to 20,000 dirhams and imprisonment of one to six months, or one of these penalties."[166] Article three–referenced here–requires all foreigners who arrive to Morocco to present themselves to the border authorities with a valid passport or travel document.[167]

Aside from a prohibition on the expulsion of foreign children and on their return to the border in Law 02-03, Moroccan legislation on immigration does not have any additional provisions on migrant children, accompanied or not. There is a dearth in legal provisions protecting unaccompanied migrant children in Morocco. The 2006-2015 Moroccan National Plan for Children names unaccompanied migrant children as one of their targeted beneficiaries, but the plan does not specify any provisions for the protection of these unaccompanied children. The plan only states, "the competent Moroccan authorities, in collaboration with Civil Protection, the Moroccan *Croissant Rouge* and national NGOs, actively contribute, especially for children, to the area of food assistance, clothing and their protection."[168]

---

[165] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196.

[166] Ibid., art. 42.

[167] Ibid., art. 3.

[168] Plan d'action national pour l'enfance 2006-2015 "Maroc digne de ses enfants" http://www.unicef.org/morocco/french/PANE(2).pdf (accessed 18 September 2013) pp. 44-45. This point was previously highlighted by Marie Diop, "Migration des Enfants Non Accompagnés de l'Afrique de l'Ouest vers l'Afrique du Nord. Etat des lieux," January 2013 http://picum.org/picum.org/uploads/file_/migration_des_enfants_non_accompagnes_de_lafrique_de_louest_vers_lafrique_du_nord_1.pdf (accessed 18 September 2013), p. 40.

Article 23 of Law 02-03 requires migrants to receive a notification of the decision to be returned to the border and gives migrants the right to request the nullification of this decision within 48 hours of receiving the notification: "The foreigner, who is subject to a decision of return to the border may, within forty-eight hours of the notification, request the annulment of the decision to the President of the Administrative Court."[169]

In addition, according to article 23 of the Migrant Workers Convention, migrant workers and their family members have the right to be assisted by consular or diplomatic representatives of their home country whenever their rights under the convention are impaired. In particular, in case of expulsion, the Migrant Workers Convention states, "the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right."[170]

Article 23 of Law 02-03 further allows migrants to ask for the details of the case against them and to request a lawyer or an interpreter.[171] Article 24 stipulates, "Upon notification of the decision of deportation, the alien is immediately able to notify a lawyer, consulate of his country or a person of his choice."[172] The Migrant Workers Convention also sets standards in this area by requiring that any decision on expulsion be communicated in a language that migrants can understand,[173] and that migrants have a right to appeal the decision.[174]

Forced Evictions and Migrants' Rights to Housing

As a state party to the International Covenant on Economic, Social and Cultural Rights, which includes the right to housing as an essential part of the right of everyone to an

---

[169] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196., art. 23.

[170] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, art. 23.

[171] "Entry and Stay of Foreigners in Morocco, Emigration and Irregular Immigration," November 11, 2003, (Law 02-03) enacted by Royal Decree: Dahir n° 1-03-196., art. 23.

[172] Ibid., art. 24.

[173] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, art. 22, para. 3

[174] Ibid., art. 22, para. 4.

adequate standard of living,[175] Morocco has a minimum obligation to respect migrants' rights to basic shelter. In its Fourth General Comment, the Committee on Economic, Social and Cultural Rights (CESCR) has interpreted states' obligations to have a wide application in terms of housing rights:

> In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.[176]

While the CESCR acknowledged that states have minimum core obligations, including with regard to "basic shelter and housing," this obligation only requires a state party "to take the necessary steps 'to the maximum of its available resources.'"[177] But while the CESCR interprets the Covenant as allowing for "progressive realization" of social and economic rights based on available resources, it also precludes states from taking "deliberately retrogressive measures" that would destroy access to or enjoyment of a core right.[178] The destruction of an existing home, even a makeshift tent, especially without the provision of equivalent housing, would be such a retrogressive step.

Forced evictions are the most obvious violation of a government's obligations to ensure everyone's right to shelter. The CESCR defines forced evictions as, "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to,

---

[175] UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, The Right to Adequate Housing, *(Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: http://www.refworld.org/docid/47a7079a1.html (accessed 27 August 2013) para 6 states that "The right to adequate housing applies to everyone.... individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination."

[176] UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, The Right to Adequate Housing, *(Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: http://www.refworld.org/docid/47a7079a1.html (accessed 27 August 2013), para. 7.

[177] UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, The Nature of States Parties Obligations, (*Art. 2, Para. 1, of the Covenant*), December 14, 1990, E/1991/23, available at: http://www.refworld.org/docid/4538838e10.html (accessed 27 August 2013), para.10.

[178] Ibid. paras. 9-10.

appropriate forms of legal or other protection."[179] It says that forced evictions constitute "a gross violation of human rights," and are "incompatible with the requirements of the Covenant [ICESCR].”[180]

According to the CESCR, evictions must be carried out according to the law and respecting international human rights law. The Committee also determined that due process procedures must be respected in carrying out forced evictions, and made no distinction on the applicability of these rights to people depending on their residency status in the country. These due process measures include:

a) an opportunity for genuine consultation with those affected;
b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
e) all persons carrying out the eviction to be properly identified;
f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.[181]

The CESCR has also stated that “Evictions should not result in individuals being rendered homeless or vulnerable to the violations of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing,

---

[179] ESCR, General Comment No. 7, The Right to Adequate Housing (Art.11.1): Forced Evictions, (Sixteenth Session, 1997) http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument, (accessed August 27, 2013) para. 3.

[180] Ibid., para 4. They are also incompatible with art. 17(1) of the ICCPR, which recognizes, among other things, the right to be protected against "arbitrary or unlawful interference" with one's home.

[181] UN Committee on Economic, Social and Cultural Rights, General Comment 7, para. 15.

resettlement or access to productive land, as the case may be, is available."[182] Furthermore, article 15 of the 1990 Migrant Workers Convention protects the right of all migrants—regardless of their status—not to be arbitrarily deprived of property.[183]

Considering that undocumented migrants have a basic right to housing, Morocco should therefore protect them from forced evictions carried out without due process requirements, including in situations where they might be squatting on public or private land.

In addition to its obligations pursuant to national law, Morocco has obligations to respect international human rights law. The committee overseeing CEDAW said in its general recommendation No. 26 on women migrant workers that state parties "should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers" and "measures that may be required include" the "protection of undocumented women migrant workers." They stated "the situation of undocumented women needs specific attention. Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights." [184] The Committee went further to state:

> Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, or if they…face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity…. If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid…. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin (articles 2 (c), (e) and (f)).[185]

---

[182] Ibid., para 16.

[183] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, article 15. Morocco ratified the Migrant Workers Convention on June 21, 1993.

[184] UN Committee on the Elimination of Discrimination against Women, General Recommendation 26, Women Migrant Workers, CEDAW/C/2009/WP.1/R (2009), para. 26, http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

[185] Ibid.

The Human Rights Committee, the international expert body that monitors compliance with the ICCPR, stated in its General Comment No. 15 that while states are entitled to admit or deny entry of persons, "in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence…when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise."[186] Separating women from their children by deporting them, meets that threshold.

Moreover special attention needs to be paid regarding the stage of pregnancy of women while in custody and with regard to the decision to deport them. As made clear by the Committee on the Elimination of Discrimination against Women, the CEDAW treaty monitoring body, when deportation cannot be avoided, "States parties need to treat each case individually, with due consideration to the gender-related circumstances."[187] This would include, for example, pregnancy and women who are breastfeeding. Women held in custody by state authorities must be provided with access to adequate and gender-specific health care.[188]

The Convention on the Rights of the Child entrenches the right to shelter of *all* children, as stated in Article 27 (1,2): "(1) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (2) The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development."[189]

---

[186] UN Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, (Twenty-seventh session, 1986) para. 5 http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument (accessed August 27, 2013).

[187] UN Committee on the Elimination of Discrimination against Women, General Recommendation 26, Women Migrant Workers, CEDAW/C/2009/WP.1/R (2009) http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf (accessed August 27, 2013).

[188] UN Committee on the Elimination of Discrimination against Women, Inga Abramova v Belarus, Communication No. 23/2009, UN Doc. CEDAW/C/49/D/20/2008 (29 August 2011) see http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-23-2009.pdf (accessed August 27, 2013).

[189] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A.Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. Morocco ratified the CRC on June 21, 1993, Art. 7, paras. 1-2.

Acknowledgements

Katya Salmi, ACLS public fellow at Human Rights Watch, researched and authored this report. Brahim Elansari, Middle East and North Africa research assistant; Leeam Azulay, senior writer in Development; and Rona Peligal, deputy Africa director, also researched this report. Bill Frelick, refugee program director; Rona Peligal; and Eric Goldstein, deputy Middle East and North Africa director; edited this report. Benjamin Ward, deputy Europe and Central Asia director; Rothna Begum, women's rights researcher; Alice Farmer, children's rights researcher; Shantha Rau Barriga, disability rights program director; Joe Stork, deputy Middle East and North Africa director; and Tom Porteous, deputy program director; reviewed the report. Senior legal advisor Clive Baldwin provided legal review. Yasmin Yonis, refugee program associate, provided additional editorial assistance. Grace Choi, director of publications, and Kathy Mills, publications specialist, provided production assistance. Kaitlin Bush and Mary Laurie of the Refugee Program provided research assistance.

We are grateful to the Moroccan Interministerial Delegation for Human Rights for its willingness to meet with us and to correspond with us on related issues. We would also like to thank the local and international NGOs who provided assistance to us, including Médecins sans frontières – Espagne, la Fondation Orient-Occident, le Groupe antiraciste d'accompagnement et de défense des étrangers et migrants, l'Association Marocaine des droits de l'homme (Oujda), AMDH-Nador, UNHCR, Association Beni Znassen pour la Culture, le Développement et la Solidarité, l'Association Rif des droits de l'Homme, and Jose Palazon in Melilla.

Royaume du Maroc

Réponses des autorités marocaines aux questions soulevées par Human Rights Watch

(Rapport sur la situation des migrants subsahariens)

I. Réponse relative au sujet de la supposée violence injustifiée contre les migrants par les forces de sécurité :

Les déclarations de migrants étrangers au Maroc, telles que soulignées dans la lettre de l'organisation HRW, selon lesquelles certains migrants auraient été forcés à quitter le territoire national et à entrer en Algérie ou auraient été violentés au niveau du périmètre grillagé enclavant la ville de Mellilia, **sont dénouées de tout fondement**.

A cet égard, il est à souligner les précisions suivantes :

- Dans le cadre de la gestion de la problématique migratoire, **les autorités marocaines**, agissant dans la stricte légalité, **n'ont jamais forcé des migrants à quitter le territoire national et à entrer en Algérie**.
- Conformément à la règle du droit international, bien établie, **la reconduite à la frontière**, compte dûment tenu du nécessaire respect de la dignité et des droits de l'homme du migrant, ainsi que des droits de la défense, notamment l'épuisement des voies de recours contre la décision d'éloignement, **s'effectue par le transport du migrant, faisant l'objet d'une mesure légale de reconduite à la frontière, au dernier point de son infiltration sur le territoire national**. A cet égard, il faut rappeler que les frontières terrestres du Maroc avec l'Algérie, longues de 1.601 Km, constituent le point d'infiltration de la quasi-totalité des candidats étrangers à l'immigration irrégulière.

  Sachant que la **mise en œuvre de la mesure de reconduite à la frontière n'est pas systématique**. C'est ainsi que dans le cadre d'une gestion humanisée des conséquences de la problématique migratoire, les **étrangers ne disposant pas des conditions requises pour être maintenus au Maroc** (au regard de la migration économique ou de la protection internationale accordée aux réfugiés), **bénéficient de**

retours volontaires assistés, par voie aérienne, en coordination avec les représentations diplomatiques et consulaires de leurs pays d'origine et le bureau de l'Organisation Internationale pour les Migrations (OIM) à Rabat.

A ce jour, plus de **11.345 migrants extirpés des réseaux de trafic des êtres humains ont bénéficié de ce programme d'envergure**, depuis 2004.

Le plan d'action de la stratégie nationale favorise également la mise en œuvre de programmes et actions d'ordre social, économique et culturel dans le cadre des actions de coopération soutenues avec les pays concernés.

Concernant l'utilisation de la force excessive au niveau du périmètre grillagé enclavant la ville de Mellilia, il est à souligner les précisions suivantes :

- La problématique migratoire au Maroc est largement instrumentalisée par les réseaux criminels de trafic des êtres humains, particulièrement agressifs et utilisant des moyens matériels de plus en plus sophistiqués et qui n'hésitent pas à pousser leurs victimes à recourir à la force physique.
- Dans ce sens, en 2012, les autorités marocaines ont procédé, pour des raisons sécuritaires et humanitaires évidentes, à l'avortement de 38 assauts au niveau des périmètres grillagés enclavant les villes de Sebta et Mellilia, ayant impliqué plus de **3367 migrants étrangers**.
- Il est à souligner que **l'avortement d'un assaut au niveau de Mellilia, le 10 juillet 2012, a été terni par le décès tragique d'un Agent des Forces de l'ordre**.
- S'agissant de **l'incident se rapportant à la journée du 26 octobre 2012**, il est à préciser que **les autorités marocaines ont avorté, dans la stricte légalité, deux assauts de migrants subsahariens au niveau du périmètre grillagé enclavant la ville de Mellilia** (tentatives groupées d'infiltration forcée) ayant impliqué plus de 200 migrants originaires de pays tiers.
- Il est également à signaler que toute plainte déposée par un migrant, un réfugié ou un demandeur d'asile, pour d'éventuels actes de violence subis, est systématiquement instruite conformément aux lois et règlements en vigueur.

II. Réponse relative au sujet des supposés abus commis par la police dans des camps à Nador et à Oujda :

Les déclarations de migrants étrangers au Maroc se rapportant à de «prétendues exactions et contrôles abusifs de l'identité de migrants étrangers au niveau de Nador et Oujda », sont également dénouées de tout fondement.

A cet égard, il est à préciser ce qui suit :

- Dans le cadre de la lutte contre les réseaux criminels de trafic des êtres humains et de traite de personnes ou, encore, lors de l'avortement de tentatives d'assauts violents contre les grillages métalliques enclavant les deux villes de Sebta et Mellilia, le contrôle de la situation de séjour au Maroc de ressortissants étrangers, dont des personnes originaires de l'Afrique subsaharienne, s'effectue dans le strict respect de la loi 02-03 et des dispositions des conventions internationales, dûment ratifiées et publiées par le Maroc. Sachant que notre pays adhère à l'ensemble des instruments juridiques internationaux en la matière.

- La protection de l'intégrité physique, des droits fondamentaux et de la dignité des migrants au Maroc, **indépendamment de leur situation de séjour et de leur nationalité**, est au centre de la stratégie nationale de lutte contre le trafic des êtres humains. C'est ainsi que sur le plan de la mise en œuvre opérationnelle de ladite stratégie, l'accent est particulièrement mis sur la dimension humanitaire impliquant **la nécessaire prise en considération des droits des personnes concernées, en tant que victimes des réseaux de trafic**.

- Les bonnes pratiques développées par les autorités marocaines en la matière sont mises en œuvre indépendamment de l'ampleur de la problématique migratoire, qui s'est notamment accentuée, durant l'année 2012, au niveau des villes d'Oujda et de Nador, compte tenu de l'activité criminelle grandissante des réseaux de trafic au niveau de ces deux villes.

- Concernant les allégations se rapportant à la destruction d'abris de fortune utilisés par des migrants étrangers au Maroc, il est à relever que le « processus de protection », l'un des trois piliers de la stratégie nationale de lutte contre le trafic des êtres humains, vise notamment à **garantir la meilleure protection aux victimes des réseaux criminels de trafic des êtres humains sur le plan juridique et social, ainsi qu'en**

matière d'assistance médicale et psychologique, dans la mesure où le trafic des êtres humains induit nécessairement le recours à toutes les formes de contrainte (violence, tromperie, exploitation d'une situation de vulnérabilité).

- Par ailleurs, l'enquête ordonnée par le Procureur général du Roi à Oujda a révélé que toutes les opérations effectuées par les forces de sécurité d'Oujda, dans le cadre de la lutte contre l'immigration irrégulière, sont menées conformément à la loi et sous la supervision du parquet général. Lors de la garde à vue, les personnes concernées sont informées de leurs droits au même titre que les citoyens marocains, et leurs déclarations sont consignées dans des procès-verbaux légaux.

III. Réponse relative au sujet des supposés expulsions sans procédure régulière par les autorités marocaines :

L'éloignement du territoire national pour séjour irrégulier au Maroc (article 21 de la loi 02-03 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulière) ne s'applique que dans le cadre des mesures de reconduite à la frontière par **décision individuelle et motivée de l'administration, en tant qu'acte légal entouré de toutes les garanties juridiques et procédurales** (article 23).

Dans le cadre des dispositions de ladite loi et suivant une gestion humanisée des conséquences de la migration irrégulière et désordonnée, la « **Stratégie nationale de lutte contre le trafic des êtres humains » se focalise sur l'extirpation des migrants de l'emprise des réseaux criminels de trafic**. A cet égard, les **autorités marocaines ont démantelé plus de 2780 réseaux de trafic** depuis l'année 2002.

Sachant qu'une gestion efficiente de la problématique migratoire requière l'instauration de véritables dynamiques de coopération au niveau régional et international afin d'approfondir la compréhension de l'évolution du phénomène migratoire, de resserrer l'étau contre les activités des réseaux transfrontières de trafic des êtres humains et de fonder des solidarités objectives et durables entre les pays d'origine, de transit et de destination.

S'agissant de la mise en œuvre du **mandat du HCR** au Maroc y compris dans **la région orientale**, il est à souligner les précisions suivantes :

- ✓ Le **développement de la protection Internationale des réfugiés,** conformément aux standards internationaux et à la Constitution du Royaume du Maroc, se décline à travers la **mise en œuvre des principes de la Convention de Genève** de 1951 et de son protocole de 1967, le **Renforcement des politiques publiques en la matière et la consolidation de la coopération avec le HCR,** dans le cadre de la mise en œuvre de son mandat au Maroc.

- ✓ Concernant l'absence d'un bureau local du HCR à Oujda, il est à relever que conformément à l'accord de siège de 2007, le Haut-Commissariat des Nations Unies pour les réfugiés **exerce son mandat sur l'ensemble du territoire national à partir de sa représentation officielle à Rabat.**

- ✓ Sur le plan juridique il est à préciser que le **décret du 29 Août 1957** fixant les modalités d'application de la convention de Genève **est toujours en vigueur, en attendant la mise à niveau globale du système d'asile au Maroc** dans le cadre d'un projet d'envergure, actuellement en cours de finalisation par une commission interministérielle ad hoc.

- ✓ Par rapport à l'autorité publique actuellement en charge de la détermination du statut de réfugié, il est à préciser que **le Ministère de l'Intérieur et le Ministère des Affaires Etrangères et de la Coopération sont les autorités marocaines compétentes pour gérer la question d'asile** sur le plan politique et technique. Sachant que la **Direction Générale de la Sûreté Nationale** est l'autorité compétente pour délivrer les **cartes de résidence aux demandeurs d'asile ayant obtenu le statut de réfugié** au Maroc.

- ✓ Il est également à rappeler que dans le cadre d'une franche et étroite coopération soutenue avec le HCR, notamment depuis la **signature de l'accord de siège en juillet 2007,** les **étrangers bénéficiant d'attestations délivrées par la représentation du HCR au Maroc sont exemptés de toute mesure de reconduite aux frontières ou d'expulsion.** De même, un **échange fluidifié d'informations** a été instauré avec les responsables de ladite représentation du HCR.

Il est également à relever que l'adhésion aux normes internationales en matière de protection des réfugiés et demandeurs d'asile au Maroc a été parfaitement intégrée dans les dispositions de la loi n° 02-03. Il en est ainsi de :

- ✓ L'article 17 - paragr. 5 de la loi 02-03 stipulant qu'une carte de résidence est délivrée à l'étranger « qui a obtenu le statut de réfugié en application du décret du 29 août 1957, fixant les modalités d'application de la convention relative au statut des réfugiés, signée à Genève le 28 juillet 1951, ainsi qu'à son conjoint et à ses enfants mineurs» ;

- ✓ L'article 29 - a) disposant que : « L'étranger qui fait l'objet d'une décision d'expulsion ou qui doit être reconduit à la frontière, est éloigné : « A destination du pays dont il a la nationalité, sauf si le statut de réfugié lui a été reconnu ou s'il n'a pas encore été statué sur sa demande d'asile » ;

  L'article 29 - paragr. 5 disposant qu' : « aucune femme étrangère enceinte et aucun mineur étranger ne peuvent être éloignés. De même, aucun étranger ne peut être éloigné à destination d'un pays s'il établit que sa vie ou sa liberté y sont menacées ou qu'il y est exposé à des traitements inhumains, cruels ou dégradants».

Il est également à noter que les procédures d'éloignement du territoire national pour séjour irrégulier au Maroc sont menées en coordination avec des ONG telles que l'Organisation marocaine des droits de l'Homme (OMDH), l'Association marocaine des droits de l'Homme et le Haut-commissariat aux droits de l'Homme (HCDH).

Finalement, il est à préciser que le parquet général n'a jamais reçu aucune plainte, ni de la part des victimes présumées ni d'aucune ONG, concernant des actes de violence, du vol ou d'autres violations subis par des migrants irréguliers, ni dans les postes de police ni lors des opérations d'éloignement du territoire national.

IV. Réponses relatives aux autres questions

- Le Maroc et l'Espagne ont signé quatre accords portant sur la coopération en matière d'émigration. Une copie de ces accords est attachée à ce document.
- A ce jour, il n'existe aucun cadre juridique ou organe de coopération en matière de gestion de la problématique migratoire avec l'Algérie.
- Le cadre légal en matière d'expulsion et de gestion de la situation des étrangers au Maroc est la loi 02-03 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulière du 11 novembre 2003, constitue le cadre légal régissant l'action des autorités publiques par rapport aux deux points soulevés. S'agissant notamment de l'expulsion, ladite loi opère une distinction entre

la reconduite à la frontière et l'expulsion. A cet égard, l'expulsion revêt le caractère d'un acte légal exceptionnel, qui peut être prononcée à l'encontre d'un ressortissant étranger lorsque son éloignement du territoire national constitue une nécessité impérieuse pour la sûreté de l'Etat ou pour la sécurité publique (article 27 de ladite Loi).

- Sachant que le législateur prévoit explicitement des catégories d'étrangers ne pouvant faire l'objet d'une décision d'expulsion en application des dispositions de l'article 26 de la loi 02-03. Il s'agit des situations suivantes :
  - L'étranger qui justifie par tous moyens qu'il réside au Maroc habituellement depuis qu'il a atteint au plus l'âge de six ans ou depuis plus de quinze ans ;
  - L'étranger qui réside régulièrement sur le territoire marocain depuis dix ans, qui est marié depuis au moins un an, avec un conjoint marocain ou qui est père ou mère d'un enfant résidant au Maroc ;
  - L'étranger qui a acquis la nationalité marocaine par le bienfait de la loi ;
  - L'étranger résidant régulièrement au Maroc sous couvert de l'un des titres de séjour prévus par la loi (carte d'immatriculation ou carte de résidence) ou les conventions internationales, qui n'a pas été condamné définitivement à une peine au moins égale à un an d'emprisonnement sans sursis ;
  - La femme enceinte et le mineur d'âge.

Sub-Saharan African migrants in Morocco's northeastern region live in constant fear of Moroccan police sweeps and round-ups, and of being expelled across the border into Algeria.

Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco documents cases of Moroccan police beating migrants, depriving them of their few possessions, and burning their shelters. The report also documents how the Moroccan authorities expel Sub-Saharan migrants at the Algerian border without taking appropriate legal procedural measures.

Both Moroccan Auxiliary Forces and the Spanish Guardia Civil use excessive force against migrants trying to enter the nearby Spanish enclave of Melilla. Migrants expelled from Morocco to Algeria report similar abuse at the hands of Moroccan and Algerian authorities, who allegedly use force—or the threat of force—at the border.

Coordinating border management with the European Union, especially Spain, since the 1990s, Morocco contributes to curbing the number of migrants reaching European shores as part of what has been described as the "externalization" of EU migration policy.

Human Rights Watch calls on the Moroccan government to end the use of excessive force against migrants, stop the forced returns and expulsions of migrants without due process, and respect the rights of refugees and asylum seekers who wish to lodge a refugee claim.

Human Rights Watch urges the Algerian government to stop its border security forces from violently and summarily pushing back migrants expelled by Morocco at the border.

Human Rights Watch calls on the Spanish government to ensure that migrants are not arbitrarily removed, including at the border between Morocco and Melilla.

(above) Melilla, Spain, November 2012 – View of the Spanish-Moroccan border from the Spanish side of the border fence.

(front cover) Nador, Morocco, November 2012 – A migrant from Mali lying down in a cave used as shelter. In the forests and mountains that surrounded Nador, groups of Sub-Saharan African migrants survive and wait for the right moment to attempt to cross the border between Morocco and the city of Melilla, a Spanish enclave on Morocco's north coast.

© 2012 Gianfranco Tripodo/contrasto/Redux

hrw.org