



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK

RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

STUDY ON MIGRATION AND ASYLUM IN MAGHREB COUNTRIES

INADEQUATE LEGAL AND ADMINISTRATIVE FRAMEWORKS CANNOT GUARANTEE
THE PROTECTION OF MIGRANTS, REFUGEES AND ASYLUM SEEKERS



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Copenhagen - Juillet 2010

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REMARKS ON METHODOLOGY





This study on migration and asylum in the Maghreb was carried out in the context of a call for expression of interest launched by the Euro-Mediterranean Human Rights Network (EMHRN). In accordance with the terms set out in the call for expression of interest, the study seeks to analyse, in approximately 50 pages, the legal and administrative regimes pertaining to migrants, asylum seekers and refugees in the four countries of the Maghreb (Morocco, Algeria, Tunisia and Libya), with a particular focus on the impact of these regimes on the protection of their rights.

The analysis is based on research conducted over a four-month period (January-April 2010). The first stage in the research project consisted in gathering basic data on each of the countries under review. This was followed by information-gathering missions in the four countries (limited to the capital cities) that were organised and conducted by the four researchers taking part in the study¹. These missions took them to Morocco (25-30 January 2010), Algeria (30 January-4 February 2010), Tunisia (7-12 February 2010) and Libya (19-23 March 2010)². Each researcher was able to meet representatives of international organisations and non-governmental organisations (NGOs) at the local level, as well as experts on migration and asylum issues and a few migrants and refugees.³ The data thus collected, along with a search of the literature, enabled the four researchers to draw up a 'fact sheet' on each country, based on a model drawn up by the EMHRN. The fact sheets can be found in an appendix to this report.

The report is based in part on the fact sheets and on interviews and testimonies gathered in the countries visited. Based on the analysis of the legal and administrative regime pertaining to migrants, asylum seekers and refugees in those countries, the author has attempted to identify the main shortcomings in the legal system and in administrative practice.

The study examines the flows of migrants and refugees through and to the countries of the Maghreb, as well as the context in which these movements take place. It includes a description of

- 1 The team included a lead researcher and three 'country' researchers. To ensure that field-related constraints would be taken into account in the preparation of the regional report, it was decided that the lead researcher would also make a field visit in one of the four countries.
- 2 Because of problems and delays in obtaining a visa for the lead researcher, the mission to Libya was preceded by a mission to Rome (18-21 February 2010).
- 3 Interviews were conducted with migrants and refugees in Algeria; in Rome, the interviewees were people who had transited through Libya. The four researchers wish to thank all those who agreed to be interviewed during these missions.

the cooperation framework established between the European Union (EU) and these countries, as well as a critical look at the impact of this cooperation from the point of view of the protection of migrants and refugees. The study also considers the extent to which the various financing instruments of the EU and/or EU member states aimed at this region support projects that fall under migration and border control, as well as the impact of these projects on the protection of migrants and refugees. The study devotes particular attention to the major types of violations of the civil, political, economic and social rights of migrants and refugees in the Maghreb⁴. It seeks to examine the causes of these violations and the steps taken by the authorities and civil society to remedy them, and makes recommendations aimed at improving the situation.

Some of the difficulties that were encountered warrant a mention. First, it was sometimes difficult to identify and meet all the actors involved in the field and to plan field visits effectively within a maximum period of one week. Second, the collection of comprehensive and specific information and verifiable data for the entire population under study sometimes proved to be challenging - especially in Tunisia but also in the other countries - in particular because of the deliberate lack of transparency maintained by the authorities on the issues studied here. In addition, it was not possible, during a field visit lasting only a few days, to address all issues precisely, succinctly and comprehensively.

W A R N I N G

On 8 June 2010, a few weeks after the study was completed, we learned that the Libyan government had ordered the representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) to leave the country. Unfortunately, it was not possible to take into account this new development in the data and analysis pertaining to Libya⁵, but it is one that is extremely critical and worrisome for the fate of refugees in that country.

- 4 Among the refugees living in Maghreb countries, it was not possible to devote a special study to Palestinian refugees as part of this report but data on their numbers and their situation (which are available for Morocco, Algeria and Libya but not for Tunisia) are mentioned under the relevant headings. In general, the data available show that the treatment and rights enjoyed by Palestinian refugees are much more favourable than they are for other refugees in these countries.
- 5 See, for example, <http://www.unhcr.org/4c0e79059.html> and <http://news.bbc.co.uk/2/hi/world/africa/10338790.stm>.

M I G R A T I O N A N D A S Y L U M I N M A G H R E B C O U N T R I E S

INTRODUCTION





With the exception of Libya, the Maghreb countries (Morocco, Algeria and Tunisia) have long been sources of emigration. In recent years, however, their role from a migration point of view has evolved. While the late 2000s witnessed continued emigration from these three countries, there was also an increase in immigration into their territories⁶. As a result, 'the migration portrait of the Maghreb is changing and becoming more complex. To its traditional function as a source of emigration, which continues to grow and to have a strong impact on the demographic and socio-economic structures of the countries of the region, is now added a new immigration dimension and, as part of the latter, a transit function'⁷. Some believe that the notion that all or most of the migrants who cross the Sahara desert are 'in transit' to Europe is unfounded, and it may well be that there are indeed more sub-Saharan Africans living in the Maghreb than in Europe⁸. Libya is an important destination country in its own right, but there are also many migrants who fail to reach European shores or decide not to make the attempt, preferring to remain in North Africa as a second-best choice. In addition, there are far fewer sub-Saharans than Maghreb nationals who actually cross the Mediterranean⁹.

6 Consortium for Applied Research in International Migration (CARIM), *Mediterranean Migration, 2008-2009 Report*. Robert Schuman Advanced Studies. San Domenico di Fiesole, Italy: European University Institute, October 2009.

7 Ali Bensaâd, *Le Maghreb à l'épreuve des migrations subsahariennes. Immigration sur émigration*. Paris: Karthala, 2009, p. 5 (quote translated by EMHRN).

8 Hein de Haas, *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends*, Migration Research Series. Geneva, Switzerland: International Organization for Migration, 2008. According to the author, this finding runs contrary to the apocalyptic image, conveyed by the media and by the dominant political discourse, of a massive and growing exodus of desperate Africans fleeing poverty and war in their countries, piled up in barely floating, rotting vessels in an attempt to reach the elusive European Eldorado. The conditions in which thousands of sub-Saharan migrants cross the desert to reach the Maghreb are nonetheless very dangerous, as noted in particular in the report of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants, Bahame Tom Nyanduga, for the period from November 2008 to May 2009.

9 According to Abderazak Bel Hadj Zekri (in *La dimension politique de la migration irrégulière en Tunisie*, CARIM-AS 2008/53, Robert Schuman Centre for Advanced Studies. San Domenico di Fiesole, Italy: European University Institute, 2008), sub-Saharan migrants are far less numerous than North Africans overall in irregular ("illegal") migration flows towards Europe, and the importance of sub-Saharan migration has been exaggerated. At the same time, a large-scale field survey conducted in Algeria in 2008 reveals that "the proportion of sub-Saharans who wish to live in Algeria is far from negligible since 57 percent admit this is their goal while 43 percent seek to go on to Europe or elsewhere (other Maghreb countries, Canada, Australia). This initial finding suggests that Algeria is now a country of immigration and not only a stepping stone towards Europe"; see Nouredine Khaled, Rafika Hafdallah, Houria Gharbi, Carine Adam and Saïb Musette, *Les migrants subsahariens en situation irrégulière en Algérie: caractéristiques, profils et typologie*. Association pour l'aide psychologique, la recherche et la formation (SARP) and Comitato Internazionale per lo Sviluppo dei Popoli (CISP), November 2008.

While the reality of these flows is undeniable, quantifying them remains a difficult task, in particular because of their essentially clandestine nature. It is important to note in this regard that, in contrast with the situation in the three other countries studied, the issue of migration flows in Tunisia is completely obscured. Officially, the migration phenomenon does not exist and the Tunisian authorities have no wish to turn migration into 'a problem'. Thus migration is taboo, an unspoken topic. There is failure to agree about migration in Tunisia even among different persons met in the field. According to the International Organization for Migration (IOM), there are no transit flows in Tunisia, a view that is challenged by a number of researchers and organisations. While there are migratory flows of Tunisians towards Europe (recall that Tunisians did land at Lampedusa and Malta) and towards Libya, it is very difficult to quantify migration (especially from sub-Saharan Africa) to or through Tunisia. The Tunisian border is very tightly controlled and Tunisia cannot in any way be characterised as a sieve, but at the same time the information gathered in the field is mainly anecdotal. There are indications that transits and departures do occur, but no one can determine their extent. Migration in Tunisia definitely has not reached the scope observed in Morocco, Algeria and Libya.

According to a study on Morocco, Algeria and Tunisia, performed for the International Labour Organization in 2006¹⁰, there are numerous sources of data on international migration in these countries: surveys and censuses, administrative sources (data gathered on a regular basis by different government ministries), economic and financial data (in particular on transfers by migrants) and data on other elements of international migrations (students, tourists, refugees, etc.). While there are many sources of data production, there is no coherent system for gathering, processing, analysing and disseminating the data.

While the data on legal emigration by Maghreb residents are widely publicised¹¹, the information on foreign-born groups in the region is held by the interior ministries and thus by the countries' security apparatuses. Information on these groups is for the exclusive use of security services

10 Mohamed Saïb Musette, with the collaboration of Belghazi Saad, Boubakri Hassan and Hammouda Nacer Eddine, *Systems of Statistical Information on Migrant Workers in Central Maghreb*, International Migration Papers No. 76E, International Migration Programme. Geneva: International Labour Organization, 2006.

11 Morocco, Algeria and Tunisia have established bodies that are specifically aimed at protecting the rights of their nationals who have migrated abroad.

and, as a rule, is not made available to the public. Similarly, while the data on foreign workers are managed by the employment or labour ministries, they are treated in the same way: no information on working conditions or wages is published. And finally, there are, by definition, no data on illegal migrants. As a result, the only data available on this category of migrants are the (incomplete and imprecise) bits of information that can be garnered about those who have been interrogated or arrested by law enforcement officials or who have died in the country of migration¹². There is also a crucial lack of information on migration in Libya. Statistical data from this country are especially unreliable because of its inconsistent migration policies and of the constant ebb and flow of migrants crossing its borders.

The data for the four countries provided by CARIM (for the mid-2000s¹³) and UNHCR¹⁴ must be viewed with the usual caution called for in statistical analysis:

- Algeria:** more than 90 000 immigrants, including 10 000 illegal migrants + 138 refugees¹⁵ and 192 asylum seekers (end January 2010);
- Libya:** 1.2 million immigrants, including 1 million irregular migrants¹⁶ + 6 713 refugees¹⁷ and 4 834 asylum seekers;
- Morocco¹⁸:** approximately 75 000 immigrants, of whom 10 000 are illegal entrants + 766 refugees¹⁹ and 469 asylum seekers;
- Tunisia:** 45 000 immigrants, including fewer than 10 000 illegal migrants + 94 refugees²⁰ and 51 asylum seekers.

12 Since the figures also include emigrants (except in the case of Libya), these countries are all the more reluctant to disseminate them (except for dissuasion purposes) because they highlight the lack of confidence felt by young North Africans towards their future prospects in their own countries.

13 CARIM, *Mediterranean Migration - 2008-2009 Report*, Robert Schuman Advanced Studies. San Domenico di Fiesole, Italy: European University Institute, 2009.

14 See United Nations Office of the High Commissioner for Refugees, *2008 Global Trends*. Geneva: UNHCR, 16 June 2009; also based on information gathered locally.

15 This figure includes only sub-Saharan refugees - that is, nationals from the Democratic Republic of Congo, Cameroon, Ivory Coast, Liberia and Nigeria. When Sahrawi and Palestinian refugees are included, the figure for Algeria rises to 94 093 refugees, according to UNHCR, although Algeria itself recognises 165 000 persons as refugees. The Sahrawi, who came from Western Sahara in 1975 and 1976, have been living in camps near Tindouf in southwestern Algeria. Since the *ratione temporis* scope of the present study covers current flows of migrants, refugees and asylum seekers, the Sahrawi living in Algeria are not part of the main focus of the study because of the many specific aspects of their history and their situation. In addition, the Algerian government recognises 4 000 Palestinian refugees, according to the U.S. Committee for Refugees and Immigrants (USCRI). Because they can enter Algeria legally without a visa, many of them have not contacted the UNHCR. That agency does have a few cases pending, however, for seekers who were unable to obtain a student visa. In its 2010 Country Operation Profile - Algeria, the UNHCR indicates that 'an indeterminate number of Palestinian refugees also live in Algeria, but they are well integrated'.

16 No official figures are available, but the most common estimates quoted in international reports and by the Libyan authorities are between 1.5 million and 2 million foreigners, of whom about three quarters are in the country illegally. Thus the total number of illegal migrants could well be between 1.2 million and 1.5 million.

17 At the end of 2009, the UNHCR had registered 8 171 refugees in Libya, including 3 446 Palestinians, who form the largest group of refugees. Palestinian refugees began to experience difficulties in Libya after the launching of the peace process in the wake of the Oslo peace agreements in 1993. In 1995, the Libyan government encouraged thousands of Palestinian refugees to move to a camp located near the border with Egypt. It then requested the UNHCR to assist some 1 000 refugees who were stuck at the border in this camp located in the middle of the desert. The UN agency granted them refugee status on a *prima facie* basis. The following year, the Libyan government decided to allow all Palestinian refugees to return to their previous places of residence and to be reinstated into their jobs. Since then, their overall situation has stabilized.

18 According to the interior ministry, close to 60 000 foreigners were in Morocco legally in 2008.

19 At 31 December 2009, Morocco had 773 refugees and 318 asylum seekers; a further 807 persons submitted a request for asylum in 2009. At 31 March 2010, the UNHCR's Rabat office had records on 24 Palestinian refugees, 75 percent of whom were registered before 2004.

20 At 31 December 2009, 92 refugees were recognised under the UNHCR mandate and there were 36 registered asylum seekers whose cases were being reviewed.

The estimates available on the geographic origins of foreign residents suggest that there are more sub-Saharan Africans living in North Africa than in Europe²¹. They are believed to be far more numerous in Morocco and Algeria than in Tunisia, which may be explained by the latter's looser geographic links with Africa (it has no common border with any sub-Saharan country) and its more tightly controlled borders. An overwhelming majority of foreigners living in Libya are believed to be from sub-Saharan countries²².

The flows of migrants and the routes they follow can change very quickly under the influence of geopolitical events in the regions of origin and of changes in legislation and practices in the countries of North Africa and the European Union²³. Thus the oldest migratory route, across the Strait of Gibraltar, is said to be used less and less frequently and to have been successively replaced by the route through Mauritania and Senegal to the Canary Islands (which reached its highest usage in 2006), the route through Turkey to Greece's Dodecanese Islands (culminating in 2007) and later the route through Libya to Italy (culminating in 2008). Libya, which was a major transit country until very recently²⁴, is believed to have stopped completely all departures from its coastal areas.

It should be noted that the very definition of the phrase 'irregular migration' (or 'illegal migration') is subject to debate. Hein de Haas, for example, refers to a broad notion of 'irregular migration', which he characterises as 'international movement or residency in conflict with migration laws'. In this researcher's view, irregular migrants can fit into several categories: migrant workers who respond to a job offer in the local labour market without obtaining a residency permit (informal employment); asylum seekers and refugees²⁵ who are stuck in the country to which they have fled, where they have no residency permit and are awaiting relocation or a possible return to their country of origin; and transit migrants who are attracted to a more distant region (Europe, in most cases) but cannot leave because they have no visa. These categories may give rise to some controversy, however, when one attempts to differentiate between different flows on the basis of the rights that apply to each category. While a state may legitimately seek to control migratory flows, such control should not prevent asylum seekers from entering its territory. In an environment where the 'fight against illegal immigration' is becoming more and more widespread, the definition used by Hein de Haas does not allow for singling out asylum seekers as a category of persons protected against *refoulement* by the 1951 Convention on the Rights of Refugees. In any case, as we shall see below, the fact is that none of the Maghreb countries has a specific regime in place for the recognition of refugee status. As a consequence, the vast majority of refugees in the region find themselves without residency documents. From the point of view of administrative procedure and of the legislations in effect in the countries of North

21 Hein de Haas, *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends*, Migration Research Series. Geneva: International Organization for Migration, 2008.

22 In 2004, Olivier Pliez estimated the number of sub-Saharan Africans in Libya at 1.5 million persons.

23 Often resulting in terrible tragedies.

24 At seminar held in 2009, Hassan Boubakri, a Tunisian academic, described the routes of clandestine emigration through the rectangle formed by western Libya and the Tunisian Sahel in the south, and by Malta and Italy in the north. These routes, especially those which leave from Tripolitania, are the largest in North Africa, as Libya is the Maghreb country through which flow the largest numbers of sub-Saharan Africans in transit.

25 Contrary to migrants - a category that also includes nationals from the countries under study (which, with the exception of Libya, remain a source of emigration in addition to playing new roles as transit and destination countries) - asylum seekers and refugees are foreigners by definition.

Africa, these persons are in an 'irregular' situation.

The shift from regular to irregular status (or vice versa) during a migrant's cycle (entry, stay, work, exit) is a common phenomenon in all countries. In Libya, a country that has always lined up its migration policy on its foreign policy rather than on the actual situation of its labour market, foreigners find themselves in a particularly unstable situation, with shifts between regular status and irregular status being frequent. If, however, one looks beyond the categories defined above (irregular migrant workers, transit migrants and refugees), it can be seen that the persons concerned share broadly the same living conditions.

While there have been many studies on migration routes, dynamics and flows²⁶ (especially viewed from a sociological or geographical perspective) and while there has also been research on the legal frameworks found in the Maghreb countries²⁷, the issue of migration seen from the point of view of the impact of policies and laws on the rights of migrants, refugees and asylum seekers remains relatively unexplored²⁸.

Given the methodological constraints under which this study was conducted²⁹, no attempt was made to carry out a comprehensive review of the situation of migrants, refugees and asylum seekers in each of the four countries considered (Morocco, Algeria, Tunisia and Libya). Rather, the study set out to analyse the legal framework governing the different categories of migrants in those countries and its impact on the protection (or violation) of their rights.

The human rights protection regime in most Maghreb countries is still in the development phase, and the acceptance of international instruments by these countries remains incomplete. There are several legal international instruments in place that should guarantee the rights of foreigners as individuals, refugees or migrants, but in effect the international treaties protecting those rights are limited by national legislation. Where legal safeguards do exist, they are inadequately implemented.

The national legal systems of the four countries regulate the different aspects of migrations in greater or lesser detail. All of them have in place a legislative framework on the entry and

departure of foreigners, with a strong emphasis on repression. With respect to asylum, while some of the Maghreb states have adopted decrees linked to the implementation of the Geneva Convention, none of them currently has in place a national procedure for recognising the status of refugees or guaranteeing their rights, including the right to stay. As regards access to the labour market by foreigners, regulations are largely inadequate in Morocco, Algeria and Tunisia, while in Libya, traditionally a country of immigration, the rules continue to be very unpredictable.

Thus, whatever the degree of the four countries' adherence to international treaties on migrants and refugees and whatever the state of the national systems in place, the migration policies of the Maghreb countries display little concern for the rights of migrants, whether their status is regular or irregular (Part I), and the asylum regimes are incapable of guaranteeing full protection of refugee rights (Part II).

At the same time, civil society is getting more and more involved in some countries of the region, but its impact on the rights of migrants and refugees remains insufficient (Part III).

There is no expectation that measures offering greater protection will come from the European Union or its member states: their highly ambiguous policies remain focused on control while underplaying the protection of migrant and refugee rights (Part IV).

26 In *La migration de transit en Tunisie: état des lieux et impacts et avancement de la recherche sur la question* (CARIM-AS 2009/16, Robert Schuman Centre for Advanced Studies; San Domenico di Fiesole, Italy: European University Institute, 2009), Abderazak Bel Hadj Zekri notes that studies on migration transit are barely beginning in Tunisia, in comparison with Morocco and Algeria; the first field study was conducted in 2003 by Mehdi Mabrouk, followed by others (in particular by Hassan Boubakri). In *Voiles et sel: Culture, foyers et organisation de la migration clandestine en Tunisie* (Tunis: Editions Sahar, January 2010), Mehdi Mabrouk has acknowledged that there are many works by Tunisian writers on regular migration, but in his review of scientific publications on migration published between 1991 and 2004, a period when there was a massive amount of irregular migration, he notes that the word 'clandestine' appears very seldom and only fleetingly in this literature. And indeed, migration studies in Tunisia remain largely focused on legal migration. When research does touch upon irregular migration, it is mostly centred on the emigration of Tunisians.

27 See the bibliography at the end of this report. A large number of existing publications are based on secondary sources such as media reports and government sources. A few empirical studies using quantitative and qualitative methods and focusing more on life stories of migrants are beginning to appear, however.

28 As Mehdi Mabrouk has noted in *Voiles et sel*, 'administrative obstacles and the obsession with security unquestionably constitute barriers that prevent the development of a "proximity approach" of the phenomenon; forced to cope with many prohibitions, scientific research is the big victim' (EMHRN translation). What is said about Tunisia very likely applies to Libya as well.

29 See the comments on methodology in the preamble to this study.

I - NATIONAL MIGRATION POLICIES LITTLE CONCERNED WITH MIGRANT RIGHTS





Whether the foreigner's status is regular or irregular, he enjoys little protection. In most cases, his legal status in the country of destination depends exclusively on its political, economic and social interests.

A. STRICT CONTROL OVER FOREIGNERS ADMITTED LEGALLY

1- GENERAL REGULATIONS APPLYING TO FOREIGNERS

Each state controls the access of foreigners to its territory. The four countries considered here (Morocco³⁰, Algeria³¹, Tunisia³² and Libya³³) have adopted legislation³⁴ governing the entry, exit and stay of foreigners. The Libyan legislation is characterised by its great unpredictability and by the contradictions that exist between the laws that have been adopted and the implementation decrees.

In all four countries, these legislations stipulate various administrative procedures that foreigners must comply with in order to enter the territory³⁵ (travel document, valid visa) unless bilateral treaties provide for other measures. The legislations also describe the different types of residency permits that may be granted to foreigners under specified conditions. In general, the laws grant a significant degree of discretionary power to the authorities by referring to such notions as 'public order', 'state security' or 'public security' without defining them.

³⁰ Dahir No. 1-03-196 of 11 November 2003, enacting Law No. 02-03 regarding the entry and stay of foreigners in the Kingdom of Morocco, emigration and irregular immigration (hereafter, 'Law 02-03'). Several provisions of the law require implementation decrees that have yet to be adopted.

³¹ Law No. 08-11 of 25 June 2008, regarding the conditions applying to the entry, stay and movement of foreigners in Algeria, replacing Order No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria. At the same time, the Algerian constitution guarantees the protection of foreigners who have settled in the country legally (Article 67): 'Any foreigner who is legally in the national territory enjoys the protection of the laws for his person and his property' (EMHRN translation). In addition, Law No. 09-01 of 8 March 2009 strengthens the Penal Code with regard to the repression of trafficking in migrants.

³² Law No. 1968-7 of 8 March 1968 regarding the situation of foreigners in Tunisia; Decree No. 1968-198 of 22 June 1968 regulating the entry and stay of foreigners in Tunisia, as amended and complemented by Law No. 1999-77 of 2 November 1988, Law No. 2004-6 of 3 February 2004 and Law No. 1008-13 of 18 February 2008.

³³ In Libya, a traditional destination country, several laws govern the entry and stay of foreigners. The main laws are the following: Law No. 6/1987 regarding the entry and stay of foreigners (amended by Law No. 2/2004); Law No. 10/1989 granting Arab citizens the right to enter into and remain in Libya, with the same rights and obligations as Libyan citizens.

³⁴ The references to specific articles in the laws of Morocco, Algeria, Tunisia and Libya governing the different matters examined in this report are included in the corresponding fact sheets for each of the four countries.

³⁵ The Tunisian legislation also requires that entry into and exit from Tunisia can only be effected through specific border stations.

In **Tunisia, Algeria and Libya**, the legislation also stipulates that anyone providing accommodation to a foreigner, under any type of arrangement, even free of charge³⁶, must notify the police or the national guard of the person's place of residence. In those countries, as well as in Morocco, accommodation professionals must also meet this requirement, under penalty of criminal prosecution. Finally, in Tunisia the foreigner who moves from one residence to another must pre-notify the police of his previous place of residence and, within three days, advise them of his new one.

In **Morocco**, the legislation provides for protections and guarantees defined in international law, in particular with respect to the rights of children and refugees and to protection against torture. However, some domestic provisions are in contradiction with international norms, especially with regard to the delivery of residency permits to refugees on the basis of their legal entry into the country. In addition, most of the law's protection provisions (supervision of administrative detention, guarantees offered in the context of removal procedures, appeal procedures, etc.) are not being applied³⁷. The mechanisms that should have been put in place to allow for a more dignified and humane application of the provisions related to migration control (detention centres and holding facilities) have not been implemented.

Generally speaking, these legislations place greater emphasis on fighting against irregular immigration and emigration than on protecting the rights of migrants. Many different provisions establish heavy penalties aimed at many different offenders to cover many different offences (see section B, 'Highly repressive regimes for irregular migrants').

³⁶ As stated explicitly in the Tunisian law.

³⁷ See, in particular, GADEM, Le cadre juridique relatif à la condition des étrangers au regard de l'application du pouvoir exécutif et de l'interprétation du juge, December 2008.

2- REGULATIONS APPLYING TO WORKERS

In addition to the general regulations applying to all foreigners, the Maghreb states have established other more restrictive conditions that essentially reflect their political, economic and social concerns.

From an international perspective, it is important to note that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been ratified by Morocco³⁸, Algeria³⁹ and Libya⁴⁰. In the case of Morocco and Algeria, ratification seems to have been part of a strategy aimed at strengthening the rights of their nationals aboard more than promoting the rights of foreigners present on their soil. As for Tunisia, it has yet to ratify the Convention⁴¹.

Seen from a domestic point of view, the internal legislations often contain gaps or vary significantly (as in Libya) and the rights of migrant workers, far from being adequately protected, are often flouted.

In **Morocco**, there is no legislation specifically designed to protect the rights of migrant workers. There are, however, several legislative instruments that could be used to offer some protection⁴². As a rule, Morocco's domestic framework does not adequately protect the rights of migrant workers, especially those who are in an irregular situation. As for migrants in a regular situation, several recent instances of arbitrary expulsions from the country illustrate the failure, among other things, to implement the guarantees provided for in Moroccan laws governing foreigners⁴³. At the same time, their regular stay status is a major obstacle to the enjoyment of certain rights even though they are guaranteed by the Convention for all workers regardless of their residency status. Because of their situation, they cannot be granted the administrative permission needed for foreigners to be hired, and as a result the labour code is not applicable to them. In addition, without the assistance of a member of civil society, irregular migrants experience difficulties in accessing the public health care system outside the main cities. Similarly, outside Rabat, access to education for the children of migrant workers is not guaranteed for those who do not have a residency permit. According to a number of observers, some persons in an irregular situation have been unable to gain access to the justice system or to enjoy the protection of law enforcement because of their irregular status in Morocco. As a result, it is impossible for these persons to secure respect for the rights conferred upon them by the laws mentioned above.

38 Morocco ratified the Convention on 21 June 1993.

39 Algeria ratified the Convention through Presidential Decree No. 04-441 of 29 December 2004, published in Issue No. 2 of the Journal officiel (official gazette) of the People's Democratic Republic of Algeria.

40 Libya ratified the Convention on 18 June 2004.

41 According to a 2004 study, there are several obstacles (physical, procedural and formal) impeding the ratification of the Convention by Tunisia; see Hafidha Chekir, Monia Ben Jemiaa and Hassen Boubakri, 'Les migrants et leurs droits en Tunisie', in Khadija Elmadmad (ed.), *Les migrants et leurs droits au Maghreb avec une référence spéciale à la Convention sur la protection des droits de tous les travailleurs migrants*. SHS/2004/MC/4. UNESCO, 9 September 2004.

42 See the list of laws in the fact sheet on Morocco.

43 See, for example, RFI, 'L'expulsion de Chrétiens suscite la controverse', 19 March 2010.

In **Algeria**, in addition to the two specific laws already cited⁴⁴, other, more general laws have implications for migrant workers⁴⁵.

According to the information provided by Algeria in its report to the UN Committee on Migrant Workers⁴⁶, the ratification of the International Convention on the Protection of the Rights of Migrant Workers in 2004 was expected 'to usher in major changes, particularly to the Labour Code and the law on the employment of foreigners in Algeria'⁴⁷. Nearly two years later, Algerian media reported that 'the ministry of labour, employment and social security has announced that it intends to reorganise the activities of foreigners in Algeria. The matter will be approached through the framework of the new labour code, currently being developed'⁴⁸. According to the minister, a new provision dealing with the organisation of foreign workers in Algeria will be added to the text and mechanisms making it possible to harness, control and manage this manpower will be put in place⁴⁹. Thus there are gaps remaining in the domestic regime. It was not possible, in the context of this study and of the field mission in Algeria, to gather precise data on the situation of legal migrant workers⁵⁰. As for migrant workers in an irregular situation, they are essentially employed in the informal sector⁵¹ and are faced with the same precarious conditions as all illegal migrants, in particular facing the risk of being arrested, detained and expelled.

Libya, traditionally a country of destination for migrant workers, has signed bilateral agreements on employment with a large number of Asian and Arab countries. Libyan policy has been fluctuating between openness to migrant workers and restrictive measures aimed at them, especially those from sub-Saharan Africa, in response to economic or political decisions. There are a large number of laws and regulations governing the employment of foreign workers⁵² and they have often been amended in recent decades. Some of these legislations concern all migrant workers while others focus specifically on those from Arab and African countries.

44 The Law of 25 June 2008 regarding requirements for the entry, stay and movement of foreigners in Algeria, and the Law of 8 March 2009 strengthening the Penal Code with regard to the elimination of migrant smuggling.

45 For example, Law No. 90-14 of 2 June 1990 on the exercise of the right to organise; Article 6 of the law includes Algerian nationality as one of the preconditions required of persons seeking to establish a trade union organisation.

46 Algeria submitted its initial report to the Committee on Migrant Workers on 26-27 April 2010 in Geneva. The EMHRN attended this public session of the Committee and heard the explanations provided by the delegation from Algiers on the implementation of the Convention on the Protection of Migrant Workers in that country.

47 CMW/C/DZA/1, 22 July 2008, par. 6.

48 El Watan, 2 February 2010 (EMHRN translation).

49 The Committee's conclusions and recommendations are available on its website by clicking on 'Algeria': <http://www2.ohchr.org/english/bodies/cmw/sessions.htm>.

50 According to El Watan (2 February 2010), 'official figures [no source is quoted] indicate that approximately 45 000 foreign nationals are working in Algeria "legally" [and that] "they are from 105 different nationalities... Chinese workers are the most numerous, with 45 percent of the total" (EMHRN translation). These are largely skilled or low-skilled workers recruited by foreign companies to work on projects commissioned by the Algerian government. A recent example is the East-West expressway, which has been contracted to foreign corporations, with workers being hired in their own countries. While these are legal migrants, some of them may be working in second jobs, outside the employment contract which brought them, or following the expiration of that contract.

51 The CISP report on migration in Algeria presents a comprehensive view of the occupations of migrant workers. Niger, Benin and Mali are the three countries most represented among workers in the embroidery industry; workers from Cameroon, Congo and Benin are often employed on construction sites, etc. Some migrants work as guards, gardeners or handymen in the villas of Algerians, in exchange for accommodations and a small salary; see CISP, 'Réalités migratoires subsahariennes en Algérie', written by the CISP-Algeria team and its field agents in contact with migrants, Faical Abdel Aziz, coordinator, 2008, p. 20-29.

52 See the list on the fact sheet.

The extent to which these many laws and regulations are actually applied is in some doubt, as a great deal of confusion has been caused by frequent amendments made to them and by the numerous contradictions that have developed between them. A recently proposed labour code (Law No. 12/2010) is similar to the present code, except that it includes farm and domestic workers. In the new bill, the employer will be responsible for ensuring that employees have the proper work permits. The new code appears to be more streamlined, setting out clear guidelines for the employment of non-Libyans. It allows the 'responsible authority' to establish quotas for Libyan employees and to block access of non-Libyans to certain types of employment.

The laws in place do not address the issue of the rights of illegal migrant workers, and their great unpredictability leads to violations of the rights of migrant workers, whose status can turn illegal overnight.

Irregular migrant workers, especially but not exclusively those from sub-Saharan Africa, run the risk of being arrested, detained and expelled from Libya at any time. Libya has allowed irregular migrants in detention who could not be expelled (in particular those from Eritrea and Somalia) to legalise their stay by finding work. However, this measure has not been very successful, in particular because some migrants prefer to remain in detention and wait to be relocated or be set free through corruption, in hope of reaching Europe. In addition, some employers prefer to take advantage of the informal economy to exploit workers⁵³.

In practice, legal migrants are sometimes poorly paid or are expelled without being paid, following changes in regulations. They are sometimes treated in the same way as illegal migrants and may be arrested and detained along with them. Discriminatory measures have been implemented against migrant workers, such as the HIV/AIDS test that they must undergo in order to obtain a work contract or a temporary residency permit. Legal migrant workers are sometimes exploited by public- and private-sector employers who confiscate their passports and refuse to pay their wages.

Although Libya has ratified the eight basic conventions of the International Labour Organisation (ILO), its legislation does not necessarily comply with them. For example, Libyan laws restrict the creation of independent associations and do not recognise workers' right to strike. Foreign workers do not have the right to hold decision-making positions in labour unions, and the existing unions do not have the means to defend the rights of migrant workers. Free health care and education have recently been rescinded. Employers are supposed to pay for the health care of African workers and to provide them with lodging, but in practice this rule is honoured in the breach.

In Tunisia - a country with a particularly weak record of compliance with universal international and regional treaties on the protection of migrants - there is no specific legislation addressing issues related to migrant workers. In violation of the 1990 Convention, Tunisian legislation does not recognise the human rights of migrants, whom it considers as foreigners subjected to strict entry, residency, work-related and social security requirements.

⁵³ Opinions expressed on Libya by various international experts who prefer to remain anonymous, February and March 2010.

Under Article 7 of the Tunisian Labour Code, the employment of foreign workers is governed by provisions regulating the entry, residency and work of foreigners in Tunisia (see above). In addition to general conditions applying to the entry of foreigners into the country, there are restrictions on their access to the domestic labour market. This increases the vulnerability of foreign workers, who in addition to being foreigners are in a weak position in the labour market⁵⁴.

Any non-national who wishes to work for pay in Tunisia must have a work contract (for a specific term and with limited renewability) and a residency permit indicating that he is authorised to work for pay in Tunisia⁵⁵. This authorisation is granted on the basis of a large number of criteria, including legal residency and a shortage of skilled Tunisian workers in the industry where the worker is to be hired. Employers who hire foreign workers must register them within 48 hours in a special registry. A review of the jurisprudence shows that the failure to follow contract and work authorisation procedures leads to cancellation of the work agreement.

Under Article 263 of the Labour Code, 'the foreign worker enjoys the same rights and has the same obligations stemming from workplace relationships as are applicable to the Tunisian worker' (EMHRN translation). In theory, legal migrant workers (both permanent and temporary residents) should enjoy the same benefits as Tunisian-born workers with respect to such matters as employment and pay conditions, holidays, minimum working age, learning, vocational training, job security, occupational health and safety, etc. They are also supposed to have the right to join a labour organisation and the right to collective bargaining, to send their children to public schools and to enjoy the same rights as Tunisians with regard to social security. They are also supposed to have access to the justice system in a language they can understand. In practice, however, the realisation of the principle of equality between foreign and Tunisian workers is proving difficult to achieve. First, foreign workers who are the victims of discrimination cannot invoke any specific regulation to obtain remedy in the courts without fearing reprisals from their employer. Second, allegations of discrimination raise a problem related to evidence: the foreigner must prove that discrimination has occurred - not an easy task. And finally, no penalty in civil or criminal law is provided for in cases of violations of Article 263 of the Labour Code.

The foreign worker who, in theory, enjoys the same rights (and has the same obligations) as Tunisian workers is one who has a work contract and a residency permit allowing him to work in Tunisia. He can therefore enjoy these rights because his situation is legal. Illegal workers, on the other hand, do not enjoy these rights⁵⁶.

⁵⁴ See Hakim Abderrazek, Ph.D. candidate and member of the Tunisian bar association, 'Aspects juridiques d'immigration et de transit dans la région du Maghreb avec une attention spéciale sur l'exemple tunisien', in Union Générale des Travailleurs Tunisiens (UGTT), Les nouvelles orientations de l'émigration dans la région méditerranéenne, Conférence annuelle de l'UGTT, Hammamet, 5-6-7 novembre 2007.

⁵⁵ Articles 264 to 269 of the Tunisian Labour Code contain specific penalties against foreign workers and their employers, aimed at dissuading them from engaging in illegal working relationships. While the employer can only suffer financially (by paying a fine), illegally employed foreign workers may face disciplinary penalties (getting fired), criminal penalties (fines and prison sentences) and administrative penalties (refoulement).

⁵⁶ See Farah Ben Cheikh and Hafidha Chekir, La migration irrégulière dans le contexte juridique tunisien. CARIM-AS 2008/64, Robert Schuman Centre for Advanced Studies. San Domenico di Fiesole, Italy: European University Institute, 2008.

B. HIGHLY REPRESSIVE REGIMES FOR IRREGULAR MIGRANTS

The regulations providing for strict control of foreigners (see A(1)) and migrant workers (see A(2)) already constitute 'preventative' measures targeting foreigners⁵⁷, but the laws of the four Maghreb countries also contain measures that are more and more repressive towards them.

Generally speaking, the laws governing the admission, residency and exit of foreigners are driven by the fight against illegal immigration and emigration. They were adopted under pressure from the European Union (see Part IV) and inspired as well by the Protocol Against the Smuggling of Migrants by Land, Sea, and Air (which supplements the United Nations Convention Against Transnational Organized Crime, adopted on 15 November 2000), and they reflect a focus on security and on penalising the illegal entry, residence and departure of migrants and of all those who support them in those countries.

In the words of Hassan Boubakri, the countries of the Maghreb have become, unwillingly and despite their repeated denials, the 'gendarmes of Europe'⁵⁸. There are now three lines of control aimed at foreign migrants: controls at the border points of departure towards Europe; controls (targeting mainly North Africans and sub-Saharan Africans) within the four countries; and finally general border controls aimed at foreigners, and more specifically controls exerted on the four countries' continental borders in the southern Saharan regions.

1- PENALTIES AGAINST UNAUTHORISED ENTRY, RESIDENCY AND EXIT

The laws of the four countries under review, especially laws adopted in recent years⁵⁹, contain very severe penalties for unauthorised entry, residency and departure. In all four countries, foreigners who have entered illegally risk fines and prison sentences⁶⁰. The lack of a residency permit is also punished by a fine and a prison sentence in Algeria, Tunisia and

⁵⁷ See, in particular, Hakim Abderrazek, *op. cit.*

⁵⁸ Hassan Boubakri, 'Les politiques des Etats du Maghreb en matière de migrations irrégulières', in UGTT, *Les nouvelles orientations de l'émigration*.

⁵⁹ A case in point is Tunisia's Law No. 2004-6, adopted on 3 February 2004.

⁶⁰ In theory, there are some exemptions. In Algeria, for example, the law contains an exemption for people falling within the scope of an international treaty on refugees and stateless persons. In other words, asylum seekers and refugees are exempted from submitting the travel documents required of other foreigners. Tunisian law also does not require asylum seekers and refugees to present the travel documents that foreigners must normally submit upon entering and leaving the country. At the same time, the refoulement of foreigners who cross the border at other than designated points should not occur, at least in theory.

In Libya, the Constitutional Proclamation of 11 December 1969 states at Article 11 that 'the extradition of political refugees is forbidden', while Law No. 20 of 1991 on strengthening freedoms states at Article 21 that Libya 'offers a shelter for oppressed people and for those who fight for freedom. It is forbidden to extradite to any destination whatsoever refugees seeking security' in Libya (EMHRN translation).

In Morocco, protection against refoulement exists in law (asylum request submitted in a waiting or detention centre) but not in reality. Refugees in Morocco are not exempted from entry requirements.

Morocco⁶¹. The same applies to illegal exit from those countries. In some countries, these provisions apply to their own nationals as well as foreigners⁶². Often accompanying these penalties are measures providing for expulsion.

2- ADMINISTRATIVE REMOVAL AND EXPULSION MEASURES

The laws of the four countries under review describe in greater or lesser detail those situations in which administrative removals or expulsions may be ordered.

Moroccan legislation is particularly specific in that regard, providing for two types of measures - namely, expulsion and administrative removal to the border. The law defines a number of situations in which a decision to remove a foreigner can be made and makes it mandatory to indicate the reason(s) for making that decision. The situations mentioned in the law include the following: illegal entry; illegal residency; being denied the possibility of renewing one's residency permit; expiration of the residency permit; being convicted of falsifying a residency permit; withdrawal of the official receipt for a residency card request or of the residency permit itself, for reasons linked to 'law and order'. In the matter of expulsions, on the other hand, the government enjoys discretionary powers when the presence of a foreigner on Moroccan territory constitutes a 'serious threat to public safety'. Several categories of people are exempted from the expulsion regulations, however.

In practice, removal and expulsion orders are made in various ways (decisions communicated verbally or not communicated in advance, etc.); generally speaking, they do not provide any reasons, in blatant violation of Moroccan law⁶³. In addition, there is no procedure for appealing expulsion orders, except with respect to the destination country, if specified in the order. An appeal procedure exists in the case of administrative removals, allowing the removal decision to be suspended. In practice, however, the procedure is ineffective for various reasons: the persons targeted have no information on appeal procedures; officials fail to follow procedures, thus breaking the law, etc.

Most removals (including expulsions) from Morocco are to its neighbours Algeria (at Oujda) and, less frequently, Mauritania. The people who are under a removal order are generally forced to walk to the neighbouring country in conditions that in some cases are equivalent to inhuman or degrading treatment: night-time expulsions in areas where criminals specifically targeting

⁶¹ In Algeria, for example, a migrant who is prosecuted for illegal entry and residency is placed in custody until he can appear in court. This detention period can last up to two weeks, according to information obtained from migrants who have been subjected to this process. The penalty imposed on the foreigner ranges from a fine to deprivation of freedom. In practice, irregular migrants almost systematically receive a suspended sentence of between two and six months in jail. This does mean the end of the ordeal for the migrant: according to administrative procedures, he is taken to the main police station where a file on him is opened and he is given an expulsion order. After regaining his freedom, he then has 15 days to leave the country.

In Libya, current Law No. 6 on entry and departure states that illegal migrants must be deported; there is no provision for a fine or a prison sentence. However, undocumented immigrants have often been authorised to legalise their situation as an alternative to expulsion.

⁶² In Morocco and Tunisia, in particular. In Algeria, only the unauthorised departure of Algerian nationals is a crime, as the 2008 legislation revoked the requirement for foreigners to have an exit visa.

⁶³ See, for example, GADEM, *Le cadre juridique relatif à la condition des étrangers au regard de l'application du pouvoir exécutif et de l'interprétation du juge*, December 2008.

migrants operate; expulsions in desert areas without food or water; presence of landmines in areas near the border with Mauritania⁶⁴, etc.

Algerian law also allows the government to order the expulsion or removal of foreigners. The interior minister may order the expulsion of a non-national whose presence is deemed to be a threat to law and order or to the security of the state, who has been convicted of an offence or a crime and has been given a prison sentence, or who has failed to leave Algeria within a specified time period. The law also provides for the administrative removal (to be decided by the relevant wali) of a foreigner who enters Algeria illegally or whose status in Algeria is illegal, unless the foreigner seeks to regularise his administrative status.

The law of 2008 provides access to an appeal procedure for people under an expulsion order, which is suspended while that process unfolds. In practice, however, lawyers acting on behalf of migrants against whom an expulsion order has been issued say that the order is carried out so swiftly that it is impossible to appeal within the five-day period provided for in the law. In its Concluding Observations on the report submitted by Algeria in 2008, the UN Committee against Torture expressed its concern 'about allegations received of collective expulsions of migrants in violation of their basic right to have their case reviewed individually and to appeal against the expulsion decision'⁶⁵.

The law does not specify what remedy is available to foreigners against whom an administrative removal order has been issued. One might think that, as with expulsion orders or any ministerial order, an appeal can be made to the State Council to revoke a removal order or to an appeals judge to suspend it. The fact that the law does not specify what course of action should be followed in such cases raises fears that refoulement decisions could be made in greater numbers without any guarantees being provided.

In practice, all irregular migrants, even sub-Saharan asylum seekers and refugees, who do not enjoy any special protections despite the provisions of the law of 2008 (see Part II), live in fear of being arrested and sent back to the border.

Laws in **Tunisia** and Libya are less specific than those in Morocco and Algeria with regard to expulsions. In addition, they grant a significant degree of discretionary powers to the authorities and provide no effective remedy for foreigners.

In **Tunisia**, the law provides for the administrative removal of foreigners who are in violations of regulations governing entry, residency and exit, in addition to fines and imprisonment. As well, the secretary of state for interior affairs may issue an expulsion order against any foreigner whose presence in the country is deemed to be a threat to public safety. At the same time, Tunisian law provides that any foreigner who has been convicted of violating the laws governing entry, residency and exit must be expelled once the prison sentence has been completed. Thus foreigners in this situation are in true 'double jeopardy'.

⁶⁴ See, for example, El País, 'El gobierno y la UE tienen que presionar a Marruecos para que no abandone a los inmigrantes en el desierto', 17 September 2008.

⁶⁵ United Nations, Committee against Torture, Concluding observations on Algeria, CAT/C/DZA/CO/3, 26 May 2008, par. 9.

While the law, in terms that are very vague, allows refoulement and expulsion to take place, it does not provide for any appeal procedure or remedy. The authorities seem to enjoy powers that are wholly discretionary.

In **Libya**, the law states provides for the deportation of a foreigner who has violated entry or residency regulations, such as the lack of a visa, the possession of an expired visa or the revocation of a visa, in particular for security reasons or because the foreigner has been convicted of a crime or an offence against honour or security. According to Law No. 6 on entry and exit, the general directorate for passports and immigration is responsible for arresting and deporting a migrant who is in an irregular situation⁶⁶. There is a court dealing with migration issues, but it has seldom passed judgment, especially in cases involving defenceless migrants intercepted at sea. There is no possibility of appeal in the current legislation.

In practice, illegal migrants awaiting deportation are unable to defend themselves in a court of law and are placed in detention or expelled without appearing before a judge.

In addition to deporting foreigners targeted by expulsion orders, since the 1970s Libya has carried out selective expulsions and massive repatriations of thousands of sub-Saharan Africans, Palestinians, Egyptians and Tunisians, mainly on political grounds. Between 2003 and 2005, Libya has, in cooperation with Italy, repatriated approximately 145,000 sub-Saharan Africans in several waves.

In the laws of the four countries under review, the removal/expulsion order may be accompanied by a ban on returning to the country concerned.

3- PRE-EXPULSION DETENTION

With regard to detention, **Moroccan** law makes a distinction between the administrative detention of foreigners in anticipation of their removal from the country, and the confinement in a waiting area of those who are denied entry and are expected to leave the country. In theory, these actions are well regulated by law (waiting period, appeal procedure, periodical follow-up by a judge, right to contact a lawyer, etc.), but in practice the detention provisions (waiting area, detention centre) have not been put into effect and the detention of foreigners takes place outside the law, without any judicial oversight. Detention may take place in police stations or in other incarceration facilities without the formal procedures provided for in law being made available.

In **Algeria**, one of the new developments introduced by the law of June 2008 is the creation (by regulatory process) of waiting centres where, following an order issued by the wali, irregular migrants may be placed for a 30-day renewable period. The fact that the law does not specify how many times the waiting period may be renewed is a source of concern in that the migrant risks being detained indefinitely.

⁶⁶ Law No. 19/2010, a new law on illegal immigration and human trafficking adopted in May 2010, allows migrants without travel documents to regularise their status within two months of their arrival. See the Libyan government's website, http://www.gpc.gov.ly/html/show_news2.php?value=1520 (text in Arabic).

There is no official information available on these centres at the moment. The Algerian government maintains that migrants awaiting expulsion are not placed in special premises but are simply under house arrest.

The detention of migrants before they are expelled is not a new practice in Algeria: several sources indicate that it was already in place before the law of 2008 was adopted⁶⁷. The CISP report on the realities of sub-Saharan migration in Algeria (2008), for example, notes that migrants were being confined in the main prisons and police stations in various cities across the country: Ghardaïa for those arrested in the East; Oran, followed by Laghouat, for those arrested in the West; Blida, and then Laghouat for those arrested in central Algeria. From Laghouat, they are taken to Ghardaïa and then to In Salah. The CISP report draws attention to the harsh detention conditions in these facilities (lack of water, food, hygiene services, etc.).

In **Libya**, the detention of non-nationals has raised grave concerns for several years due to the number of people involved, the conditions of detention and the fact that the potential protection needs of detainees are not taken into account. The number of migrants detained in Libya fluctuates constantly because of new arrivals and of the number of those who are expelled (especially migrants from Chad, Sudan, Niger and Nigeria) or who return to their country of origin as part of a voluntary repatriation arrangement, those who are able to go free as a result of bribery or who are allowed to leave the detention facilities and find work, regularise their residency status or secure refugee status (mainly people from Eritrea and Somalia)⁶⁸. Some migrants have remained in detention up to one year⁶⁹. The number of irregular migrants in all categories in Libya is estimated to be between 3,000 and 4,000, held in 18 detention facilities throughout the country⁷⁰. UNHCR now has access to 15 of those facilities, thanks to an agreement signed in July 2008 with the International Organization for Peace, Care and Relief (IOPCR, a Libyan agency), the Vienna-based International Centre for Migration Policy Development (ICMPD) and the Italian NGO Consiglio Italiano per i Rifugiati (CIR, Italian Council for Refugees). This is part of an EU-funded, capacity-building project aimed at enhancing the protection of refugees and asylum seekers in Libya, especially those held in the detention facilities⁷¹.

Libya's detention centres are overcrowded and poorly equipped, and they lack sanitary facilities and medical care services. It is not uncommon for detainees to be subjected to physical violence and inhuman and degrading treatment. Those who are placed in detention receive little information on the reasons and duration of the detention, and are not given access

67 According to Ali Bensaâd in *Les migrations sub-sahariennes en Algérie* (CARIM research paper, CARIM-RR 2008/01, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole, Italy: European University Institute, 2008), 'the 60 Africans who have been recognised as political prisoners by UNHCR and who were arrested in late 2005 were not returned to their countries of origin but have since then been held in "preventive detention" at Reggane (in the far south)' (EMHRN translation). When asked about this situation, the UNHCR said it had no information on these 60 refugees.

68 The issue of asylum in the Maghreb countries is reviewed in detail in Part II.

69 According to Human Rights Watch, some people were held in the Ganfuda detention facility for five years, while others were kept in the Towisha facility, near the Tripoli airport, for two years; see Human Rights Watch, *Pushed Back, Pushed Around*, September 2009, pp. 94 and 84 respectively. According to some international organisations, detentions of up to one year are common; interviews held in February and March 2010.

70 See details on the fact sheet.

71 Global Detention Project, *Libya detention profile*, [http://www.globaldetentionproject.org/nc/de/countries/africa/libya/introduction.html?sword_list\[0\]=libya%29](http://www.globaldetentionproject.org/nc/de/countries/africa/libya/introduction.html?sword_list[0]=libya%29). Also based on interviews with CIR representatives, Rome, February 2010.

to lawyers or to UNHCR representatives, especially if they are in facilities the UN agency has not been authorised to visit. There was only one female guard at the Al-Zawiya facility, where women and children are held (there are said to be three female guards now) and virtually none in the other facilities, where some of the detainees are women⁷² - even though women are the most susceptible to abuse, especially by guards.⁷³

Some steps have been taken to improve the appalling conditions in the detention facilities⁷⁴ and to offer detainees more medical services and to train personnel to better treat migrants, asylum seekers and refugees. Efforts are also said to be under way to make legal aid available to irregular migrants and asylum seekers.

While detention conditions in **Morocco, Algeria and Libya** are fairly well documented, the issue of migrant detention in Tunisia is very difficult to clarify. Tunisian laws provide for penalties - prison sentences and/or fines - for violations of the regulations governing entry, residency and exit, and both Tunisian nationals and non-nationals who fail to abide by those regulations may be held in general penal institutions. By contrast, the question of detention facilities is one that was particularly sensitive in interviews with all the people met during the field visit to Tunisia. Expressions such as 'waiting facilities', 'detention facilities', 'holding facilities' and even 'reception centres' were used, but no one had any idea of their precise meaning and no verification could be done on the ground. The International Committee of the Red Cross (ICRC), the only international organisation with access to all prisons and detention facilities in Tunisia since 2005, has acknowledged that it has met with foreign detainees along with other vulnerable persons in general prisons as well as in 'holding facilities' - which is evidence that these places exist - but it is unable to determine their number ('spread out throughout the country'), the number and types of persons detained ('significant turnover') or the duration of detention periods ('short stays').

Generally speaking, it seems clear that the detention and forced repatriation of migrants that take place in the region are only partially in compliance with guarantees provided by national rights regimes (where such guarantees exist) and by international law. They sometimes lead to arbitrary detention, forced and illegal repatriations or inhuman and degrading treatment, especially against women.

72 ICMPD, *A Comprehensive Survey of Migration Flows and Institutional Capabilities in Libya*, February 2010, p. 135; HRW, *Pushed Back, Pushed Around*, September 2009.

73 This was corroborated by interviews held during the field visits in Rome and Tripoli with Somali and Eritrean migrant women who were held in detention for up to 120 months in different facilities in southern, southeastern and northern regions of Libya. See the descriptions of the major types of violations suffered by women in Part III.

74 Thanks, in particular, to the intervention of international organisations (UNHCR and IOM) and international NGOs (CIR and ICMPD), as well as a Libyan organisation (IOPCR).

4- MEASURES CRIMINALISING THOSE WHO PROVIDE ASSISTANCE TO IRREGULAR MIGRANTS

The laws of the four countries under review provide for very severe penalties against people who are responsible for smuggling and transporting illegal migrants, and for organising smuggling networks⁷⁵. In some cases, the penalties apply to any one who assists in facilitating the illegal entry, residency or exit of foreigners. The penalties are even more severe for those who hold public positions⁷⁶.

In **Morocco, Algeria and Tunisia**, if these activities lead to a permanent disability or to the death of someone, longer prison sentences are meted out. The laws in Tunisia, Algeria and Libya also make it incumbent upon those who provide accommodations to migrants to divulge their names to the authorities. Employers are also under an obligation to provide information on migrants in their employ to the government. In some countries, additional penalties may also be imposed (withdrawal of permit, ban on activities, etc.).

The laws currently in effect do not make any distinction between activities associated with trafficking and those associated with humanitarian assistance. This represents a threat for associations that provide assistance to migrants and refugees.

In **Tunisia**, the law goes very far in that it includes severe penalties for anyone who facilitates or assists in, in any way, even as an unpaid volunteer⁷⁷, the illegal entry or departure of someone into/from the country. The law also provides for fines and prison sentences for those who fail to advise the authorities immediately of any information or actions of which they may be aware in relation to such criminal offences⁷⁸, even if they are bound by the professional secret⁷⁹.

In similar fashion, in its attempt to control smugglers, the Algerian law criminalises all of those who provide assistance to migrants. Providing accommodation is considered a form of assistance under the law. The penalty is very high, ranging from 2 to 5 years, but it can be as high as 10 years if an aggravating circumstance is involved, and 20 years if two aggravating factors are present. The aggravating circumstances listed in the law include the use of vehicles and telecommunications.

⁷⁵ In Libya, the focus is on a bill on illegal immigration which includes very heavy penalties for those responsible for these offences. It is the first time that a law deals with the issue of smuggling and human trafficking.

⁷⁶ In Libya, for example, court proceedings that began in May 2010 involve some 500 civilians, soldiers and security officers who are accused of human trafficking. See <http://www.oalibya.com/front-page/local-news/17456--490-> (text in Arabic) and <http://migrantsatsea.wordpress.com/2010/05/12/mass-human-trafficking-trial-in-libya/>.

⁷⁷ The italics are ours.

⁷⁸ The Libyan bill also includes significant penalties (imprisonment and fines) for those who deliberately refrain from revealing information.

⁷⁹ The italics are ours.

Finally, in all countries of the Maghreb, migrants, in particular those from sub-Saharan countries, must cope with racist and discriminatory attitudes and behaviours both in their daily lives and in labour markets, but they do not have access to complaint or redress mechanisms. This is true not only in countries that are highly homogenous ethnically such as Tunisia but also in those with long immigration traditions such as Libya⁸⁰.

The governments of the Maghreb countries have not launched awareness-raising campaigns to fight against racism and discrimination and take account of the important changes brought to these countries as a result of migrations. As with the need to protect and integrate migrants, the need of these states to act as host countries and countries of residence is apparently denied, and both public opinion and the media tend to confuse immigration and asylum with drug trafficking and criminal activities..

⁸⁰ Interviews with Somali asylum seekers and other migrants, as well as staff members of international humanitarian organisations in Rome and Tripoli, February and March 2010. See also Human Rights Watch, *Stemming the Flow*, pp 22, 63, 64, 78. The report also quotes (on p. 63) Libyan officials who deny the existence of any racism problem.

II - ASYLUM SYSTEMS THAT ARE UNABLE TO GUARANTEE FULL PROTECTION OF REFUGEE RIGHTS



With respect to asylum, the Geneva Convention of 28 July 1951 on the status of refugees has been ratified by Morocco⁸¹, Algeria⁸² and Tunisia⁸³. As for Libya, while it has ratified the 1969 Convention on the rights of refugees of the Organisation of African Unity (OAU), it has not ratified the Geneva Convention.

There is no domestic law on asylum in **Tunisia or Libya**. Because of the absence of laws dealing specifically with this subject, the legislation on foreigners is applied to asylum seekers. The Tunisian government has repeatedly said in recent years, especially in the context of cooperation with the EU, that it is working towards the eventual adoption of domestic legislation. In Libya, the government maintains there are no asylum seekers or refugees in the country, only migrant workers and illegal migrants. There are no domestic mechanisms for dealing with asylum in either country.

In **Morocco**, Decree No. 2-57-1256 of 29 August 1957 describes the measures to be followed in implementing the Geneva Convention. The decree establishes a procedure (with few details) that enables refugees recognised by the UNHCR to legalise their residency in the country. It also creates an office for refugees and stateless persons (Bureau des réfugiés et apatrides, BRA), responsible for dealing with issues related to these migrants, as well as an appeals board. Since 2004, however, the government has suspended BRA's operations, effectively preventing the application of the decree. Law No. 02-03 on the entry and residency of foreigners in the Kingdom of Morocco, as well as on illegal immigration and emigration, also has an impact on the rights of refugees whose status has been recognised by BRA, especially with respect to Article 17 (residency rights). The law provides for the possibility of requesting asylum when entry into the country has been denied (Article 38), even though this procedure is unavailable in practice. The law also protects refugees recognised by the Moroccan government from expulsion or administrative removal (Article 29).

In **Algeria**, Decree No. 1963-274 of 25 July 1963, which described the mechanism for implementing the Geneva Convention, established BAPRA (Bureau algérien pour les réfugiés et les apatrides), the Algerian bureau for refugees and stateless persons, to recognise the status of refugee, guarantee the protection of refugees and stateless persons in law and in administrative practice, and ensure the implementation of the 1951 Convention. The 1963 decree provided for

⁸¹ Morocco ratified the 1951 Geneva Convention on 7 November 1956, without reservations, and also ratified the 1967 Protocol to the Convention on 20 April 1971. It has also ratified the 1969 OAU Convention on the rights of refugees.

⁸² Algeria ratified the Geneva Convention in 1963 and the Protocol in 1967, without reservations. It has also ratified the 1969 OAU Convention on the rights of refugees.

⁸³ Tunisia ratified the 1951 Geneva Convention by a decree dated 2 June 1955, and the 1967 Protocol by a law adopted on 27 July 1968. It has also ratified the 1969 OAU Convention on the rights of refugees.



the establishment of an appeals board that would include representatives of three ministries (justice, foreign affairs, labour and social affairs) and UNHCR. However, the government has never asked the UN agency to nominate its representative on the board. The law of 25 June 2008 on the admission, residency and movements of foreigners in Algeria included exemptions to admission regulations for asylum seekers and refugees (Article 7) and to expulsion rules for foreigners who had entered or were living in the country illegally (Article 42).

In practice, even in countries where a national process exists for asylum matters, that process is no longer being implemented by the government (Morocco) or is applied only sporadically (Algeria). **Morocco's** BRA is responsible in theory for recognising the refugee status of anyone who falls under UNHCR's mandate or under the definitions set out in Article 1 of the 1951 Geneva Convention, but in fact the recognition procedure has not been activated since the government suspended the application of the 1957 decree in 2004. In **Algeria**, BAPRA, which was established in 1963, has been given the authority to make decisions about refugee status applications and confirm the refugee status of persons recognised as such by UNHCR, but no official information is available on its activities⁸⁴. No explanation is ever provided when BAPRA rejects requests that have submitted.

In the four countries, refugee status determination is made by UNHCR, which meets and interviews the asylum seeker, registers and investigates his or her application, and makes a decision based on its own mandate or on Article 1.A(2) of the Geneva Convention⁸⁵. In Libya, status determination also occurs on a prima facie basis⁸⁶. There is an appeal procedure within

⁸⁴ It was impossible to obtain an interview or any information on this body in the context of this study, even during the field mission.

⁸⁵ In Libya, UNHCR seeks to identify asylum seekers with specific needs, including unaccompanied minors, and directs them to Al Wafaa, a Libyan organisation.

⁸⁶ This procedure applies to 97% of asylum requests, especially from Palestinian and Iraqi refugees.

UNHCR. The agency delivers asylum seeker attestations and refugee certificates⁸⁷. UNHCR is present in all four countries⁸⁸ but does not have the same status in all⁸⁹.

Access to UNHCR, whose national offices are generally located in capital cities⁹⁰, sometimes presents a challenge for asylum seekers who are intercepted or stopped for questioning in border regions far removed from the capital (especially in Oujda in Morocco, in southern Algeria and in Libya's vast border regions⁹¹) and are arrested and detained without being able to reach the UN agency. Given the real risk that the right to non-refoulement might not be respected by these countries, UNHCR makes an effort to address this problem by establishing a presence outside the capital cities and in detention facilities - especially in Libya where the agency, with the concurrence of the government, now has access to 15 of the country's 18 detention facilities⁹² - by training local partners to direct asylum seekers to UNHCR and by creating legal aid teams with local partners (in Oujda, for example).

While UNHCR determines the status of refugees, none of the Maghreb countries recognises the agency's status determinations. Their governments do not systematically give residency permits to refugees recognised by UNHCR, so that the latter do not really have better access to their rights and are not really better off than irregular migrants⁹³. This situation prevails even in countries where the legal regime in place does allow recognition of refugee rights by the government. In Morocco, since 2004 the BRA agency has failed to register any asylum applications, to confirm UNHCR's refugee status determinations or to deliver civil-status documents or residency permits to refugees recognised by UNHCR⁹⁴. And in Algeria, despite the 1963 decree, BAPRA does not recognise the refugee status of sub-Saharan Africans, who as a result do not receive any residency permit or other document from the government⁹⁵. BAPRA's recognition rate for sub-

87 In Morocco and Algeria, the certificate can no longer be forged.

88 See the warning about Libya at the beginning of the report.

89 Cooperation agreement with Morocco since 2007; cooperation agreement with Algeria since 1984; honorary representation in Tunisia since 1968; no official status in Libya, where UNHCR uses the services of a Libyan semi-governmental organisation based in Tripoli (International Organization for Peace and Care and Relief).

90 In Algeria, UNHCR also has an office in Tindouf which is responsible for activities related to Sahrawi refugees. In Libya, the agency now has an office in Misrata. In Tunisia, UNHCR does not deal with asylum seekers in its own offices but in those of its operational partner, the Tunisian Red Crescent, in downtown Tunis.

91 According to testimonies obtained during the field mission, asylum seekers whose goal is to travel to Europe by boat via Libya are not always aware of the presence of UNHCR in Libya. Five Somali refugees in Rome who had spent some time in Libya, but had not been held in detention there, stated that they had not heard of the UNHCR before arriving at Lampedusa in May 2008.

92 Thanks to an agreement signed in July 2008 between UNHCR, IOPCR, ICMPD and the Italian organisation CIR in the context of a EU-funded, capacity-building project on the protection of the rights of refugees and asylum seekers in Libya, especially those in detention facilities. The programme has made it possible to establish a screening mechanism for migrants in holding facilities, offer them protection and allow them to leave the facilities. Once the persons who fall under UNHCR's mandate have been identified, the agency registers them and sets up status determination teams in the relevant facilities to conduct interviews and then review the files in its offices.

93 In Tunisia, only 40% of refugees granted status by UNHCR receive residency permits, which are assigned by the interior ministry on the basis of criteria that are applied entirely at the discretion of its officials. Thus access to residency permits is very much a hit-or-miss affair.

94 Refugees whose status had been confirmed before BRA's activities were suspended have received a residency permit and enjoy the right to stay, the right to work and many other economic and social rights. However, the majority of refugees in Morocco have been recognised by UNHCR since 2004, and as a result they do not enjoy those rights.

95 When questioned in April 2010 by the UN Committee on Migrant Workers about the methods and criteria used in determining refugee status, the Algerian delegation stated that the refugee status recognition process was conducted with UNHCR's assistance but did not provide any details about BAPRA's role. The delegation also indicated that new regulations aimed at modernising the agency and redefining

Saharan asylum seekers is always 0%, and thus it is the situation of sub-Saharan refugees that raises the gravest concerns in this country.

The fact is that although they lack a residency permit, refugees holding a UNHCR certificate find that their presence is generally tolerated in Morocco and Tunisia. In Algeria⁹⁶ and Libya⁹⁷, on the other hand, refugees are in constant fear of being arrested and detained as illegal migrants even when they have a UNHCR card⁹⁸. When informed of such incidents, however, the UN agency has had growing success in securing the freedom of these refugees. The agency has devoted many efforts to raising the awareness of law enforcement officials in a bid to forestall arrests and expulsions.

Residency permits are a determining factor in securing access to most rights, and refugees without this document are unable to gain access to the labour market in Morocco, Algeria, Tunisia or Libya because they are subject to the same conditions as other foreigners⁹⁹. As a result, most of them work in the informal economy. The irregular nature of their situation makes these workers, especially women, vulnerable to various forms of exploitation.

The access of refugees to health care does not raise particular problems in Morocco (although the situation varies from one region to another), in Algeria (although they must pay for certain types of medication) or in Tunisia (except in cases of grave illness). In Libya, however, only Palestinians have the same access to free health care as Libyan citizens; other refugees must pay the standard fees.

In **Morocco**, access to primary schooling is, in theory, relatively easy for refugees in the capital but it remains more difficult in other regions of the country. This is not true in Algeria and it is not systematically true in public schools in Tunisia for refugees without residency permits. In Libya, access to primary and secondary education in public schools was free for all Arabic-speaking refugees until October 2007, when school fees began to be imposed on all foreigners. UNHCR and IOPCR made representations to obtain that refugees be exempted from school fees up to the university level. In all four countries, language problems may be a major obstacle in the

its objectives were being prepared, but there was no mention of the scope of the anticipated changes or of a deadline for adopting the new regulations.

96 Since the Algerian government does not recognise the refugee certificate provided by UNHCR, all sub-Saharan refugees and asylum seekers in the country are, in effect, illegal migrants, and as a result, the provisions of the law of 25 June 2008 that exempt them from entry-related obligations (Article 7) and prison terms of between two and five years if they breach an expulsion order against them (Article 42) are inoperative for this category.

97 In Libya, asylum applications received from Somalis and Eritreans are the main focus of UNHCR's investigations. Other migrants in detention, mainly from Nigeria, Mali, Ghana, Niger, Sudan and Chad are expelled or return voluntarily.

98 The following is a statement (in translation) made by a refugee during the field mission to Algeria: 'I was recognised as a refugee by UNHCR in October 2009. A short time later, I was arrested. The judge accused me of having entered Algeria illegally. He did not take into consideration my refugee card. He was not familiar with this document and said that it did not have the words "République algérienne" written on it, and that the card did not concern him. I spent 17 days in prison and became sick. No one came to see me. It was tough. There were fights. Then I was convicted, given a three months' suspended sentence and a fine of 5000 dirham. When I left the prison, I was taken to the police station and I was made to sign an expulsion order written in Arabic, and I was told I had 15 days to leave the country. I then contacted UNHCR and they told me they would appeal, but I don't know where things stand right now'. (EMHRN translation)

99 Palestinian and Iraqi refugees are allowed to work in Libya in accordance with Law No. 10/1989, which provides for all Arabs to receive the same treatment as Libyan citizens. In 2006 and 2007, however, many Palestinians lost their teaching jobs because of the availability of Libyan workers in the education sector.

public school system, where teaching is generally given in Arabic. Depending on the age of refugees, the only option then is to register pupils in a private school, but the costs involved are generally higher than what refugees can afford.

Broadly speaking, the only difference in the treatment received by status refugees has nothing to do with that status but is due to the presence of many programmes that have been developed by UNHCR in partnership with local associations (operational partners)¹⁰⁰. These associations, whose number varies from country to country, receive funding from UNHCR to help them provide support to refugees in various areas (social assistance, housing¹⁰¹, education, medical care, legal aid, etc.) as part of services that are more or less developed, depending on the country.

In **Morocco**, in particular, UNHCR has established partnerships with several local organisations to develop material assistance and legal-aid programmes for refugees. The Fondation Orient-Occident ('East-West Foundation') offers UNHCR-recognised refugees individual help services focusing on social and psychological assistance, support and guidance, assistance in registering refugee children in public schools (including enrolment fees and the reimbursement of the cost of school supplies), Arabic-language courses, as well as learning and vocational training promotion programmes. Action Urgence ('Emergency Action') organises consultations with general physicians and helps asylum seekers and refugees gain access to the public health care system; it also offers monitoring services for pregnant women as well as HIV/AIDS screening services, which implies partial or complete coverage of the costs of medications, medical tests, specialised medical exams, hospitalisation, dental care, optical glasses and other specialised treatments. The Organisation Marocaine des Droits de l'Homme (OMDH, 'Moroccan Human Rights Organisation') provides persons falling under UNHCR's mandate in Morocco with mediation and counselling services, as well as legal aid and administrative assistance, in Rabat and in Oujda, near the Algerian border, where OMDH also assists asylum seekers and refugees under expulsion orders and refers persons needing international protection to UNHCR. The Association Marocaine d'Appui à la Promotion de la Petite Entreprise (AMAPPE, 'Moroccan Association of Support to the Development of Small Enterprise') has put in place a programme aimed at stimulating and/or strengthening income-generating activities for refugees recognised by UNHCR in Morocco.

In **Algeria**, UNHCR's operational partners are the following: Algerian Muslim Scouts, organising student support, awareness-raising campaigns against racism, and income-generating activities involving public-interest projects; SOS Femmes en Détresse ('SOS Women in Distress'), providing housing and social assistance services; the Association des Femmes Algériennes pour le Développement ('Algerian Women's Development Association'), in Annaba; Rencontre et Développement ('Encounter and Development'), focusing on social assistance and the

¹⁰⁰ In Morocco, for example, UNHCR offers direct psychological and social support services to vulnerable refugees in order to assess their needs. Financial assistance may exceptionally be allocated to protect the most vulnerable refugees (isolated women, unaccompanied minors, sick or dependent persons, etc.). In addition, the UN agency has held negotiations with the Moroccan government to allow registered women refugees to be given birth certificates.

¹⁰¹ None of the four countries have accommodations for asylum seekers and refugees. There are no refugee camps in Tunisia. In Algeria, Sahrawi refugees are housed in camps (in Tindouf, in the southwestern region of the country). Morocco has no refugee camps, but there are several informal camps where irregular migrants live (in Oujda, in particular). In Libya, irregular migrants, including potential asylum seekers, are held in 18 detention facilities, 15 of which can now be visited by UNHCR.

schooling of children; the Ligue Algérienne de Défense des Droits de l'Homme ('Algerian League for the Defence of Human Rights'); and the Algerian Red Crescent (in Tindouf only).

In **Tunisia**, UNHCR manages a small clinic and a small-scale health programme through its operational partner, the Tunisian Red Crescent. On a case-by-case basis, the agency can also support small income-generating projects for refugees and provide financial assistance to the most vulnerable persons, based on its own vulnerability criteria, with special emphasis on female heads of households and women living alone. UNHCR also supports a schooling programme for refugee children and ensures that they are all properly registered in schools and that all refugees, both adolescents and adults, receive advice and guidance to enable them to have access to vocational and occupational training in order to become self-sufficient. In Tunisia, Caritas also provides different types of assistance to migrants, regardless of their status.

In **Libya**, UNHCR's main partner is the International Organization for Peace, Care and Relief, the Libyan organisation that is most active in providing assistance to migrants and refugees. Other partners include the International Centre for Migration Policy Development and CIR, the Italian Council for Refugees, in particular in detention facilities. UNHCR also works in cooperation with the group Al-Wafa, especially in such areas as training, occupational guidance of refugees and health care.

Thus, in all four Maghreb countries UNHCR and its operational partners are attempting to compensate for the inadequacies and, in some cases, the absence of support mechanisms that governments should in theory be providing for refugees. The latter's vulnerability and parlous situation persists because of a lack of national support systems for asylum seekers and refugees that are worthy of the name. The NGO network plays a crucial role (especially in Morocco and, to a lesser extent, in Algeria) but it cannot provide all the guarantees that are normally required by the status of refugee. The informal agreements between UNHCR and the governments of the four countries remain fragile. The situation in Libya, in particular, raises grave concerns, because the presence of UNHCR has not been formalised by an official agreement, which means that its activities and those of its partners are in a precarious environment that is subject to sudden changes in response to political developments¹⁰².

Ultimately, the outlook for the integration of refugees into local societies in all of these countries remains very uncertain¹⁰³. And yet, because most refugees find it impossible to return to their country of origin¹⁰⁴, relocation is the only viable long-term solution. Unfortunately, this option is limited in practice, being reserved in principle for vulnerable cases, and thus refugees remain in a legal near-vacuum for long periods of time, in the hope of eventually being relocated in a third country. An effective protection environment has yet to emerge in the Maghreb.

¹⁰² A new proposed legislation on asylum is said to have been drafted in Libya. It is expected to refer to the Geneva Convention, to establish a procedure for refugee status determination and to provide for a specific agreement between UNHCR and the Libyan government.

¹⁰³ The situation of Palestinian refugees in Maghreb countries is much more positive in that regard. Some of their rights remain limited in host countries - for example, restrictions on the right to ownership in Libya, restrictions on freedom of movement outside the host country, difficulties in renewing travel documents - but their prospects for integration into local societies are much more favourable than those of other refugees, and they do not face obstacles in accessing means of livelihood, the labour market and basic services.

¹⁰⁴ UNHCR and the IOM provide assistance on an ad hoc basis to refugees who wish to return to their country of origin voluntarily.

III - THE GREATER INVOLVEMENT OF CIVIL SOCIETY HAS AN INSUFFICIENT IMPACT ON THE PROTECTION OF MIGRANT AND REFUGEE RIGHTS



There are a large number of associations in countries of the Maghreb but due to the control exerted by the state in those countries and to the frequent use, in most of them, of repression as the glue that holds regimes in place, the development level of the NGO community varies from country to country. The interest and involvement of associations in migration issues vary considerably. In Morocco, many types of groups and initiatives are represented in this area, but in the other countries, especially in Tunisia and Libya, the scope of civil society activities directed at migrants, asylum seekers and refugees is much more limited. Nevertheless, in all countries of the region there are charity or humanitarian organisations that provide support to migrants just as they do to other vulnerable groups¹⁰⁵. Regardless of the categories of migrants (legal or illegal, refugees), these associations perform extremely valuable work at the community level, sometimes under very difficult conditions.

In **Libya**, IOPCR is the largest and most active organisation involved in supporting migrants, asylum seekers and refugees, working in partnership with UNHCR, ICMPD and CIR. However, the role played by IOPCR and by Al-Wafa, another organisation working with refugees, is closely dependent on the good will of the government.

In **Tunisia**, there is no civil society organisation specialising in migration and asylum issues. It is important to point out that generally speaking, Tunisian NGOs face great difficulties in their work, a situation that inevitably has an impact on their ability to focus their activities on the promotion and protection of migrant and refugee rights¹⁰⁶. Some organisations are aware of these issues (UGTT, for example) but do not have the resources to get involved. A few organisations (Caritas, Tunisian Red Crescent) provide material support to migrants, while others try to incorporate migrant issues into their advocacy activities focusing on human rights (LTDH - 'Tunisian Human Rights League'), on workers' rights (UGTT) or on awareness-raising and training (IADH - 'Arab Institute for Human Rights'). Other organisations may deal with isolated cases of persons experiencing difficulties that fall within their field of intervention, such as support for migrant women (ATFD - 'Tunisian Association of Democratic Women'; AFTURD - 'Tunisian Women's Association for Research on Development'). Broadly speaking, Tunisian civil society should be involved in Tunisia's transformation from a country of emigration to a country of transit and

¹⁰⁵ In Tunisia, for example, humanitarian organisations such as the International Federation of Red Cross and Red Crescent Societies restrict their scope of action to advocacy and promotion of humanitarian rights and obligations by targeting hosting communities. The Federation provides assistance to migrants by focusing on their vulnerability but it keeps a low profile in its activities and addresses migrant-related issues not as a specialised focus but via different subjects such as health, youth, etc.

¹⁰⁶ Other protection actors, such as lawyers, do not have the degree of awareness or the training needed to tackle migrant and refugee issues. Moreover, legislative provisions penalise support for migrants, including any potential assistance provided by attorneys and other professions governed by the principle of professional secrecy.



immigration, but given the crushing repression of civil society in that country¹⁰⁷, the prospects for mobilising these actors on the issue of migrant rights are very faint.

In **Algeria**, the involvement of civil society in issues related to migrants, asylum seekers and refugees is a very recent development and remains limited. The relevant actors explain this situation by invoking the 'black decade' - the 1990s - which mobilised Algerians on human rights violations and abuses of which they were themselves victim. Given this very difficult environment, the situation of foreigners in Algeria remained in the background. Ten years later, the same observation can be made, though perhaps more mutedly: organisations promoting human rights have developed activities in support of certain vulnerable groups such as persons with disabilities and women, but not migrants. Only a few Algerian NGOs are active in this area. Moreover, several of them have focused on a specific category of migrants - namely, refugees - because they have been able to conclude partnership agreements with UNHCR whereby a number of activities involving support for refugees are delegated to them. As a result, they do not have enough resources to launch new activities or expand their work with other categories of migrants. For irregular migrants, this means there are very few people they can turn to.

In addition, except in **Morocco**, the situation of civil society with respect to the protection of migrants and refugees remains fragile. NGOs are generally subjected to dual pressures. On the one hand is the pressure maintained by migrants and refugees, who are often frustrated by the legal limbo in which they find themselves and by the limited resources available to NGOs to support them. On the other hand, several associations practice a form of self-censorship because they believe they run the risk of having problems with the government if they cross a certain 'red line'. This probably explains why they have concentrated their work on humanitarian

¹⁰⁷ In anticipation of the October 2009 presidential election, the Tunisian government multiplied measures aimed at weakening opposition figures and members of NGOs, especially those with a focus on human rights. See the EMHRN report, Freedom of Association in the Euro-Mediterranean Region, 2009.

action in the field (food baskets, school kits, housing, etc.) rather than on advocacy focused on the right of asylum, the rights of migrants, the fight against racism, etc. It is not the only explanation, however: given the enormous requirements, NGOs naturally focus their action on the most immediate needs, and the financial resources at their disposal are not enough to meet those needs. At the same time, the fact that domestic legislations penalise some forms of assistance to migrants under the pretext of combating human trafficking may inhibit their activities in that area.

A number of the associations that were contacted had not yet explored the funding possibilities offered by the European Commission and most of them were not aware of these programmes. Some groups indicated they did not want to manage projects funded by the EU because the administrative burden would be too heavy and these types of projects would require that they expand their activities. While the needs are very significant, these associations felt that by expanding their activities, they would risk having too many problems with the authorities and jeopardising what they had been able to achieve until now. Others indicated that receiving funding from the European Union to launch activities related to migration and asylum would be contrary to their values because they were opposed to the EU's general policy regarding border controls.

As a rule, there is a lack of organised dialogue at all levels. Although sporadic contacts do occur, especially in Morocco, the groups met during the field mission generally do not engage in discussions with the authorities on matters related to migrants. In some cases, especially in Algeria, they feel they are tolerated but not recognised, and they fear they could be targeted by measures banning their activities. In Algeria and Tunisia, a number of associations are carrying out their work without having obtained the official approval required under the legislation on associations¹⁰⁸. Even in Morocco, GADEM has been unable to fully regularise its administrative situation. At the same time, there is little coordination of activities among the various organisations. They communicate rarely or not at all. In some regions, there are virtually no NGOs working with migrants - in southern Algeria, for example, even though that is where most of the migrants to Algeria are found¹⁰⁹.

In summary, there are few associations specialising in defending migrant and refugee rights in the Maghreb. Those that do exist are found mainly in **Morocco**.

Moroccan civil society is very dynamic and includes many associations providing support to migrants and defending their rights. At the same time, few associations with a social mission focusing on Moroccan citizens incorporate migrants into their activities, especially in areas such as the protection of women and children and the promotion of literacy, vocational training and access to health care. As a result, programmes specifically aimed at migrants have been set up and organisations specialising in this area have been established. The outcome, however,

¹⁰⁸ See EMHRN, Freedom of Association in the Euro-Mediterranean Region, Follow-up Report 2009, pp. 16-22. See also N. Benissad, "A propos de la liberté d'association en Algérie," in Errabita, journal of the Ligue algérienne de défense des droits de l'homme, second quarter 2009, pp. 32-33.

¹⁰⁹ It is, in fact, very difficult for NGOs to provide services in the south of the country, especially when one takes into account the state of emergency in effect in the region since 1992 and the militarisation of the region associated with the fight against terrorism and the presence of Al-Qaida.

is that the issue of respect for the fundamental rights of migrants is being confined to specific thematic areas and that its national visibility is more limited. To overcome this obstacle, UNHCR and several other organisations (Terre des Hommes, Caritas, etc.) have adopted strategies designed to bring migrant issues to the attention of associations that do not work primarily with migrants. In addition, several groups (AMDH, OMDH, GADEM, ABCDS, Fondation Orient-Occident, etc.) are working to make the public at large more aware of these issues.

Several international organisations - including Caritas, Doctors without Borders (MSF), Concertation des Églises Indépendantes-Église Évangélique, etc. - have developed humanitarian and material assistance programmes intended for refugees, asylum seekers and irregular migrants. However, these programmes tend to be concentrated in Rabat and Casablanca, although MSF and ABCDS are present in Oujda and ASDM ('Southern Association for Migration and Development') is active in Laayoune, in Western Sahara. This geographic concentration matches the location of the majority of refugees and migrants present in Morocco, but those who have settled in other large urban areas (Fez, Meknes, Marrakesh and Tangiers, in particular) must face greater challenges, especially in areas where civil society intermediation is of primary importance (access to health care and education, protection of the most vulnerable groups, etc.). It is important that civil society extend its geographical reach, in particular by bringing issues relevant to migrants and refugees to the attention of associations that are already well established so that the latter will include the newcomers into their programmes.

Access to housing is an area where Moroccan civil society has yet to make significant inroads. No organisation in the country has a systematic approach to housing for migrants and refugees, even for the most vulnerable among them. Some actors (Caritas, UNHCR and Jesuit Refugee Service, for example) try to find ad hoc, community-based solutions in emergency cases, but none of the groups met during the field mission have programmes specifically directed at hosting migrants or refugees, even though some of them have emergency shelters for Moroccan women.

While not exhaustive, the following list of civil society actions can be cited. OMDH, a UNHCR partner, has developed legal aid projects for refugees and asylum seekers in Rabat and Oujda. AMDH and GADEM also provide this type of assistance for irregular migrants (representation in legal proceedings, assistance and support in dealings with the bureaucracy, etc.). OMDH and GADEM also provide support to those whose initial asylum request has been denied by UNHCR. In addition, these two organisations offer information on asylum application procedures. AMDH, OMDH, GADEM and several other NGOs monitor and advocate for the rights of illegal migrants, refugees and asylum seekers.

Finally, it can be noted that refugees, migrants and asylum seekers, in particular from French-speaking West African countries, have formed a number of representative organisations. Because the status of their members is irregular, however, these groups cannot be legalised.

It is also in **Morocco** that the largest number of organisations addressing the issue of violence against migrant and refugee women through prevention and re-adaptation activities can be



found. These groups, many of which are part of the 'Protection Platform', offer psychological and social counselling services, income-generating activities, informal households, etc. In Algeria as well, some associations are active in protecting women, especially the group SOS Femmes en Détresse ('SOS Women in Distress'). In Libya, on the other hand, there is no organisation dealing specifically with these issues, while in Tunisia, one association (AFTD) focuses exclusively on Tunisian migrant women and another (AFTURD) deals on an ad hoc basis with very isolated cases of ill treatment of foreign women in the private sector.

Several reports deal specifically with **the problem of violence against refugee and migrant women in Morocco**. According to these reports, migrant women are especially vulnerable to physical violence, both sexual and nonsexual. (MSF emphasises the extreme vulnerability of these women to sexual violence.) Migrant women can be exposed to violence during their travels from the border to the urban centres in eastern Morocco, during their stay in the country or when they cross the border (when they are being expelled or when they are stopped for questioning as they try to enter illegally). The sources of violence may be other migrants, Algerian or Moroccan law enforcement officers or Moroccan civilians. The vulnerability of irregular migrant women is made all the greater by their inability to gain access to official protection facilities (shelters or safe houses) and by their fear of reporting these acts of violence to the police. Several actors drew attention to the impunity enjoyed by law enforcement officials when cases of violence are reported.

Several sources have also reported cases of exploitation of migrant women, both 'regular' and 'irregular', in Morocco. This situation mainly affects domestic workers from West Africa (Senegal) or Asia (Philippines). While the exploitation is a known reality, it is very difficult to measure the scope of this phenomenon, according to the IOM report.

According to several reports, including the IOM report and comments by observers, criminal networks and groups from English-speaking West African countries (Ghana and Nigeria, in particular) are behind the trafficking of women who transit through Morocco on their way to becoming prostitutes in Europe.

Several actors also reported cases of migrant women who work as prostitutes in Morocco, although no data are available to measure the scope and nature of this problem.

Some reports deal specifically with the problem of violence against refugee and migrant women in Algeria¹¹⁰. The reports available suggest that sub-Saharan migrants include a growing proportion of women and of families with children. Migrant women generally have a 'protector', whom they refer to as their husband even though they are not married. Some of these 'protectors', whom they have met en route or after arriving in **Algeria**, are very violent. In addition, according to several migrants and association representatives who were interviewed,

¹¹⁰ Nouredine Khaled, Rafika Hafdallah, Houria Gharbi, Carine Adam and Saïb Musette, Les migrants subsahariens en situation irrégulière en Algérie : caractéristiques, profils et typologie (Association pour l'Aide Psychologique, la Recherche et la Formation and Comitato Internazionale per lo Sviluppo dei Popoli, November 2008). Smaïn Laacher, Violence sans recours ni secours. Le cas des femmes migrantes au cours de leur voyage interdit (provisional title; forthcoming at Editions La Dispute).

women sometimes serve as a means to an end in the sense that it is believed to be easier for couples and families than for single persons to obtain refugee status and that controls are less stringent for families, women and children.

No report dealing specifically with the problem of violence against refugee and migrant women in **Tunisia** or **Libya** was identified in the course of this study. However, some general reports dealing with Libya refer to acts of violence committed against women among abuses endured by migrants in detention facilities or during their travels. Testimonies refer to frequent abuses committed by guards in detention centres, especially physical violence and rapes committed against migrant women. Acts of violence are also perpetrated by smugglers and by Libyan police in police stations. Young Nigerian women seem to be the main target of trafficking networks who arrange for them to be sent to Europe via Libya or to become prostitutes in Libya itself. Other sub-Saharan migrant women are forced to turn to prostitution to pay the money they owe smugglers.

IV - EUROPEAN POLICIES FOCUSED ON BORDER CONTROL RATHER THAN ON THE PROTECTION OF MIGRANT AND REFUGEE RIGHTS



While the goals of the European policy of cooperation with Maghreb countries on migration issues may seem well balanced, the results are far from even and reveal substantial blockages in some areas. For example, the goals associated with domestic capacity-building in such areas as border control and illegal-immigration management have a higher degree of priority than the guarantee of the migrants' basic rights. Similarly, the goals linked to the development of domestic capacities in such areas as asylum and access to long-term solutions for refugees have not been met and few noticeable breakthroughs have been achieved.

Despite this, cooperation between Europe and the Maghreb countries on migration issues has continued, especially through the negotiation of readmission agreements, the development of cooperation on practical matters and rapprochement with Libya. By strengthening a type of cooperation whose impact remains uneven, the European Union runs the risk of contributing directly to the implementation of migration policies that are contrary to the basic rights of migrants and refugees. In so doing, the EU also encourages bilateral policies and practices between its member states and the countries of North Africa, even though the latter are little concerned with the rights of migrants and refugees.

A. EU COOPERATION FRAMEWORK FOR ASYLUM AND MIGRATION IN THE MAGHREB

In 2005, the European Commission listed the EU's foreign-policy priorities in the area of migration, asylum and border management¹¹¹:

- improve third countries' capacity for migration management and refugee protection in accordance with international law;
- support their operational border-management capacity;
- enhance document security;
- prevent illegal migration;
- encourage synergies between migration and development;
- provide refugees with better access to durable solutions;
- ensure the return of illegal migrants.

¹¹¹ Communication from the Commission, 'A Strategy on the external dimension of the area of freedom, security and justice', COM(2005) 491, 12 October 2005.



To implement this policy in the Maghreb, the EU has incorporated these priorities into its general framework for bilateral cooperation (Barcelona Process and European Neighbourhood Policy, or ENP). In addition, the EU uses other specific instruments, such as financial instruments, operational cooperation and bilateral readmission agreements.

1. THE UE-MAGHREB BILATERAL COOPERATION FRAMEWORK

The 1995 Barcelona Conference led to the establishment of a strengthened cooperation process between the European Union and the Mediterranean countries. This process has gradually become more tangible through the signing of association agreements with each country of the region (except Libya).

1.1 The Barcelona Process

The Barcelona Process established a partnership made up of three major components: political and security cooperation; economic and financial cooperation; and cultural, social and human cooperation, which included cooperation on migration issues¹¹². In 2005, at the Barcelona+10 Conference, cooperation on migration issues became a fourth component of the process.

At the regional level, the partnership provides for the organisation of Euro-Mediterranean conferences of the foreign ministers of the associate countries. The first (and so far only) Euro-Mediterranean Conference on Migration was held in November 2007 in the Algarve, as part of that process. With the exception of a fairly general reference to guaranteeing migrant rights in

¹¹² See, for example, 'Final declaration of the Barcelona Euro-Mediterranean Ministerial Conference of 27 and 28 November 1995 and its work programme'.

the preamble, the conclusions of the conference did not address the protection of the human rights of migrants (not even those with legal status). The asylum issue was entirely ignored.

Thus bilateral relations, governed by bilateral treaties called 'association agreements' (AA), are the most important part of the partnership. The EU has signed association agreements with Tunisia (1995), Morocco (1996) and Algeria (2005)¹¹³. These instruments constitute the legal foundation for all cooperation between the EU and these countries. They have been approved by the European Parliament.

Article 2, common to all AAs, stipulates that respect for the democratic principles and fundamental human rights is an essential element of the cooperation between the EU and the signatory country. The agreements also contain articles dealing specifically with migrations, providing for enhanced cooperation in order to avoid and combat illegal immigration and to establish a regular dialogue between the EU and the associated state on this issue. Recent agreements (including the agreement with Algeria) state the principle of the readmission of illegal migrants and provide for negotiations dealing with readmission. The AAs make no mention of asylum or refugees.

Libya is not a full participant in the Barcelona Process but has attended several regional meetings held as part of the process and now has observer status. Since November 2008, the European Commission and Libya have been negotiating a framework agreement whose content is fairly similar to that of the association agreements (enhanced economic cooperation, political dialogue etc.)¹¹⁴. Several negotiating sessions have already taken place and the EU is hoping for an early conclusion. Migration is expected to be an important element in this agreement, which is expected to include a general clause on readmission, as in the agreement concluded with Algeria. The agreement is also expected to provide for modernisation of migration-management and border-control capacities, as well as reform of Libya's legislative framework for migrations¹¹⁵. It seems, however, that Libya wishes to negotiate financial assistance to implement these reforms as a precondition for signing any agreement that includes migration issues¹¹⁶. At the same time, Libya has on several occasions refused to ratify instruments designed to protect refugees and migrants. As a result, the negotiations are making little progress and it is difficult to assess what the final content of the agreement will be.

During the French presidency of the European Union (2008), it was decided to give new momentum to the regional dimension of the Barcelona Process, which was transformed into the Union for the Mediterranean (UfM) as a result. The ambition of the Union for the Mediterranean is 'to build a common future based on the full respect of democratic principles, human rights and fundamental freedoms, as enshrined in international human rights law, such as the promotion of

economic, social, cultural, civil and political rights, strengthening the role of women in society, the respect of minorities, the fight against racism and xenophobia and the advancement of cultural dialogue and mutual understanding'¹¹⁷. Unfortunately, the emphasis placed on the promotion and protection of human rights and on the importance of civil society does not appear to be reflected in the actual programmes set up by the UfM. In fact, the EMHRN has noted, instead, a tendency to raise obstacles against the involvement of civil society¹¹⁸. It is important to note also that migration issues do not seem to be a priority area for the UfM Secretariat.

In any event, the UfM seems to have lost steam since Israel's military offensive in the Gaza strip (operation Molten Lead), and the meeting of foreign ministers that was to be held in Istanbul on 24-25 November 2009 has been postponed. Moreover, the current marginalisation of EU institutions in the operation of the UfM, including the proposal to appoint six deputy secretaries general from six different countries in the Barcelona secretariat, appears to have slowed down rather than facilitated the promotion and protection of human rights and democratisation within the Union. A Union for the Mediterranean summit was to be held under the Spanish presidency of the EU during the first six months of 2010, but the meeting has been postponed until November 2010.

1.2 The European Neighbourhood Policy

The European Neighbourhood Policy (ENP) was grafted onto the Barcelona Process in 2004. Of the four Maghreb countries, only Morocco and Tunisia are currently official participants in the ENP. While Algeria has signed an association agreement, it has repeatedly signalled its lack of interest in the ENP. As for Libya, its priority seems to be on reaching a framework agreement with the EU, but the legal and political foundations of this instrument remain unclear.

a. The general ENP framework

The ENP seeks to develop with the EU's neighbours 'a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development)'¹¹⁹.

On the subject of migration, the European Commission stated in 2003 that 'the EU should assist in reinforcing the neighbouring countries' efforts to combat illegal migration and to establish efficient mechanisms for returns, especially illegal transit migration'. Similarly, a 2004 Strategy Paper indicated that 'priorities could furthermore include co-operation on migration, asylum,' etc.

¹¹³ The texts of these agreements are available on the official website of the European Neighbourhood Policy, http://ec.europa.eu/world/enp/index_en.htm.

¹¹⁴ See European Union, 'EU-Libya: negotiations on future association agreement start,' IP/08/1687, Brussels, 12 November 2008.

¹¹⁵ See, for example, 'European Neighbourhood and partnership instrument, EU Libya Strategy Paper and National Indicative Program 2010-1013'.

¹¹⁶ 'Muammar al-Gaddafi: „Die Schweiz ist eine Mafia“', Der Spiegel, 1 May 2010.

¹¹⁷ See 'Joint Declaration of the Paris Summit for the Mediterranean, Paris, 13 July 2008', as well as the official website of the Union for the Mediterranean, http://eeas.europa.eu/euromed/index_en.htm.

¹¹⁸ On this subject, see 'EMHRN recommendations to the Spanish Presidency of the EU on The Union for the Mediterranean and the European Neighbourhood Policy', December 2009.

¹¹⁹ Communication from the Commission to the Council and the European Parliament, 'Wider Europe – Neighbourhood: a new framework for relations with our eastern and southern neighbours', COM(2003) 104, 11 March 2003.

Among ENP countries, Morocco is the first EU partner that has adopted a roadmap showing the way to an 'advanced status' since the agreement reached at the Council of Association meeting of 13 October 2008¹²⁰. Tunisia also wishes to enjoy the benefits associated with accession to this status, especially in the economic realm, and to proclaim its status as a privileged partner of the EU¹²¹. At the Association Council meeting of 11 May 2010, the EU and Tunisia agreed to move towards strengthening their relations, but the Commission noted that the official upgrading of relations with partner countries is based on commitments to the same values and the same interests, and takes place when the implementation of the partner's action plan demonstrates that the partner is determined to go further, especially with regard to democratic practices and respect for human rights, basic freedoms and the rule of law¹²². The Commission was also of the opinion that reform of the justice system to strengthen the rule of law would be 'an element that will be essential to bring Tunisia truly closer to the EU'. Despite this, the EU Council saw only a weak link between strengthened relations and progress in human rights, and pointed out that the advanced status was conditional upon stronger commitment by the parties. In this context, it encouraged the Tunisian government to increase its efforts to pursue reforms, especially in favour of democratic pluralism and participation, the independence of the judiciary, freedom of expression and association, and protection of human rights defenders (see the EU's statement in anticipation of the Council of Association meeting).

b. National action plans

To give tangible form to the ENP objectives, national action plans have been adopted jointly by the EU and, respectively, Morocco and Tunisia¹²³. The plans set out a programme of economic and political reforms with short- and medium-term priorities. However, the action plans are not legally binding: the association agreements concluded under the Barcelona Process are the documents that govern bilateral relations between the EU and countries of the region.

The action plans adopted by the Maghreb countries contain objectives pertaining to human rights and migration that are more detailed than those defined in the AAs. On the subject of migration, the action plans list priority areas in which cooperative actions will be undertaken: asylum, action to prevent illegal immigration, border management, readmission of nationals, visas, etc. Most of the cooperation measures include the launching of a dialogue, the sharing of information, technical support or financial assistance, training, the sharing of experiences and the strengthening of regional cooperation.

While the national action plans stress the need to implement the principles of the 1951 Geneva Convention and include general cooperation in the area of asylum (training and development of domestic capabilities), there are no undertakings concerning respect for the basic rights of migrants. More specifically, the plan for Tunisia calls for supporting the implementation of comprehensive, consistent and balanced strategy to counter illegal migration, and for

¹²⁰ See, for example, 'Tunisie: 240 millions d'euros de l'UE pour la coopération', *Les Echos*, 30 March 2010.

¹²¹ Communication from the Commission to the European Parliament and the Council, 'Implementation of the European Neighbourhood Policy in 2008', COM(2009) 188/3, 23 April 2009.

¹²² Available on the official ENP website: http://ec.europa.eu/world/enp/documents_en.htm.

¹²³ Available on the official ENP website: http://ec.europa.eu/world/enp/documents_en.htm.

strengthening the operational and intervention capabilities of monitoring units and controls of maritime and land borders. The word 'balanced' (*équilibrée*) is the only reference, and a timid one at that, to the basic rights of migrants. Similarly, in Morocco's action plan there is only a passing reference to supporting the implementation of a strategy to fight illegal immigration. No mention is made of implementing the guarantees included in domestic legislation and international law.

The section of national action plans that deals with human rights does not contain any reference to the rights of migrants, except for a commitment to combat discrimination, racism and xenophobia.

1.3 Monitoring bodies

The association agreements include provisions for joint EU-associated country monitoring bodies. These bodies may consist of the association council at the foreign-minister level or of subcommittees or working groups dealing with specific subjects. The monitoring bodies are charged with implementing the political and technical dialogue established by the AAs and with ensuring the implementation of the action plans.

In the case of Morocco and Algeria, migration and asylum issues are dealt with in the Migration and Social Affairs working group/subcommittee. In the case of Tunisia, these subjects are examined by the Justice and Security group. As a rule, the working groups meet once a year, alternating between the capital city of the country and Brussels. European officials interviewed as part of this study indicated that violations of migrant and refugee rights are treated and discussed in the Migration and Social Affairs working group in Morocco and Algeria. It seems that in Tunisia, the authorities are not prepared to engage in a dialogue on migration and asylum issues and that despite the recommendations to that effect, no group of experts on this subject has been set up¹²⁴.

The negotiation of ENP action plans also provided the political momentum for establishing human rights subcommittees. However, it does not appear that issues linked to refugee and migrant rights are being addressed by these groups.

The agendas and proceedings of the meetings of these working groups and subcommittees are not made public. Informal briefings are organised for civil society by the European Commission in the context of meetings of the human rights subcommittees, but very little information is being communicated on meetings devoted to migrations. This lack of publicity makes it impossible to gauge the content of the discussions between the EU and the Maghreb countries on issues such as asylum and migrant rights. The lack of transparency is particularly resented by civil society, given an environment where the basic rights of migrants are not respected in the Maghreb and where cooperation with these countries on migration issues is being strengthened.

¹²⁴ Interview with the European Union delegation in Tunisia.

On the other hand, the European Commission publishes annual follow-up reports on the implementation of the Neighbourhood Policy. In the reports published in May 2010, there is no mention of protection of the human rights of migrants. The emphasis is generally put on border controls and the fight against illegal migration (as well as, in the case of Morocco, the conclusion of a readmission agreement). On the other hand, the issue of asylum does warrant particular attention. In the reports devoted to Morocco¹²⁵ and Tunisia¹²⁶, the Commission notes that few breakthroughs have been observed on the subject of the adoption of a national framework for the recognition of the status of refugee.

With respect to Morocco, discussions surrounding the granting of advanced status have led to the adoption of a joint EU-Morocco document on strengthening bilateral relations and the advanced status¹²⁷. Cooperation in such areas as migration¹²⁸, border controls¹²⁹ and asylum¹³⁰ is one of the many priority subjects. However, the deepening of cooperation in these areas is conditional upon the conclusion of ongoing negotiations on the readmission agreement.

It should be pointed out that while Algeria is not part of the ENP, it has negotiated a EU-Algeria roadmap, which has not been made public. According to information received by the EMHRN, cooperation on migration and border controls is one of the priority subjects discussed in the document.

2. FINANCING INSTRUMENTS OF COOPERATION

Several European financing instruments offer funding for migration- and asylum-related projects in the Maghreb, whether bilaterally or in direct support of international organisations and NGOs working in the region.

2.1 Financial assistance to Maghreb countries

The European Neighbourhood Policy Instrument (ENPI), successor to the MEDA programme, provides financial support to its recipients (Morocco and Tunisia, among Maghreb countries). Among the various objectives assigned to ENPI, those which have an impact on migration are expressed as follows¹³¹:

- i) supporting policies to promote social development, social inclusion, gender equality, non-discrimination, employment and social protection including protection of migrant workers (...)*
- q) ensuring efficient and secure border management;*
- r) supporting reform and strengthening capacity in the field of justice and home affairs, including issues such as asylum, migration and readmission, and the fight against, and prevention of, trafficking in human beings (...).*

The funding amounts are substantial: 654 million euros to Morocco over three years, and 300 million euros to Tunisia over the same period. The current pattern is to pay European assistance into the state's budget programming rather than allocate it to specific projects. The priorities are identified in the national indicative programmes (NIPs) and the funds received fall under the state's general budget and are used to implement projects or reforms in the designated policy area. Monitoring bodies are then charged with ensuring that the planned projects are undertaken. In the case of Morocco, for example, a budgetary allocation of 40 million euros received (but not fully spent) for border controls in the period 2004-06 was delivered anew for the period 2007-10. This funding is to be used to enhance the national strategy, provide personnel training, supply equipment to priority regions and raise public awareness in the regions and among the social groups most affected by illegal emigration. No assessment of the impact of this project is available¹³².

This approach makes it difficult to track the use of European funding. In the absence of a list of achievements, it is difficult to measure the effectiveness of the funding and its impact on the basic rights of migrants.

¹²⁵ http://ec.europa.eu/world/enp/pdf/progress2010/sec10_521_fr.pdf (French text).

¹²⁶ http://ec.europa.eu/world/enp/pdf/progress2010/sec10_514_fr.pdf (French text).

¹²⁷ 'Document conjoint UE-Maroc sur le renforcement des relations bilatérales/statut avancé', 13653/08.

¹²⁸ In chapter 4 on the human dimension, section (d) is devoted to cooperation in the implementation of the comprehensive approach in the area of migration.

¹²⁹ See the section on security cooperation.

¹³⁰ See the section on judicial cooperation.

¹³¹ 'Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument'.

¹³² See 'Document de travail des services de la Commission accompagnant la Communication de la Commission au Parlement européen et au Conseil, Mise en œuvre de la politique européenne de voisinage en 2008', Rapport de Suivi Maroc, SEC(2009) 520/2, 23 April 2009.

2.2 Thematic funding

In the area of thematic funding, the EU has transformed the former Aeneas programme¹³³ into a thematic programme devoted to migration and asylum¹³⁴. The European Instrument for Democracy and Human Rights (EIDHR) could also, in theory, serve to fund projects intended to enhance the rights of migrants and refugees, although it is apparently not being used for that purpose in the Maghreb region.

2.2.1 General presentation

a. The Migration and Asylum Thematic Programme

The thematic programme of cooperation with third countries in the area of migration and asylum, which succeeded the Aeneas programme, emphasises the need to enhance the capacities of countries of origin and countries of transit. Its main objectives are expressed as follows:

- fostering the links between migration and development;
- promoting well-managed labour migration;
- fighting illegal immigration and facilitating the readmission of illegal immigrants;
- protecting migrants against exploitation and exclusion;
- promoting asylum and international protection, including through regional protection programmes¹³⁵.

Priorities are set each for individual countries or regions as part of a call for proposals. Priorities in the Maghreb are often very diverse, mirroring the goals of the programme. In the call for proposals for 2009-10, one of the priorities for the Maghreb was 'strengthening the protection of migrants' rights in transit countries (for instance Niger, Libya, Mauritania, Morocco, Algeria, Tunisia, but not limited to them), with focus on asylum seekers, victims of trafficking, unaccompanied minors, apprehended irregular migrants, vulnerable migrants'. There are five other priorities, covering such thematic areas as facilitating voluntary return, preventing irregular migration, promoting the link between migration and development, promoting legal migration and preventing the irregular migration of unaccompanied minors.

The eligibility conditions for the projects tend to favour international organisations and other large organisations, since priority is given to projects covering several countries. In addition, projects must have a budget of at least 500,000 euros and be based on co-funding in the amount of 10 percent, conditions that are difficult for local groups to meet. And finally, the funding does not cover the operating costs of the requesting organisations.

¹³³ Communication from the Commission to the Council and the European Parliament, 'Integrating migration issues in the European Union's relations with third countries', COM(2002) 703 final, 3 December 2002.

¹³⁴ Communication from the Commission to the European Parliament and to the Council, 'Thematic programme for the cooperation with third countries in the areas of migration and asylum', COM(2006) 26 final, 25 January 2006.

¹³⁵ See, for example, 'Strategy paper for the thematic programme of cooperation with third countries in the areas of migrations and Asylum, 2007-2010'.

The definition of priorities and choice of projects of the thematic programme are managed from the European Commission headquarters in Brussels. However, representatives of the delegations told the EMHRN that decentralisation of the projects by the Commission was under way. Under this process, the delegations of the European Union in recipient countries will be responsible for supervising the projects implemented in those countries.

b. European Instrument for Democracy and Human Rights

The European Initiative for Democracy and Human Rights, established in 1994 by the European Parliament, later became the European Instrument for Democracy and Human Rights (EIDHR), whose objective is to promote human rights and democratisation in third countries. Several priority areas should make it possible to fund projects focused on promoting and protecting the basic rights of migrants and refugees¹³⁶. For example, among the goals supported by the EIDHR are the strengthening of civil society organisations active in protecting the rights of vulnerable groups and the promotion of equal rights and treatment for people belonging to minorities.

In fact, however, no migration-related project seems to have been funded by the EIDHR in the Maghreb¹³⁷. This is a regrettable situation, given the fact that local associations active in defending the rights of migrants and refugees experience difficulties in accessing funding from the Migration and Asylum Thematic Programme.

Officials of the European Commission interviewed by the EMHRN on this subject acknowledged that the thematic programme should remain the main tool for financing projects related to migration and asylum, but they were open to the idea that the EIDHR might be used to finance local projects focusing on the protection of migrants and refugees. They also pointed out that, in their view, EIDHR programming offers all the flexibility needed to finance such projects, but that it was the responsibility of NGOs to contact the EU delegations and submit funding requests. Until now, the number of requests made by civil society to the EIDHR for the purpose of funding projects dealing with the human rights of migrants and refugees remains very low, only a few rare exceptions having been noted. Thus this is area where civil society needs to be more proactive.

¹³⁶ See 'Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide'.

¹³⁷ This, despite the fact that several projects dealing with the rights of migrants and refugees have received funding from EIDHR around the world, in particular in Latin America.

2.2.2 Funding not geared towards the goal of protecting migrant rights

a. A focus on security

An analysis of the projects selected for financial assistance in the Maghreb region suggests that the funding provided by European instruments is focused on preventing illegal migration and promoting legal migration more than on enhancing the mechanisms intended to protect migrants and refugees. This imbalance highlights the implementation of an EU strategy that does not favour protection.

In the case of Tunisia, a review of the projects funded by the Aeneas programme in 2004-06¹³⁸ and of those funded by the Migration and Asylum Thematic Programme in 2007-08¹³⁹ shows that projects that included this country were primarily focused on promoting legal migrations or controlling borders. It also seems that projects with some degree of interest in protection could not be undertaken because of the government's unwillingness and of the pressures exerted on civil society. It appears that the EU has been powerless to induce a change in direction and as a result has had to refocus at least one project¹⁴⁰. The only Aeneas project in Tunisia addressing the protection of migrant rights is restricted to advocacy and awareness-raising activities and is regional in scope¹⁴¹.

In Libya, a review of the funding also reveals a bias in favour of projects focusing on strengthening domestic capabilities in managing migrations and controlling the borders. The projects in these areas are those which have the highest budgets. While there are projects with a protection focus, they are generally regional initiatives undertaken by European organisations or by the UNHCR¹⁴². The Libyan authorities are not associated as they are with border control projects. CIR, the Italian Council for Refugees, does have a project on the protection of refugees in Libya, conducted in partnership with UNHCR and ICMPD.

¹³⁸ See EuropAid, AENEAS Programme: Overview of projects funded, 2004-2006.

¹³⁹ See EuropAid, Thematic program Migrations and Asylum, 'Provisional list of awarded projects prior to final contractualisation'.

¹⁴⁰ Initially, the IMAD-Migration project, led by the IOM as part of the Aeneas programme, dealt with both legal and illegal migration, and in the case of the latter included support in detention facilities. Subsequently, the project was refocused to remove the illegal migration component and replace it with awareness-raising activities focused on legal migration and with support to micro-projects.

¹⁴¹ This is a project led by the International Federation of Red Cross and Red Crescent Societies.

¹⁴² See, in particular, the UNHCR project conducted in cooperation with IOPCR, ICMPD and CIR, which supports the development of an asylum system in Libya and contributes to UNHCR activities in identifying migrants in the country who are in need of international protection, providing them with assistance and 'sustainable solutions' and improving conditions for irregular migrants held in detention facilities. There is also an IOM project which includes a training component for border guards and law enforcement officers, with a focus on a more humane treatment of migrants who are intercepted at the border.

b. Difficulties associated with the involvement of local associations in projects funded by European programmes

Except in Morocco, where groups working to defend the basic rights of migrants enjoy relative freedom of action, Maghreb countries exert pressures on local associations in varying degrees. In Algeria, these pressures force the local groups to maintain a low profile and to limit the scope of their activities¹⁴³. In Tunisia, the development of sizeable projects in areas such as the protection of migrant and refugee rights and of human rights in general is impossible. In the past, several funding programmes set up by the EU in favour of Tunisian NGOs active in protecting human rights were blocked by the Tunisian government¹⁴⁴. In Libya, freedom of association is severely restricted and there are no independent associations¹⁴⁵.

In general, in order to have access to European funding, the requesting organisation must be legally registered. This requirement precludes associations of migrants and refugees since the latter are unable to obtain residency cards. In addition, in Tunisia and Algeria many human rights organisations are denied the certificates they need to be registered. In Morocco, GADEM has also been unable to fully regularise its administrative status because the government has refused to issue a receipt. These obstacles do not, however, prevent these organisations from carrying out their activities.

In the case of the Migration and Asylum Thematic Programme, this situation actually benefits larger organisations, international organisations and European state agencies, all of which are already better placed to benefit from the eligibility criteria (500,000 euro minimum, co-financing, etc.).

The pressures exerted by the state in Tunisia, Algeria and Libya also seem to have benefited the development of projects in Morocco, where NGOs and international organisations have a greater margin for manoeuvre and where migration issues are less sensitive.

¹⁴³ EMHRN interviews with civil society representatives in Algeria.

¹⁴⁴ See, for example, Afrik.com, 'Haro sur les droits de l'Homme en Tunisie', 9 September 2005.

¹⁴⁵ See also Part III of the present report.

3. OPERATIONAL COOPERATION WITHOUT SAFEGUARDS

Member states of the EU are currently allied with countries of the Maghreb through operational cooperation projects focused on border controls and the prevention of illegal immigration. Officials of European countries work directly with their Maghreb counterparts in their countries. This cooperation is essentially intended to prevent illegal immigration from or through these countries by strengthening their domestic capabilities. Italy and Libya are the two countries that have developed the closest relationship in this type of cooperation.

On 30 August 2008, Italy and Libya signed a bilateral agreement acknowledging the damage caused by Italian colonisation and providing for the payment of reparations in the amount of 5 billion euros over 25 years¹⁴⁶. The agreement states that in return, Libya and Italy are to strengthen their cooperation in the area of illegal immigration. This revival of cooperation between the two countries was followed by several other bilateral agreements related to migration, most of them secret, on information sharing, cooperation and training. Under these agreements, Italy has provided Libya with equipment and vessels to monitor its coasts.

As part of this process, Italy and Libya have also agreed on joint action both on the latter's northern maritime border, the main exit door towards the EU, and on its southern land border, the main entry area for irregular migrants.

With regard to the northern border, the two countries announced in May 2009 the launching of joint patrols in international and Libyan waters, for a three-year period. According to the agreed mode of operation, Italian naval vessels can force intercepted Libyan boats to return to Libya¹⁴⁷. Since the start of the joint operations, the patrols have helped to return to Libya hundreds of migrants intercepted on the high seas¹⁴⁸. According to UNHCR, in May and June 2009 alone 900 irregular migrants were intercepted in international waters and returned to Libya. These repatriations were carried out without these migrants being able to seek asylum from the Italian government¹⁴⁹. The joint operations have led to a significant decline not only in migrant arrivals in Italy (at Lampedusa) but also in Malta¹⁵⁰. They have also given rise to several appeals at the European Court of Justice¹⁵¹ as well as in Italian courts¹⁵². In March 2010, the EU adopted a directive on sea rescues, whereby member states are to assist boats carrying migrants in distress and to allow them to disembark under conditions compatible with international law

146 See 'L'Italie s'excuse et paie une dette à la Libye pour la colonisation subie', L'Express, 1 September 2008.

147 Absent any cooperation from a third country, Frontex operations are obligated to rescue the boat and escort it to the nearest European port. On this subject, see Council of the European Union, 'Draft Council Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders', 21 January 2010.

148 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.

149 European Committee for the Prevention on Torture, Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009.

150 See, for example, 'Frontex patrols stopped as Malta quits', Times of Malta, 28 April 2010.

151 See, for example, UNHCR, 'Hirsi and Others v. Italy - Submission by the Office of the United Nations High Commissioner for Refugees', March 2010.

152 See, for example, Consiglio Italiano per i Rifugiati, 'Respingimenti di migranti in Libia. Procura di Siracusa: Capo polizia frontiere e Generale G.D.F. A Giudizio', 23 April 2010.

guaranteeing the right to non-refoulement¹⁵³. The impact of this directive on future operations by Frontex and EU member states is not yet clear, however. Malta has withdrawn from one Frontex programme, which has led to the suspension of the Chronos programme, in which Malta, Italy and Frontex were working together in the central Mediterranean¹⁵⁴.

On Libya's southern border, several projects focusing on practical cooperation between Italy and Libya have benefited from EU funding since 2005 under the Aeneas programme and its successor, the Migration and Asylum Thematic Programme (see the part of this report dealing with European financing).

Already in 2005, a project intended to enhance border cooperation between Libya and Niger, led and co-financed by the Italian ministry of the interior, received funding from the EU. Italy is also involved in several other projects designed to strengthen Libya's border management capabilities, especially on its southern frontier. One of these projects, dealing with the prevention of irregular migration on Libya's southern border, seeks to improve the government's overall capabilities, in particular by helping it to modernise its system for preventing illegal migrations. Another project, concerned with managing the pressures generated by irregular migration in Libya, is designed to help the authorities improve their practices with respect to the registration, reception and treatment of irregular migrants intercepted at the country's southern border, in a manner compatible with international standards, and to foster the development of a system aimed at helping migrants to return voluntarily to their country of origin. The two projects, which will be managed by the Italian interior ministry, are in the final stages of preparation with the Libyan government. Other EU member states are involved as partners.

A project was approved as part of the 2009 budget of the Migration and Asylum Thematic Programme to complement previous projects. This new project will seek in particular to meet the need to put in place a more efficient system for monitoring the southern border and the roads and tracks leading to the Mediterranean coast. It will help border guards and police to acquire improved surveillance equipment, train their personnel in the use of this equipment and set down operational and organisational procedures to make the best possible use of it.

In parallel with this bilateral process, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) has attempted to develop operational cooperation with Libya. Article 14 of the regulation establishing Frontex states that one of the main tasks of the Agency is to 'facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy. The Agency may cooperate with the authorities of

153 'European Parliament resolution on the draft Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders', 17 March 2010.

154 While the reason invoked for this decision was that migrant arrivals at Malta had diminished, the decision was made after the adoption of a directive that Malta considered contrary to its interests. Because of Malta's geographical location, it faces increased responsibilities, as an EU member state, to rescue migrants at sea, ensure their safety and disembark them at the nearest port under the obligations set out in the directive. Malta has argued that there should be a burden-sharing system in place between member states. See 'Frontex patrols stopped as Malta quits', Times of Malta, 28 April 2010.

third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities¹⁵⁵.

The Agency's Programme of Work 2010 indicates that 'priority should be given to finalizing the agreements with... Libya, and develop agreements with all Northern African countries, including... Algeria, Tunisia and Morocco'¹⁵⁶. As a rule, these working agreements focus at first on the exchange of information and on a risk assessment of migrations. They must also foster the development of joint projects on training and research, and the implementation of joint operations involving several member states¹⁵⁷.

According to different sources, in 2006 Frontex tried to negotiate with Tripoli an agreement to run joint patrols in Libyan waters, similar to a Spanish-led operation taking place off the coasts of Mauritania and Senegal¹⁵⁸. This joint operation, called Operation Jonas, was to involve Italy as well, but it never materialised because Libya refused to let it take place in its territorial waters. In 2007, Frontex conducted a feasibility study on a concrete cooperation project intended to increase surveillance along Libya's southern land border.

Negotiations on the working agreement between Frontex and Libya seem to have reached an impasse due to Libya's demands for financial assistance¹⁵⁹. As a result, the EU presence in the country is mainly in the form of financial support to operational cooperation programmes between Italy and Libya.

In 2009, Jacques Barrot, the European commissioner for justice and internal affairs, recommended that relations be established between UNHCR and Libya to put in place a system for hosting and protection asylum seekers that would meet the highest international standards. Among other things, the system would make it possible to determine the status of people sent back to Libya, who could then be offered the possibility of relocating¹⁶⁰. This proposal did not lead to any substantial developments, however, as the Libyan government's demands for financial assistance were far higher than what European institutions would be prepared to contemplate.

155 "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".

156 Frontex, Programme of Work 2010, <http://www.frontex.europa.eu/gfx/frontex/files/justyna/pow2010.pdf>, pp. 22-23.

157 See, in particular, the working agreements concluded between Frontex and Russia, Serbia, Bosnia and the Republic of Macedonia.

158 See the presentation of the operation on the official Frontex website: http://www.frontex.europa.eu/examples_of_accomplished_operati/art5.html.

159 See, for example, 'Khadafi: Cinq milliards par an de l'UE pour arrêter les clandestins', *Afrique Nouvelle*, 4 May 2010.

160 Agence Europe No. 9910, Friday, 29 May 2009.

4. NEGOTIATING READMISSION AGREEMENTS

EU member states have developed a very intricate network of bilateral readmission agreements to facilitate the return of irregular immigrants and establish standard procedures to make that process smoother¹⁶¹. Not all of these agreements are made public, and their nature may vary from one to the next, ranging from simple 'verbal arrangements' to legally binding instruments that are sometimes, but not always, ratified by the legislatures of the signatory states. Very little information is available on the implementation of these agreements¹⁶². There are many questions about the readmission procedures that are applied and about the fate of foreigners and nationals readmitted in third countries.

The EU considers that facilitation of the readmission process is one of its priorities in the Maghreb and has linked this issue to cooperation with the countries concerned. In its 2003 communication on the ENP, the Commission stated that 'concluding readmission agreement(s) with all the neighbours, starting with Morocco... Algeria... will be an essential element in joint efforts to curb illegal migration'.

The association agreement between the EU and Algeria, which came into force in 2005, contains a statement reaffirming the commitment of both parties to readmit their nationals. However, this statement is very general and does not contain any specific procedures for implementing this commitment. The framework agreement currently being negotiated with Libya is expected to contain an identical statement. The older agreements with Morocco and Tunisia do not have similar statements.

This has led the Council to mandate the European Commission to launch negotiations on readmission agreements with Morocco and Tunisia in 2000 and 2002, respectively. In the case of Tunisia, while there are no formal negotiations being contemplated at the moment, the EU-Tunisia Action Plan refers to the need to 'initiate a dialogue on return and readmission with a view to concluding a readmission agreement with the EU'. The proposed agreements encompass the nationals of the countries concerned, nationals of third countries, and stateless persons who have transited through these countries. The negotiations are not public and no documents are available.

In Morocco, after several negotiation rounds, the most difficult issue remains the readmission of third-country nationals - in particular, the question of the evidence that can be adduced to consider that a foreigner has transited through the country. The EU has several times reiterated its commitment to reaching an agreement, half-implying that breakthroughs in other areas were conditional upon the success of these negotiations. In the words of the joint statement issued

161 Morocco, for example, has signed readmission agreements with France, Italy, Spain, Portugal and Germany. Algeria has signed agreements with France, Italy, Spain, the United Kingdom and Germany. Tunisia has similar agreements with Italy, France, Greece and Austria. Libya has signed agreements with Italy, Malta and the United Kingdom. See the MIREM website: http://www.mirem.eu/datasets/agreements/index?set_language=en.

162 For example, there is a complete lack of information on the implementation of the agreement signed by Tunisia and Italy on 9 August 1998, according to EMHRN interviews with civil society representatives in Tunisia.

at the European Union-Morocco Summit, held in Granada on 7 March 2010, 'Morocco and the EU agreed on the need to conclude the negotiation of the readmission agreement as soon as possible. Concluding that agreement will help increase cooperation in the area of migration, since the shared objective is to combat illegal migration, promote the use of lawful channels for mobility and migration, and promote the positive impact of migration on development. Completing the negotiation of the readmission agreement will allow overall cooperation on migration, including visa facilitation'.

It seems that, where Algeria is concerned, negotiations are stalled. Algeria has said it is prepared to sign the agreement if it is accompanied by an agreement facilitating the granting of visas to its nationals¹⁶³. As with Morocco, however, the EU refuses to engage in simultaneous negotiations on these two issues.

The implementation of these agreements raises many questions, one of which has to do with the expulsion of nationals of third countries to transit countries. The very principle involved is a source of controversy. In addition, many are concerned about the fate that might befall people who are returned to Maghreb countries. As has been noted in Part I this report, the practices of these countries with regard to the detention and expulsion of irregular migrants are often at odds with both domestic laws and the basic rights of migrants. In some cases, these practices clearly fall under the definition of cruel, inhuman and degrading treatment.

¹⁶³ See European Neighbourhood and Partnership Instrument, Algérie, Programme indicatif national, 2011-2013, p. 7 ; http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_algeria_en.pdf

CONCLUSION AND RECOMMENDATIONS



CONCLUSION

European cooperation has been given the ambitious goal of helping the countries of the Maghreb to modernise their migration management policies by implementing effective policies focused on border controls, the management of illegal and legal migration, and measures that respect the rights of migrants and refugees. It seems clear, however, that security concerns are given priority over protection goals, for various reasons.

This approach must first overcome the reluctance of the Maghreb countries as well as their shortcomings with regard to human rights, the rule of law and the management of migration flows. The development of appeal mechanisms and asylum systems, the adoption of administrative practices that respect the rights of migrants, and the commitment to judicial controls are all areas that require meaningful and ongoing reforms, and the continuous demonstration of political will - elements that are still missing today.

At the same time, EU member states, especially those which face the Mediterranean, have insisted on the development of the security component of cooperation and on strengthening the ability of neighbouring states to control and reduce migration flows into their territories. When EU actions were deemed insufficient or were impossible to carry out, these countries have put in place bilateral programmes of practical cooperation that are little concerned with protection goals.

For all these reasons, a major imbalance has developed and has continued to grow. Thanks to the pressures and assistance of the EU and its member states, the Maghreb countries have designed migration policies that are often repressive and offer no protection. And yet, neither the Union's member states nor its institutions seem to take into account the impact of their cooperation with the Maghreb countries. On the contrary, certain boundaries have been crossed and both member states and the European institutions are pursuing alarming courses of action. The expansion of cooperation with Libya and the development of a large-scale refoulement system by Italy have not been strongly condemned by the European Union. Even worse, on 18 June 2009, European border guards who were on patrol as part of a joint operation coordinated by the Frontex agency, were involved in the interception of a vessel carrying a large number of irregular migrants who

were transferred to the custody of Libyan border guards¹⁶⁴. And while the detention conditions of migrants in Libya were unanimously decried by many observers, the European commissioner for Justice and Internal Affairs was proposing the creation of transit camps in Libya¹⁶⁵.

These recent examples suggest that that the quest for effective solutions preventing the entry of migrants into Europe now prevails over any considerations linked to protection and respect for fundamental rights.

As Hein de Haas has observed: 'Ironically, migration policies aiming at 'combating' irregular migration are a fundamental cause of the increasingly irregular character of migration. Similarly, while smuggling is commonly represented as one of the main 'causes' of irregular migration, it is rather the result of increasingly restrictive migration policies. Policy making on this issue seem to be caught in a vicious circle: Rather than "solving" irregular migration, increasingly restrictive immigration policies and border controls have produced more "illegality", which ironically adds pressure to adopt even more restrictive policies'¹⁶⁶.

¹⁶⁴ See, for example, 'Frontex Handover of Migrants to Italy Results in Forced Repatriation', Malta Today, 21 June 2009.

¹⁶⁵ See, for example, European Council on Refugees and Exiles, 'Barrot wants reception points in Libya for asylum seekers', ECRE Weekly Bulletin, 17 July 2009.

¹⁶⁶ Hein de Haas, *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends*. Geneva: International Organization for Migration, 2008, pp. 49-50.

RECOMMENDATIONS

TO THE STATES OF THE MAGHREB

Taking note of the fact that they are, or are becoming, host countries for migrants and refugees, the states of the Maghreb should put in place legal and administrative regimes to deal with foreigners that are consonant with their international obligations on human rights.

1. ON THE SUBJECT OF MIGRATION

- The states of the Maghreb should adopt legislative and regulatory frameworks pertaining to the entry and residence of non-nationals that are not focused exclusively on repression but also provide for a set of guarantees for foreigners.
- A more incremental structure of sentences should be put in place for those responsible for different offences under laws pertaining to non-nationals. Illegally crossing a border and residing in a country should never be punished by prison terms. Prison sentences are out of proportion with the offences, in particular when the latter is purely administrative in nature.
- No punishment should be meted out to people who assist non-nationals in an irregular situation on a voluntary basis or to people who must respect professional secrecy.
- Double penalties should be abolished in all countries, as should orders forbidding a person who is removed from a country to return to that country.
- Alternatives to the detention of migrants should be investigated in all countries of the Maghreb.
- The administrative detention of non-nationals should be subject to clear provisions in law. A clear procedure should be enunciated, with guarantees for foreigners, including the provision of information on their rights. The duration of detention should be strictly limited

and any renewal of detention should be under the control of a judge.

- In all countries, significant improvements should be made to detention conditions, in particular with respect to overcrowding, medical care and legal aid. Lists of detention facilities should be kept by governments and should be made available to independent organisations authorised to visit these facilities and to civil society organisations. In particular, the ICRC should be allowed to visit all establishments where non-nationals are detained and to talk to the detainees. Similarly, UNHCR should be given access to all detention facilities in order to be able to assess the protection needs of detained asylum seekers and refugees. As well, detainees must be given the possibility of choosing their own legal counsel. Special attention must be given to the situation of women detainees, who should be kept in areas separate from those where male detainees are held, and who should be overseen by female guards.
- In all countries, procedures pertaining to the administrative removal of non-nationals should be clearly framed in the legislation and should provide non-nationals with guarantees (communication of information, decisions based on individual facts and clear grounds, effective right to appeal, right to legal aid, etc.). Where the guarantees are already present in domestic law, they should be implemented more effectively.
- These guarantees should be honoured in practice, and no removal should take place in violation of Article 3 of the UN Convention against Torture.
- More specifically, Algeria and Libya should put an end to collective expulsions of migrants, which are contrary to the basic rights of migrants to have their case reviewed on its individual merits and to appeal any expulsion order.
- Training of all representatives of the state who are in contact with foreigners (customs officials, police officers, representatives of the administration, prison guards, etc.) on the

rights of migrants and non-nationals should be strengthened. Training and awareness-raising activities aimed at lawyers and judges on these issues should also be implemented in all countries of the Maghreb.

- Tunisia should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The states of the Maghreb should guarantee that migrant workers, including those who are in an irregular situation, enjoy the full range of rights defined in the Convention.
- The states of the Maghreb should adopt domestic laws on the rights of migrant workers that are specific, comprehensive and consistent.
- The principle of non-discrimination between domestic and foreign workers should be entrenched in legislation and honoured in practice. Penalties should be legislated, to be applied to employers who do not respect this principle.
- The powers of the government regarding non-nationals, in particular with respect to the granting of residency and work permits, should be clearly defined in the legislation.
- Migrants should be advised of their rights and of the remedies available to them in case those rights are violated, in their own language.
- Proactive policies aimed at combating discrimination and xenophobia should be implemented by governments, and effective complaint and remedy mechanisms should be put in place for the victims of such acts or behaviour.
- Special attention should be paid by all states of the Maghreb to the prevention of violence against migrant women and to the provision of assistance to the victims of sexual violence. Initiatives in that regard should be taken by the governments pursuant to the conclusions of the Istanbul Euro-Mediterranean Ministerial Conference on the protection of migrant women.
- The countries of the Maghreb should publish detailed statistics on foreign individuals present in their territory, regardless of their status.
- The countries of the Maghreb should guarantee freedom of association, and strengthen the capacities of associations devoted to the support of migrants as well as consult them regularly in the process of defining and implementing their policies in that area.

2. ON ASYLUM

Asylum seekers should be systematically exempted from the need to comply with entry regulations when they enter the territories of the countries concerned.

All countries of the Maghreb should respect their obligation regarding the non-refoulement of refugees and should ensure that their protection needs are duly taken into consideration, regardless of where they are in the country's territory.

The access of UNHCR to asylum seekers should never be restricted for legal or practical reasons. In particular, UNHCR should be given access to all detention facilities in order to be able to assess the protection needs of asylum seekers and refugees held in detention.

Libya should demonstrate the political will to ratify and respect the 1951 Convention on the Status of Refugees or, at least, to adopt laws that are in compliance with the OAU Convention on refugees.

Libya should strengthen and stabilise over the long term its steps towards cooperation with international organisations with respect to the protection of migrants, asylum seekers and refugees. It should also grant official status to UNHCR.

All countries of the Maghreb should adopt domestic laws on asylum.

All countries of the Maghreb should take the steps needed to establish regimes that are in compliance with the right of asylum and the rights of refugees, in accordance with their international obligations. The discussions and proposals recommending a reform of domestic legislative regimes governing asylum that are ongoing in Morocco, Algeria and Libya should strive to achieve those goals.

While awaiting the establishment of domestic asylum regimes, all countries of the Maghreb should grant refugees all the rights that derive from the recognition of their status by UNHCR (in particular, the right of residence, the right to work, the right to education, the right to medical care, etc.).

Tunisia and Libya should sign headquarters agreements with UNHCR.

No refugee should be arrested, detained or, a fortiori, expelled.

TO THE EUROPEAN UNION

The EU should, through renewal of its cooperation policies, seek to re-establish a balance in the migration policies of the Maghreb states that would favour the basic rights of migrants and refugees. This outcome could be achieved in particular by increasing the funding earmarked for this purpose. The expansion of cooperation on migration and asylum should be made conditional upon the demonstration of a genuine political will to provide adequate protection to migrants and refugees. In general, the EU should assess more precisely the impact of its cooperation on the basic rights of migrants and refugees in the region.

1. ON THE BILATERAL COOPERATION FRAMEWORK

The Barcelona Process and the Union for the Mediterranean

- The European Commission and the member states of the Union for the Mediterranean should ensure that the conclusions of the Istanbul Euro-Mediterranean Ministerial Conference that concern the protection of women are implemented. The EC should strive to identify the types of violence to which migrant women are subjected in the region and to take stock of the various initiatives undertaken by governments to protect women from violence.
- The EU and the partner states of the UfM must find responses to the organisational and political dysfunction of the UfM, which threatens the implementation of the commitments to respect human rights and the involvement of civil society in the affairs of the Union. They must also ensure that the promotion and protection of human rights and democracy are consistently and regularly incorporated into all the programmes, policies and activities of the UfM at the multilateral and bilateral levels.
- Civil society must be consulted systematically on the programmes, policies and activities of the UfM.

On the ENP

- The EU must consider as an utmost priority the consideration of the issue of human rights and political reforms in all political dialogues taking place in the context of the ENP.

On the content of national action plans under the ENP

- In the chapter dealing with asylum and migration, the national action plans of Morocco and Tunisia must provide for the establishment of national migration policies that respect the basic rights of irregular migrants, mirroring the provisions made in favour of refugees.
- The EU must undertake a collaborative relationship with these countries so that, once guarantees protecting migrants are incorporated into domestic legislation, they are implemented more effectively, in particular with respect to the procedures associated with expulsions.
- Similarly, the EU must undertake a collaborative relationship aimed at improving domestic legislation and ensuring its compliance with international law on the subject of expulsions.
- Respect for the basic rights of migrants and refugees should also be incorporated as a specific objective in the section pertaining to human rights. Morocco and Tunisia should,

in that same chapter, make a commitment to respect the economic, social and cultural rights of migrants, similar to the commitment made in favour of the rights of women and children. Special attention should be paid to preventing violence against migrant women and to assisting the victims of sexual violence.

- The section devoted to the prevention of discrimination and racism should be expanded further and should provide for closer cooperation in order to assist in the integration of new migrants in countries of the Maghreb.

On the political dialogue between the EU and the countries of the Maghreb

- The European Commission and the EU presidency must ensure that issues related to violations of the basic rights of migrants and refugees are systematically addressed in committees dealing with human rights. A special effort must be made, where Tunisia is concerned, to ensure that a dialogue is undertaken on these points.
- The EU must ensure this political dialogue is more open and more transparent, in particular by organising briefings for civil society following meetings devoted to the subject of asylum and migration.
- While the EU delegations have stated that they have listened to the positions of international organisations and civil society, it would be interesting if these consultations were to be organised formally and systematically as part of this political dialogue.

On the negotiation of an EU-Libya agreement

- The negotiation of this framework agreement must be conducted in a transparent manner, in particular with respect to the content of the agreement. Before the negotiations are concluded, Libya must ratify the international instruments protecting the rights of migrants and refugees.

2. ON THE FINANCING INSTRUMENTS

On the ENPI

- The impact of the budget allocation received by the countries of the Maghreb under this financing instrument remains difficult to measure, in particular where asylum and migration are concerned. The follow-up reports on the implementation of the ENP do not provide details of the results and reforms funded by this instrument. The EU should publish detailed information on the projects and reforms that are carried out with matching funds and assess the impact of the budget allocation.

The EU should adopt an approach based on the development of programmes that are clearly identified and have measurable goals and outcomes.

On the financing instruments available to civil society

- The EU must better balance its approach by increasing its funding for projects aimed at strengthening the protection of refugees and migrants. This goal can be achieved by increasing the importance of protection in the annual priorities of the Migration and Asylum Thematic Programme.
- The Migration and Asylum Thematic Programme must consider the possibility of launching

national calls for proposals aimed at local civil society. The eligibility criteria should be made more flexible in order to take into consideration the financial situation of civil society organisations in the Maghreb, as well as the pressures to which associations are often subjected by the authorities.

- The protection of migrant and refugee women and assistance to victims of sexual violence should be included as priorities in the calls for proposals.
- The calls for proposals launched under the EIDHR should mention the possibility of funding projects focusing on the basic rights of migrants and refugees.
- Information sessions should be organised for civil society in the countries of the Maghreb to encourage them to submit funding requests associated with the protection of migrants and refugees.

3. ON PRACTICAL COOPERATION

- The EU must ensure that practical cooperation initiatives undertaken by its member states, especially in Libya, do not result in an increase in violations of migrant rights. To that end, the projects should only be concerned with qualitative improvements of Libyan capabilities in managing migratory flows, in particular by supporting substantive changes in the practice of forced repatriations. Effective mechanisms for identifying asylum seekers must be put in place as a prerequisite to any cooperation initiative on migration issues. The EU and its member states should not, in any circumstances, seek to strengthen Libya's capabilities in interception and border controls as long as the detention and forced repatriation of migrants practiced by this country continue to fall under the rubric of inhuman and degrading treatment.
- More transparency is needed on the activities of Frontex in the region, in particular through the publication of activities reports and agreement proposals. Any cooperation project with third countries of the Maghreb should be accompanied by an impact study that includes an assessment of the repercussions of this practical cooperation on the basic rights of migrants and refugees.

4. ON READMISSION AGREEMENTS

The EU must put an end to negotiations on readmission agreements that allow the expulsion of migrants from third countries to a country of the Maghreb where they do not enjoy the right of residence or related rights, nor adequate guarantees against repatriation to their country of origin when there are reasons to fear for their safety or their life.

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