

Analysis of the Mobility Partnership signed between the
Kingdom of Morocco, the European Union and nine Member
States on 7 June 2013

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Executive Summary

In the context of the Arab Spring and the migratory fluxes in the Southern Mediterranean, the European Commission established in 2011 a “Dialogue on migration, mobility and security.” This cooperation, which falls within the wider scope of the European Union’s (EU) Neighbourhood Policy, heralded the launch of the so-called Mobility Partnerships between it and its Southern neighbours. On 7 June 2013, Morocco became the first Mediterranean country to sign a joint declaration with the European Union establishing a Mobility Partnership.

This long-term cooperation framework is based on the same objectives as the EU’s “global approach to migration and mobility”, which are as follows: encouraging legal migration; effective combating of irregular migration; maximising the positive effect of migration on development; and the promotion of, and respect for, refugee rights. In this document, the Euro-Mediterranean Human Rights Network (EMHRN) examines the priorities defined and activities put forward by the signatory parties in light of relevant asylum and migration-related legislation and the current situation of migrants and refugees in Morocco.

The joint Declaration which establishes the Partnership does not impose binding legal obligations on the parties; implementation of the Partnership is therefore dependent on the good will of and effort made by the EU, its Member States and Morocco.

However, the Network notes that strategies to reinforce and implement instruments to combat irregular migration dominate the spirit of the proposal. The parties, by signing the Partnership, commit to signing a readmission agreement, by which Morocco would accept readmitting not only its citizens but also those of third party states who have transited through its territory (in majority sub-Saharan Africans) and who are caught irregularly entering or residing in the EU. The parties also commit to establishing a working agreement between Morocco and the European border agency Frontex.

In view of the current situation in Morocco, a readmission agreement would entail serious risks in terms of respect for the rights of migrants and refugees, and would expose them to the risk of inhuman and degrading treatment. In fact, both civil society organisations in Morocco as well as the Moroccan National Council for Human Rights have denounced the fate of sub-Saharans “blocked” in Morocco. The criminalisation of irregular immigration, as contained in the Moroccan Law 02-03, the absence of an effective asylum system and the xenophobic climate hostile to migrants, which has gone so far as to cause the death of several migrants in recent years, are all real issues that the signatory parties cannot ignore.

The objective of the EU’s border surveillance systems is to prevent migrants and refugees from crossing the borders into Europe. Far from ensuring that protection needs are met, particularly for the most vulnerable, these measures in themselves entail a risk that states may breach their international obligations and violate fundamental rights: the principle of non-refoulement, the right to seek asylum and the right of every person to leave a country, including their own, as recently noted by the Council of Europe. Furthermore, they exacerbate violent practices which have been used by Moroccan authorities in their so-called “hunt for foreigners.”

While the European Union and Morocco have committed to encouraging the mobility of Moroccan citizens, it should be noted that the proposals above all reflect the interests of the EU to facilitate entrance and residence only for highly skilled persons.

Further, the parties' general commitment to improving conditions for migrants and refugees is not strong enough in view of current events in Morocco. Despite the launch of a regularisation campaign for certain categories of irregular migrants and the announcement of a "new migration policy", Morocco still faces many challenges before being able to guarantee the dignity and the human rights of migrants and refugees on its territory. The Network fears that actions to combat irregular migration immigration will be prioritised and implemented at the expense of other themes included in the Partnership and, more worryingly, at the expense of the rights of migrants and refugees.

Finally, the EMHRN disapproves of the donor/beneficiary logic governing the Partnership and the EU's use of a "bargaining chip", by which European economic aid and visa facilitation are conditioned on Morocco's ability to effectively control migration flows.

In this context, the EMHRN invites the European Union, its Member States and Morocco to translate their commitment to promoting and protecting human rights into tangible actions, and to encourage true mobility for all Moroccan and third country nationals residing in Morocco. Only the Mobility Partnership's activities that unconditionally respect the rights of migrants and refugees should be implemented.

Recommendations

- With regards to the implementation of the Mobility Partnership: guarantee the involvement of civil society organisations in Morocco, in particular those who defend and assist migrants, as well as of international non-governmental organisations, in negotiations concerning the implementation of the Mobility Partnership; refrain from implementing actions which do not fully respect the rights of migrants and refugees, in particular the readmission agreement;
- To the European Union: make deep-rooted changes to its migration policies, currently based on an approach of securing borders and externalising migration control; implement policies which reinforce and protect human rights within its territory and in third party countries;
- To the Moroccan authorities: implement the recommendations of the UN Committee on Rights of Migrant Workers and of the Moroccan National Human Rights Council in the framework of the on-going reforms for a new asylum and immigration policy in accordance with international law; guarantee the rights of migrants and refugees, in particular by ending impunity for perpetrators of police violence against migrants, as well as putting an end to practices of *refoulement* and expulsions at borders.

Introduction: The Mobility Partnership within the framework of EU-Morocco cooperation

The creation of an area of free circulation, security and justice within the European Union (EU) has been counterbalanced by the strengthening of its external borders. It is with this particular aim in mind that the EU has, for several years, undertaken discussions and negotiations with Morocco (for example, through its Association Agreement of 2000, Action Plan of 2005, Advanced Status of 2008). Due to Morocco's geographical position, migration issues have represented a cornerstone of the partnership agreements it has negotiated with the EU.

The main lines of the new cooperation the EU hopes to develop with its southern Mediterranean neighbours were first presented in the European Commission's communication, "A dialogue for migration, mobility and security with the southern Mediterranean countries".¹ They also form the basis of the "Mobility Partnerships" envisaged under the new European Neighbourhood Policy (ENP).² According to the EU "only those partners willing to embark on political reforms and to respect the shared universal values of human rights, democracy and the rule of law have been offered the most rewarding aspects of the EU policy, notably economic integration (...) as well as a EU financial assistance"³. This is the principle of the EU's new "more for more" principle.

On 7 June, 2013, after lengthy negotiations,⁴ Morocco became the first Mediterranean country to sign a "Mobility Partnership" with the EU and nine of its Member States.⁵ According to the European Commission, this partnership aims "to ensure that the movement of persons is managed as effectively as possible" and to further develop migration cooperation between the EU and Morocco. However, the terms outlined in the Joint Declaration place more emphasis on the goal of "well-managed migration" than the development of mobility: the call for Morocco to deploy the necessary instruments to fight irregular migration as well as the the proposed readmission agreement between the EU and Morocco⁶ are significant in this respect.

¹ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: "A dialogue for migration, mobility and security with the Southern Mediterranean countries", Brussels, 24 May 2011, COM (2011) 292/3: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0292:FIN:EN:PDF>

² Joint Communication of the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission, "A new response to a changing neighbourhood; A review of European Neighbourhood Policy", Brussels, 25 May 2011, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

³ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Delivering on the new European Neighbourhood Policy", Brussels, 15th May 2012, http://ec.europa.eu/world/enp/docs/2012_enp_pack/delivering_new_enp_en.pdf

⁴ European Commission Press Release, 7 June 2013 Brussels, http://europa.eu/rapid/press-release_IP-13-513_en.htm

⁵ The nine signatory European Member States of the Joint Declaration are Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

⁶ Discussions on this topic have been under way since September 2000, Readmission Agreements, Brussels, 5 October 2005, http://europa.eu/rapid/press-release_MEMO-05-351_en.htm

The parties have agreed on 46 points following four operational priorities:

- 1) mobility, regular immigration and integration
- 2) prevention and fight against irregular immigration, human trafficking, border management
- 3) migration and development
- 4) international protection

In the annex of the declaration, the EU and each of the nine signatory Member States define actions that they commit to organising, financing or co-financing in the context of the four objectives. This annex "is intended to be an evolving one", the activities are therefore listed as a guide and their implementation will ultimately depend on the commitment of the participating states, who intend to meet at least twice a year.

At the beginning of September 2013, the National Council for Human Rights (CNDH in French) of the Kingdom of Morocco presented a thematic report to the King, entitled "*Foreigners and human rights in Morocco: for a radically new asylum and migration policy.*"⁷ The CNDH presents a highly critical assessment of the situation of migrants and refugees in Morocco and urges the government to redefine a migration policy that would "protect human rights". The Council calls upon all civil society partners, international organisations and partner countries of Morocco, in particular those in Europe, as well as the EU, to support these reforms. In mid-September, the United Nations Committee on Migrant Workers, for its part, made comments along a similar line.⁸

The EMHRN wishes to recall its position on the signing of such agreements by the European Union,⁹ and of the preconditions which must be in place for the implementation of such a partnership in terms of the respect for the human rights of migrants and refugees on both sides of the Mediterranean. In this context the Network regrets that there has been a lack of clear and effective support by the EU with regards to the establishment of Morocco's new migration policies, and invites the EU to support the upcoming legislative reforms and the regularisation process of certain categories of irregular migrants already underway.

The following document presents an analysis in three parts of the different priorities of the Joint Declaration, taking care to highlight the most concerning aspects with regards to the respect of human rights. However, it is important to mention that the Mobility Partnership is a statement of political intent and the activities proposed by the concerned parties are not legally binding. The EMHRN therefore addresses at the end of this paper its recommendations to the European Union, signatory Member States and the Kingdom of Morocco, with regard to the implementation only of the activities outlined in the Partnership which fully respect the rights of migrants and refugees.

⁷ Conclusions and recommendations of the report: "Foreigners and human rights in Morocco: for a radically new asylum and migration policy" NCHR, September 2013, http://www.ccdh.org.ma/IMG/pdf/CNDH_report_-_migration_in_Morocco.pdf

⁸ Consideration of Morocco's initial report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers, <http://www.gadem-asso.org/Examen-du-Rapport-initial-du-Maroc>

⁹ EU Mobility Partnerships with Tunisia and Morocco: Guarantees for the respect of rights must be a prerequisite to any agreement, EMHRN, 4 July 2012, http://www.euromedrights.org/eng/wp-content/uploads/2012/07/Mobility-Partnerships_FINAL_ENG.pdf/

1. Border management and control of irregular migration

In the preamble of the Declaration establishing the Mobility Partnership, the states stress that Morocco – a country of origin, transit and increasingly a final destination for migrants – has engaged in "continued efforts to tackle migration routes, including maritime routes, to fight irregular immigration and combat cross-border networks involved in the trafficking and smuggling of human beings".

The EU therefore wishes to continue supporting Morocco in order to "enhance its capacity at the legislative, institutional and operational level" in this area. For this purpose, two types of activities are highlighted: cooperation in the field of readmission and the exchange of information and good practices, in particular through the conclusion of a "Working Agreement" between Morocco and the European border agency Frontex.¹⁰

These agreements should in principle respect all fundamental freedoms and rights of migrants and refugees in accordance with the 1951 United Nations Convention relating to the status of refugees and its 1967 protocol, as well as the fundamental right to leave a country, including one's own.¹¹ However certain practices proposed within the scope of the Mobility Partnership are a serious challenge to the respect of these rights.

1.1 Readmission agreements versus the respect of fundamental rights

For the European Union, readmission agreements are part of its broader strategy to combat irregular migration, whereby migration control is increasingly externalised and deportations to "partner" countries facilitated. These partners are, in fact, called upon to "readmit" not only their own nationals who are caught residing or entering the EU irregularly, but also non-citizens who have merely transited through their territory.

Negotiations between the EU and Morocco on a readmission agreement date back to September 2000 and have always provoked strong criticism from the EMHRN and civil society organisations active in the field of migration. Through financial and other incentives, the EU is in fact encouraging Morocco to exercise greater control over its citizens and those of other states, seen as "undesirable" in Europe.

¹⁰ As a reminder, this agency is responsible for coordinating, harmonising and pooling the resources of EU Member States for the management of their external borders. FRONTEX website: <http://www.frontex.europa.eu/> See also the website of the civil society's campaign about the agency: <http://www.frontexit.org/>

¹¹ Guaranteed in paragraph 2 of article 13 of the Universal Declaration of Human Rights, stated specifically in paragraph 2 of article 12 of the International Covenant on Civil and Political Rights (hereinafter the Covenant), in article 2 of Protocol n4 to the European Convention on Human Rights (ECHR), and in the 1990 Convention on Protection of the Rights of Migrant Workers and Members of their Family, ratified by Morocco in 1993.

Legislation and political climate hostile to migrants

The current partnership, presented as "reconciling the need for operational efficiency with the requirement to observe the fundamental rights of migrants,"¹² is not less disturbing as it includes provisions relating to the readmission of third country nationals, "mainly sub-Saharan Africans," as pointed out by the Netherlands.¹³ This, despite article 5 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, which prohibits racial discrimination in the enjoyment of the right to leave a country.¹⁴

The Law of November 2003 (hereinafter Law 02-03) on the entry and stay of foreigners in Morocco and irregular emigration and immigration, as well as the policies which followed from it, led to a hardening of Morocco's migration policy and are partly responsible for exacerbating the country's xenophobic climate. The law introduced a number of provisions penalising irregular immigration, stay and emigration with fines and imprisonment. This, in particular, is a violation of the right of each and every person "to leave any country, including his own". It is important to recall that while the right to move freely within the territory of a state, as stated in Article 12, paragraph 1 of the International Covenant on Civil and Political Rights, refers to persons *legally* residing within the territory of a State, paragraph 2 explicitly specifies that irregular migrants – despite their status - also retain the right to leave the territory.

Moroccan authorities have deployed significant resources to track irregular migrants on their soil. Migrants are frequently stopped for identity checks and taken to the police station, even when they present valid documents. This repression is also aimed at active members of civil society and is part of an approach of intimidation towards defenders of migrant rights.¹⁵

Round ups have increased over the last two years, during which the police and the gendarmerie have, according to the Ministry of the Interior, made 31,000 arrests. In reality, however, the same people are arrested several times, in order to "inflate" police figures. Marc Fawe, Head of United Nations High Commissioner for Refugees' (UNHCR) external relations in Rabat indicated in June 2013 that more and more refugees were being arrested and then released – a practice which was particularly prominent in the north of the country.¹⁶

¹² "Joint Declaration establishing a mobility partnership between the Kingdom of Morocco and the European Union and its Member States", http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130607_declaration_conjointe-maroc_eu_version_3_6_13_en.pdf

¹³ Part 1 of the Annex to the Joint Declaration: New Projects at 25/03/2013, Item 13 "To resume negotiations between the EU and Morocco in order to conclude a balanced readmission agreement, with provisions relating to third-country nationals as well as accompanying measures and reconciling the need for operational efficiency with the requirement to observe the fundamental rights of migrants", *Ibid.*

¹⁴ "The Right to Leave a Country", Issue paper published by the Council of Europe Commissioner for Human Rights, consulted 25 November 2013, <https://wcd.coe.int/ViewDoc.jsp?id=2130187>

¹⁵ Serge Lebrun Gbakpoma, Secretary of the Council of sub-Saharan migrants in Morocco, announced his arbitrary arrest of 26 August 2013 in Rabat on the Migreurop list dated 29 August 2013, and one can recall the arrest of Camara Laye, coordinator of the Council of sub-Saharan migrants in Morocco (CMSM) in October 2012.

¹⁶ In 2011, 80 refugees were arrested and then released. In 2012, 230 refugees were arrested and for the first quarter of 2013, UNHCR reports more than 200 arrests, "Morocco: Asylum applications have doubled in a year", Julie Chaudier, Yabiladi, 21 June 2013, <http://www.yabiladi.com/articles/details/18045/maroc-demands-d-asile-double.html>

This "hunt for foreigners"¹⁷ has devastated the daily lives of migrants. Despite the reforms towards a more humane migration policy, Moroccan authorities have yet to put a complete stop to these practices. In addition, while the detention and expulsion of foreigners is theoretically regulated by law, the discretionary power of the Moroccan authorities is broad in the implementation of these measures.¹⁸ Provisions to protect the rights of migrants and refugees (right to an interpreter, lawyer, and appeal) are not guaranteed and never applied.

Added to this is the fact that, although Article 29 of the Law 02-03, prohibits the *refoulement* of the most vulnerable people, mass deportations have been common practice. In its January 2013 publication, for example, Doctors Without Borders reported of arrests - followed by deportations to the border - of refugees, minors, pregnant women and injured or sick people.¹⁹

In addition to the fact that this creates an aggravated risk of "chain refoulement" to Algeria and Mauritania, —who then become responsible for processing the deportee and are also known for criminalising irregular migration—, the methods used during deportation procedures are universally deemed unacceptable.

Migrants have been brought to the land border with Algeria — despite this border being closed— or Mauritania, where they are abandoned, often at night and without provisions. Migrants have reported being forced to cross the border, where they then face threats and abuse by the Algerian authorities, who in turn push them to return to Morocco. They are exposed to groups of criminals operating along the border and to smuggling and trafficking networks, acting with complete impunity and well aware that the Moroccan government pays little attention to the fate suffered by these "illegal" migrants.

Civil society organisations regularly denounce violence against migrants by the security forces, who are not only guilty of abuse, but commit these crimes with full impunity. A campaign —"Stop violence at the borders!"²⁰ — was launched by several associations in memory of Clément, a young Cameroonian arrested during an attempt to cross the border in Melilla and who was beaten to death by security forces.²¹

Violence against irregular migrants, as well as the exploitation — especially of migrant women - by employers for whom they work illegally, is not addressed by the signatory States and the EU in the Joint Declaration, even though the issue of irregular migrants and their integration in Morocco is an inherent issue in the Mobility Partnership. In fact, only the organisation of "voluntary returns" to countries of origin appears to count.²²

¹⁷"In Morocco, the hunt for foreigners kills, and while this is going on, the EU negotiates and keeps quiet" Migreurop Press release, 2 August 2013, <http://www.migreurop.org/article2272.html?lang=fr>

¹⁸ "Migration and Asylum in the Maghreb. Fact sheet: Morocco", EMHRN, Copenhagen, December 2012, pp. 35-41, http://www.euromedrights.org/eng/wp-content/uploads/2012/12/EMHRN-Factsheet-Morocco_EN_15JAN2013_WEB.pdf

¹⁹ "Violence, Vulnerability and Migration: Trapped at the gates of Europe," Report on Sub-Saharan illegal migrants in Morocco, MSF, March 2013, http://www2.ohchr.org/english/bodies/cmw/docs/ngos/MSF_Morocco18_en.pdf

²⁰ "MOROCCO - Launch of the number 9 campaign Stop violence at the borders! ", Press release of the Associations: La Cimade, Alecma, Gadem, FMAS and AMDH, 25 June 2013, <http://www.lacimade.org/nouvelles/4476-MAROC---Lancement-de-la-campagne-num-ro-9---Stop-aux-violences-aux-fronti-res>

²¹ "Increase in repression of migrants in Morocco A violence we believed was over," Joint information note on the increasing repression against migrants in Morocco in September 2012, <http://www.gadem-asso.org/Recrudescence-de-la-repression,147>

²² Part 1 of the Annex to the Joint Declaration: New Projects at 25/03/2013, Point 18 and 20 "With respect for migrants' dignity and fundamental rights, to support the development of initiatives facilitating the voluntary return and socio-economic

In this respect, the announcement in early November 2013 of a regularisation campaign by the Moroccan government has been welcomed as a positive sign of the country's new migration and integration policy.²³ However, the challenges presented by this regularisation, in terms of capacity and resources needed, is undeniable. In this context, the active support of the EU in implementing this regularisation should therefore constitute a priority for the signatory states of the Mobility Partnership.

In this general climate, the EMHRN is particularly concerned about the lack of guarantees for those most vulnerable, in particular migrant women and unaccompanied minors. While the Partnership also includes carrying out awareness campaigns²⁴ through programmes such as SALEMM, aimed at informing minors on the risks of irregular immigration, returns to Morocco also concern unaccompanied minors of sub-Saharan origin and there are legitimate fears that these initiatives are insufficient to ensure the best interests of the child, as noted by Human Rights Watch.²⁵

Finally, the EMHRN recalls that among the migrants readmitted by the EU, there are also "failed" asylum seekers; and their return would be to a country which, for the moment, does not have a system of reviewing applications and offering protection in accordance with the principles and conditions outlined by the Geneva Convention (see § 2).

Lack of guarantees in readmission procedures

In terms of the European Union, the conditions under which readmission operations to third countries are carried out have also stirred up significant criticism from both non-governmental organisations (NGOs) and the European Parliament.²⁶

In some cases, the practice can be likened to *refoulement*, a practice deemed incompatible with the prohibition of collective expulsions as stated in article 4 of the Protocol to the ECHR. In Europe, such practices are regularly denounced by NGOs. In September 2012, 81 sub-Saharan migrants, including women and children, were expelled from Spanish territory to Morocco by a joint operation of the Spanish and Moroccan security forces.²⁷ More recently, in July 2013, a decision of the European Court of Human

reintegration of illegal migrants, both for Moroccan nationals residing in the EU and for third-country nationals residing in Morocco." *Op.cit.*

²³ "Régularisation des sans-papiers : Une association de défense des migrants salue l'effort du Maroc avec quelques inquiétudes," Yabiladi, 14 November 2013, <http://www.yabiladi.com/articles/details/20912/regularisation-sans-papiers-association-defense.html>

²⁴ Part 2 of the Annex: "Projects in progress at 25/03/2013" point no.18, *Op. cit.*

²⁵ PICUM Quarterly information, April-June http://picum.org/picum.org/uploads/file_/PICUM%20Quarterly%20April-June%202013.pdf

²⁶ Open readmission agreements letter to the European Council and the European Commission, <http://www.migreurop.org/article1350.html?lang=en>

²⁷ "Joint Moroccan and Spanish forces remove 81 migrants from an island near Al Hoceima," *lemag*, 4 September, http://www.lemag.ma/Une-force-mixte-maroco-espagnole-deloge-81-migrants-d-un-ilot-pres-de-Al-Hoceima_a63319.html

Rights prevents *in extremis* the return of migrants to Libya, where violence against foreigners of sub-Saharan origin is such that they inevitably face degrading and inhuman living conditions.²⁸

There have also been several cases where, during readmission procedures, people have been denied the right to file an asylum claim before being returned, and where interrogations have at times been carried out without the help of interpreters, limiting the effective possibility of detained persons to express themselves and exercise their rights.²⁹

Similarly, accelerated readmission procedures, often included in these agreements, lead to a very rough assessment of the protection needs of those who have entered irregularly into the country³⁰ and *de facto* limit the possibility of applying for asylum in the EU, in violation of the Geneva Convention.³¹

Finally, the European Commission itself admits that there is virtually no means of monitoring readmission agreements and their *ex-post* evaluation.³² Their legitimacy cannot therefore be based on their effectiveness.

Furthermore, in the context of reinforced attempts to secure borders, detention is the preferred solution of EU Member States. Although EU financing of detention centres in Morocco has not yet been announced, the signature of a readmission agreement may be accompanied by such measures in order to prevent those readmitted from leaving Morocco again. Detention of foreigners is, as a principal, condemnable for its inhuman and degrading nature.

In this context and on the basis of the foregoing observations, the EMHRN can therefore only reiterate its deep reservations about the conclusion of a readmission agreement between the EU and its Member States on the one hand, and Morocco on the other.

²⁸ECHR prevents the forced return of migrants to Libya, <http://www.boats4people.org/index.php/fr/actualite/actuarticles/610-malte-refoulement-cedh-ong>

²⁹ For example, Human Rights Watch, in its 2010 report entitled "buffeted in the Borderland: The Treatment of Asylum Seekers and Migrants in Ukraine" stresses that, of the 14 testimonies from migrants returned to Ukraine via Hungary (five in 2008, four in 2009 and five in 2010 after the formal entry into force of the EU-Ukraine readmission agreements), almost all of them had applied for asylum, and had failed to make themselves heard. In Slovakia, respondents noted that no interpreter was present during the interviews, although authorities claim the contrary. See also the 2009 Human Rights Watch report entitled, "Pushed back, Pushed Around: Italy's forced return of boat migrants and Asylum Seekers, Libya's Mistreatment of migrants and Asylum Seekers," which highlights the violations under the readmission agreement between Italy and Libya.

³⁰ "Certain readmission agreements contain provisions on accelerated procedures at border, which require examination from a human rights point of view. The speed with which a return is enforced under readmission agreements might prevent the returnee from properly accessing all legal remedies that would or should be at his disposal." para. 31, "Readmission agreements, a mechanism for returning irregular migrants," European Committee on Migration, Refugees and Population, Reporter: Ms Tineke Strike, Parliamentary Assembly, Council of Europe, Doc. 12168, 16 March 2010.

³¹ See the analysis by Yasha Maccanico for Statewatch: "The EU's self-interested response to unrest in North Africa: the meaning of treaties and readmission agreements between Italy and North African states," for examples of implementation of expedited procedures concerning Egyptian nationals within the framework of readmission agreements between Egypt and Italy.

³² "Evaluation of EU readmission agreements," European Commission, 23 February, 2011
http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/comm_pdf_com_2011_0076_f_communication_en.pdf

1.2 Frontex: a key player in the Mobility Partnership

The EMHRN is equally concerned by the conclusion of a "Working Agreement" between Morocco and the European border agency Frontex, as stipulated in the Annex to the Joint Declaration.

For several years, the EU has called on Morocco — as well as Tunisia and Algeria — to participate in Frontex patrols in the Mediterranean to combat irregular immigration. This "working agreement" aims to ensure that Morocco benefits from "specific training tools developed by Frontex", to "exchange and share information and risk analysis" and "to involve the Moroccan authorities in charge of border management in joint operations coordinated by Frontex".

By "border management", the agency intends the fight against both cross-border crime and "clandestine" immigration, thus suggesting that the migrant is a threat to the internal security of states. As the EMHRN has already underlined, Frontex is not just a technical instrument, but is proving to be a full-blown political actor.³³

In a 2008 communication, the European Commission proposed the creation of EUROSUR, a European Border Surveillance System to "reach full situational awareness on the situation at their external borders and increase the reaction capability of their law enforcement authorities."³⁴ Since then, EUROSUR was born and Frontex is a key player in the system. It is also a key player in the implementation of the Mobility Partnership, especially for the purpose of strengthening the capacity of the Moroccan authorities in fighting against irregular immigration, smuggling and trafficking of human beings.

In a similar vein, the CLOSEYE³⁵ project was launched in the Strait of Gibraltar by the European Union in April 2013. Through increased militarisation — the use of drones and unmanned aerial vehicles — CLOSEYE reinforces the SIVE (Integrated External Surveillance System), which has been operational for ten years, in the detection of vessels approaching the coast of Spain. A similar agreement was signed in May between Morocco and Spain.³⁶

However, many of these border surveillance devices do not ensure the protection needs of migrants and refugees, and the lack of transparency regarding these activities increases the Network's concern. Migrants, but also potential refugees intercepted at sea, are generally returned to Morocco, where, as already

³³ Joint letter to the LIBE Committee of the European Parliament, http://solidar.org/IMG/pdf/ngo_joint_letter_eurosur_3_09.pdf

³⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, "Examining the creation of a European system of border surveillance", 13 February, 2008, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0068:FIN:EN:PDF> and read the contribution of AEDH on the EUROSUR overhaul proposal dated 20 June 2012, http://www.aedh.eu/Contribution-of-the-AEDH-to-the_1569.html

³⁵ CLOSEYE: "Collaborative Evaluation of Border Surveillance Technologies in maritime Environment by pre-operational validation of innovative solutions," in Strategic Defence and Security Note "Toward the militarization of European borders" by the Mediterranean Company of Analysis and Strategic Intelligence, 7 May, 2013, http://www.yabiladi.com/img/content/note_analyse_militarisation_frontiere_ue.pdf.pdf

³⁶ "Migration: Morocco and Spain sign a police cooperation agreement" in Yabiladi, 29 May 2013, <http://www.yabiladi.com/articles/details/17006/migration-maroc-l-espagne-signent-accord.html>

established, their rights are violated.³⁷ It is surprising that, by signing the Mobility Partnership, Morocco has validated this European strategy to control its external borders while not having been involved in its design.

For its part, the EMHRN fears that, far from addressing migration issues in the region, this increased "securitisation" of the Mediterranean has in itself serious risks in terms of human rights abuses and states' commitments on an international level — in particular with regards to the principle of non-refoulement.³⁸ The objective of Frontex's sea and land operations is to keep migrants away from EU borders and, as highlighted by the Human Rights Commissioner of the Council of Europe, these policies prevent people from exercising their right to leave a country, including their own. They also lead to a worsening of the situation for migrants and refugees in Morocco, which, as recalled by the CNDH in its recent report, already "undoubtedly suffers from the effects of a strict European policy of control of its external borders."³⁹

2. Access to international protection and the respect for refugee rights

In order to strengthen dialogue and cooperation with regards to international protection, the EU and Morocco commit themselves to strengthening Morocco's legal and institutional asylum framework and to building the capacity of Moroccan authorities in charge of asylum procedures. This will be through close cooperation with the relevant agencies and bodies of the EU and Member States as well as with the UNHCR.⁴⁰ While initiatives undertaken in this direction would certainly positively reinforce the rights of asylum seekers and refugees in Morocco, as well as be in line with Morocco's announced reforms, the context in which this cooperation is presented raises many questions.

Cooperation between the EU, Member States and Morocco in the area of international protection has so far remained limited. This, despite the fact that the asylum system in Morocco is especially lacking and civil society criticism about it is nothing new. In July 2012, the EMHRN already called on the EU and Morocco to place the rights of refugees at the heart of preparatory discussions regarding the Mobility Partnership.

On paper, Moroccan law is in line with International Conventions relating to asylum: the country ratified the 1951 Geneva Convention on 7 November 1956 and the Protocol on 20 April 1971. But in practice, the implementing decree that ensued has never been fully respected and the Bureau of Refugees and Stateless Persons, BRA — the competent authority for the recognition of refugee status —, has suspended its activities since 2004.

³⁷ Frontexit campaign, "Frontex: controlling or saving lives?", 8 October 2013, <http://www.frontexit.org/en/news>

³⁸ "Borderline: The EU's New Border Surveillance Initiatives Assessing the Costs and Fundamental Rights Implications of EUROSUR and the "Smart Borders" Proposals", A study by the Heinrich Böll Foundation, June 2012, [http://www.boell.de/downloads/DRV_120523_BORDERLINE - Border_Surveillance.pdf](http://www.boell.de/downloads/DRV_120523_BORDERLINE_-_Border_Surveillance.pdf)

³⁹ Conclusions and recommendations of the report: "Foreigners and human rights in Morocco: for a radically new asylum and migration policy" NCHR, September 2013, *Op. Cit.*

⁴⁰ International Protection, point 29, "Joint Declaration establishing a mobility partnership between the Kingdom of Morocco and the European Union and its Member States", p.10, *Op. Cit.*

Despite the cooperation agreement in force between Morocco and the UNHCR, obstacles of various kinds prevent refugees from filing their application for asylum with the UN agency.

The city of Oujda, by which most migrants from West Africa enter Moroccan territory, is located about 600 km from Rabat, where UNHCR offices are found. The means of transport to reach Rabat are particularly controlled by the Moroccan authorities. To avoid being arrested, refugees are forced to make long clandestine and dangerous journeys. Similarly, a foreigner who is refused entry at the airport and who wishes to apply for asylum cannot register his application, contrary to the provisions of Moroccan law.⁴¹

Finally, since the suspension of its activities, not only does the BRA no longer register asylum applications, but it does not recognise the status issued by the UNHCR. Refugees do not receive civil status documents or a residence card. Their right to residence however, is now tolerated, and as a rule, Moroccan authorities no longer return refugees with a UNHCR registration document.

The failed attempt to reopen the BRA in the fall of 2013 – ahead of which the UNHCR had temporarily stopped registering asylum seekers – highlights how fragile and lengthy the process of implementing a new asylum system will be – whether jointly with UNHCR or not. In the meantime, the current system results in serious violations of the human rights of refugees, as provided for in the 1951 Geneva Convention and its additional Protocol. Despite this, however, the states that are party to the Partnership do not offer, in their Declaration, any real support for the implementation of asylum legislation, nor do they intervene with sufficient strength to oblige Morocco to respect the principle of non-refoulement. This, despite that the facts shown above are known to the European Union, which has conducted several follow-up reports in the framework of its ENP.⁴²

The current practices of the Moroccan authorities result in serious violations of the human rights of refugees, as provided for in the 1951 Geneva Convention and its Additional Protocol. In this context, the states that are party to the "Partnership" do not sufficiently address in the Declaration the challenge that exists with regards to refugee issues in Morocco. They do not offer real support for the implementation of legislation relating to asylum nor do they intervene with sufficient strength to oblige Morocco to respect the principle of non-refoulement. This, despite the fact that the practices mentioned above are known to the European Union.⁴³

Moreover, strengthening the EU's own asylum system – including through the European Asylum Support Office (EASO), which works with Frontex – remains ambiguous. By evaluating the "migratory risk" from

⁴¹ Article 38 of Law No. 02-03 on the entry and residence of foreigners to the Kingdom of Morocco, and on illegal immigration, http://www.gadem-asso.org/IMG/pdf/Loi_02-03.pdf

⁴² European Commission and High Representative of the Union for Foreign Affairs and Security Policy: ENP Progress Reports 2011 MEMO/12/XXX, Brussels, 15th May 2012

-Morocco: EMO/12/339:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/339&format=HTML&aged=0&language=FR&guiLanguage=en>

⁴³ European Commission and High Representative of the Union for Foreign Affairs and Security Policy: ENP Progress Reports 2011 MEMO/12/XXX, Brussels, 15th May 2012

-Morocco: EMO/12/339:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/339&format=HTML&aged=0&language=FR&guiLanguage=en>

different countries, EASO helps define the EU's visa policies vis-à-vis third states. The EASO has already been criticised as an instrument that can be used to "contain asylum seekers in neighbouring countries of the EU (...) more than ensuring their international protection within the EU."⁴⁴

Similarly, the initiatives proposed in the Mobility Partnership by the signatory states focus specifically on the "mobilisation of expertise" with regards to Morocco's asylum system and the training of officials. For the EU, the promotion of an effective asylum system in Morocco also has the objective of externalising its asylum policy to a country whose current practices still violate the rights of refugees.

Finally, the EU and the signatory states must consider the direct impact of border management policies on the possibility of refugees to access the territory of a country in order to apply for asylum. If they do not enjoy effective protection in Morocco and other North African countries with similar asylum systems, some will try to reach Europe despite the barriers it imposes. In addition to the principle of non-*refoulement*, the EU and its Member States must provide access to, and protection on, their territory for these persons, instead of attempting to prevent them from accessing EU territory and thereby forcing them to undertake increasingly dangerous routes.

While the number of asylum seekers on Moroccan territory has doubled in a year,⁴⁵ the parts of the Mobility Partnership which relate to the fight against irregular immigration are far better defined than those concerning international protection. However, Morocco does not meet requirements in terms of respecting the right of refugees to present an asylum request and receive protection, and mechanisms to ensure the full respect of the rights of refugees are still non-existent.

3. Visa facilitations: the EU's "bargaining chip" for a readmission agreement

With the Mobility Partnership, the implicated states aim, on the one hand, "to manage the movement of persons for short periods, as well as legal and labour migration more effectively" and on the other hand, "to reinforce the role of Moroccan nationals in the EU in contributing to the development of Morocco."⁴⁶

Cooperation between the EU, participating Member States and the Kingdom of Morocco is aimed at establishing "more fluid mobility," taking into account the signatories' labour market situation. Indeed, the simplification of procedures for legal access and residence is especially aimed at Moroccan citizens with the skills required for jobs in Member States, but also at "vocational trainees, students, academics,

⁴⁴ "The right of migrants and refugees in the framework of the privileged partnership EU-Tunisia 2013-2017," by Statewatch and the FTDES, EMHRN 12 April, 2013, http://ffm-online.org/wp-content/uploads/2013/07/Droits_Migrants_PP_Statewatch_FTDES-2.pdf

⁴⁵In 2012, UNHCR registered 2,291 asylum applications and the war in Syria is statistically primarily responsible for the increase in asylum applications "Morocco: Asylum applications have doubled in a year", Julie Chaudier, Yabiladi, 21 June 2013, <http://www.yabiladi.com/articles/details/18045/maroc-demandes-d-asile-double.html>

⁴⁶ Preamble to the Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, *Op. Cit.*

researchers, and businessmen and women."⁴⁷ This implies, in particular, facilitating the mutual recognition of academic and professional qualifications, and the issuance of short-term visas and multiple entry visas of longer duration.

Several activities are proposed in order to provide information on "the means of legal immigration" and to facilitate the latter. However, the EMHRN regrets that these facilitations are not directed at broader categories of people. Visa liberalisation is not mentioned and the Partnership seems to offer mobility on terms that are purely economic and beneficial to European Member States. This visa facilitation presents itself more as a bargaining chip, in the illusory surplus, for influencing negotiations on readmission agreements, rather than as a true shift in the EU's migration policy. This is reflected by the States' confirmation that, "the various components of this partnership (...) constitute a package, particularly the visa and readmission facilitation agreements."⁴⁸

Parties also stress their willingness to support the development of professional and academic skills of Moroccan migrants legally residing in the EU, which could later be utilised upon their return to Morocco. The "*brain drain*" phenomenon is mentioned in the Declaration — the Parties undertake to implement policies to prevent and treat this phenomenon, in particular by promoting circular migration and the mobilisation of resources.

However, this mobility will be conditional on the implementation of bilateral agreements with the Member States concerned — a condition which is not required for other aspects of the Partnership. It could then be limited to the cooperating European country and not extend to the entire Schengen area. In addition, visas are reserved for short-term migrant workers, for whom obtaining a residency status may subsequently prove to be a complicated affair.

Also missing are references to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, especially with regards to the rights of migrant workers in terms of access to benefits, legal protection, maternity allowances for female migrant workers and family reunification. Only the portability of social security rights of Moroccan migrant workers and members of their families in the EU is mentioned.⁴⁹ The absence of other commitments in this regard constitutes a limit in the Partnership, given that decisions relating to the organisation of social security systems with several countries, including Morocco, have already been adopted.

The European Union and its Member States have not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 18 December 1990. While in some countries, such as Italy and Spain, national legislation is in line with the Convention, the gap

⁴⁷ "Mobility, legal immigration and integration", point 7, *Op. Cit.*

⁴⁸ "Implementation", paragraph 39, *Op. Cit.*

⁴⁹ Implementation of the decision of the Association Council on the coordination of social security between Morocco and the EU in the framework of Articles 65-68 of the EU-Morocco Euro-Mediterranean Association Agreement on Mobility, legal immigration and integration, points 10 and 11 p. 6-7 in "Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States."

between law and practice remains problematic in terms of workers' rights.⁵⁰ As for Morocco, although it has ratified the Convention, it does not apply the protective provisions of labour law to irregular immigrants — or in fact, to the vast majority of migrants and refugees.⁵¹

The Network recalls that the ratification and implementation of this Convention by the signatory parties is essential, not only to protect the rights of migrant workers, but also so that European commitments with regards to promoting the human rights of migrants are taken seriously.

The Partnership thus neglects one of the major aspects in terms of promoting mobility: the rights of migrant workers. In addition, the actual mobility introduced by the Declaration is highly selective and limited, despite the fact that access to legal channels for migrating to the EU should be seen as complementary and inseparable from the “fight” against irregular immigration. Whether the latter takes the form of a magnanimous securing of borders or of a “cooperation in support of the socio-economic development of regions with high migration potential,” it goes hand in hand with the legal means for entering Europe, and this is particularly true with regards to eligibility criteria for family reunification. In fact, it is precisely the increasing difficulties faced by those who wish to travel and work in Europe that push them to remain on EU territory after the expiry of their visas — this, when they are not obliged to take other more perilous routes to enter EU territory in the first place, thus risking their lives in the process.

4. Conclusions and recommendations

The EU, the nine signatory Member States and Morocco have introduced the Mobility Partnership as a new framework for a discussion that is both, more balanced than the one in the past and in the mutual interest of all parties involved.

Yet it is clear that this Partnership, which is based on the EU’s new “global approach to migration and mobility,” does not take into account the specificity of Morocco as the country of origin, transit and settlement of migrants, nor existing issues regarding the respect for their rights. It only constitutes an additional agreement in favour of the interests of the European Union.

In view of the prevailing situation in Morocco — as highlighted by Morocco’s very active civil society as well as by international NGOs — the EMHRN recalls that respect for human rights of migrants and refugees should be a prerequisite for cooperation on migration between the EU, its Member States and Morocco. As such, genuine support by the EU for the reforms and regularisation process currently being carried out in Morocco is indispensable.

⁵⁰ UNESCO, Migration Research, “The Migrant Workers Convention in Europe, Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU / EEA Perspectives,” Euan MacdDonaled & Ryszard Cholewinski, 2007: <http://unesdoc.unesco.org/images/0015/001525/152537e.pdf>

⁵¹There is no specific Moroccan law to protect the rights of migrant workers, but several pieces of legislation are likely to protect migrant workers in a legal situation, “Asylum and Migration in the Maghreb. Factsheet: Morocco,” *Op. Cit.*

The Partnership must be implemented in a spirit of co-decision and co-accountability between partners and should not be framed by a donor/recipient logic nor be the reflection of an asymmetrical relationship. It should lead to the signing and implementation of all relevant international conventions regarding the respect for the rights of migrants and refugees, taking into account the particular situation of those most vulnerable, including children and women.

In this respect, the role of the Moroccan civil society is essential. The latter has been neglected in the negotiations, even though cooperation with partners and relevant players in Morocco is mentioned as a priority in the implementation of the Mobility Partnership. Civil society's participation must be integrated, through the use of information-sharing and consultation mechanisms.

The Mobility Partnership, however, as outlined in the Joint Declaration, provides a model likely to encourage Morocco to continue its repressive policies aimed at combating irregular immigration at its borders and the "hunt for foreigners" on its soil. The EMHRN is concerned that Morocco could benefit from economic advantages on the basis of its ability to reduce irregular emigration from its territory, even if the means used to do so lead to a violation of migrant and refugee rights. These resources should instead support the establishment of a migration policy which effectively protects human rights and of a coherent public policy for the integration of migrants and refugees in Morocco.

The EU's desire to control mobility is nothing new: its consequences have been felt for several years around the Mediterranean. The inhumane practices in Morocco, which have led to the deaths of many migrants, have never elicited a statement from the European Union and its Member States, although some are mentioned in the monitoring reports of the European Neighbourhood Policy.

In this context, the EMHRN calls for a Partnership which encourages and supports Morocco in its announced reforms, in accordance with the full respect for human rights of migrants and refugees. Only in this way will cooperation between the EU and Morocco in the field of migration constitute a positive example for other actors facing similar conditions in the region.

Recommendations :

- With regards to the implementation of the Mobility Partnership,
 - Condition cooperation in the field of migration upon the respect of the human rights of migrants and refugees, and refrain from implementing activities which do not fully respect their rights, in particular the signature of a readmission agreement;
 - Guarantee the participation of civil society organisations in Morocco, particularly those involved in providing assistance to, and promoting the rights of, migrants, as well as of INGOs in the negotiation and implementation of the Mobility Partnership;
 - Take into account the specific needs of the most vulnerable, including unaccompanied minors, women and asylum seekers, in the implementation all Partnership activities;

- Guarantee that the conditions of persons readmitted to Morocco, including their reception conditions, are monitored, and ensure that third country nationals are not subject to « chain refoulement » to countries where their rights would not be respected.

- To the EU and its Member States:
 - Radically change its migration policies, currently shaped by security considerations and based on the externalisation of migration control, and implement policies to reinforce and protect human rights on their territory and in third countries;
 - Suspend negotiations regarding the signature of a readmission agreement for Moroccan and third country nationals, in view of the breaches of human rights of migrants and refugees still on-going in Morocco;
 - Ensure that the rights of migrants and refugees are respected in any working agreement concluded with Frontex, in particular by setting up a mechanism to directly handle complaints from migrants who consider that their rights have not been respected;
 - Guarantee transparency and respect for the rights of migrants and refugees in the implementation of any system aimed at “securing” the EU’s external borders, in particular: the right to leave a country, including one’s own, the prohibition on collective expulsions and *refoulement*, and the right to apply for and obtain asylum;
 - Prohibit the return of the most vulnerable groups, and take into consideration the risk of exposing people to undue and disproportionate treatment upon their return to Morocco in readmission decisions;
 - Exclude all third country nationals from a possible readmission agreement in view of the current Moroccan context;
 - Actively support the 2014 migrant regularisation campaign announced by the Moroccan authorities;
 - Advocate for increased promotion and respect of human rights in favour of all migrant workers and their family members, and encourage Member States to ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - Encourage real mobility by further developing legal routes to access EU territory, in particular by expanding the categories of people who can benefit from visa facilitation procedures to include, among others, youth;
 - Facilitate access to family reunification procedures in EU Member States;
 - Improve the portability of economic and social rights between the signatory countries of the Mobility Partnership.

➤ To Morocco:

In the context of the new migration approach promoted by Morocco, and in view of the conclusions of the reports by Morocco's National Human Rights Council and the United Nations Committee on the Rights of All Migrant Workers and Members of their Families, the EMHRN calls upon Morocco to:

- Implement the recommendations of the UN Committee on the Rights of Migrant Workers and Morocco's National Council of Human Rights for a new asylum and immigration policy, guarantee the rights of migrants and refugees and their movement within Moroccan territory, and eliminate all forms of violence against migrants and refugees by combatting the immunity of those responsible for police violence against migrants as well as for *refoulement* and collective expulsion at the borders;
- Set up a joint mechanism for handling asylum applications with the UNHCR whilst awaiting the implementation of an asylum system and adoption of legislation concerning migration and asylum, in accordance with article 30 of the Constitution on the fundamental freedoms recognised for both Moroccan citizens and foreigners as well as international conventions ratified by Morocco intended to protect and promote the human rights of migrants and refugees in law and in practice;
- Repeal Law 02-03 and any legislation criminalising immigration, and separate the concept of irregular immigration from human trafficking;
- Involve organisations promoting migrant and refugee rights – including migrant- and refugee-based organisations – in the negotiations regarding the current reforms; cooperate with them in order to raise awareness within migrant populations about their rights and provide support to these populations; to this end, officially register those who have submitted their registration request and presented an application in accordance with the law;
- Urgently adopt provisional measures in order to guarantee the basic economic, social and cultural rights of migrants and refugees, and in particular access to education and health.

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