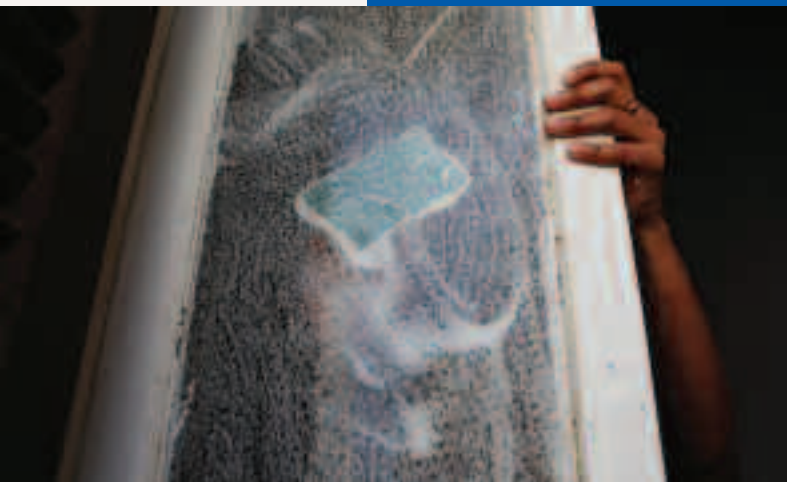




# Rights on the Line

Human Rights Watch Work on Abuses against Migrants in 2010

HUMAN  
RIGHTS  
WATCH





## **Rights on the Line**

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against Migrants in 2010**

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## Summary

**Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns do not trump the obligations of the State to respect the internationally guaranteed rights of all persons, to protect those rights against abuses, and to fulfill the rights necessary for them to enjoy a life of dignity and security.**

—Navi Pillay, United Nations high commissioner for human rights, address at the Fourth Global Forum on Migration and Development, Puerto Vallarta, Mexico, November 10, 2010

In 2010, international migration helped fuel economies across the globe. More than 215 million people live outside their country of birth, according to the United Nations, while migrants sent home more than US\$440 billion in 2010, \$325 billion of which went to developing countries, according to World Bank estimates.

The benefits and relative stability of remittances compared to other forms of foreign direct investment means that many development authorities and governments tout them as a promising form of development.

However, international migration has also sparked contentious political debate about control of irregular immigration, discrimination against migrant workers, and their integration into host countries. While some migrants have thrived, current immigration practices and massive protection gaps have exposed many others to a range of human rights abuses, including labor exploitation, violence, trafficking, mistreatment in detention, and even killings. Often viewing migrants as undesirable, many host governments make minimal effort to measure the social costs of migration for workers and their families, particularly regarding family unity; abuses during the migration process; or discrimination, exploitation, and limited access to redress that migrants may face in their host countries.

Human Rights Watch conducted fact-finding investigations throughout 2010, and released 12 in-depth research reports and dozens of public statements on human rights abuses against migrants. This report compiles the main findings and recommendations based on this research and ongoing monitoring in Côte d'Ivoire, Egypt, France, Greece, Guinea-Bissau, Hungary, Indonesia, Israel, Italy, Libya, Malawi, Malaysia, Kazakhstan, Kuwait, Lebanon, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Thailand, Ukraine, the United Arab Emirates, the United States, and Zambia.

**While some migrants have thrived, current immigration practices and massive protection gaps have exposed many migrants to a range of human rights abuses, including labor exploitation, violence, trafficking, mistreatment in detention, and even killings.**

**December 18, 2010, marks the 20th anniversary of the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families .... The majority of these are “migrantsending” countries: countries that host large numbers of migrants, particularly the United States, Gulf, and European countries have resisted adopting those obligations.**

Grave abuses against migrants take place around the world, and the specific countries and issues covered by Human Rights Watch were selected based on a range of factors, including scale and severity of abuses, evolving policy developments in 2010, and the access for Human Rights Watch to conduct research.

The report includes documentation of abuses against migrant workers, primarily in low-wage sectors such as domestic work, agriculture, and construction; violations of the right to health while in detention, including access to HIV and TB testing and treatment; limited investigations into abuse against migrants; trafficking; and overly restrictive entry, screening, and immigration detention policies that expose migrants to abuse, extortion, and violence at border crossings.

December 18, 2010, marks the 20th anniversary of the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW). Only 44 countries were party to the treaty as of November 2010, despite its critical role in elaborating states’ responsibilities toward migrants. The majority of these are “migrant-sending” countries: countries that host large numbers of migrants, particularly the United States, Gulf, and European countries have resisted adopting those obligations.

While commitment to the international standards outlined in the CMW is important, a full range of migrants’ rights are protected in other, more broadly-ratified, international human rights treaties, such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the UN Refugee Convention; and the UN Trafficking Protocol.

Governments must do more to ensure that national laws and enforcement complies with their international human rights obligations to protect migrants’ rights, and should take greater steps to forge cohesion between immigration and labor laws that are too often discordant, imperiling the protections to which migrants workers are entitled, and even endangering their lives.

For example, immigration sponsorship systems in many countries tie worker immigration status to employers, who consequently wield immense control over their employees, contributing to labor exploitation. For example, employers in many Middle Eastern countries can have a worker repatriated at will, or withhold consent from an employee who wants to transfer to another employer. Such policies exist in many countries and Human Rights Watch research in Kuwait, Lebanon, Saudi Arabia, and the United Arab Emirates shows how these sponsorship systems can trap workers in exploitative situations in which they do not receive full wages, or work long hours without adequate rest. In Kuwait, for example, government authorities arrest workers who have left their employment without permission, charge them with “absconding,” and generally deport them, even if they have been abused and seek

redress. These policies inhibit workers from reporting abuse, as does the difficulty of remaining in the country while waiting for lengthy trials to conclude.

Migrant workers in the agriculture and domestic sectors are often at particular risk of abuse due to weak labor protections and monitoring. For example, Human Rights Watch documented how many tobacco farm workers from Kyrgyzstan, including child workers, who migrated to Kazakhstan work excessively long hours, lacked basic occupational health and safety protections, and could be deprived of their proper wages. In the United States, labor laws exclude child farm workers from minimum age and maximum hour requirements: as a result, many often work up to 14 hours a day and drop out of school.

While many governments are beginning to engage in a reform process, they have generally failed to foster the sustained international dialogue and cooperation necessary to protect these workers. For example, Indonesia and Malaysia have repeatedly stalled in protracted negotiations to revise a bilateral agreement to increase protections for migrant domestic workers who are excluded from key protections in Malaysia's labor law. The two governments have also failed to agree on whether to establish a minimum wage and how to regulate recruitment fees.

Indeed, it is the private sector, at times in collaboration with governments that have produced some of the most promising initiatives and commitments. These include agreements from New York University, the Guggenheim Foundation, and their government-owned partners regarding strengthened labor contracts for workers involved in constructing their campus and museum buildings in the United Arab Emirates, as well as improved work contracts for workers producing tobacco for Philip Morris Kazakhstan, a subsidiary of Philip Morris International, one of the world's largest tobacco companies.

Migration, whether to seek employment in low-wage sectors or to flee instability in home countries, remains a risky enterprise often undertaken with few protections and at great personal and financial cost. Men, women, and children may risk their lives to cross borders and face danger while in grey areas, such as between border checkpoints, on the high seas, or in the international zones of airports. For example, between January and November 2010, Egyptian border guards shot dead at least 28 migrants who attempted to cross the Sinai border into Israel. Between 2000 and June 2010, India's Border Security Force (BSF) killed at least 924 Bangladeshi nationals trying to cross the border between the two countries, according to Odhikar, a Bangladesh human rights monitoring group.

Vulnerable populations crossing borders, including asylum-seekers, refugees, trafficking victims, and unaccompanied children often get caught up in migration policies that fail to adequately distinguish between the "mixed flows" crossing borders. Instead of being offered special status and protections, governments may treat such individuals as immigration offenders through summary deportation, or re-victimization through systems of immigration arrest, detention, and deportation. For exam-



ple, Egypt denied UNHCR access to detained refugees and migrants arrested in the Sinai peninsula, preventing them from making asylum claims. Italy and Libya patrol waters near their borders to interdict boat migrants and return them summarily to Libya without screening.

Human Rights Watch documented several forms of trafficking, including boys sent to Senegal to study who are then forced to beg for as many as 10 hours a day, Nigerian women and girls forced into prostitution in Côte d'Ivoire, and Nepalese women in domestic servitude in Saudi Arabia. Across these diverse situations, victims were trapped by deception about the conditions they would face abroad as students or as workers, as well as limited options for escaping highly exploitative situations.

Government response to such situations remains haphazard, with an urgent need for more comprehensive protection strategies, including improved international cooperation to prevent and respond to trafficking, as well as strengthened support services for survivors.

Racism and xenophobic violence against migrants remain problems that governments are not only slow to acknowledge and tackle appropriately, but in some cases even aggravate by adopting policies that exacerbate discrimination. For example, Italian politicians have made public statements linking migrants to crime, and the government has been slow to investigate and prosecute several incidents of shootings and attacks against migrants. Precarious migration status, language barriers, isolation, and limited access to services can compound these abuses and further limit workers' access to redress.

Several European countries adopted and maintained immigration policies that inhibit effective access to asylum procedures and processing of applications. Individuals may also face mistreatment in detention, for which there is little accountability. For example, the European Union and Ukraine implemented a readmission agreement that provides for the return of third-country nationals who enter the EU through Ukraine. However, Ukrainian authorities have been unable or unwilling to effectively protect refugees and asylum seekers, and some returned migrants have been abused or even tortured. Greece continues to detain migrants and asylum seekers in substandard conditions, offering unaccompanied migrant children and other vulnerable group little or no assistance. The Canary Islands regional authorities continue to keep unaccompanied migrant children in unregulated emergency shelters that fail to comply with the government's own minimum care standards.

Migrants frequently face barriers to health care. Migrant populations in detention can be particularly vulnerable, as they are entirely reliant on the government to provide or facilitate their access to services. Under international law, states are obligated to ensure medical care for all prisoners at least equivalent to that available to the general population; human rights law also requires that a core minimum of health care services be provided without discrimination on the basis of citizenship or social origin. Yet despite these protections, prisoners in various countries,

including Zambia and Malawi, are often held in life-threatening conditions. Human Rights Watch researchers found that migrant detainees held in prisons—sometimes inappropriately or unnecessarily—also experience discrimination, such as inferior conditions or health care to that provided to non-migrant prison populations.

On September 30, 2010, the Global Migration Group—comprising 12 UN agencies, the World Bank, and the International Organization of Migration (IOM)—adopted a statement on migrants who do not have a recognized valid immigration status, noting that,

Migrants in an irregular situation are more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process.... Too often, States have addressed irregular migration solely through the lens of sovereignty, border security or law enforcement, sometimes driven by hostile domestic constituencies.... The irregular situation which international migrants may find themselves in should not deprive them either of their humanity or of their rights.

Two decades after the UN General Assembly adopted the CMW much remains to be done by countries of origin, transit, and destination to prevent and respond to human rights abuses against migrants.

## Key Recommendations

As governments consider their migration policies in 2011, Human Rights Watch urges them to:

- Sign and ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families and take steps to align national law policies with their international human rights obligations;
- Lift restrictions on freedom of migrants' movements within countries and ensure that immigration and labor policies are designed to facilitate documented, regular migration, but are not disproportionately punitive against those without proper documents;
- Establish effective monitoring and complaint mechanisms, including with translation services as necessary, rigorously investigate complaints of abuse, irrespective of an individual's migration status, and take steps to resolve labor disputes and criminal proceedings in a timely manner;
- Reform labor laws to extend comprehensive labor protections in poorly-regulated sectors often dominated by migrants, including domestic work and agriculture;
- Establish legally enforceable standards to govern conditions of detention, including access to medical care, and strengthen accountability and oversight mechanisms to prevent and respond to abuses;
- Conduct independent reviews of expulsion policies and ensure that those subjected to forced removals have a right to appeal based on individual review that does not discriminate on grounds of ethnicity or nationality;
- Develop comprehensive national strategies and strengthen international cooperation to prevent, respond, and prosecute cases of trafficking, including access to services and rehabilitation for survivors; and
- Affirm that there are no "rights free zones" and that states are responsible for respecting the full range of human rights of migrants when they are interdicted or intercepted on the high seas, in border zones, or in international zones of airports.

# I. Exploitation of Migrant Workers

**I was mistreated by my employers. I woke up at 5 a.m. [and worked until I] went to sleep at 2 or 3 a.m. I never got a day off. I had no rest. The door was always locked. I could never go out, only when employers go out with me. I slept in the dining room. I never slept in a room ever.**

—Saminem, Indonesian domestic worker, Kuala Lumpur, Malaysia, February 12, 2010

Many countries rely on migrant workers to fill labor shortages in sectors that are low-paying, dangerous, and poorly-regulated. Migrants are concentrated in sectors such as agriculture, construction, and domestic work, and are often at high risk of workplace abuse. Their migration status, language barriers, isolation, and limited access to services can compound these abuses and further limit access to redress. While many governments are beginning to engage in a process of reform, the most promising initiatives and commitments have arisen from the private sector rather than governments. These include commitments from New York University and the Guggenheim regarding labor contracts for workers involved in constructing their buildings in the United Arab Emirates, and improved work contracts for workers producing tobacco for Philip Morris Kazakhstan, a subsidiary of Philip Morris International, one of the world's largest tobacco companies.

## Indonesia and Malaysia

Large numbers of complaints from migrant domestic workers regarding nonpayment of wages and a series of high-profile abuse cases led Indonesia to suspend migration of domestic workers to Malaysia in June 2009 until new protections could be put in place.

The two governments have indicated their intent to revise a 2006 Memorandum of Understanding (MOU) to allow domestic workers to keep their passports and have a weekly day of rest, but after several bilateral meetings and missed deadlines, negotiations have stalled on a minimum wage and the recruitment fee structure.

Approximately 300,000 domestic workers, mostly from Indonesia, work in Malaysia. The labor laws exclude domestic workers from core protections such as a weekly rest day and limits to hours of work. Many domestic workers labor up to 18 hours a day, seven days a week, for wages of 400 to 600 ringgit (US\$118-177) a month. Domestic workers must typically turn over the first six to seven months of their salary to repay exorbitant recruitment fees charged by private labor brokers for placing

them in their jobs. When such salary deductions are taken into account, Indonesian domestic workers only earn an average of 300 to 450 ringgit (US\$89-133) a month over a two-year contract.

Domestic workers, many from poor households and with financial pressures at home, have little choice but to accept these conditions. This system contributes to domestic workers being trapped in abusive situations and to forced labor since some employers may restrict employees' freedom of movement to prevent them leaving before the debt is repaid. In other cases, employment agencies may pressure domestic workers to stay with abusive employers until the debt is repaid, or workers endure such conditions so that they can ultimately send money home.

In the absence of government regulations, employment agencies and employers typically set domestic workers' salaries based on their country of origin instead of their education and experience. Filipina domestic workers in Malaysia earn the highest salary at US\$400 a month because of requirements imposed by the Philippines government. Malaysia has no national minimum wage, but the Human Resources Ministry is conducting a study to consider introducing one for private sector workers. The Malaysian Trades Union Congress advocates a minimum wage of 900 ringgit (US\$266), and the Malaysian government considers that earnings less than 750 ringgit (US\$222) fall below the national poverty line.

*Human Rights Watch recommends that the governments of Indonesia and Malaysia revise the 2006 Memorandum of Understanding to include:*

- A commitment to extend equal protection under Malaysia's labor laws to domestic workers, specifically Section XII of the Employment Act of 1955 and the Workmen's Compensation Act of 1952.
- Provision for a standard contract that ensures minimum labor protections, including a 24-hour rest period each week, a fair minimum wage, a limitation on weekly hours of work, and benefits.
- Mechanisms for timely remedies for migrant domestic workers in cases of abuse, and sanctions for employers and labor agents who commit these abuses.
- Stronger regulations governing recruitment agencies, including eliminating the practice of deducting salaries to repay excessive recruitment fees, and mechanisms to monitor and enforce these standards.

## Kazakhstan

Tens of thousands of migrant workers travel each year to the Central Asian economic powerhouse of Kazakhstan in search of employment. Thousands of these migrant workers, often together with their children, find work in tobacco farming. As docu-

mented in the report, “Hellish Work: Exploitation of Migrant Tobacco Workers in Kazakhstan,” Human Rights Watch research in 2009 found abuse and exploitation of many migrant workers by tobacco farm owners who employ them for seasonal work. Tobacco farm owners in Kazakhstan contract with, and supply tobacco to, Philip Morris Kazakhstan (PMK), a subsidiary of Philip Morris International (PMI), one of the world’s largest tobacco companies.

Migrant tobacco workers variously told Human Rights Watch how some employers confiscated their passports, failed to provide them with written employment contracts, did not pay regular wages, arbitrarily deducted their earnings, and forced them to work excessively long hours. Some employers also failed to provide migrant workers with potable water, adequate hand-washing and other sanitary facilities, or adequate living conditions. In the worst cases, workers carried out forced labor, or were subject to situations analogous to forced labor, in which employers confiscated migrant workers’ passports and in some cases required them to perform other work without pay, in addition to tobacco farming.

Human Rights Watch documented 72 cases of children working in tobacco farming in 2009, the youngest of whom was 10. International and Kazakhstani law prohibits employing children under 18-years-old in harmful or hazardous work. Experts agree that the difficulty of the work, the risks associated with handling tobacco leaves, and exposure to pesticides, renders tobacco farming one of the worst forms of child labor, or labor from which children under 18 are categorically prohibited. Children who worked with their families on tobacco farms typically missed several months of school each year, or even entire academic years.

Human Rights Watch first brought to PMI its concerns about the treatment of migrant workers on tobacco farms producing tobacco for PMK in October 2009. In response, PMI and PMK have committed to implement measures to expand and strengthen their labor and other rights protection for migrant workers, including: strengthening the contracts PMK signs with tobacco farm owners as well as requiring landowners to conclude contracts with each worker guaranteeing minimum labor standards and other conditions. Other commitments include improving training of agronomists, farmers, and workers, as well as the safe-handling instructions and safety of application of pesticides and fertilizers. PMI and PMK have also stated that they will engage with the Kazakhstani government to address the ability of children of migrant workers to attend local schools and to have alternatives to work during the summer months. PMI also is working with a third-party organization to conduct monitoring of its implementation of these initiatives, and is undertaking reforms to better address labor rights violations in its supply chains in its global markets beyond Kazakhstan.

*Human Rights Watch recommends that the government of Kazakhstan:*

- Establish accessible complaint mechanisms and rigorously investigate complaints of abuse, irrespective of a migrant workers’ contractual status or migration status.

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- Ensure children of migrant workers have access to local schools and other social services, and increase training for parents, children, employers, and others regarding the hazards of child labor in tobacco.

## Kuwait

The Human Rights Watch report, “Walls at Every Turn: Exploitation of Migrant Domestic Workers through Kuwait’s Sponsorship System” describes how workers become trapped in exploitative or abusive employment, only to face criminal penalties for leaving a job without the employer’s permission. Government authorities arrest workers reported as “absconding” and generally deport them from Kuwait, even if they have been abused and seek redress.

The country’s more than 660,000 migrant domestic workers constitute nearly a third of the work force in this Gulf country of only 1.3 million citizens. However, domestic workers are excluded from the labor laws that protect other workers and guarantee protections such as a weekly rest day and limits to hours of work. Kuwaiti lawmakers reinforced this exclusion as recently as February 2010, when they passed a new labor law for the private sector that failed to cover domestic work. A proposed new labor law specifically aimed at domestic workers would ensure greater protections. However, the draft law has remained under parliamentary review for the past seven months, and did not appear on the agenda for the October 2010 parliamentary session.

Data compiled by Human Rights Watch shows that in 2009, domestic workers from Sri Lanka, Indonesia, the Philippines, and Ethiopia filed over 10,000 complaints about their treatment with their embassies in Kuwait. The domestic workers interviewed cited a variety of abuses by their employers, including nonpayment of wages, refusal to grant days off, and physical or sexual assault. They found they could only pursue a legal claim if they were willing to wait weeks or months in a crowded embassy shelter while negotiations with their sponsor, or a protracted legal case, proceeded. Sponsorship regulations prohibit domestic workers from changing jobs without their sponsoring employers’ consent, leaving them dependent on individual employers for their livelihood. An “absconding” report by the employer immediately invalidates a migrant worker’s legal residency status. Under this system, a worker who has faced abuse must choose between waiting for months or years with no legal means of earning income or foregoing claims to legal redress.

Kuwait provides no expedited labor courts despite the country’s huge population of migrant workers and the fact that wage complaints top the list of workers’ grievances. Long waits, poor information about their rights and options, and slim chances of achieving justice mean that many workers give up on redress.

### *Human Rights Watch recommends that the government of Kuwait:*

- Reform the current sponsorship system, including taking immediate steps to remove “absconding” as a legal violation and permitting workers to change jobs without an employer’s consent.
- Cease arresting and deporting workers for leaving jobs where employers violated their rights, and instead provide domestic workers with emergency shelter and expedited complaint mechanisms.
- Ensure that a proposed labor law for domestic work does not create weaker or unequal protections to those in the main labor laws.

## **Lebanon**

Lebanese families employ an estimated 200,000 migrant domestic workers, primarily from Sri Lanka, Ethiopia, the Philippines, and Nepal.

In its “Without Protection: How the Lebanese Justice System Fails Migrant Domestic Workers” report, Human Rights Watch reviewed 114 Lebanese judicial decisions affecting migrant domestic workers and found that lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes.

Human Rights Watch did not find a single example among the 114 cases it reviewed in which an employer faced charges for locking workers inside homes, confiscating their passports, or denying them food, even though these violations of the law are commonplace.

Complaints that workers file against employers often languish in court for months, and sometimes years. This poses an added burden on the workers because Lebanon’s restrictive visa policies make it hard for them to remain in the country to pursue the case. Cases of physical violence against migrant domestic workers often fail to garner sufficient attention from police and prosecutors. For example, a review of police reports in numerous cases of violence against these workers shows that police investigating these cases regularly ask employers only general questions and accept their statements as truthful without cross-checking their statements with other potential witnesses.

While authorities have prosecuted certain cases of severe beatings against migrant domestic workers, these cases remain rare and have resulted in only light sentences. The most severe sentence for physical abuse of which Human Rights Watch is aware was one month in prison imposed by a criminal court on June 26, 2010, against an

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employer who repeatedly beat a Sri Lankan domestic worker while forcibly confining her to the house.

Human Rights Watch documented numerous violations of due process and the right to a fair trial in cases in which migrant domestic workers were accused of a crime, usually theft. Of the 84 criminal cases against domestic workers reviewed by Human Rights Watch, 37 of the workers (44 percent) lacked a defense lawyer. Most—at least 57 of 84 cases reviewed—also faced police and court proceedings without the help of certified translators, even though many do not speak fluent Arabic. Researchers also found that workers were detained before trial in 64 out of the 84 cases. Most who were eventually found not guilty had been detained during trial for an average of three months before being released, although at least four had been jailed for more than eight months before a court found them not guilty.

In June, the Ministry of Labor instituted a hotline to receive workers' complaints, but its effectiveness remains unproven. Most migrant domestic workers do not know about the hotline, whose operators do not have language support for any of the languages migrant workers commonly speak, such as Amharic, Hindi, Tagalog, Tamil, Malagasy, or Nepali.

*Human Rights Watch recommends that the government of Lebanon:*

- Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to prosecution, including training programs for police officers, immigration officials, prosecutors, and judges.
- Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner.
- Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime.
- Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors, and so that workers can file complaints without fear of detention and deportation.

## **Saudi Arabia**

In 2010, Human Rights Watch monitored several cases in which Saudi Arabia's justice system failed migrant workers, highlighting broader problems of access to redress and fair treatment.

Several aspects of Saudi Arabia's labor laws and immigration sponsorship system put migrants at high risk of abuse. Migrant workers' residency is tied to their immi-

gration sponsor (a company or an individual employer), who must provide consent for the worker to change jobs or to get an exit visa from the Interior Ministry to leave the country. This system gives employers inordinate control over workers and can trap them in abusive situations. Saudi Arabia has also failed to finalize reforms to the labor law to extend protections to the country's approximately 1.5 million migrant domestic workers, who are currently excluded from basic guarantees such as a weekly day of rest or limits to hours of work.

Several migrant domestic workers were only able to report complaints of grave physical abuse after returning to their home countries because complaint mechanisms in Saudi Arabia remained inaccessible. For example, in late August, Lahadapurage Daneris Ariyawathie, a domestic worker from Sri Lanka returned home and needed an operation to remove dozens of nails and metal objects she said her Saudi employers had hammered into her body after she complained of being overworked. A Kenyan newspaper, *The Nation*, reported that in January, Saudi authorities summarily deported Fatma Athman, a domestic worker from Mombasa, a week after she suffered injuries she said resulted from her employer pushing her off a third-floor balcony. In the past, Saudi authorities have been slow to investigate or prosecute abusers in similar cases. The criminal case against the employers of Keni binti Carda, an Indonesian domestic worker who says she was burned by her employers in September 2008 before they put her on a plane back home, was only investigated following international pressure and has been subject to protracted delays.

Human Rights Watch also documented several cases in 2010 in which workers complaining of unpaid wages were unable to obtain redress and were effectively trapped in the country once their residency permits expired. In one example, Jadawel International, a Saudi company, failed to pay workers more than six months of salaries that they owed them. Managers told workers they were working toward a solution for paying the back salaries and renewing their residency permits, without which workers could not leave the compound for fear of arrest, access medical treatment, or leave the country. Following Human Rights Watch communication with the company's chairman, Jadawel renewed most residency permits, issued exit visas, and paid six months outstanding salaries in August, although workers stated on October 24, 2010, that salary payments were three months in arrears. Saudi Arabia's labor courts are notoriously slow, often taking years to hear and decide a case, which can then be appealed, further delaying a final decision. Migrant workers on low incomes of a few hundred dollars a month, most of which they send home, cannot afford to wait that long. Migrant workers also lack the resources that companies have to hire lawyers to present their case.

In other cases, migrant workers accused of crimes may face harsh penalties such as the death sentence and several obstacles to a fair trial including limited access to lawyers and translators. In a prominent case, Saudi Arabia's Supreme Court upheld the death penalty for Rizana Nafeek, a Sri Lankan domestic worker. Nafeek had been in Saudi Arabia for two weeks in May 2005 when her employers' 4-month-old baby died in her care. A recruitment agency in Sri Lanka had altered the birth date

on her passport to suggest she was 23, but her birth certificate later confirmed she was 17 at the time. Though she was arrested in 2005, she did not have access to legal counsel until after a court in Dawadmi sentenced her to death in 2007. As of November 2010, the death sentence had not been carried out.

*Human Right Watch recommends that the government of Saudi Arabia:*

- Create effective mechanisms to monitor migrant workers' working conditions, including accessible complaints mechanisms such as hotlines, and take steps to resolve labor disputes in a timely manner.
- Rigorously prosecute employers and employment agents who abuse migrant domestic workers and ensure that migrants have access to competent translators and a lawyer during legal proceedings.
- Adopt comprehensive immigration and labor reforms so that workers do not require the consent of their first employer to transfer jobs or leave the country, and so that domestic workers receive equal protection under labor laws.

## Thailand

Human Rights Watch's report, "From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand," describes the widespread and severe human rights abuses that migrant workers—who originate from Burma, Cambodia, and Laos—face in Thailand, including torture in detention, extortion, sexual abuse, trafficking, forced labor, restrictions on organizing, violent retaliation against complainants, and even death. Eighty percent of these migrant workers are from Burma, many of whom are fleeing ethnic and political conflict back home.

Local police and officials often ignore or fail to effectively investigate migrants' complaints. National laws and policies and provincial decrees prohibit migrants from establishing their own organizations, such as trade unions, and asserting their rights. Policy restrictions on changing employers, moving outside designated areas, and convening meetings with more than a handful of persons leave migrants vulnerable to exploitation and ill-treatment.

Migrants reported constant fear of detention and extortion by police, who demand money or valuables from migrants in their custody in return for their release. It is not uncommon for a migrant to lose the equivalent of one to several months pay in a single extortion incident.

Human Rights Watch found that a number of provinces continue to restrict migrants' use of mobile phones and motorcycles, severely limit freedom of movement, prohibit migrant gatherings, and enforce nighttime curfews.

*Human Rights Watch recommends that the government of Thailand:*

- Revoke laws and national and provincial policies that bar migrants from forming labor unions, changing employers, organizing assemblies, and exercising their rights to freedom of expression, association, and movement.
- Establish an independent and impartial commission to investigate allegations of abuse by police and other authorities against migrants. Such a commission should be empowered to subpoena, require presentation of evidence, and recommend criminal and civil charges against abusers. It should make reports public periodically.

## **United Arab Emirates**

In 2010, New York University (NYU), the Guggenheim Foundation, and their government-owned partners announced new contractual safeguards for workers employed in building an NYU campus and a branch of the Guggenheim on Saadiyat Island, Abu Dhabi. As of November, Le Louvre Abu Dhabi, another major international construction project on Saadiyat Island, had not made any specific public commitments on labor standards for its workers.

A May 2009 Human Rights Watch report, “The Island of Happiness: Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi,” documented how the UAE government and development authorities had failed to tackle worker abuse, including unlawful recruiting fees, unpaid wages, and a sponsorship system that gives employers inordinate power over workers. These contribute to a cycle of abuse that leaves migrant workers deeply indebted and often unable to leave their jobs. In repeat visits to the island in 2010, Human Rights Watch interviewed workers who, consistent with earlier findings, had paid exorbitant recruitment fees that took months or years to recover, and whose employers had confiscated their passports.

In early 2010, NYU and its partner, the Executive Affairs Authority of Abu Dhabi, announced it would require all companies involved in building and operating the NYU Abu Dhabi campus to reimburse workers for recruiting or other employment-related fees they are found to have paid. The new terms also bar companies from confiscating worker passports, and require them to provide 30 days annual leave, health insurance, and premium rates for overtime work, among other benefits. In September 2010, the Guggenheim and its government-owned partner, the Tourism Development & Investment Company (TDIC), said all companies involved in building and operating the museum’s Abu Dhabi branch would be required to provide workers with electronic wage payment, overtime provisions, annual leave, a weekly day off, and health insurance. Companies would also have to give workers contracts in local languages before they enter the UAE, and give them access to a complaints body at TDIC.

Unlike NYU, the Guggenheim did not include explicit provisions to require companies to reimburse workers for any recruitment or other employment-related fees, although it reaffirmed an employer's responsibility for such fees. Indebtedness for recruitment fees remains the primary factor that creates conditions of forced labor, with workers required to use their wages to pay off the fees, and pressured into remaining in their jobs regardless of abusive conditions. Every single worker interviewed for the 2009 report, as well as all workers interviewed in 2010, had paid such fees before coming to work in the UAE.

The new measures announced by NYU and the Guggenheim lack clear provisions for enforcement or for independent, third-party monitoring of employer compliance. Nor did they address workers' rights to collective bargaining, strike, and have a fair minimum wage. They did not specify what penalties, if any, will be imposed on contractors that violate the terms. It is also unclear what legal recourse NYU Abu Dhabi or the Guggenheim have in the event of a breach by a contractor employing workers on its project, with which it will have no direct contractual relationship.

*Human Rights Watch calls upon NYU, the Guggenheim, the Louvre, and the government of the UAE to:*

- Establish a mechanism to monitor labor practices within the operations of the new branch, as well as those of any subcontractors and their affiliates (including those who provide construction and maintenance services). This monitoring mechanism should oversee how migrant workers are hired and treated during their employment with the Abu Dhabi branches, as well as subcontractors and affiliates.
- Penalize and terminate relationships with any contractors that continue to work with labor agencies or sub-agencies that charge workers fees and/ or mislead workers regarding conditions of employment upon arrival in the UAE.
- Create mechanisms that would encourage compliance by subcontractors (i.e. retain experienced and reputable labor and construction lawyers and give them a mandate to ensure that all construction and maintenance related contracts require meaningful compliance with labor laws).

## United States

Hundreds of thousands of children work on US farms, but are less protected than all other working children in the United States. The 1938 Fair Labor Standards Act specifically exempts farm worker youth from minimum age and maximum hour requirements, exposing them to work at far younger ages, for far longer hours, and under more hazardous conditions than children in other jobs. Federal protections that do exist are often not enforced, and state child labor laws vary in strength and enforcement. As a result, child farm workers, most of whom are Latino and include both domestic and international migrants, often work 12 to 14 hour days, and risk

pesticide poisoning, heat illness, injuries, and lifelong disabilities. Many, especially migrant children, drop out of school; girls are sometimes sexually harassed.

While federal legislation that would close the loophole and protect child farm workers remains pending, some government agencies have moved to improve conditions: the Department of Labor added more than 250 new field investigators since early 2009 and plans to add more; the Environmental Protection Agency has pledged to strengthen its assessment of pesticide health risks, and to propose amendments to federal worker protection standards by 2012.

*Human Rights Watch recommends that the government of the United States:*

- Via the US Congress should amend the Fair Labor Standards Act (FLSA) to apply the same age and hour requirements to children working for hire in agriculture as already apply to all other working children. Congress should also raise the minimum age for particularly hazardous work in agriculture to 18, in line with existing standards in all other industries.
- Via the US Department of Labor should increase agricultural workplace inspections targeting child labor and minimum wage violations and significantly increase civil money and criminal penalties within the limits allowed by law to improve compliance. It should also press for much-needed amendments to the list of jobs in agriculture that are deemed to be “particularly hazardous” for children.

## II. Abuse and Detention at Borders

There's a corner with a guard where they keep foreigners who are not permitted entry. There is no bed, only metal chairs. I was with Georgians, Indians, Africans, and a Kuwaiti. People [officials] asked for money. If you gave US\$500 or US\$600 you could enter [Ukraine]. They didn't give anything to eat and no water. I drank from the toilet tap. I didn't eat for four days. They said, "If you have money, we will let you enter." I was deported to Tunisia.

—Tunisian man who was deported but returned to Ukraine where he lives without proper travel documents, June 10, 2010

Men, women, and children often risk their lives to cross borders and are frequently subject to abusive treatment while in grey areas: no-man's lands between border checkpoints, on the high seas, and at international zones of airports. Many countries have border control policies that are hostile, discriminatory, and flout international standards, particularly along frontiers at the margins of territories that often lie beyond the sight of media and other witnesses. Governments—often in the form of border and coast guards—may fail to screen migrants to identify asylum seekers, trafficking victims, unaccompanied children, and other members of vulnerable groups, or subject them to violence, extortion, poor conditions in detention, and refoulement (forced return to torture or persecution).

### Egypt and Israel

As of November 2010, Egyptian border guards in 2010 had shot dead at least 28 migrants attempting to cross the Sinai border into Israel. A government official said in March that security forces had "only" killed 4 percent of those attempting to cross in 2009. Egypt continues to detain refugees and migrants and charge them with illegal entry before military courts that do not meet international fair trial standards.

Many of those trying to cross into Israel at or near the Sinai border come from refugee-producing countries such as Eritrea and Sudan. Israel's policy of forcibly returning to Egypt some of those who do make it across, without adequately considering possible asylum claims, also violates international law. Migrants and refugees who Israel forcibly returns to Egypt face arbitrary arrest and detention, unfair trials before military courts, and forcible deportation without the chance to make asylum claims.

Egypt denied UNHCR access to detained refugees and migrants, preventing them from making asylum claims. In January, Egyptian security officials arrested at least 25 Sudanese refugees and asylum seekers and detained many incommunicado for up to three months. Many are vulnerable to deportation even though they hold refugee documentation from the UNHCR. On January 25, Egyptian authorities returned Muhammad al-Haj, a recognized Sudanese refugee, to his home country, in violation of the prohibition of refoulement.

*Human Rights Watch recommends that the Egyptian government:*

- Order border police to use lethal force only as a proportional and necessary response to a threat to life, and conduct a thorough and impartial investigation into the killings of African migrants, make the results public, and prosecute responsible border police officers and officials with oversight responsibility.
- Cease using military tribunals to try civilian migrants, refugees, and asylum seekers detained in the Sinai.
- Guarantee UNHCR access to all migrants who have international protection needs in official custody.

*Human Rights Watch recommends that the Israeli government:*

- Conduct no additional “coordinated returns” to Egypt of persons who cross the Sinai border until:
  - » Israel institutes a system that ensures border-crossers the ability to present asylum claims, and
  - » Egypt credibly guarantees that it will respect returnees’ rights under international human rights and refugee law and not to return them to countries where they could face persecution.

## Italy and Libya

Since May 2009, Italy has joined forces with Libya to patrol the waters from the coast of Libya to Italy’s Mediterranean territories, principally the island of Lampedusa. Libya in 2010 operated patrol boats provided by Italy with Italian personnel on board to interdict boat migrants on the high seas and in Libyan waters and return them summarily to Libya with no screening to identify refugees, the sick or injured, pregnant women, unaccompanied children, victims of trafficking, or victims of violence against women.

All interdicted boat migrants are detained upon arrival in Libya in overcrowded and unsanitary conditions. Libya is not a party to the 1951 Refugee Convention and has no asylum law or procedure. In April, Libyan Foreign Secretary Moussa Koussa said his country “does not have any refugees but only illegal migrants who break the

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laws.” In July the government said that there were 3 million irregular migrants in Libya. A new law on “Illegal Migration” criminalizes trafficking of migrants but does not mention protections for refugees.

In June, Libya closed the office of the UN High Commissioner for Refugees (UNHCR) in Tripoli and expelled its representative. It later allowed the office nominally to reopen but only with highly restricted permission to work on behalf of refugees and asylum seekers whom it had registered prior to closing, and without access to newly detained migrants and asylum seekers.

On June 28, a group of detained Eritrean migrants tried to escape from a migrant detention center after Libyan officials allowed Eritrean embassy officials to take their photos and forced them to complete forms raising fear of deportation. In response, Libyan authorities transported 245 Eritrean detainees from the Misrata detention on Libya’s northern coast to another detention center at al-Biraq, north of Sabha, in an apparent attempt to deport them. Some of these Eritreans were among those whom Italy had forcibly returned to Libya without giving them an opportunity to claim asylum. After an international outcry, Libya released this group but did not provide them with any support or protection. They remain in Libya.

*Human Rights Watch recommends that the Libyan government:*

- Sign and ratify the 1951 Refugee Convention and its 1967 Protocol and establish asylum procedures in conformity with international refugee standards.
- Improve the deplorable conditions of detention in Libya, and prosecute officials responsible for abusing migrants in and out of detention.

*Human Rights Watch recommends that EU institutions and member states:*

- Refrain from concluding multilateral or bilateral readmission agreements with Libya until Libyan policies and practices with regard to migrants, refugees, and asylum seekers fully meet international standards.
- Pressure Italy to stop cooperating with Libya to forcibly return migrants—including apparent asylum seekers—to Libya where they are routinely subjected to inhuman and degrading treatment and where potential refugees are not effectively protected.
- Ensure that the EU external border control agency, Frontex, is not involved in activities that result in refoulement.

## Hungary, Slovakia, and Ukraine

On January 1, 2010, a readmission agreement between the European Union and Ukraine came into force that provides for the return of third-country nationals who enter the EU from Ukraine. Readmission agreements are a cornerstone of the EU's so-called externalization strategy for asylum and migration, the core of which is to stop the flow of migrants and asylum seekers into the EU by shifting the burden and responsibility for migrants and refugees onto countries that neighbor the Union, in this case Ukraine.

Ukraine has a dysfunctional asylum system, and from August 2009 through August 2010, no government body had the mandate to recognize or provide protection to refugees. Ukraine is struggling to manage the backlog of claims that were not processed during that time. Not only has Ukraine been unable or unwilling to provide effective protection to refugees and asylum seekers, it has also subjected some migrants who returned from neighboring EU countries to torture and other inhuman and degrading treatment.

Out of 161 interviews of refugees, migrants, and asylum seekers in Ukraine, Slovakia, and Hungary whom Human Rights Watch interviewed in June 2010, 48 said they had been returned from Slovakia or Hungary. Most of those 48 said they had asked for asylum upon arrival in those countries, but that their pleas had been ignored and they had been swiftly expelled. These practices breach the right to seek asylum contained in the binding EU Charter of Fundamental Rights. Both Slovakia and Hungary also returned unaccompanied children to Ukraine in violation of their international obligations to protect them.

*Human Rights Watch recommends that Slovakia, Hungary, and other EU member states:*

- Suspend the return of third-country nationals to Ukraine under the EU-Ukraine readmission agreement or bilateral readmission agreements until Ukraine meets international standards with respect to the human rights of returned migrants, particularly with regard to the practice of torture, inhuman or degrading treatment, and arbitrary detention and until Ukraine demonstrates willingness and the capacity to provide a fair hearing to asylum seekers and effective protection to refugees.

*Human Rights Watch recommends that Ukraine:*

- Ensure that all migrant detainees in state custody are treated in a humane and dignified manner and that their detention fully complies with Ukraine's international obligations governing the administrative detention of migrants.
- Immediately investigate allegations of torture and abuse of migrants in State Border Guard Service custody, including at the time of apprehension and in all phases of detention and transfer.

- Ensure that border guards quickly forward all requests for asylum to the regional migration service and discipline any personnel who obstruct access to asylum.

## Greece and the European Union

In 2010, Greece was faced with 10,000 requests by other EU member states to return migrants and asylum seekers there under the Dublin II regulation, the instrument that assigns responsibility among EU states for examining asylum claims. Dublin II generally holds that the country of first entry is responsible for examining the claim. Greece was the entry point for about 75 percent of the 106,200 irregular migrants entering the EU in 2009; that percentage rose to 80 percent in the early months of 2010, according to *The Economist*. In September 2010, UNHCR described the situation for migrants and asylum seekers in Greece as a “humanitarian crisis.”

Despite the government’s repeated commitments to overhaul its broken asylum system, restore appeal rights, ensure humane treatment for migrants, and police accountability for ill-treatment, it had made no progress in any of those areas by year’s end. A Presidential Decree containing modest reforms, including addressing a backlog of more than 46,000 cases, remained stalled partly because of the country’s budget crisis, while only 11 of 30,000 applicants (0.04 percent) were granted asylum at first instance in 2009.

Migrants and asylum seekers continued to be detained in substandard conditions, with little or no assistance to unaccompanied migrant children and other vulnerable groups, many of whom live in destitution or on the streets, at risk of exploitation and trafficking. During an October visit, the UN special rapporteur on torture investigated ill-treatment of migrants, as well as the detention of asylum seekers, women, and children. On October 20, he called on the EU not to transfer asylum seekers to Greece under the Dublin II regulation.

*Human Rights Watch recommends that other EU member states:*

- Suspend all Dublin II transfers to Greece.

*Human Rights Watch recommends that Greece:*

- Invite UNHCR to take over its asylum system as long as it is incapable of doing so.
- Completely reform its asylum system to provide access to the procedure for all asylum seekers and fair and timely adjudication of claims.
- Improve conditions of detention in all places of migration detention to meet international standards.

## Spain

The Canary Islands government's decision to keep 200 unaccompanied migrant children in emergency shelters, which are not subject to normal care regulations, puts the children at risk and threatens their well-being. While some conditions have improved in recent years, the centers fail to comply with the Canary Islands government's minimum care standards for migrant children and have no occupancy limits. The approximately 100 children in the biggest and most secluded emergency center, La Esperanza, receive low-quality food, lack adequate heating, hot water, and blankets, and report exposure to frequent violence from other children.

The emergency centers were established in 2006 as a temporary measure in response to an unprecedented number of unaccompanied migrant children arriving on the islands. Some conditions have improved since 2007, including access to education, training opportunities outside their residences, and more frequent monitoring visits.

Other serious concerns also persist in emergency centers. These include the absence of a functioning mechanism to file confidential complaints, mixing of younger children with older peers in one emergency center, insufficient access to the asylum procedure, absence of occupancy limits, and limited opportunities to become integrated in the community. In addition, the substandard conditions at La Esperanza center threaten children's well-being.

The Canary Islands government informed Human Rights Watch orally on June 15 that it plans to close down La Esperanza emergency center by December 2010 and move children to other centers, including the emergency centers at Tegueste and Arinaga. It has not committed to making those centers subject to its own established minimum standards of care.

*Human Rights Watch recommends that the government of the Canary Islands:*

- Close La Esperanza emergency center as a matter of priority and transfer all children to adequate care arrangements.
- End the emergency regime as a whole and bring all centers for unaccompanied minors in line with Canary Islands minimum standards and occupancy limits for centers accommodating unaccompanied migrant children.

### III. Inadequate Health Care for Migrants in Detention

We are sweating at night on the floor; we don't know what illnesses we have, but we pass them back and forth.... I asked the officer to go to the clinic, but he said, "You just need to wait for deportation." Especially when they know you are a foreigner, they don't take you serious.

—Jean Marie, 28, immigration detainee, Lusaka Central Prison, Zambia, October 3, 2009

Migrants frequently face barriers in accessing health care. Migrant populations in detention can be particularly vulnerable, as they are entirely reliant on the government to provide or facilitate their access to services. Under international law, states have an obligation to ensure medical care for all prisoners at least equivalent to that available to the general population; human rights law also requires that a core minimum of health care services be provided without discrimination on the basis of citizenship or social origin. Yet despite these protections, prisoners in Zambia and Malawi are often held in life-threatening conditions. Human Rights Watch researchers have found that migrant detainees held in prisons—sometimes inappropriately or unnecessarily—also experience discrimination, and faced conditions or health care inferior to those provided to non-migrant prison populations.

#### Malawi

In August 2010, Human Rights Watch became aware of serious health and justice concerns in the cases of approximately 230 Ethiopian migrants imprisoned in Malawi. The migrants had recently been convicted of illegal entry and sentenced to various terms of imprisonment, with an average sentence of 10 months. Reports from these prisoners suggested that their trials were conducted in a language they were unable to understand, with no translation provided, raising concerns that the trials may not have met international fair trial standards.

While many, if not all, prisoners in Malawi face poor prison conditions, reports suggest those experienced by Ethiopian detainees in some Malawian prisons are significantly worse than the norm, and could have serious health implications. For example, in one prison some 85 non-Malawian inmates were housed in a small, smoke-filled kitchen, measuring 3.4 by 3.9 meters. Some of the inmates were forced to stand for 16 hours a day while the cell was locked: one or more were forced to crouch in the chimney. Inmates reported respiratory ailments and symptoms con-

sistent with malnutrition-related disorders, but often could not report serious health problems because they did not speak the officers' language.

*Human Rights Watch has recommended that the government of Malawi:*

- Improve conditions of detention and in particular overcrowding in Malawi's prisons, ensuring that non-Malawian prisoners are held under conditions of detention equivalent to Malawian prisoners.
- Provide migrant detainees with a designated interpreter through whom they can request medical assistance and through whom they may make complaints to prison authorities empowered to address prison conditions.

## Zambia

In Zambia, immigration detainees—including administrative detainees held pending deportation—are frequently held in prisons, made to await deportation without due process, and mixed with convicted and pre-trial criminal prisoners.

Human Rights Watch, the Prisons Care and Counselling Association (PRISCCA), and the AIDS and Rights Alliance for Southern Africa (ARASA) interviewed immigration detainees in Zambian prisons and found that only 38 percent of those interviewed had ever seen a magistrate or judge, compared with 97 percent of non-immigration detainees. Many who were detained appeared to have reasonable claims to legal status. Immigration detainees are routinely told to pay for their own deportation and are held until they pay.

Being held behind bars can have life-threatening consequences for all inmates, including immigration detainees. Overcrowding, malnutrition, rampant infectious disease, grossly inadequate medical care, and routine violence at the hands of prison officers and fellow inmates make Zambian prisons death traps for inmates of all nationalities.

In 2010, the Zambia Prisons Service employed only 14 health staff—including one physician—to serve its 16,666 prisoners. Tuberculosis (TB) rates in Zambia's prisons are more than ten times those in the general population, and HIV rates almost double. Yet despite being held under the same unhealthy conditions as Zambian inmates, immigration detainees interviewed by Human Rights Watch, PRISCCA, and ARASA had been tested for both TB and HIV in detention at even lower rates than their Zambian counterparts; six percent of immigration detainees had been tested for TB compared to 23 percent of all detainees, and 21 percent of immigration detainees had been tested for HIV compared with 57 percent of all detainees.

Such a disparity is attributable to a combination of discrimination against immigration detainees in accessing care, and the fact that immigration detainees, on average, spend less time in detention than convicted detainees.

**Immigration detainees interviewed by Human Rights Watch, PRISCCA, and ARASA had been tested for both TB and HIV in detention at even lower rates than their Zambian counterparts; six percent of immigration detainees had been tested for TB compared to 23 percent of all detainees, and 21 percent of immigration detainees had been tested for HIV compared with 57 percent of all detainees.**

*Human Rights Watch recommends that the government of Zambia:*

- Boost prison-based health services to include HIV and TB testing and treatment, and ensure accessibility of such services to immigration detainees on equal terms.
- Amend the Immigration Act to require that any administrative detention for the purposes of deportation be explained on a case-by-case basis and shown to be proportionate and necessary, and include specific limits on the duration of administrative detention for the purposes of deportation.
- Ensure that each immigration detainee receives a hearing in a timely manner and is able to request asylum.

## IV. Discriminatory Treatment of Migrants

**In some of the world’s most advanced democracies, among nations that take just pride in their long history of social progressiveness, migrants are being denied their basic human rights.**

—Ban Ki-moon, UN secretary general, in an address to the Council of Europe, October 19, 2010

### France

France launched a highly-publicized campaign against Roma from Eastern European in late July 2010, moving to forcibly evict Roma (and French travelers “gens du voyage”) living in unauthorized camps and to return migrant Roma (who are mostly EU citizens) to their countries of origin. By the end of August, 128 of the camps had been destroyed, and by mid-September, over one thousand Roma from Romania and Bulgaria had been removed from France, the majority through “assisted voluntary returns” involving cash inducements and threat of deportation. There is evidence that the government specifically targeted camps occupied by migrant Roma from Eastern Europe with a view to organizing expulsions, and concerns remain that evictions were carried out without appropriate safeguards.

At time of writing, a government-sponsored immigration reform bill, already passed by the lower chamber of parliament, is under examination in the French senate. The draft law weakens migrants’ rights and contains provisions that widen the grounds for expelling EU citizens to include abuse of France’s welfare system, profiting from begging by others, and “abusive” occupation of land. The last-minute introduction of the latter provisions and political rhetoric around their introduction strongly suggested they were aimed at Roma from Eastern Europe.

The European Commission applied pressure on France in September for failing to implement correctly a 2004 EU directive on freedom of movement for EU citizens, which contains protections against summary and mass expulsions, neither of which appear to have been respected in the case of the expulsions of Roma to Romania and Bulgaria. While a positive move, the commission’s actions did not take France to task for discrimination against Roma, although it has said it will continue to monitor France’s compliance with its human rights obligations in this area. The commission’s actions prompted France to indicate it will take steps to remedy the shortcomings in national legislation.

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The immigration reform currently being debated also includes limiting the rights of appeal of migrants held in deportation detention, and withdrawing acquired citizenship from persons convicted of killing a public official, such as law enforcement officers, firefighters and judges.

*Human Rights Watch recommends that the French government:*

- Ensure all camp evictions are conducted lawfully and in compliance with international standards on evictions, including with necessary safeguards, such as appropriate advance notice, compensation for lost or damaged belongings, and alternative accommodation.
- Conduct an independent review of its “voluntary assisted return” program and the policy of expulsion of migrant Roma.
- Ensure that any expulsion measures are based on individual review and do not discriminate on the grounds of ethnicity or nationality.
- Withdraw problematic provisions of the immigration reform bill, including those targeting Roma, weakening the rights of migrants in detention, and withdrawing citizenship from naturalized French convicted of certain crimes.

## Italy

Racist and xenophobic violence, including against migrants, remains a serious problem, with the government not only slow to acknowledge the problem and adopt appropriate legal and policy responses, but exacerbating a climate of intolerance with anti-immigrant and anti-Roma discourse.

The plight of seasonal agricultural migrant workers was laid bare in January 2010, when 11 African seasonal migrant workers were seriously injured in drive-by shootings and there were mob attacks over a three-day period in Rosarno, Calabria, in south Italy. Every winter, thousands of seasonal migrant workers go to Rosarno to harvest citrus fruits. Most are hired without legal employment contracts, and work in conditions that are often exploitative, involving low pay, failure to pay, and abusive treatment.

Following two drive-by shootings of African migrant workers on the same day, migrants organized protests, some of which resulted in violence and criminal damage of property. In the most serious episode attributed to migrants, a woman and her children were forced out of their car, the woman was hit in the face with a rock, and the car set ablaze. More shootings and mob beatings targeting migrants followed, there were two attempts to run over migrants (including with a bulldozer), and an arson attack on a house occupied by migrants. In addition to the 11 seriously injured

migrants, at least 10 other migrants, 10 law enforcement officers, and 14 local residents required first aid treatment.

Over one thousand migrants left the town after the violence, most of them evacuated by law enforcement personnel. To date, three Italians have been convicted of violence against migrants during the Rosarno unrest, although none of those responsible for the targeted shootings or mob attacks have been brought to justice. Five African migrants were convicted and sentenced in late January in expedited trials for incidents during the riot after the first two drive-by shootings.

Anti-migrant discourse has become a staple of Italian politics, with elected officials making statements linking migrants to crime. This has exacerbated an existing climate of hostility, prompted in part by several high profile murders and rapes attributed to foreigners. Prime Minister Silvio Berlusconi said in January 2010 that fewer foreigners in Italy “means fewer people to swell the ranks of criminals,” while the mayor of Milan said in May 2010 that “illegal immigrants who don’t have regular work usually commit crimes.” Elected officials at the local and national level have engaged in derogatory rhetoric about Roma (many of whom are Italian citizens) and Romanians, blaming them for crime and urban blight.

*Human Rights Watch recommends that the Italian government:*

- Ensure existing criminal provisions that provide for penalty enhancement in racially-motivated crimes are utilized and fully implemented.
- Ensure that attacks on migrants, Roma, and other ethnic minorities are promptly investigated by law enforcement and those responsible are brought to justice.
- Condemn forcefully and consistently all racist and xenophobic statements, especially by public and elected officials, and make clear that racist discourse has no place in Italian society.

## South Africa

Since 2005, up to 3 million Zimbabweans have fled political persecution and economic collapse in their country and sought refuge and economic opportunities in neighboring South Africa. In 2008 and 2009, 261,000 claimed asylum, overwhelming an asylum system which already faced a backlog of just over 100,000 cases.

Responding to international calls to grant Zimbabweans in South Africa temporary special protection, South African authorities in April 2009 announced a “special dispensation” policy under which Zimbabweans would receive special permission to remain and work in South Africa. While the policy was never implemented, South Africa stopped deporting Zimbabweans that same month, ending a practice that had seen over an estimated half-a-million Zimbabweans forced back to their country since early 2007.

On September 2, 2010, due to perceived improvements in the situation in Zimbabwe, South African authorities announced an end to the special dispensation policy, and confirmed deportations would resume on January 1, 2011. However, the September 2 decision allows Zimbabweans (asylum seekers, the undocumented, and those with fraudulent South African identity papers) currently working, studying, or operating a business in South Africa to regularize their status by December 31, 2010. To qualify, applicants must hold a Zimbabwean passport, which they can obtain from Zimbabwean authorities in South Africa, and prove they have been in the country since at least May 31, 2010.

Human Rights Watch and other organizations have voiced concern that four months is insufficient time to ensure that all Zimbabweans wishing to apply can do so, and that those who miss the deadline will be caught up in South Africa's likely resumption of mass deportations of Zimbabweans in early 2011.

### *Impact on Asylum System and Genuine Refugees*

Human Rights Watch is also concerned that lack of additional resources for the asylum system and inadequate safeguards against police abuses means resumed deportations of Zimbabweans will lead to more violations of asylum seekers' rights.

Once deportations have resumed, Zimbabweans will have only two options to lawfully enter and remain in South Africa: apply for asylum, or apply for a temporary residence permit under the Immigration Rules' work, study, and business provisions. The majority who wish to enter or remain in South Africa will be unable to apply for such a residency permit due to a combination of permit fees, lack of skills, lack of Zimbabwean identity documents, and lack of sponsorship by South African employers or educational institutions. For most Zimbabweans, the only way to remain legally in South Africa will be to claim asylum, which guarantees them a right to remain in the country until the claim has been resolved.

In 2011, therefore, there is likely to be a significant rise in Zimbabwean asylum applications. South Africa's asylum system—already buckling under the strain of hundreds of thousands of Zimbabweans' claims and tens of thousands of claims by other nationalities—will be under further pressure. As documented in our June 2008 report, "Neighbors in Need," this will almost certainly lead to even less access to the asylum system, resulting in police arrests, prolonged detention, unlawful deportation of genuine refugees, and a drop in the quality and timeliness of decisions for asylum seekers in genuine need of international protection.

### *Recommendations to the South African government:*

- Extend the deadline for Zimbabweans to register in South Africa until at least June 1, 2011, to ensure that those wishing to apply have enough time to do so; support the Zimbabwean authorities in South Africa to rapidly issue passports to all Zimbabweans wishing to register.

- In light of the likely dramatic increase in Zimbabwean asylum applications following resumed deportations, take all necessary steps to ensure that anyone wishing to claim asylum in South Africa can easily lodge their claim and is guaranteed protection from police arrest, detention, and deportation.

## United States

### *Federal Immigration Law*

Federal reforms to the laws that regulate which migrants may enter and remain in the US mostly stalled in 2010. Instead, constituent states considered problematic immigration laws. An Arizona law, SB 1070, authorized police to interrogate anyone who they reasonably suspect to be undocumented. Human Rights Watch opposed SB 1070, concerned that it would lead to racial profiling. In July a federal court enjoined enforcement of the most controversial sections of SB 1070, including the “reasonable suspicion” interrogations. The court’s decision is under appeal.

### *Federal Detention Law and Policy*

October 2010 marked one year since the US Immigration and Customs Enforcement agency (ICE) published a report calling for replacing the current punitive approach to detaining immigrants with a “civil detention model.”

The agency has been working on programmatic steps to achieve that goal. In 2010, it took the positive step of establishing a computerized detainee locator system, enabling attorneys, government officials, and family members to locate an immigrant held in one of around 300 detention facilities throughout the country. However, several other key reforms that Human Rights Watch has called for based on its research are stalled or need additional effort by the agency. Aspects of immigration detention procedures needing prompt reform include:

### *General Detention Reform*

While the ICE detainee locator system is an important first step, much more needs to be done to ensure that ICE uses its detention facilities only as necessary. In 2009, ICE held between 380,000 and 442,000 people in approximately 300 facilities, at an annual cost of US\$1.7 billion. These people are not imprisoned as punishment for criminal offenses, but rather are detained for civil immigration violations. Many are deprived of their liberty for months, and even years.

### *Treatment of Detainees with Mental Disabilities*

Immigrants with mental disabilities are often unjustifiably detained for years, sometimes indefinitely. They also must undergo deportation hearings without the right to a government-appointed attorney, which means approximately 60 percent

**Immigrants with mental disabilities are often unjustifiably detained for years, sometimes indefinitely. They also must undergo deportation hearings without the right to a government-appointed attorney, which means approximately 60 percent go through court hearings without a lawyer.**

go through court hearings without a lawyer. Human Rights Watch has documented numerous cases in which people with mental disabilities were prevented from making claims against deportation—including claims of US citizenship—because they were unable to represent themselves. Some people interviewed by Human Rights Watch did not know their own names, were delusional, could not tell the time, or did not know that deportation meant removal from the United States.

### *Sexual Violence against Female Detainees*

Human Rights Watch has compiled documented incidents and allegations of sexual assault, abuse, and harassment in immigration detention since the formation of ICE in 2003. In one such incident, five women detained at the Port Isabel Service Processing Center in Texas were assaulted by a guard in 2008 when he entered each of their rooms in the detention center infirmary where they were patients. He ordered them to undress and touched intimate parts of their bodies. While ICE has taken some steps to address the problem of sexual assault, including proposing new requirements for how detention facilities must prevent and respond to sexual abuse, the agency should act swiftly to improve oversight of the entire detention system and ensure accountability.

### *Detainee Transfers*

On February 22, ICE wrote to Human Rights Watch, announcing the agency's intention to "minimize the number of detainee transfers to the greatest extent possible." This important commitment came after Human Rights Watch raised serious concerns about ICE's policy of transferring large numbers of immigrant detainees to facilities far from where they lived. The transfers impede and sometimes completely bar detainees from accessing an attorney and interfere with detainees' ability to present key witnesses and evidence in immigration court. Sometimes transfers completely alter the law applied to their deportation or asylum case, for example, the act of sending a detainee from one jurisdiction to another can determine whether she may ask an immigration judge to allow her to remain in the United States.

In light of the 1.6 million detainee transfers recorded between 1997 and 2006, and data from 2008 that show that a majority of detainees were transferred two or more times, ICE's statement of intention is a positive step. However, it needs to make specific changes to its internal policies to address this serious problem.

### *Human Rights Watch recommends that the US government:*

- Ensure that immigrants are not detained unnecessarily, with particular attention to preventing the detention of persons with mental disabilities without justification, and provide appointed counsel for non-citizens with mental disabilities in immigration proceedings.

- Establish legally enforceable standards to govern conditions of detention, including access to medical care; reform policies to limit the transfer of detainees away from counsel and family; and improve accountability and oversight mechanisms in the detention system to prevent and respond to abuses.
- Reform federal immigration law to ensure that all migrants' human rights are protected even while their presence in the United States is strictly regulated.

## V. Migration and Trafficking

When I could not bring the quota, the marabout beat me—even if I lacked 5 CFA (\$0.01), he beat me. It was always the marabout himself. He took out the electric cable and we went to the room. I stood there and ... he hit me over and over, generally on the back but at times he missed and hit my head. I still have marks on my back from the beatings.

—Former student in a residential Quranic school,<sup>13</sup> describing being forced to beg, Saint-Louis, Dakar, Senegal, November 25, 2009

### Côte d'Ivoire

In Côte d'Ivoire, as elsewhere in West Africa, women and girls are trafficked from Nigeria for forced prostitution. Most appear to come from Delta and Edo states in Nigeria and are lured into migrating with promises of gainful employment in West Africa or Europe. Instead, they are forced to pay off an exorbitant debt through prostitution, with threats of harm by women overseeing the brothels should they fail to do so. The problem appears to be rising, with the Nigerian embassy repatriating scores of victims this year alone. Côte d'Ivoire has failed to ratify the UN Trafficking Protocol and likewise has no domestic legislation against trafficking, resulting in serious legislative deficiencies to tackle the problem.

*Human Rights Watch recommends that the government of Côte d'Ivoire:*

- Sign and ratify the UN Trafficking Protocol, and pass a domestic anti-trafficking law that provides a framework for combating trafficking, including trafficking for the purpose of prostitution, in accordance with international standards.
- Conduct a thorough and comprehensive national investigation into the trafficking of West African women and girls for the purposes of prostitution, in order to determine the scale of the problem, the main trafficking routes, and the conditions and threats under which the women and girls live.
- Under the current domestic legal framework, arrest and prosecute those engaged in recruiting children for prostitution and those who force women and girls into prostitution.

## Kuwait and Saudi Arabia

More than two million migrant domestic workers are employed in Saudi Arabia and Kuwait and are at high risk of abuse and exploitation due to gaps in labor laws and restrictive immigration practices. The combination of deceptive recruitment practices in home countries, indebtedness due to placement fees, confinement to the workplace upon employment, withholding of passports, and abuses summarized earlier in this report, can contribute to situations of forced labor, trafficking, and slavery-like conditions.

In May 2010, the Nepalese embassy in Riyadh confirmed several cases in which Kuwaiti employers hired Nepalese domestic workers, illegally transported them to Saudi Arabia against their will, and forced them to work for Saudi families. The Saudi families typically paid the Kuwaitis fees for trafficking the workers, and when finished employing them, often abandoned them at the Nepalese embassy to avoid paying fines for illegal hiring. Although many of the Nepalese women arriving at the embassy appeared to have suffered abuse, including sexual abuse, diplomats said that Saudi authorities, while typically facilitating repatriation of these domestic workers, did not provide them with specialized services or investigate the Saudi employers who illegally employed or abused them.

Saudi Arabia passed an anti-trafficking law in July 2009. The law prohibits all forms of trafficking, and includes specific provisions addressing migrant workers, including prohibiting sale of work permits, receiving commissions in return for employment, and stiffer penalties “if the crime was committed across national borders.” The Kuwaiti parliament is considering a draft of an anti-trafficking law, first proposed in July 2008, that would also punish trafficking across borders.

*Human Rights Watch recommends that the governments of Kuwait and Saudi Arabia:*

- Cooperate to prevent, monitor, and prosecute cases of cross-border trafficking of migrants.
- Institute and enforce comprehensive legal frameworks to combat human trafficking, including implementation of Saudi Arabia’s anti-trafficking law, adoption of such a law by Kuwait, and reforms to labor and immigration laws.
- Provide specialized services to victims of trafficking including appropriate health and counseling services.

## Senegal and Guinea-Bissau

In Senegal, at least 50,000 young boys live in conditions that amount to a modern form of slavery. They generally come from small villages and are sent by parents to



**In Senegal, at least 50,000 young boys live in conditions that amount to a modern form of slavery. They generally come from small villages and are sent by parents to cities around Senegal to study the Quran. However, many of the men who operate these residential schools offer little education and instead force the boys to beg for up to ten hours a day.**

cities around Senegal to study the Quran. However, many of the men who operate these residential schools offer little education and instead force the boys to beg for up to ten hours a day. The boys must return a daily demanded sum or face severe physical abuse. While the boys suffer from malnutrition and frequent diseases, many of the teachers live in relative affluence.

Many boys are trafficked internally within Senegal or from neighboring Guinea-Bissau, Guinea, the Gambia, Mali, and Mauritania. In 2005, Senegal passed a law that criminalized trafficking and forcing another person to beg for financial gain; in September 2010, one month after President Abdoulaye Wade announced a ban on all forms of begging, the country applied the law for the first time, arresting and prosecuting nine men who were exploiting young boys under their de facto guardianship through forced begging. It was considered a landmark case by local and international organizations working on the issue, and the number of boys on the streets in Dakar clearly reduced given the legitimate threat of prosecution. However, only a month later President Wade reversed course and announced that the ban on begging would no longer be applied—and the number of boys forced to beg on the street appeared to return to its previous ubiquity.

As of October 2010, Guinea-Bissau, the neighboring country that sends the greatest number of these young boys to Senegal, had no law against trafficking. However, a draft law that would bring the country's legislation in line with international obligations is set to appear before the National Assembly in early 2011. Border officials, children's rights workers, and police said the law was essential to stem the flood of boys who are taken across the border each year to be exploited in Senegal.

Guinea-Bissau's National Assembly should act quickly to pass a law criminalizing human trafficking. The draft law, which the Assembly recently placed on its agenda for its October-November session, would empower police, judicial officials, and civil society to improve protection of the country's children, thousands of whom are trafficked from Guinea-Bissau to Senegal and other countries each year.

*Human Rights Watch recommends that the government of Senegal:*

- Resume prosecutions of those who traffic and abuse boys through forced begging. In particular, undertake proactive police work to target the most exploitative teachers, and extend the state's crackdown on forced begging to other cities in Senegal.
- Strengthen and expand the mechanisms in place to temporarily house, clothe, and feed boys recovered from abusive Quranic schools, and to return them to their families.
- Establish minimum standards in Quranic schools that protect a child's right to education, health, and physical and mental development, and require all such

schools to be registered and periodically inspected by state officials to ensure they conform to such standards.

*Human Rights Watch recommends that the government of Guinea-Bissau:*

- Immediately enact the draft legislation that criminalizes child trafficking, and enforce its provisions through the arrest and prosecution of individuals who traffic boys to Senegal under the guise of religious education.
- Increase the capacity of civil and border police units, particularly in the Bafatá and Gabú regions, to deter child trafficking and other illegal cross-border movements of children.

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*Three talibés ask a taxi driver for money on a street in the Senegalese capital, Dakar. They each carry a tomato can to collect money, rice, and sugar to bring back to their Quranic teacher.*

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*A migrant worker from Kyrgyzstan picks tobacco leaves near the village of Malybai, Kazakhstan.*

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*Gyanu, 21, came from Nepal to work as a domestic worker in Kuwait. After leaving her employers, she sought refuge inside a makeshift shelter operated from a private house on the outskirts of Kuwait City.*

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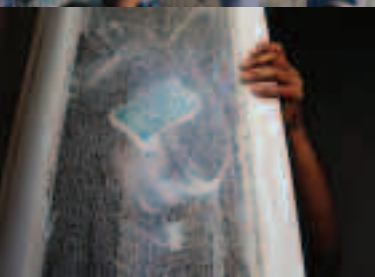
*Immigrant laborers from Mexico and Honduras work to rebuild a home damaged by Hurricane Katrina on April 27, 2006, in New Orleans.*

© 2006 Mario Tama/Getty Images



*A Burmese migrant worker waits as Thai immigration officers check documentation during a raid on his worksite near Chiang Mai.*

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*A Sri Lankan woman washes the windows of her employers' home in Beirut.*

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**Human Rights Watch conducted fact-finding investigations throughout 2010, and released 12 in-depth research reports and dozens of public statements on human rights abuses against migrants. This report compiles the main findings and recommendations based on this research and ongoing monitoring in Côte d'Ivoire, Egypt, France, Greece, Guinea-Bissau, Hungary, Indonesia, Israel, Italy, Libya, Malawi, Malaysia, Kazakhstan, Kuwait, Lebanon, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Thailand, Ukraine, the United Arab Emirates, the United States, and Zambia.**

**The report includes documentation of abuses against migrant workers, primarily in low-wage sectors such as domestic work, agriculture, and construction; violations of the right to health while in detention, including access to HIV and TB testing and treatment; limited investigations into abuse against migrants; trafficking; and overly restrictive entry, screening, and immigration detention policies that expose migrants to abuse, extortion, and violence at border crossings.**

***Rights on the Line* includes detailed recommendations to governments on reforms needed to prevent and respond to the array of human rights abuses against migrants.**