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TRABAJADORES MIGRANTES

**Informe presentado por la Relatora Especial sobre los derechos humanos
de los migrantes, Sra. Gabriela Rodríguez Pizarro^{*}**

Adición

VISITA A MARRUECOS

Resumen

Por invitación del Gobierno de Marruecos, la Relatora Especial sobre los derechos humanos de los migrantes visitó ese país en misión oficial del 19 al 31 de octubre de 2003. Se recomienda leer el presente informe junto con el informe sobre la visita de la Relatora Especial a España (E/CN.4/2004/76/Add.2).

^{*} El resumen del presente informe será distribuido en todos los idiomas oficiales. El informe figura en el anexo del resumen y será distribuido en el idioma original y en inglés.

En su informe, la Relatora Especial examina la situación de los migrantes en Marruecos como país de origen, tránsito y acogida de migrantes y describe la situación de vulnerabilidad en la que se encuentran, así como las situaciones de riesgo y abuso a las que están expuestos.

Uno de los problemas más graves que ha descubierto la Relatora Especial en su visita es el de la situación de los derechos de los migrantes irregulares marroquíes, así como la de los subsaharianos en Marruecos. El aspecto problemático deriva de la falta de recursos económicos para reforzar las capacidades de los organismos encargados de luchar contra la migración irregular, garantizar formas de asistencia a los migrantes irregulares y encargarse de las cuestiones migratorias. La Relatora Especial manifiesta su inquietud también por la situación de los menores no acompañados y recomienda que se les proteja y ayude debidamente y que se siga muy de cerca su situación.

La Relatora Especial toma nota de los esfuerzos del Gobierno en la lucha contra la migración irregular y considera que es fundamental actualizar la legislación nacional a fin de mejorar las condiciones de esa lucha. Sin embargo, observa que la actualización del marco normativo no se equilibrará con las medidas previstas al ser exclusivamente represivas. La Relatora Especial alienta a Marruecos a que adopte una política migratoria encaminada a poner fin a la dicotomía existente entre lo que el país reivindica para sus emigrantes en el extranjero, desde el punto de vista de protección y de asistencia, y el trato que da a los inmigrantes extranjeros bajo su jurisdicción.

La Relatora Especial destaca que habría que estudiar la gestión de las corrientes migratorias en el marco del desarrollo socioeconómico y alienta a la Unión Europea a que prosiga su diálogo con Marruecos para que su colaboración con ese país se base en estrategias de cooperación encaminadas a luchar contra la migración irregular por medio de programas de asistencia técnica y de codesarrollo.

La Relatora Especial recomienda que se adopten medidas concretas, entre ellas: contar con programas de protección de los derechos de los migrantes irregulares y formas de asistencia específicas para los migrantes enfermos o heridos; prever programas para su rehabilitación física y psicológica; ser conscientes de la presencia del fenómeno de la prostitución y de la explotación de los migrantes subsaharianos, así como aplicar instrumentos adecuados para proteger, rehabilitar y proporcionar asistencia a las víctimas de la trata de personas; considerar la posibilidad de impartir cursos de formación a las autoridades judiciales; facilitar el acceso a los mecanismos de intercesión, la sensibilización y las campañas de información; consolidar los mecanismos de control interno de los funcionarios que se ocupan de cuestiones migratorias y adoptar medidas encaminadas a luchar contra la corrupción. La Relatora Especial invita a las instituciones gubernamentales encargadas de la cuestión de la migración y a las organizaciones no gubernamentales a que refuercen su posición y adopten criterios más orientados a la protección de los derechos de los migrantes.

Annex

**REPORT SUBMITTED BY MS. GABRIELA RODRÍGUEZ PIZARRO
SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS,
ON HER VISIT TO MOROCCO FROM 19 TO 31 OCTOBER 2003**

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Introduction

1. At the invitation of the Moroccan Government, the Special Rapporteur on the human rights of migrants undertook an official mission to that country from 19 to 31 October 2003. During her stay, she visited Rabat, Casablanca, Khouribga, Tangier, Tetouan, Oujda and then Nador.

2. In Rabat, the Special Rapporteur met with the Minister of Human Rights, the Minister of Justice, the Deputy Minister for Foreign Affairs and Cooperation with responsibility for Moroccan expatriates, the Minister of Labour and Social Affairs, representatives of the Ministry of the Interior, the Director of Consular and Social Affairs, the President of the Supreme Court, the President of the Advisory Council on Human Rights, the Vice-President of the Hassan II Foundation for Moroccan Expatriates and several central government officials. She also had a number of meetings with representatives of international non-governmental organizations and academic institutions. At other times during her visit the Special Rapporteur met *walis* (prefects), local authority representatives and representatives of the police and the security forces and she spoke to migrant groups.

3. The Special Rapporteur wishes to thank the Moroccan Government for its invitation and for its help and assistance before and during her visit to the country. She would like to thank the international organizations, non-governmental organizations, academic institutions and migrants that she met during her mission. In this report she examines the context of Moroccan migration from the legislative, institutional/political and operational points of view. This report describes the facts observed and the information received by the Special Rapporteur during her visit.

I. GENERAL CONTEXT OF MIGRATION IN MOROCCO

4. Morocco is a traditional country of emigration towards the countries of the European Union, other Middle Eastern countries and North America. Today, there are more than 2.5 million Moroccans living abroad, almost 82 per cent of them in the European Union. This migration flow is the result of a twofold process that has developed over several phases: the boom in regular migration of the 1960s and 1970s resulting from the demand for labour; a period of increased migration with family reunification or the forming of new families; and a phase of demand for labour from traditional emigrant countries, such as Italy or Spain. This kind of migration is characterized by the maintenance of close ties with the country of origin.

5. The other feature of this process is irregular migration by Moroccan nationals; this has reached its highest level in the last few years as European States have tightened up their national immigration laws. There are an estimated one million Moroccans illegally living abroad and who are often exploited by unscrupulous employers.

6. In recent years Morocco has also become a country of transit for a significant migration flow originating in sub-Saharan Africa and passing through the Maghreb and Morocco on the way to Europe. Since 1997-1998, the presence of migrants from sub-Saharan Africa has increased sharply, following the events in the Democratic Republic of the Congo, the Republic of the Congo and the Great Lakes region. Other flows have been seen from Sierra Leone, Nigeria and Côte d'Ivoire, owing to the situations in those countries. Today, the main countries

of origin of prospective irregular immigrants are Guinea-Bissau, Mali, Liberia, Sierra Leone, Nigeria, Guinea, Senegal and Algeria. Most of the irregular migrants who are intercepted are in the 20-35 age group.

7. During her visit to Spain, the Special Rapporteur was told about the important role Morocco plays in managing migration flows in the subregion and about its strategic position with regard to European Union migration policy. The Special Rapporteur therefore judged it important and useful to go to Morocco in order to form a clear picture of the situation there and undertake a thorough analysis as soon as possible. It is recommended that this report be read jointly with that on the Special Rapporteur's visit to Spain (see E/CN.4/2004/76/Add.2).

II. GENERAL COMMENTS

A. Framework for the protection of migrants' rights

1. The international framework

8. Internationally, Morocco has demonstrated its commitment to the promotion and protection of the rights of migrants and has supported the development of an international legal framework to that end. Morocco played an important part in creating the mandate of the Special Rapporteur on the human rights of migrants and it participated actively in the drafting and adoption of the International Convention on the Protection of the Rights of All Migrant Workers and their Family Members, an instrument which Morocco ratified on 21 June 1993 and which entered into force on 1 July 2003.

9. With regard to the other main international human rights instruments, Morocco has either ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the involvement of children in armed conflict.

10. With regard to refugee protection, Morocco has ratified the Convention relating to the Status of Refugees of 28 July 1951, together with the Protocol relating to the Status of Refugees. Within the region, the country has ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969.

2. National framework

11. The Special Rapporteur took note of the presence of institutional mechanisms concerned with the rights of migrants. The Centre for Migrants' Rights, jointly established by the Ministry of Human Rights and the International Organization for Migration, plays an important role in consolidating respect for the rights of Moroccan migrants. Its training programmes for

Moroccan professionals involved in migration issues both inside and outside of government and its information campaigns directed at migrants and public opinion in general are to be welcomed warmly.

12. The Special Rapporteur stresses that the interest taken in migration problems should not embrace solely prospective emigrants, but should also offer the country information, ideas and recommendations on the situation of irregular migration. In that regard, she welcomes the announcement of the establishment, within the Ministry of the Interior, of a migration observatory with responsibility for formulating a national migration strategy and centralizing all information on migration. Together with the Observatory of the Moroccan Community Abroad, this body should be able to create a national statistical database on migration, propose concrete measures, undertake studies on the phenomenon of migration and furnish a complete picture of migration dynamics in Morocco.

13. At the end of her visit, the Special Rapporteur learned about the imminent establishment of other institutions and bodies involved in the migration phenomenon, namely the Department of Migration and Border Surveillance, to be mainly responsible for operationalizing the strategy to combat migrant trafficking networks and for border surveillance, and the standing bilateral committee formed by the Ministry of the Interior of Morocco and its Spanish counterpart to deal with all issues relating to migration, the joint mechanisms that need to be put in place, and exchanges of information and liaison officers.

B. Morocco as a country of emigration

1. The Moroccan expatriate community

14. Most Moroccan migrants who are living abroad in a regular or irregular situation come from one of three main regions of Morocco, between Nador and Oujda, Casablanca and Beni Mellal, and Casablanca and Marrakesh. In the current state of Morocco's economy, the rate of unemployment is more than 20 per cent and economic growth is not strong enough to reduce it or to absorb new labour market entrants. The number of Moroccan expatriates who are in a regular situation is estimated at 2.5 million. They make an important contribution to the country's development; remittances by Moroccan expatriates are the primary source of foreign currency (36.2 billion dirhams).

15. According to the information received by the Special Rapporteur, Moroccan expatriates are subjected to human rights violations that affect their security and dignity and their conditions of life, work and residence, and also to forms of discrimination based on race and religion. A further very significant problem seems to be the frequent conflicts between the laws of their country of residence and those of their country of nationality, conflicts based on court decisions that contrast with family law in particular.

16. The Special Rapporteur met the Deputy Minister with responsibility for the Moroccan expatriate community to discuss complaints from Moroccan expatriates and the actions the Government could take to resolve them. The Special Rapporteur welcomes the creation of this institutional framework, which serves as a bridge between the Moroccan Government and Moroccan expatriates and caters to the needs of Moroccan expatriates. She views as very

positive the plan of action to guarantee assistance to Moroccan expatriates and considers it vital that the strategy should include educational, legislative, consular, economic and financial components in order to guarantee respect for and the promotion of the rights of Moroccan expatriates.

17. The Special Rapporteur welcomes the process Morocco has begun of revitalizing and rehabilitating its diplomatic and consular offices, making them more accessible to citizens by appointing social and economic advisers to work in them, simplifying administrative procedures and improving legal aid services. The Special Rapporteur also attaches great importance to the conclusion of bilateral agreements with host countries on conditions of stay, the question of social security for Moroccan nationals, and on cultural matters.

18. With regard to legislation, the Special Rapporteur notes that the adoption of the new Family Code on 11 October 2003 represents a noteworthy outcome in terms of the protection and welfare of all Moroccans, but particularly for Moroccan expatriates, who have suffered greatly because of legal conflicts in their country of residence, a point underlined by King Mohammed VI on the occasion of the opening of Parliament on 10 October 2003.

19. At the same time, the Special Rapporteur has taken note of the efforts made by other organizations, such as the Hassan II Foundation, which perform an important function by helping to maintain and strengthen the ties between Moroccan expatriates and their homeland. The mandate of the Foundation includes the organization of educational, cultural, scientific, sports and leisure activities; the provision of legal, social and medical assistance; business development; communications and marketing; and the development of cooperation and partnerships. The Special Rapporteur views the creation of a cooperation and partnership centre to study all the projects that Moroccan expatriates wish to undertake with the Foundation and the establishment of the business centre to provide advice on investment in Morocco and preferential transfers for local and regional development as very useful tools for supporting and assisting Moroccan expatriates.

20. The Special Rapporteur was also briefed on all the programmes that have been put in place to facilitate the transit and reception of Moroccan expatriates during the summer season and ensure that they are received in the best possible conditions. King Mohammed VI, who is at the port every year to welcome migrants, has furthermore decided to institute a national migrant's day during the month of August, which will provide another opportunity to draw attention to various aspects of the day-to-day lives and problems of the Moroccan expatriate community.

21. During her visit to the province of Khouribga, an area with a high rate of emigration, the Special Rapporteur was told about the programmes the province is currently putting in place, thanks to investments by Moroccan expatriates who have decided to finance projects for the revitalization of their region of origin. The programmes are designed to help revive the region's economy through investments in services and infrastructure aimed at generating new employment opportunities.

22. The joint ventures set up with enterprises in migrants' host countries - like the Morocco-Italian "Immigration 2003 Textilia" project - to create emigration training projects are evidence of the interest taken in the migrant's integration into the world of work and into his or her new cultural and social environment. Some civil society associations have committed

themselves to combating irregular emigration by setting up microcredit and small enterprise schemes. They are also involved in awareness-raising campaigns on the dangers of irregular migration.

23. The Special Rapporteur believes that more should be done to strengthen protection and promotion strategies that put the accent on training programmes in the private and public sectors and deliver a system of training that is tailored to the needs of enterprises. The drive to streamline regular emigration and to combat irregular migration is evidenced by the creation, in 2001, of the Agence Nationale de promotion de l'emploi et des compétences, which acts as a Moroccan public intermediary on the international market.

24. The Special Rapporteur regards these initiatives as examples of good practice that ought to be emulated in other regions of Morocco. Awareness-raising, investment in the economic and social sectors and development of infrastructure and services support an approach to migration that links it to the eradication of poverty, to local development initiatives in regions with a high potential for migration and to a process that favours informed and dignified regular migration.

C. Morocco as a point of departure for irregular migration

25. The Special Rapporteur informed the Moroccan authorities of her concerns about the human rights violations to which Moroccan irregular migrants are subjected. The Special Rapporteur met numerous Moroccan irregular migrants being held in detention in Spain. She was also told about those who lose their lives while trying to pass illegally through the Strait of Gibraltar in small boats (pateras) in order to get to Europe. On the basis of information obtained by the association of the families of victims of illegal emigration, the Special Rapporteur was told that, in the past five years, more than 4,000 bodies have been found on the two shores of the Strait. To this figure must be added those who have disappeared.

26. The Special Rapporteur also referred to the situation she had observed in Spain, where she had seen a large number of Moroccans and sub-Saharanans who said they had reached Europe by transiting illegally through Morocco. During her visit to Spain, the Special Rapporteur received information about several unsatisfactory aspects of efforts to counter irregular migration attributable to poor cooperation on the part of the Moroccan authorities in combating irregular emigration to Spain by Moroccans and persons from sub-Saharan Africa and to the obstacles that Morocco erects to the readmission of third party nationals who illegally enter Spanish territory from Moroccan territory.

27. The Special Rapporteur noted the existence of a market in which regulated fares for sea crossings vary depending on the passenger's nationality and the points of departure and arrival. According to the information received, well structured organized networks that traffic in and smuggle persons operate both in the migrant's country of origin and in the countries of transit and destination. The Special Rapporteur was told that the Zodiac assault boats used by gangs that organize the journey to Europe are purchased directly in Spain or in other European countries. In Tangier, she visited the port, accompanied by the wali and the port authorities. They showed her an unregistered Zodiac boat that had been seized. The Special Rapporteur was informed that, in Morocco, all such boats must be registered for use.

28. During her visit, the Special Rapporteur gathered a great deal of information about how traffickers bribe certain public officials, particularly police officers. According to that information, the organizers of migrant trafficking bribe police officers, who are not well paid, to release migrants who are apprehended, in the event of their arrest, or not to take them to the police station. The borders between Algeria and Morocco appear to be even more porous, because the police of the two countries allegedly facilitate irregular crossings in exchange for payment.

29. Added to this is the tense situation prevailing in and around the two Spanish enclaves of Ceuta and Melilla. One of the points of departure for Europe is Tetouan, a town where, like Tangier, there are organized networks for travel to Europe. Tetouan is a destination for migrants because of its proximity to Ceuta. There is an agreement on the free movement of people between Ceuta and Melilla, as well as the Moroccan provinces close to Nador and Tetouan. This open border produces a daily flow of around 40,000 persons, which encourages migrants from other African countries to try to slip through. However, this route to Europe has been partially blocked by the erection of a galvanized steel fence with electronic devices that can detect the presence of human beings. According to information received by the local authorities, in the first nine months of 2003, in the Wilaya of Tetouan there were 3,350 prospective irregular emigrants, of whom 2,507 were Moroccans.¹ The Government has plans for development schemes for the northern region of Morocco, the area from which most irregular Moroccan migrants who attempt the journey to Europe come. The Special Rapporteur was told about the creation of the Northern Region Development Agency, the object of which is to revive the economy and to combat trafficking in migrants and traffic in persons by creating an important centre for investment and job creation and promoting training and education in order to bring human resources up to standard.

30. Tangier is another point of departure for irregular emigration bound for Europe. The local and police authorities that the Special Rapporteur met told her that the Moroccan Royal Navy, the gendarmerie and the security forces were making a concerted effort to combat irregular migration. Reports indicate that in 2002 a total of 60 networks were dismantled and 195 organizers of crossings were arrested. During the first nine months of 2003, a total of 30 networks were reportedly dismantled and 99 arrests were made. The persons arrested were reportedly Moroccan nationals and persons from sub-Saharan Africa, particularly Nigeria. Efforts are nevertheless circumscribed by the shortage of available resources. The Tangier authorities drew attention to the need for funding to train police forces and improve their equipment.

31. The Special Rapporteur visited the port, where she was able to see the efforts by the authorities to check passengers boarding ferries bound for Tarifa or Algeciras. However, it is very difficult, given the shortage of resources and technology, to control the hundreds of roadsteads and coves along the Moroccan coastline. The Special Rapporteur also met the families of victims of irregular immigration who had travelled in *pateras*. Some families have set up associations to alert young persons to the dangers of irregular migration, to help prospective emigrants to return to their country and integrate into working life, and to act as the plaintiff in proceedings against any person directly or indirectly involved in the soliciting and promotion of irregular immigration.

32. On several occasions, the Moroccan authorities stressed the fact that, in addition to the trafficking mafias operating on either side of the Mediterranean, there is also a demand for cheap labour in certain sectors of the economy (agriculture, construction, etc.), while misleading information is circulated that can encourage migrants to leave their countries of origin.

1. The problem of unaccompanied minors

33. During her visit to Spain, the Special Rapporteur was briefed on the situation of unaccompanied Moroccan minors in the country. Under Spanish law, unaccompanied foreign minors are either reintegrated into their country of origin or the family's country of residence or must remain in Spain in State care. After nine months in care, the minor is given a temporary residence permit. According to the information received by the Spanish authorities, the Moroccan authorities do not cooperate in efforts to find minors' families or to identify an orphanage for them in Morocco so that they can be repatriated.

34. In Morocco, the Special Rapporteur shared her concerns on this matter with the Moroccan authorities, but she received no information from them about what the Government was doing to deal with the problem and to help Moroccan minors during all phases of their repatriation. She furthermore informed the Moroccan authorities of allegations of police brutality against children deported to Moroccan territory² and also referred to the concerns expressed by the Committee on the Rights of the Child during its consideration of Morocco's report.³ She was told that, once on Spanish territory, the problem was a matter for Spain, since minors cannot be deported.

D. Morocco as a country of transit and destination

1. Domestic positive law on migration

35. At the national level, current positive law on foreigners in general and migrants in particular is contained in a body of legislation established between 1914 and 1950, six years before Morocco became independent. Amendments have been made by Governments since 1956, mainly to bring the legislation into line with changes in the country's administrative structure since independence.

36. The basic text governing foreigners' entry to Morocco is an order dated 13 November 1914 and amended in 1915, which applies to persons arriving or residing in the country, requiring them to provide the relevant local authority with proof of their identity, their last place of residence and their means of earning a living, and giving their reasons for coming to the country. Access by foreigners to Moroccan territory by land, air or sea is conditional upon production of a valid passport, which must contain a Moroccan entry visa, unless the bearer is a national of a country with which Morocco has concluded an agreement waiving the visa requirement.⁴ The Directorate-General of the Sûreté Nationale is responsible for monitoring foreigners entering Morocco through ports and airports. The police and gendarmerie also check motor vehicle traffic and, as is customary, those whose papers are not in order are refused entry to the country and sent back to where they came from.

37. A foreigner wishing to settle in Morocco to work is subject to immigration law. As the Moroccan Government itself has noted, the current legislation is out of date and can no longer cope with the demands of increased migration flows.

38. The various regulations⁵ allow foreigners 15 days in which to carry out the residence formalities; they also establish penalties for failure to comply with Moroccan entry and residence requirements - imprisonment, administrative sanctions or expulsion. With a view to updating the legislative framework, legislators prepared draft legislation on entry to and residence in Morocco and on illegal immigration, and this was enacted by Parliament on 26 June 2003 as Act No. 02-03, on foreigners' entry to and residence in Morocco, and on irregular immigration and emigration.

39. The Special Rapporteur was informed that the purpose of the new law is to unify the existing texts, bring the law into line with the provisions of the Criminal Code as part of the process of updating the existing legal framework, establish and define precise categories of offences relating to illegal emigration and trafficking in migrants, and rationalize the residence criteria for foreigners who have settled in Morocco, through effective oversight. In particular, the Act incorporates the hierarchy of laws as a basic principle, inasmuch as all its provisions are to be applied subject to the international Conventions ratified by Morocco (art. 1); it upholds the principle of acquired rights: several categories of foreigners, for example, who have settled in Morocco and who meet the relevant conditions may not be expelled or escorted to the border (art. 26); it includes the right to family reunification; it gives the judiciary explicit responsibility for safeguarding the rights and conditions of detention of foreigners waiting to be escorted to the border; and it provides for application for interim relief in cases where issuance or renewal of a residence permit is denied.

40. As regards sanctions, the Act increases the penalties for irregular migrants who employ fraudulent methods to pass through border posts and enter or leave Morocco illegally;⁶ it also increases the maximum penalty for officials who facilitate illegal immigration.⁷ For that, the Act provides for severe penalties for any person facilitating the illegal entry or exit of nationals or foreigners, and for any organization created for such purposes.⁸

2. The context of illegal migration to Morocco

41. The Special Rapporteur found that irregular migrants to Morocco from sub-Saharan Africa pose a serious problem. These people undertake journeys of several stages that may last up to three years. They pass through several countries, forced to take any work they can find just to survive and pay the smuggler who will make it possible for them to move on. Many of them have route maps provided by the "brothers" who have preceded them, with names of contacts and towns or places to stay.

42. The irregular migrants who come to Morocco have two options: either to use the country as a stepping stone to Europe, generally through Spain; or, if they cannot cross the Strait of Gibraltar, to stay in Morocco, where the situation is better than that they have left behind in their country of origin. The cause of their departure is always related to social and economic issues and the political situation in their home country.

43. The Special Rapporteur told the Moroccan Government of her concerns regarding the situation and living conditions of those coming from sub-Saharan Africa. She detected a certain lack of interest in the problem in central Government and civil society associations. Only in those parts of the country where the problem was actually on the agenda did she find that the local authorities and NGOs were sensitive to the issue.

44. The majority of the migrants the Special Rapporteur met during her visit had come overland. The preferred crossing place is the frontier with Algeria. The town of Maghnia, in Algeria, 10 kilometres from the border, is where migrants bound for Oujda regroup. The crossing into Morocco is made at night with the help of a smuggler from Algeria or Morocco; more recently, there have also been smugglers from sub-Saharan Africa, who have themselves been expelled from Morocco several times and are now guides. From the Algerian border the journey continues on foot to Guercif, Fès, and thence to Tangier or Rabat. Many of the migrants the Special Rapporteur interviewed said they had been in Morocco for between one and two years, waiting for a passage to Europe.

45. According to information received, operations against illegal immigration resulted in 60,996 arrests in 2002 and 2003. As at 31 July 2003, the number of irregulars arrested stood at around 6,104.

46. A very small percentage of migrants enter Morocco by air, arriving at Casablanca's Mohammed V airport. According to information received by the airport authorities, an average of 100 migrants arrive every month. The Special Rapporteur had the opportunity to observe the passenger control system and the multiple levels of screening. She found that there are no holding centres for intercepted irregular foreigners, but there are premises where they are required to wait, with a telephone by means of which they can contact their consulate. According to information received, the consular authorities of migrants' countries of origin do not always respond to these requests because they are approached nearly every day. Expulsion nearly always takes place the same day.

3. Interception, custody and refoulement of migrants

47. Irregular migrants who are intercepted by the police or any other State security body are brought before the judicial authorities for violation of the immigration laws. Foreigners who have entered Morocco illegally or who fail to meet the legal or health requirements for entry to the country are subject to refoulement. This measure may be ordered by the Prefect or the provincial authorities at the foreigner's point of entry, on the basis of a police report.

48. Refoulement is carried out by the police, who take charge of the irregular migrant and escort him or her to the border. According to information received, the period of custody does not exceed 24 hours. The authorities responsible for the custody of irregular migrants do not have sufficient financial resources to assist them and no allowance is made in their budget for meeting primary needs such as health care, food or clothing, while awaiting refoulement. Several police officers interviewed by the Special Rapporteur reported that they very often have to buy food and drink out of their own pocket to provide material aid to individuals in their custody.

49. The majority of the migrants who are intercepted have false passports and visas or else have got rid of their papers on arrival in Moroccan territory in order to make identification and repatriation more difficult. In other cases, the traffickers themselves are said to have confiscated their identity papers. The Special Rapporteur met with irregular migrants from Liberia and Guinea who spoke of their experience and described how they were intercepted, briefly held in custody at the police station - where they were given no food - brought before the court - where the case was not considered or decided on an individual basis and they were not provided with interpreters - and escorted to the border under a collective expulsion order.

50. In the wilaya of Oujda alone - the main overland route into Morocco - the number of irregular immigrants arrested climbed from 2,151 in 2001 to 3,017 in 2002, and reached 3,648 in the first nine months of 2003. As the local authorities confirmed to the Special Rapporteur, there is a high concentration of migrant traffic in this area, especially the 60 kilometre-long border zone to the north of Oujda, an area that is hard to police effectively because of the nature of the terrain and the existence of natural caves and abandoned dwellings where migrants can find shelter. The migrants use the services of ad hoc guides or smugglers to cross dangerous areas, paying them varying amounts depending on the risk involved, the migrants' own financial means and the weather. Intercepted sub-Saharan migrants are generally escorted back to Algeria via Morocco's eastern border - in fact in the Oujda area - from where many then run off into Morocco. Irregulars intercepted in the wilaya are dealt with on the spot, but the town is the main transit point for migrants intercepted elsewhere in the country and escorted to the Algerian border by the gendarmerie.

51. As the Moroccan Government has repeatedly emphasized, the country's borders are extremely long, with more than 3,500 kilometres of coastline and similarly long land borders with Mauritania and Algeria. Making the borders watertight would require logistical resources that Morocco simply does not have. During her visit to Oujda, the Special Rapporteur was informed that, despite the mobilization and coordinated efforts of all the security services, the results were not very satisfactory: there are border checkpoints and observation posts, checks on the roads to Nador and Melilla, and checks on the trains, but the resources available are not sufficient to monitor the border zones. Coastguard patrols are subject to similar constraints.

52. The situation in the wilaya of Nador, near Melilla, is very similar to that in Tétuan. The Special Rapporteur was informed by the local authorities that the majority of the irregular migrants intercepted are North Africans, followed by sub-Saharans. Various search operations were being organized by the Sûreté Nationale, the gendarmerie, the auxiliary armed forces and the local authorities to combat illegal migration.

4. The rights of irregular migrants in Morocco

53. The Special Rapporteur visited the border with Ceuta and Melilla, where she saw many sub-Saharans. They were moving around the countryside at will, asking local people for food and making their way towards the Spanish border, which they try to cross at night using ladders they have made to get over the 3.10-metre wall blocking their way.

54. According to information received from NGOs and migrants interviewed in situ, living conditions for irregular migrants in Morocco are very precarious. Migrants nearly always live in working-class districts on the outskirts of towns, and sometimes six may be living in a single

room rented from Moroccans. In Tangier, most intending emigrants live in boarding houses. Many migrants apparently sleep in the street from time to time or seek shelter in the forest. Their irregular status and Morocco's high unemployment rate prevent them from working. Those without financial resources wait for help from their family, particularly from relatives already settled in Europe, beg for a living or collect leftover food. Many migrants told the Special Rapporteur they had been attacked and robbed of their money or identity papers.

55. Their irregular status forces them to live in the shadows, isolated and abandoned. A visit to the forest of Gourougou, 12 kilometres from Nador, where sub-Saharan migrants take shelter while waiting for a chance to get to Europe, gave the Special Rapporteur the opportunity to meet irregulars and see for herself their appalling living conditions and hear their stories. She gathered that many of them are injured when they take refuge in the forests to evade police checks. Not only are they injured, but they live in the most appalling conditions, without drinking water, and the women are forced to give birth in quite unacceptable conditions of hygiene and without any medical attention whatsoever. NGOs working with this highly vulnerable group also told the Special Rapporteur that some have been found dead. Many women irregular migrants are apparently also victims of the prostitution business. In Tangier, the Special Rapporteur was told that the problem of prostitution was spreading. Apparently, the market is controlled by Nigerians and victims live in slavery, exploited by their "managers". The Special Rapporteur told the local authorities of her unease over this problem and the vulnerability of the victims of prostitution, and voiced her concern for their physical and psychological integrity. She notes that the Moroccan Government denies the existence and extent of prostitution in Morocco.

56. The Special Rapporteur emphasized several times in the course of her visit that, as a State party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Morocco has certain obligations to meet, and should establish bodies to protect the rights of regular and irregular migrants on its territory and under its jurisdiction. She also recalled that part III of the Convention applies to all migrants on a State's territory and provides that their human rights are to be respected. The Convention also establishes an obligation to cooperate with a view to preventing and eliminating the movement of migrants in an irregular situation.

57. The Special Rapporteur was told that Act No. 02-03 introduces provisions under Moroccan law for ensuring the implementation of the requirements of the Convention. Procedures for escorting migrants to the border and for expulsion have been revised, and avenues and time limits for appeal established.⁹ Following a decision to escort a foreign national to the border - which may not be executed prior to 48 hours after notification or, where an application has been made to the administrative court, until the court has ruled on the case, i.e., no more than four days after the date of such application - he or she may be held,¹⁰ if absolutely necessary and pursuant to a written, substantiated decision by the authorities, in premises "not part of the prison administration", for as long as is strictly necessary for his or her departure.¹¹ In cases of unauthorized entry to the country by sea or air, the law provides for custody in a holding area for as long as is strictly necessary for the foreign national to leave or for a decision to be taken on his or her asylum application. Appeal procedures for such cases are established and time limits set for procedures and for custody in holding centres.

58. The Special Rapporteur takes a positive view of the fact that the Act explicitly provides certain guarantees for foreign nationals who are placed in custody: judicial review of the decision, a time limit on administrative detention, administrative remedies, registration of those held in custody, information from the royal prosecutor, who must visit the holding area and inspect the physical conditions, the provision of medical aid, interpretation and counsel, and facilities for informing the consulate authorities and contacting a person of choice.

59. The Special Rapporteur is concerned that the time limit (48 hours) for appealing against an expulsion order may not be sufficient to obtain the necessary facilities for preparing the appeal and contacting a counsel of choice. Account must be taken of the fact that the person is in a foreign country and does not know the language, the law or the procedures to be followed.

60. The Special Rapporteur was told that the Act explicitly establishes categories of individuals liable to expulsion - pregnant women, minors and any other foreign national whose life or liberty would be threatened or who would run the risk of inhuman, cruel or degrading treatment - who may not be expelled. In such cases, the Act establishes compulsory residence measures and an obligation to report regularly to the police station or gendarmerie. In that regard, the Special Rapporteur wishes to highlight the importance of ensuring a degree of protection by establishing special measures for minors and pregnant women, whose status prevents them from being expelled even if they are technically liable to expulsion. The measures applicable in these cases are not explicitly set forth in the Act: it does not state clearly whether they are to be placed in custody or confined to their residence or whether any measures of protection have been put in place for them.

61. The Special Rapporteur notes that infringements of the immigration regulations are liable to criminal and administrative action, with a view to discouraging illegal migration. The detention of migrants in an irregular situation should under no circumstances be punitive in nature. In this regard, the Special Rapporteur wishes to emphasize that account must always be taken, in applying criminal law, of migrants' individual history. Additional guarantees should be provided to help irregular migrants who, even when guilty of infringements of immigration law, are in fact eligible to apply for asylum. From information received and her own observations, the Special Rapporteur notes that neither the authorities responsible for law and order and for control of air, sea and land borders, nor the judicial authorities, have clear information regarding refugee status. There are reportedly 2,245 refugees on Moroccan territory and only 720 of them receive financial support from the Office of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR Office in Casablanca does not have sufficient financial resources to help this vulnerable group and is not sufficiently visible or well enough known among the migrant community.

62. The Special Rapporteur warmly welcomes the provisions of the Act aimed at punishing smugglers and traffickers of human beings and combating corruption among officials who facilitate illegal migration. She notes, however, that no measures of protection have been put in place for the victims of such trafficking.

**E. The problem of illegal migration and partnership
with the European Union**

63. Illegal migration is one of the most important issues in relations between European Union member States and Morocco.

64. The European Union's wish to link foreign policy and migration policy is clearly expressed in the provisions on migration contained in the association agreement concluded between Morocco and the European Community,¹² and in the context of the Euro-Mediterranean Partnership. Title VI of the association agreement, which deals with cooperation in social and cultural matters, provides for a social dialogue to be conducted on all problems relating to migration, illegal immigration and the conditions governing the return of individuals who are in breach of the legislation dealing with the right to stay and the right of establishment in their host countries.

65. In the area of social cooperation, reduction of migratory pressure is considered a priority project. In the context of the multilateral Euro-Mediterranean dialogue, the approach to migration is based on controlled management of immigration through judicial, customs and police cooperation, i.e., closer cooperation with a view to reducing migratory pressure from illegal immigration, and to concluding bilateral readmission agreements.

66. Under the MEDA programme of technical and financial support measures,¹³ the Morocco Strategy Paper 2002-2006 and the National Indicative Programme 2002-2004 emphasize the role of the social, cultural and human component in the European Union's strategy in Morocco. The Union aims to develop a two-pronged approach: (a) improving the organization of legal emigration while at the same time combating illegal emigration; and (b) stabilizing the populations in those regions that produce the majority of such emigration, and particularly the northern provinces.

67. The negotiation of the bilateral agreements on the readmission of nationals in an irregular situation, which Morocco has signed with various States, represents a move towards regulating migration at the inter-State level. Morocco is currently also negotiating a draft readmission agreement with the European Union. This draft aims to provide for the readmission of Moroccans and nationals of third countries or stateless persons where it is established, or can reasonably be assumed, that they are in possession of a valid visa or residence permit issued by Morocco, or entered the territory of European Union member States illegally from Moroccan territory. In that regard, the Special Rapporteur notes that, under article 13 of the Cotonou Agreement, each of the African, Caribbean and Pacific (ACP) States undertakes to accept the return of and readmission of any of its nationals who are illegally present on the territory of a member State of the European Union, at that member State's request and without further formalities. The role of buffer State should not be imposed upon a country without adequate financial support and technical back-up, or reinforcement of the structures and personnel responsible for combating illegal migration.

68. The Special Rapporteur notes that, as a result of this mainly control-based migration policy, Morocco is under pressure to play the role of policeman. The Special Rapporteur has also been told that Morocco has been pressed by its European partners to set up reception centres along the lines of Spain's temporary holding centres for immigrants (CETI) for initial reception of migrants awaiting a decision on their case.

69. Although the Special Rapporteur stresses that appropriate assistance should always be guaranteed and provided to irregular migrants in a particular country, she believes that the establishment of holding centres may entail certain risks. In that regard, she recalls the experience of Ceuta, where, as long as no solution can be found to the problem of sub-Saharan irregular migrants, the reception centres are frequently overcrowded, waiting times are very long and there is genuine social unrest. What is more, the establishment of such centres may place too heavy a burden on Morocco in financial and human resource terms, if measures to prevent illegal migration are not put in place at the same time.

70. In the Special Rapporteur's view, it is essential for Morocco and the European Union to collaborate in developing a policy of co-development with migrants' countries of origin or transit. The planned measures still seem to concentrate too much on what is basically policing. The Special Rapporteur advocates the incorporation of global development measures as part of the strategy to combat illegal immigration, which must of necessity deal with African emigration as a whole and pay particular attention to its root causes.

71. The Special Rapporteur is pleased to hear that a dialogue on the migration problem - the 5+5 Dialogue - has been initiated by the countries of the western Mediterranean, and recommends that there should be a positive, concrete follow-up to the recommendations of the Tunis Declaration, which established a global, balanced framework for all aspects of the migration issue, and to the development of this approach by the Ministerial Conference in Rabat. The Special Rapporteur recommends an approach to the issue of migration that ties in with migrants' rights, as well as action to combat poverty and local development efforts in the regions most likely to produce migrants.

72. In that regard, the Special Rapporteur urges Morocco to put in place instruments of immigration policy incorporating a component on the integration of migrant populations, for they must be given an appropriate status. She also recommends that Morocco should provide for reintegration of migrants returning home - voluntarily or otherwise. Resettlement programmes should take account of the social and human dimension of migration, including the psychological consequences of uprooting and the difficulties of re-entering the labour market.

III. CONCLUSIONS AND RECOMMENDATIONS

73. **The Special Rapporteur notes with satisfaction the Moroccan Government's efforts to protect the rights of its nationals abroad. She is concerned at the situation regarding the rights of Moroccan irregular migrants and at conditions for sub-Saharan migrants in Morocco. The Special Rapporteur notes the Government's efforts to combat illegal migration to Morocco and from Morocco to Europe. In her view, positive efforts are being made by all government bodies at various levels. The problem is the lack of financial resources to strengthen the capacity of those bodies responsible for combating illegal migration and**

managing migration generally. The lack of technical and structural resources, and of specific allocations in police and social and health service budgets for assistance to migrants in an illegal situation, is a cause for concern.

74. The Special Rapporteur believes it is essential to update domestic legislation to enable it to cope better with the problem of illegal migration, including Moroccan emigration to Europe and immigration by sub-Saharan and nationals of other countries travelling through Morocco to Europe and in many cases remaining illegally on Moroccan territory. The efforts being made to standardize and update the provisions of the various regulations, administrative instructions and acts, to refine them and compile them into a single legislative text so as to give the authorities more precise guidelines and leave them somewhat less discretion, are to be welcomed.

75. The Special Rapporteur finds that the updated regulatory framework is not always balanced by other measures that are not merely punitive. The problem of migration - whether legal or illegal - should be viewed in a broader perspective, one that will admit an approach focusing not only on control - i.e., policing and punishment - but also on protecting the victims of socio-economic and development-related migration. Moves to establish genuine policies and legislation on migration should include a border-control component, a component on the integration and protection of migrant populations, and resettlement programmes for migrants returning home, whether voluntarily or otherwise. The Special Rapporteur is aware that this could put Morocco in a delicate position both in economic terms and as regards its relations with neighbouring countries, and indeed with its own nationals, many of whom are expatriates, and she wishes to stress that the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should act as guiding principles in the planning, promotion and implementation of initiatives and policies relating to migrants.

76. Another concern is the situation of irregular sub-Saharan migrants. The Special Rapporteur notes that many of them, fleeing from conflict in their own countries, have no assurance that they will be granted refugee status or that their asylum applications will be considered before they are escorted to the border. In that regard, she encourages Morocco to continue its efforts to fulfil its obligations arising from ratification of the Convention relating to the Status of Refugees and the Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa.

77. The Special Rapporteur encourages Morocco to pursue a migration policy aimed at ending the dichotomy between what the country demands in terms of protection for its own expatriates, and the level of protection and assistance provided, and the treatment accorded to foreign migrants in Morocco.

78. The Special Rapporteur invites the Government to take measures to protect the rights of irregular migrants and establish special assistance schemes for sick or injured migrants and programmes for their physical and psychological rehabilitation. She also invites the Government to acknowledge the existence of prostitution and of the exploitation of sub-Saharan migrants and to establish suitable instruments for the protection, assistance and rehabilitation of victims of trafficking in human beings.

79. The Special Rapporteur recommends that a plan of action be drawn up to protect migrants' rights through training for judicial authorities, access to appeal procedures, awareness-raising and information campaigns. She invites the Moroccan Government to consider tightening up internal oversight mechanisms for officials involved in managing migration, and taking measures and initiatives to combat corruption.
80. The Special Rapporteur recommends that clear procedures be drawn up in order to ensure that, in cases of illegal entry or residence, from the moment a foreigner is stopped at the border or on national territory, he or she is always informed, at least verbally and in a language he or she understands, of the nature of, and reasons for, the intended decision to deny him or her entry or residence.
81. The Special Rapporteur recommends the establishment of measures to protect minors and pregnant women, whose status prevents them from being expelled even though they are technically liable for expulsion. In that regard, the Special Rapporteur invites the Government to ensure that the law does not allow the detention of unaccompanied minors and that the detention of children is authorized only as a last resort and only in the best interests of the child. The Special Rapporteur is concerned at the situation of unaccompanied minors and recommends that the Government should provide them with adequate protection and aid and monitor their situation very closely.
82. The creation of administrative detention centres as provided for by Act No. 02-03 may have both positive and negative consequences, and should be backed up by the allocation of sufficient financial resources to allow for their establishment and management, staff training and guaranteed standards of living and accommodation, and by measures to ensure rapid resolution of individual cases in order to avoid prolonged or indefinite periods of detention. The Special Rapporteur also recommends that such centres should comply with international standards providing minimum guarantees for persons in custody. In that connection, she recalls the recommendations contained in her earlier report (E/CN.4/2003/85) and its addenda and corrigenda.
83. The Special Rapporteur recommends taking steps to provide training for authorities with the power to detain in the psychological aspects of detention, in cultural sensitivity and in human rights procedures. Training courses should also be offered to those responsible for expulsions, to enable them to carry out their duties while respecting the rights and dignity of migrants.
84. The Special Rapporteur invites the government institutions responsible for migration issues, and particularly the Centre for Migrants' Rights (CDM), to continue with their work, and also to look into all the problems facing the foreign migrant in Morocco.
85. The Special Rapporteur recommends that efforts to combat illegal migration should include global development measures, focusing as a matter of priority on the socio-economic causes of such migration. In that regard, she welcomes the development projects that have been set up at the local level and invites local authorities to repeat this work in other affected regions of Morocco.

86. **The Special Rapporteur recommends that migration issues should be addressed in the context of socio-economic development, by stepping up the European Union's contribution to efforts to develop a sustainable social environment. She encourages the European Union to continue its dialogue with Morocco and to base its partnership on cooperation strategies aimed at combating illegal migration through technical assistance and joint development programmes.**

87. **The Special Rapporteur invites the Moroccan Government to become a party to the two additional protocols to the United Nations Convention against Transnational Organized Crime. These instruments should form a reference framework for provisions and measures to protect victims of human smuggling and trafficking and ensure that such victims are not penalized.**

88. **The Special Rapporteur invites the Office of the United Nations High Commissioner for Refugees (UNHCR) to provide financial and human resources to its Morocco office to enable it to discharge its mandate to protect refugees and provide assistance to the national authorities in that regard.**

89. **The Special Rapporteur suggests that NGOs should take a stronger position and gear their approach more towards the protection of migrants' rights, with awareness-raising campaigns and material aid and legal support in various forms. She recommends that they should support migrants and include them in their terms of reference so that they can help defend their rights.**

90. **The Special Rapporteur invites university institutions to continue with their work on migrants' rights research programmes.**

Notes

¹ The majority of foreign prospective irregular migrants come from Algeria, Senegal, Mali, Cameroon, Liberia, Sierra Leone, Côte d'Ivoire, Nigeria, Guinea and the Congo.

² See E/CN.4/2004/76/Add.2.

³ See CRC/C/15/Add.211 and CRC/C/93/Add.3.

⁴ Nationals of African countries are required to produce a valid passport and a Moroccan entry visa unless they are nationals of Congo, Côte d'Ivoire, Guinea, Libyan Arab Jamahiriya, Mali, Niger, Senegal or Tunisia, in which case they are required to produce only a valid passport.

⁵ The relevant laws are: the Dahir of 15 November 1934, on foreigners' entry to and residence in Morocco; the Dahir of 16 May 1941, on residence permits for Morocco, amending the Dahir of 15 November 1934; and the Dahir of 8 November 1949, regulating the immigration of Moroccan workers.

⁶ A fine and/or between one and six months' imprisonment.

⁷ From two to five years' imprisonment.

⁸ From 10 to 20 years' imprisonment; from 15 to 20 years in the event of bodily injury to a migrant thus transported: life imprisonment in the event of death.

⁹ Chapters III and IV of the Act, respectively, regulate the escort of foreign nationals to the border and their expulsion from Morocco. In both cases, provision is made for an appeal, within 48 hours of notification, to the president of the administrative court, as the judge responsible for interim measures, and for a remedy of appeal to the Supreme Court within one month of the date of notification. In that context, the Act also allows the foreigner to request the help of an interpreter and of counsel of his or her choice or a court-appointed counsel, and sight of his or her case file.

¹⁰ Any foreigner placed in custody must immediately be informed of his or her rights. Twenty-four hours after issuance of the custody order, application is made to the president of the lower court for an order concerning the surveillance and supervision measures required for the individual's departure.

¹¹ Custody measures may apply in the first instance for 24 hours; by order of the lower court, custody may be renewed for 144 hours. In cases explicitly provided for by the law, this period may subsequently be extended by a maximum of 72 hours.

¹² Euro-Mediterranean Agreement establishing an association between the European Communities and their member States, of the one part, and the Kingdom of Morocco, of the other part, signed on 26 February 1996.

¹³ The MEDA programme provides the financial support needed to achieve the aims of the association agreements and the Barcelona process.
