Title:
Caught in The Middle: 
The EU-Morocco Co-operation on Migration Management and The Human Rights of Migrants.

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Migration management and control have become defining elements of EU’s relationship with its neighboring countries, especially those south of the Mediterranean. It is illustrative that migration is quasi-present in all EU external policies targeting third countries, especially those considered as major migrant sending and/or transit countries.

Due to the geopolitical significance of Morocco’s location, the EU and its members states have devised several policy frameworks and provided financing and technical assistance to deepen their cooperation with the kingdom on matters pertaining to migration management and border control. In this context, Morocco seems to be balancing its response to EU’s incentives and pressure by showing cooperation on border control and resisting proposals that it deems detrimental to its strategic interests.

Both parties, however, seem to have forgotten or purpousefully ignore, that their cooperation and efforts to stem migration do not evolve in a vaccuum and have consequences on the rights of those individuals they aim to prevent from reaching Europe. This thesis, therefore, aims to examine the multifaceted EU-Morocco cooperation on migration, with a particular focus on the human rights consequences it engenders. This thesis will also investigate how Morocco’s attempts to reconcile the divergent interesets of its partners with its own, prevents it from building its legal and institutional frameworks to fulfill its legal obligations.
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Table of Content:

Abstract 2
Acknowledgment 3
Abbreviations 5

Introduction: 6
Scope and Research Question 7
Rationale and Added Value 8
Methodology and limitations 9

Part 1: Morocco at the Center of Shifting Migratory Trends 11

Chapter 1: Morocco: from Outward to Inward Migration Flows 12

A: Morocco: A Migrant-Sending Country 12
B: Morocco: A Transit Country 14
C: Morocco: A Paradoxical Case 16

Chapter 2: Morocco’s Legal and Institutional Frameworks 19

A: The Physical Presence and Legal Absence of Migrants 19
B: National and International Legal Frameworks:
   1. National Framework 23
   2. International Framework 26
C: Morocco’s Strategy on Immigration and Asylum: The Prelude of a Fledgling Protection System?
   1. The Triggers of the Policy 29
   2. The Regularization campaign: A Huge Mediatization for a Meager Outcome? 32


Chapter 1: Morocco a de Facto Europe’s ‘Gendarme’? 39

A: Border control and management:
   1. Direct Measures 41
   2. Indirect Measures 47
B: Readmission of Nationals and Third Country Nationals:
   1. Bilateral Readmission Agreements 51
   2. EU Readmission Agreements: Disjointed Expectations 54

Chapter 2: The Impact of EU-Morocco Cooperation on the Human Rights of Migrants. 57

A: Border Control: Lucrative for Business, Deadly for Migrants. 57
B: A Spanish-Moroccan Complicity: Violations of Human Rights and International Law. 61
   1. The Right to Asylum: The Inconsistencies Between Law and Practice. 62
   2. Push-backs or the Erosion of the “non-Refoulement” Principle. 65
   3. Border Control: Minors are no Exception. 69
C: Morocco, not yet a Safe Country? 72

Conclusion: 76

Bibliography 79
**List of Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMDH</td>
<td>Association Marocaine de Droits de l’Homme / Moroccan Human Rights Association</td>
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<td>AI</td>
<td>Amnesty International</td>
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<td>AU</td>
<td>African Union</td>
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<td>CRC</td>
<td>Convention of the Rights of the Child</td>
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<td>CAT</td>
<td>Convention against Torture</td>
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<td>CEAS</td>
<td>Common European Asylum System</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CPT</td>
<td>Committee on the Prevention of Torture</td>
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<td>CNDH</td>
<td>Conseil National des Droits de l’Homme/ National Council on HR</td>
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<td>ECHR</td>
<td>European Convention on Human and Fundamental Rights</td>
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<td>ECCHR</td>
<td>European Center for Constitutional and Human Rights</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECtHR</td>
<td>European Court</td>
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<td>ECRE</td>
<td>European Council on Refugees and Exiles</td>
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<td>EMHRN</td>
<td>Euro-Mediterranean Human Rights Network</td>
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<td>EMN</td>
<td>European Migration Network</td>
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<td>EU</td>
<td>European Union</td>
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<td>EURA</td>
<td>EU Readmission Agreement</td>
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<td>FRA</td>
<td>European Agency for Fundamental Rights</td>
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<tr>
<td>FRONTEX</td>
<td>European Border and Cost Guard Agency</td>
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<td>GADEM</td>
<td>Groupe Antiraciste d’Accompagnement et de Défense des droits des Etrangers et Migrants</td>
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<td>GFMD</td>
<td>Global Forum on Migration and Development</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>IOM</td>
<td>International Organization of Migration</td>
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<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>SCO</td>
<td>Safe Country of Origin</td>
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<td>STC</td>
<td>Safe Third Country</td>
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Introduction:

In 2014, Morocco launched its National Strategy on Migration and Asylum, which culminated in two regularization campaigns, one in 2014 and a second, in 2017. These two campaigns allowed approximately 50,000 migrants to acquire legal status in Morocco.¹

The regularization campaigns, initiated by the Moroccan Monarch, showed that Morocco is not only attracting African migrants, but that it has become a hub of some sorts for many other nationalities (the ministry of the interior recently announced that applicants for regularization were from 116 nationalities).² This new reality shows the centrality of Morocco in migratory flows and dynamics. It is therefore, not only a sending and transitory country, but also a receiving country.

Morocco’s geographical location makes it a country of particular interest to Europe. The North African kingdom shares more than history and geography with Europe. The two parties have a long economic and trade relation that spans over many decades. However, Morocco’s cooperation with the EU is not only economic. It covers other sectors such as security, and within security, migration.

The EU-Morocco cooperation on security and migration is central for this study, especially cooperation regarding migration, which has become a key factor in Morocco-EU relations to the point that it is reportedly shaping the outcomes and trajectory of the other dossiers of cooperation between the two parties.

Morocco is considered an associated country of the European Union. The relations between the two are framed in the European Neighborhood Policy (ENP) and the Union for the Mediterranean. Among the ENP countries, Morocco has been recognized with an advanced status, permitting high levels of political cooperation.

This North African country, which shares land borders with the EU (the two Spanish enclaves, Ceuta and Melilla, are on Moroccan territory) and is at proximity from continental Europe (only

² Ibid
14km from the Strait of Gibraltar) was for many decades a migration source and a transit country. After the exacerbation of push-factors in sub-Saharan Africa and the Middle East (Yemen, Syria, Palestine), many migrants came to Morocco with the hope of an easy crossing to Europe that seemed so close, yet elusive to them. However, the rapid tightening of Europe’s borders and the increased border control cooperation between Morocco and Spain made the transit of migrants in Morocco long and oftentimes indefinite.

Morocco prides itself as being referred to as a champion of migration issues in the region and wants to take a central stage in this domain. First, Morocco hosted the Intergovernmental Conference to adopt the Global Compact on Migration (GCM) in December 2018, and second, in the same month, signed a headquarters agreement with the African Union (AU) to host the newly created African Migration Observatory that aims, inter alia, to reframe the discourse about migration in a way that includes the African perspective and narrative.³

It appears that Morocco is working to fortify its position vis-à-vis the EU (gaining monetary and technical support) for curbing migration, which is an urgency for the EU and its member States. It is a source of contention between the member states because of the failure of negotiations to revise the Dublin Regulation and a source of tension between the EU and its external partners. The EU has devised many instruments and used an array of political, economic and financial tools to pressure and/or incentivize the traditional sending and transit countries to block migrants from reaching Europe. The externalization of EU’s borders has become the foundation in the cooperation between Morocco and the EU.

**Scope and Research Questions:**

It is evident that Morocco’s role in migration flows and dynamics evolves and changes according to a plethora of factors ranging, inter alia, from socio-economic to political and environmental determinants. Furthermore, the kingdom’s geographical location and its geopolitical and economic ties with Europe make it a key player and partner in the so-called fight against illegal migration. Therefore, this thesis will attempt to answer the following questions in an effort to elucidate the

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important aspects of EU-Morocco cooperation on migration management and the impact it has on the rights of migrants.

Why the cooperation with Morocco on migration management and border control is important to the EU and its member states?

Does Morocco have the legal and institutional frameworks to fulfill its conventional obligations on matters of immigration and asylum?

How does the EU-Morocco cooperation translate on the ground and what is its impact on the human rights of migrants?

**Rationale and added value:**

The rationale of this thesis is to address the gaps in the literature and open questions within the system, as this is a subject, which has not been explored and documented in a rigorous manner.

It is of paramount importance to analyze whether and to what extent the absence of well-defined laws that go in line with Morocco’s migration dynamics and the country’s centrality in migration flows, and how the persistence of legal, institutional, and practical barriers prevent migrants from having access to the most basic protection, make the country unwelcoming to migrants, contradicts the official position of Morocco on migration, and adds more indelible stains to the country’s human rights record. From a first point of view, the country lacks effective legal and institutional frameworks that could ensure some sort of protection for migrants, especially refugees and asylum seekers that are protected under international legal instruments. On the other hand, it is true, that the kingdom has been for a longtime a transit and a sending country; hence, it did not develop the mindset of a receiving country to build its legal and institutional machinery to meet the protection needs of migrants.
Methodology and limitations

The research will be conducted through legal texts (soft law, international Conventions and concluding observations of treaty bodies), together with secondary literature such as policy analysis. Also included, will be in-person interviews with international and local NGOs, government agencies and a sample of sub-Saharan migrants in Morocco.

Morocco is trying to brand itself as an advocate for migrants’ rights on the international stage, especially given that King Mohammed VI was selected by African leaders to be the AU’s leader on migration issues. Considering these developments, this thesis aims, at first, to shed light on the grey areas of Morocco’s migration policy. The purpose of doing so, is to show that while this policy is a good-first step and a novelty in the region, it still lacks legal and institutional frameworks, therefore, it is not enough to provide an effective protection to migrants in need of Asylum. This study aims to demonstrate how Morocco’s stance on migration issues does not come from a vacuum, but that it is shaped by many factors, inter alia, EU-Morocco relations, Morocco’s Africa agenda, and the country’s internal politics. Furthermore, it will investigate the impact of the EU-Morocco cooperation on migration (mainly implemented through bilateral cooperation with Spain) has on the lives and the rights of migrants. The thesis argues that the lack of a rights-based approach and the prevalence of a security-driven approach, cause harm and suffering and accentuate the vulnerabilities of migrants.

Therefore, this thesis is divided into two parts. The first part discusses how the shifting migratory trends impacted Morocco and how despite these shifts the kingdom’s legal and institutional frameworks still lag behind. The second part of the thesis, evaluates the impact of the EU-Morocco cooperation on migration management and border control on sub-Saharan migrants, how there seems to be increasing selectivity at Spain southern borders.

It is worth noting that, the word “migrant” will be used interchangeably when talking about voluntary or forced migration, thus including immigrants, refugees and asylum seekers. In the Moroccan context, it is difficult for refugees and asylum seekers to be identified as such because the country lacks an effective asylum system and refugees and asylum seekers have no possibility

4 Ibid
to be identified or apply for asylum at the kingdom’s ports of entry. The same applies to Spain’s Ceuta and Melilla borders where sub-Saharan migrants have no access to the asylum offices at the borders of these enclaves.

Additionally, it should be mentioned that during the research phase for this thesis, the author contacted different government and non-governmental institutions and noticed that these institutions were rigid in their interaction with a third party that is not a state agent or a beneficiary. Getting information, even the basic ones, was not easy for most staff of these institutions seemed not used to interacting with researchers. Excuses such as “our director is not here, so we cannot assist you” or “we are busy, send us an email and we will see what we can do” or “leave us your phone number and we will call you back” were used in a dismissive way. Only one of the organizations contacted was helpful and willing to share information. Even though no appointment was taken with the ‘Association Marocaine des Droits de l’Homme,’ its staff was very cordial and helpful. This goes to say that in order to protect and promote the human rights of migrants, there should be a change in mentalities and more flexibility from different stakeholders.

Furthermore, the key report of the CNDH (National Council for Human Rights) based on which Morocco has developed its migration policy is nowhere to be found. The executive summary of the said report is the only document available on the Council’s website. When the author visited the Council’s headquarters, he was told that the report is not public. Some human rights activists claim that there was no exhaustive report about the situation of migrants, and that the authorities mediatized that ‘inexistent’ report to demonstrate that they take the human rights of migrants to heart.⁵

⁵ Two prominent human rights defenders claimed, under anonymity, that there was no report and that there was only a small document with some highlights.
Part 1: Morocco at the Center of Shifting Migratory Trends.
Chapter 1: Morocco: from Outward to Inward Migration Flows

Morocco’s experience with human movement between the two sides of the Mediterranean in the years following the country’s independence and onward, went through three stages in which Morocco played different roles depending on a set of factors. In the 1960s and 1970s, Morocco was a source country of migrant workers, hence it pursued an active policy of labor export. This policy continued until Western European countries put restrictions on the migrant workers’ scheme in the mid-1970s. Then in the late 1990s, Morocco became the privileged transit platform for sub-Saharan migrants zeroing in on the European ‘Eldorado.’ And in the context of the enhanced border control and deepened migration cooperation between the African Kingdom and the EU, mainly with Spain, the former has become a receiving country in its own right. It is evident that Morocco’s role in migration flows and dynamics evolves and changes according to a plethora of reasons ranging from socio-economic to political and environmental factors.

A: Morocco: A Migrant-Sending Country

According to Francoise De Bel-Air (Bel-Air, 2016, P1), as of 2011 there were 2.4 million Morocco-born migrants living in Western Europe alone. This number jumps to more or less 7 million once first, second, and third generation Moroccans are added to the computation. Morocco is, indeed, a major migrant-sending country.7

In the early 1960s and 1970s Moroccan migrants were solicited by EU member States (MS) such as Belgium, France, Germany, and the Netherlands. Therefore, Morocco signed guest workers agreements with these countries.8 The guest workers scheme allowed these countries to cover the manpower shortage they suffered after World War II. Early on, Morocco developed a policy of labor export which allowed it to employ its low skilled workers and ease the social and political

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7 Ibid.
8 For instance, Morocco signed an agreement with Belgium in 1964, and with Germany in 1963
tensions (the social unrests of 1958, 1965, the 1972-73 failed coup d'état, 1981, and the 1984 social unrest in the North of Morocco) that marked the country soon after its independence.  

As mentioned previously, migrants were welcomed in the past into Western European countries. However, the 1970s marked a turning point; the 1973 oil crisis and the fall of the Bretton Woods system (the end of the international convertibility of the US dollar to gold) sent the world's economy into recession. Consequently, unemployment rose in conjunction with inflation which engendered social tensions. Migrant workers who lived in minimal visibility in the peripheries of host countries in compounds or housing complexes, were now seen as an emerging problem that needed to be contained. Furthermore, Europe’s efforts towards integration and the realization of the four freedoms (free movement of goods, services, capital, and people) enunciated in the Treaty of Rome meant closing the borders on non-Europeans. Moreover, the signing of the Schengen Area agreement was followed by the imposition of visa requirements on Moroccans, even by countries such as Spain and Italy for which Moroccan nationals did not previously need a visa of entry.

The evolution of the European integration had a spillover effect on Morocco and the other Maghreb countries. Europe was now out of reach for the majority of Moroccans except for the privileged cluster of society which had the means and resources to travel to Europe as they please. The unskilled individual from rural Morocco that got pushed out of the village by years of drought and low crop yields, had no longer a legal venue to access Europe to work there and send money to support his family.

The bleak socio-economic (successive droughts, rural exodus, demographic pressure, the debt crisis of the 1980s) and the political (‘Years of Lead’) environment that reigned over Morocco in the last decades of the 20th century inaugurated a new dangerous and costly migration trend of Moroccans to Europe. What is now known as the Western Mediterranean route was the entry point of scores of Moroccans fleeing poverty and disenfranchisement. It is the same route that is nowadays the point of crossing of migrants from several nationalities with different motivations fueling their desire to migrate to better horizons.

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9 These events are known in Morocco’s collective memory as the ‘Years of Lead.’
The Western Mediterranean route has become infamous, given the high death toll of migrants who perish trying to cross the Strait of Gibraltar. This route registered its first victims in May 19, 1991, and since then there has been a record number of victims. For instance, between 2015 and May 2019 the Mediterranean claimed the lives of 5,919 migrants. Unfortunately, the tragedy will continue as long as the push-factors remain unaddressed, and an effective cooperation and solidarity between origin, transit, and host countries is not put in place.

B: Morocco: A Transit Country

Starting from the late 1990s the country became a point of transit for migrants. Hence, adding a new attribute to its previous one of being a country of origin. Due to a multitude of push-factors such as famine, wars and political instability in the Sahel and sub-region, thousands of sub-Saharan Africans took the perilous journey to reach Morocco in order to enter Europe, either through the two Spanish enclaves of Ceuta and Melilla or by crossing the Strait of Gibraltar to reach the Spanish mainland. The other point of entry to Europe, which is less talked about, is through the Canary Islands. This route gained popularity amongst migrants after Western Sahara was no longer an active conflict zone. The signing in 1991, of an armistice between Morocco and the Polisario Front ended a conflict that had lasted over two decades and made the closest shores to the Canary Islands off-limit for Moroccan and sub-Saharan migrants alike. The relative security of the area and its closeness to other ‘hot spots’ and migrants’ routes caused the number of crossing attempts to reach the Spanish islands to spike.

As has been highlighted above, Morocco’s geographical position offers many strategic points of entry to Europe, which is a considerable pull-factor of migrants. Another pull-factor worth mentioning is the visa exemption regime that Morocco signed with several sub-Saharan African countries such Mali, Senegal, Gabon to cite a few. Citizens of these countries can enter Morocco

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11 For more figures and updates, please see IOM’s missing migrants project accessible at https://missingmigrants.iom.int/region/mediterranean?
legally then fall into illegality once they over stay their legal sojourn while looking for a suitable opportunity to reach Europe. Morocco has become a waiting room of some sort for many migrants attempting to cross to the old continent.

A study conducted in 2007 revealed that the average duration of stay in the country was 2.5 years,\(^\text{12}\) therefore, making migrants switch from one category to another, that is, from transit migrants to de facto permanent migrants. This shows, among other things, one of the dangers of categorization, that is, it blurs facts and it does not capture the whole reality. A migrant can along his journey switch from one category to another.\(^\text{13}\) For instance, a Malian can enter Morocco legally without a visa, then overstay the 90 days, making him/her fall into a situation of illegality. And given that his/her aim is to reach Europe and not stay in Morocco, he/she would be categorized as a transit migrant; and because his/her stay is prolonged, he/she falls again into a new category, the de facto permanent migrant. As argued by many scholars and experts, categorization is politically motivated and is dangerous in the sense that it gives a disjointed picture of the reality and stands like a wall in the face of the protection of migrants’ rights.\(^\text{14}\)

The 2000 backlash against sub-Saharan migrants in Libya pushed the Libyan government to take draconian measures to prevent more migrants from entering the country. In fact, the Libyan authorities forcibly removed 1.4 million migrants between 2003 and 2005.\(^\text{15}\) The situation of migrants in those years is to some extent similar to that of 2015 and onward, where migrants were ill-treated and, in some cases, enslaved.\(^\text{16}\) The unsafety of the Libyan context coupled with the increased cooperation between the Libyan and Italian coast guards constitute a push-factor effect of migrants towards other perceivably less perilous routes. This would, inter alia, explain why the number of attempted crossings to Europe from the Western Mediterranean route increased dramatically in 2018 to the point that it doubled the number of crossings recorded in 2017. The

\(^{12}\) Bel-Air, F. D. (2016).
\(^{13}\) Collyer et al. (2010). Developing Dynamic Categorizations of Transit Migration, Wiley Online Library
\(^{14}\) Ibid
majority of the 57,000 crossings initiated from Morocco. Consequently, The European Border and Coast Guard Agency (Frontex) in a news release dated 20 February 2019 stated that the Western Mediterranean route was, in 2018, the most frequently used route to reach Europe. This situation reveals that the toughening of border controls and the implementation of restrictive immigration policies by member states push migrants to look for other routes to reach their final destination. Some migrants succeed in their endeavor, but the majority of them get trapped in transit countries.

C: Morocco: A Paradoxical Case

In addition to its two previous attributes of being a sending of and a transit country for migrants, Morocco is increasingly becoming a host country. According to the 2014 general census there were 86,206 migrants living legally in the country. A high percentage of this number is of the high skilled western workers and European retirees who chose to spend their golden age in Morocco as it offers a good quality of life. There are also reports of thousands of Europeans who are settling illegally in the country.

The regularization campaigns of 2014 and 2017 added 50,000 new legal migrants to the mix. This campaign showed also that not only sub-Saharan Africans who were interested in settling in in Morocco, but also migrants from 116 different nationalities.

The number of legal migrants increased with time as did the number of undocumented migrants; given that they live in the shadows, their real numbers are difficult to come by. Nonetheless, one can confidently infer from current trends that the number of undocumented migrants will increase

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and that in most cases many of these migrants might settle in Morocco as their best available option.

Mr. Christian N. from Guinea, a migrant living in Morocco, said that he entered Morocco illegally with no intention to settle in the country, but given the toughening of border controls and his meager resources, he rethought his plans and submitted his application for regularization, which was approved. Even though his residency permit gives him access to the job market, he still has not been able to find a suitable job, and he spends his days wandering in Rabat trying to sell headphones. When asked about his future plans, he answered:

“I will try to save some money and go back home. Living in Morocco is hard and Moroccans are not always nice.”

The case of Christian is indicative of the difficulties that migrants face in Morocco. They come to the country thinking that their journey to Europe will be smooth, but they are caught off-guard by the reality of the many challenges and obstacles standing between them and their final destination. The fence they thought was easy to jump over, is in fact 3 fences, over 6 meters in height, topped with razor-sharp barbed wire, which makes crossing to Melilla or Ceuta costly in terms of bodily injuries and near impossible for most migrants. The 14 km they thought were easy to cross on a fast boat, are not easy after all, for securing a spot on the boat is expensive, and crossing - even under optimal conditions - is still dangerous (almost 6,000 recorded deaths in the last 3 years and a half).

The cooperation on migration management between Spain and Morocco is governed by bilateral agreements (e.g. 1992 readmission agreement) as well as EU frameworks and policies (e.g. ENP). The migratory pressure sustained by both countries strengthened their cooperation and pushed them to increasingly coordinate their actions in an effort to prevent migrants from crossing any of

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22 The interview was unplanned. It took place on 29-04-2019 at a small restaurant in Rabat where Christian N. was exploring buyers for his headphones.
23 For more figures and updates, please see IOM’s missing migrants project accessible at https://missingmigrants.iom.int/region/mediterranean?
24 The Agreement between the Kingdom of Spain and the Kingdom of Morocco ‘regarding the circulation of people, the transit and the readmission of foreigners who enter illegally’, was signed in Madrid on 13 February 1992
the borders that the two countries share. This cooperation is not always done with respect to international human rights instruments. Cases of violence, killings, and ‘hot returns’ without due process have been documented, proving by the same token the limitations and the human cost of a security-driven approach to migration.
Chapter 2: Morocco’s Legal and Institutional Frameworks

Morocco’s official rhetoric puts forward the country’s efforts and its innovative and humanistic policies on migration management. Moreover, the country prides itself as being a pioneer in the region when it comes to immigration policy, and a champion of migrants’ rights in the African continent. The North African Kingdom’s leadership on migration, at least at the regional level, is becoming noticeable. The country hosted the UN conference leading to the signature of the UN Global Compact on Migration in December 2018, signed a headquarters agreement with the African Union to host the newly created African Migration Observatory, and in 2017-2018 co-chaired with Germany the Global Forum on Migration and Development. The country’s centrality in migration flows and dynamics, and its geographical location, make it an important partner for the EU and its member states.

Given the country’s role and its multifaceted experience with migration, it is important to verify whether Morocco has developed its legal and institutional frameworks to deal with the challenges that come with the inflows and outflows of migrants. This chapter, therefore, investigates Morocco’s migration machinery, and evaluates its inner workings.

A: The Physical Presence and Legal Absence of Migrants

The salient presence of sub-Saharan African migrants in Morocco dates back to the late 1990s. Their stay in Morocco was seen as temporary; hence, Morocco tolerated their presence as long as their numbers were reasonable, and their visibility in public space was insignificant. The physical presence of migrants went in par with their legal absence. Migrants, especially vulnerable groups amongst them like refugees, asylum seekers, women, and unaccompanied minors to cite a few, were unable to receive the international protection of which they were in dire need. Morocco

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lacked the legal and institutional frameworks necessary for an effective protection, and more importantly, Morocco lacked the political will to utilize the existing structures to provide some sort of protection. For instance, asylum seekers did not have venues to lodge their applications for protection in any port of entry even though Morocco is party to the 1951 Geneva Convention and its 1967 protocol, in addition to the national protection mechanisms set under the 1957 Royal Decree on the modalities for the application of the 1951 Refugee Convention. The same Decree established the Office of Refugees and Stateless Persons (Known as “BRA”) and an appeal mechanism within the Ministry of Foreign Affairs.26

Paradoxically, refugees and asylum seekers have rights under these national and international instruments but are not in a position to enjoy the rights and protection that these mechanisms guarantee. The nonapplication of laws or their obsoleteness prevented migrants from being recognized by the authorities and hence prevented them from enjoying their most basic rights. Apparently, the rationale behind keeping migrants ‘legally invisible’ was that as long as these newcomers were ‘legally inexistence,’ the state had no responsibility towards them. Morocco seems to use the strategy of ducking problems and not recognizing their existence as a way to escape its international obligations.

Furthermore, putting together an effective system of protection, requires financial and human resources, and shifts in budgetary priorities. Morocco runs a considerable deficit and its balance of payment is always in the red. The country struggles to meet the socio-economic needs of its own citizens. During the current decade the country’s Human Development Index fluctuated between 123 and 130 making it rank last among the countries in the region.27 Devoting a portion of the country’s scarce resources towards the protection of migrants would have been unpopular with many clusters of the Moroccan society. This also would have made the political parties running the government in a vulnerable position vis-à-vis their constituency.

27 In 2016 for instance, Morocco’s HDI was 123 whereas Iraq, a war-torn country, ranked 121.
The ambiguity of the legal and institutional frameworks pertaining to migrants had also a political goal for it allowed Morocco some room for maneuvering in its negotiations with the EU on migration management, and on other dossiers such as agriculture and fisheries, and aid to development. Morocco has been suspected of using the toughening of its border controls or their softening as a form of political bargaining in its dealings with the EU and its member states, especially Spain with which the North African country shares land and maritime borders and with which it has a complicated and a multifaceted relationship.

However, the promulgation of law 02-03 on the entry and stay of foreign nationals, commonly referred to as the Immigration Law, signaled a change in the government’s attitude towards migration. Putting this law in the context leading to its inception reveals that it came as a response to two major events. First, the EU Seville meeting of 2002, and the subsequent release by the European Council of a statement in which it stated that:

“It considers it necessary to carry out a systematic assessment of relations with third countries which do not cooperate in combating illegal immigration. That assessment will be taken into account in relations between the European Union and its Member States and the countries concerned, in all relevant areas. Inadequate cooperation by a country could hamper the establishment of closer relations between that country and the Union.”

Apparently, Morocco wanted to show its European partners that it was serious about combatting illegal migration and that it was taking the necessary steps in that regard. The EU is Morocco’s biggest economic partner; therefore, any sanctions or restrictions on Moroccan goods could hurt Morocco’s economy very badly.

Second, the Immigration Law could also be seen as a reactive response to the terrorist attacks that hit Morocco in May 2003 and plunged the country in a logic of mistrust and suspicion, and pushed it to adopt human rights restrictive laws (e.g. the antiterrorism act).

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These two events would also explain the security approach rationale behind the enactment of the Immigration Act. This law granted migrants some legal visibility but in a sense that is detrimental to them for it gave the authorities the legal ammunition they lacked to conduct deportations of sub-Saharan migrants under the pretext of applying the law. Many questionable deportations and expulsions to the Algerian and/or the Mauritanian borders were conducted by the Moroccan authorities. Unlawful deportations and expulsions of vulnerable groups such as unaccompanied minors were conducted even though articles 26 and 29 of the Immigration Law protected these categories from such practices. The UN committee on the Rights of the Child found at least five cases of such unlawful deportations. The committee recommended that safeguards be put in place to prevent such practices from occurring again.  

B: National and International Legal and Institutional Frameworks

Morocco is party to the 1951 Geneva Convention and its 1967 Protocol. Additionally, the country is party to the nine UN core human rights treaties and to many other UN conventions and protocols that form the backbone of international human rights law.

At the regional level, Morocco is party to several regional human rights mechanisms. For instance, Morocco enjoys a “Partner for Democracy” status granted by the Parliamentary Assembly of the Council of Europe (PACE) to neighboring countries. In this framework, Morocco has gradually accessed to the relevant Council’s human rights conventions, including the European Convention on the Exercise of Children’s Rights of 1996 and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007. It is also a fully-fledge member of the Venice Commission and the other partial agreements.


33 For more details see CoE information page on Morocco available at: https://www.coe.int/en/web/programmes/morocco
Furthermore, in January 2017, Morocco reintegrated the African Union (AU) after it left its predecessor, the Organization of African Unity (OAU), in 1984 due to the organization’s stance on the controversial issue of Western Sahara. In January 2017, Morocco signed the Constitutive Act of the AU but it has yet to join AU’s human rights instruments.

At the national level, the country’s 2011 constitution recognized the supremacy of international law in relation to the national legislation and exhorted authorities to align national laws with the provisions of international human rights instruments that the country has ratified. Furthermore, Morocco’s constitution prohibits in its preamble all forms of discrimination, on the basis of all prohibited grounds, against people living in the country. It further stipulates, in its article 30, that nationals and non-nationals enjoy the same fundamental rights. The same article grants foreign nationals legally residing in the country some political rights like participation in local elections.

1. National Framework

Morocco’s first legal instrument pertaining to refugees came about after it joined the 1951 Geneva Convention, immediately after the country secured its independence from France and Spain in 1956. Morocco then did not have a parliament nor a constitution; hence, the sole legislative body at the time was the monarchy. The Royal Decree of 1957 set the modalities of the application of the 1951 Geneva Convention and created the Office of Refugees and Stateless persons (thereinafter, the “BRA”).34 The Royal Decree gave the BRA the prerogative to recognize refugee status and issue residence permits to applicants. Nonetheless, this institution was sporadically active and its activities came to a halt in 2003 due mainly to the fact that the authorities did not have the political will to utilize the only protection mechanism the country had. Moreover, the suspension of the BRA’s activities could also be explained by the adoption of the Immigration Law that was more security-driven than protection-driven. Therefore, putting asylum seekers and refugees in a limbo for there was no guarantee for systematic issuance of residency permits. The BRA was reactivated in 2013 as part of Morocco’s efforts to incrementally build and strengthen

its protection system in light of the increasing migratory pressure on the country, its human rights obligations under the different UN human rights instruments, and its commitments towards its European partners.

The Royal Decree of 1957 and the Immigration Law of 2003 were, for many years, the sole legal instruments that regulated the sojourn of foreigners and the protection of populations of concern to UNHCR. As has been stated in many UN treaty bodies and NGOs’ reports, the 2003 Immigration Law which, despite its lacunas, provided some protection to vulnerable groups such as women and unaccompanied minors, was systematically violated by state agents. Unlawful deportations and expulsions were conducted, migrants were systematically arrested during identity checks and sent to detention centers that escape judicial supervision, and beatings and destruction of property were of common occurrence in the Nador region and the other ‘hot spots’ in northern Morocco.

It is in the context of this grave human rights situation that the National Human Rights Council (CNDH), an independent human rights institution created by the 2011 constitution, and which is the country’s locomotive when it comes to human rights promotion, issued a critical report about violations of the human rights of migrants. The report deviated from the usual official rhetoric and used an unapologetic language, describing the situation of migrants as is without embellishment. This report was a commendable development for it pinpointed issues and made recommendations, and called on the government to act on them. It also called on the international community and civil society to contribute to this effort in a spirit of solidarity. King Mohammad

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37 Was created by article 161 of the 2011 constitution, and it is supported through the general budget of the State, with regional offices in each of the 12 regions of the country whose aim is to monitor the human rights situation down to the local level.
VI was responsive to this report and ordered the government to put in place a migration policy that is innovative and humanistic.

A careful reading of the executive summary of the CNDH’s undisclosed report, reveals two points: first, the recognition by a state institution of the gravity of the violations of the human rights of migrants; and second, that the report made its own the critiques formulated by NGOs and UN treaty bodies. The executive summary of the CNDH’s report made good recommendations for real and effective protection of migrants’ rights and their integration in the social fabric of the country.

After the Royal directives, the government expeditiously initiated a National Immigration and Asylum Policy in late 2013, and in 2014 developed a National Strategy for Immigration and Asylum whose aim was to develop institutional and regulatory frameworks capable of dealing with the increasing migratory pressure and ensuring local integration of legal migrants while preventing illegal migration, and trafficking in persons and smuggling.

To implement this strategy, the government created an ad hoc inter-ministerial commission and a department within the ministry in charge of Moroccans residing abroad, which later on became the Ministry of Moroccans Abroad and Migration Affairs. Moreover, in the framework of this strategy, Morocco launched two regularization campaigns, the first in 2014 and the second in 2017. This initiative was the first time that a North African country offered undocumented migrants an opportunity to regularize their legal situation. The two campaigns allowed 50,000 migrants from 116 nationalities to gain legal status in the country. Residency permits were initially issued for one year, then subsequently renewed for three years. The legal status offered, in theory, social and economic rights to migrants; however, in practice, many practical barriers hamper the chances of migrants for an effective enjoyment of their newly acquired rights and by the same token hinder the possibility of their integration in the social fabric of the country.40

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39 The author could not find the report on the CNDH’s website (only the executive summary is available). Hence, on 29 April 2019 went in person to the CNDH’s headquarters to ask for a copy but has been told that the report is not and will not be made public.

Morocco was supposed to enact two important laws under its policy on migration and asylum. The first pertains to migration and asylum, and the second on anti-trafficking in persons. The government started with a draft law on asylum in 2014, which if enacted would have created the missing legal framework necessary for an effective implementation of the 1951 Geneva Convention, especially its article 33 establishing the principle of ‘non-refoulement.’ Unfortunately, this law disappeared from the radar. It has been five years since the draft law was introduced by the government’s Secretariat General. However, it still has not moved up the procedural pipeline to be approved by the Council of Government, then sent to the parliament where it needs to be approved by its upper and lower chambers, and then to the King for promulgation, before entering into force after its publication in the kingdom’s *Official Journal.* However, Morocco instead expedited the enactment of the law on antitrafficking in persons commonly referred to as law 27.14.\(^{41}\) This law entered into effect two years after it first was introduced proving, therefore, that when there is political will procedures and processes can be levelled and obstacles removed for the passing of a law.\(^{42}\)

2. **International Framework**

The 2011 Constitution reaffirms in its preamble the commitment of Morocco to the protection and promotion of human rights, and reaffirms the intention of the kingdom to contribute to their development within their indivisibility and universality.\(^ {43}\) The Moroccan constitution further enshrines the supremacy of international conventions duly ratified by Moroccan authorities over internal legislation. Confirming the supremacy of international law in the highest legal text of the country is something that human rights activists saluted and saw as an opportunity for Morocco to

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\(^{41}\) Loi n° 27-14 du 25 août 2016 relative à la lutte contre la traite des êtres humains.  
\(^{42}\) The draft law on asylum and the antitrafficking law will be discussed further in section C.  
\(^{43}\) An English translation of the Morocco’s Constitution is available at:  
align its legislation with the nine core UN human rights treaties and their protocols, and the other regional human rights instruments the country adheres to.

The added value of these legal binding instruments is their monitoring mechanisms and the political accountability they impose on states. They also offer venues for nationals and non-nationals to lodge individual communications when their rights are violated by governments. However, analyzing Morocco’s approach in regards to international binding agreements reveals that it does not fully adhere to these instruments; in other words, it ratifies treaties with the aim to embellish its image on the international stage, but it adheres only partially to these international conventions and covenants. Removing stringent accountability mechanisms such as individual communications (complaints), and making reservations and declarations (e.g. CEDAW) or signing a treaty and then not ratifying it, are Morocco’s antidote and defense mechanism against international accountability.

Morocco is party to the 1951 Geneva Convention and its 1967 Protocol. However, the country chose not to ratify the 1954 Convention relating to the Status of Stateless Persons as well as the 1961 Convention on the Reduction of Statelessness. By not ratifying these two legal instruments, Morocco widened the gap that exists in its already-weak legal protection mechanisms, especially towards children, refugees and asylum seekers. Furthermore, the fact that Morocco joined the 1951 Geneva Convention more than six decades ago, and that it still has not developed laws, institutions, and policies to fulfill its obligations under this legal instrument, shows the laxity of the country and the weakness of international conventions that do not have treaty bodies to monitor their effective application to ensure at least a political accountability of the signing parties.

44 Morocco is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child and its Optional Protocols. The country has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.

45 For more details see Submission by the UNHCR for the Office of the High Commissioner for Human Rights’ Compilation Report, UPR: 3rd Cycle, 27th Session, MOROCCO, available at: https://www.refworld.org/docid/590c852b4.html
Furthermore, Morocco is party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW),\textsuperscript{46} whose committee monitors its application and issues recommendations to states. It is worth mentioning here, that this Convention is joined mainly by migrant-sending-countries; however, countries of destination preferred to stay out of its scope, and therefore neither signed nor ratified it.\textsuperscript{47} Morocco was among the first countries that joined the convention, perhaps due to the fact that it is one of the major migrant-sending countries in the region. However, given the ever-changing trends of migration, the country has become a host country in its own right, therefore making it go through the scrutiny of the committee on the CMW. This committee has raised concerns on “reports that migrant workers in an irregular situation were victims of discrimination, abuse and potentially fatal extreme violence, as well as of ill-treatment by some of the security services and by criminal groups.”\textsuperscript{48}

The findings of the CMW committee are proof that Morocco lacks the necessary mechanisms to ensure the protection of vulnerable categories present on its soil, and that it still has a long way ahead. First, it needs to apply and respect its laws and implement in a timely fashion the recommendations of treaty bodies that it had accepted and signed on to. Using dilatory tactics to escape its responsibilities proved to be a losing game for Morocco whose image continue to be tarnished, and for migrants whose rights continue to be violated.

Morocco is also party to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), and made a declaration under its article 22, therefore allowing the CAT’s Committee to receive and consider individual communications. This convention ensures some protection for migrants. For instance, its article three prohibits the expulsion or extradition of a person when there are substantial risks that this person would be subjected to torture. This is similar to article 33 of the 1951 Geneva Convention that enshrines the principle of ‘non-refoulement.’ The CAT’s committee in its jurisprudence pertaining to Morocco found that it violated the convention when it expelled migrants to the Mauritanian borders in dangerous


\textsuperscript{47} This CMW has 54 states parties from the south, 13 signatories, and 131 state took no action.

\textsuperscript{48} As cited in the report of the OHCHR, 20 February 2017, A/HRC/WG.6/27/MAR/2, para. 94
conditions that amounted to torture. The case of *Diory Barry V. Morocco* is an emblematic case in this regard.\(^49\)

At the regional level, Morocco is not party to the AU’s 1969 Convention governing the Specific Aspects of Refugee Problems in Africa,\(^50\) nor is it a signatory of the African Charter on Human and Peoples’ Rights. Therefore, it completely escapes the scrutiny and the monitoring of African human rights bodies and the judicial review of the African Court of Human and Peoples’ Rights. This is unfortunate, given that regional human rights mechanisms are more adapted to regional realities and accessible to individuals from the region whose rights get violated by a member state. Furthermore, the fact that Morocco is not party to African human rights bodies puts it in a paradoxical situation with its African counterparts given the role the country wants to play by championing migration issues in the continent and advocating for the rights of African migrants on the international stage.

**C: Morocco’s Strategy on Immigration and Asylum: The Prelude of a Fledgling Protection System?**

Morocco’s Strategy on Immigration and Asylum was put in place in 2014 as a response to the CNDH’s critical report on the situation of migrants, and to the responsiveness of the Moroccan Monarch towards its recommendations thereof. The contours of the strategy, however, have been defined by several factors; in other words, Morocco tried through this strategy to reconcile the different divergent interests of several stakeholders.

1. **The Triggers of the Policy**

The signature in 2013 of the Mobility Partnership (MP) between Morocco and the EU came with incentives and obligations that Morocco needed to fulfill vis-à-vis its European partners. In order

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\(^49\) UN Committee Against Torture (2014). Communication No. 372/2009, Diory Barry v. Morocco

to receive the financial support and visa facilitation for its citizens, Morocco needed to curb illegal
migration in direction of the old continent, and to do so, it needed to toughen its border control
and to create the necessary machinery to deal with the increasing number of trapped migrants.\textsuperscript{51} Morocco needed to show that it was serious and committed, and that it is developing its
institutional and legal frameworks.

Morocco’s migration policy should also be analyzed in the context of Morocco’s efforts aiming to
deepen its South-South cooperation, and in light of its ‘economic diplomacy’\textsuperscript{52} with African
countries. In the last decade, Morocco has become one of the major investors in the African
continent. The country’s firms are heavily investing in sectors such as telecommunication,
banking, mining, construction, and transport. For instance, between 2003 and 2017 Morocco’s
foreign direct investments (FDI) on the continent totaled Euros 3.4 Billion.\textsuperscript{53} In addition to its
economic interests, Morocco has strategic political interests in Africa that the country neglected
and relegated to the backseat of its priorities after it left the Organization of African Unity (OAU)
in 1984. Morocco’s aim was to reintegrate the African Union (AU) to protect its interest, and to
advocate for and share its perspective on a solution for the Western Sahara issue. Leaving a
vacuum in an important institution such as the AU to the Polisario Front and its acolytes to fill was
no longer a plausible option for Morocco which, as all indications show, has decided to take central
stage in African affairs.

To further its political and economic interests, Morocco adopted a proactive approach in Africa.
The Moroccan Monarch made, in less than 5 years, 50 state visits to 30 countries in West as well
as East Africa, a region that is known for its political belligerence towards Morocco’s interests.\textsuperscript{54}
During these Royal visits hundreds of trade and diplomatic accords were signed, and aid and
financial contributions have been distributed to socio-economic projects. For instance, Morocco

\textsuperscript{51} As has cited in Bel-Air, F. D. (2016), the average stay of migrants was 2.5 years, however, this period could not
but increase given the toughening of border control and the increasing cooperation between Morocco and Spain.
\textsuperscript{53} Berenger V. 11 December 2018, Comment l’Afrique est devenue la première destination des investissements du
Maroc à l’étranger. Jeune Afrique, Retrieved June 5, 2019, from : 
\textsuperscript{54} Chaoui M, 17 September 2018, Comment le Maroc Tisse sa Toile en Afrique. L’Economiste, Retrieved June 6,
pledged to build a big stadium in Tanzania, and to finance the construction of a new capital in South Sudan. Furthermore, Morocco created in 2017 the Delegate Ministry of African Affairs within the Ministry of Foreign Affairs and Cooperation, whose mission is, inter alia, to promote and ensure a follow up on Morocco’s investments in the continent.

Morocco also aimed to embellish its image in the eyes of the African public. Hence, it needed to change its previous approach to migration and the way it treats African migrants on its soil. The massive deportations of African migrants to the Algerian or Mauritanian borders stopped being featured on the news on state TV; instead, official language focused on the protection of migrants’ rights, and the government’s efforts to facilitate their integration in Moroccan society were given more airtime.

Apparently, Morocco’s proactive strategy and its handling of the sensitive migration dossier was successful. The country reintegrated the AU in January 2017 after over three decades of absence, and secured more funding from its European partners to put in place policies and projects for the integration of migrants. But what is important is the way Morocco used its cooperation on migration or lack thereof to overcome the big obstacle that the EU General Court had put on the way of its agreement with the EU on agriculture and fisheries. In Polisario Front V. Council, the court annulled partially the EU-Morocco agreement. The Court excluded from the territorial application of this agreement the parts of Western Sahara under Moroccan sovereignty. Morocco’s stance on the sensitive issue of Western Sahara is categorical; no deal can be concluded if it does not include ‘Morocco’s southern provinces.’ After months of heated political exchange and press declarations of both parties, the Sustainable Fisheries Partnership Agreement (SFPA) was finally approved by the European parliament and the Council in the early months of 2019. The language used in the resolution of the EU parliament is not without danger for Morocco’s interests in the


58 General Court (2015). Judgement, Case T-512/12, Polisario Front V. Council
long run, but the fact that Western Sahara was not excluded from the territorial applicability of the SFPA, was marketed in the country as a diplomatic success over ‘the maneuvering of the enemies of Morocco’s territorial integrity.’

The successful political instrumentalization of the ‘migration card’ by Morocco and its use as a bargaining chip in its negotiations with the EU leading to the conclusion of the SFPA, is indicative of the centrality and the importance of migration for the EU and its member states. Moreover, this confirms that migration is a defining element in the EU’s relations with developing countries, especially with those south of the Mediterranean.

2. The Regularization campaign: A Huge Mediatization for a Meager Outcome?

In line with its migration policy, Morocco launched two regularization campaigns, the first in 2014 and a second in 2017. The Moroccan authorities opened over 83 offices all over the country for migrants to submit their application for regularization, during which time many stakeholders - including civil society, the Ministry of Interior which played a pivotal role, the Delegate Ministry of Moroccan Residents Abroad and Migration Affairs, and the CNDH – took part. However, it is the Ministry of Interior (MoI) that played a preponderant role in these campaigns. It is worth noting that the inner workings of MoI are still opaque; hence, there are no exact numbers of the applications and the number of those that received a favorable outcome. The number 50,000 regularized migrants that circulates in the media seems not to be accurate and is not backed by any official publication. The ministry has no website and does not have periodic publications where one can find data pertaining to migration or to other relevant matters.

These campaigns were heavily mediatized by the authorities as being innovative, and humanistic in their approach. Emphasis was put on the fact that Morocco’s initiative was the first in the region and that it shows that the country is mindful of the rights of migrants and that it does all it could to facilitate their integration despite the country’s limited resources.

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59 This is the language that state media use whenever referenced is made to the issue of Western Sahara.
In practice however, the two campaigns did not go as smoothly and efficiently as civil society and migrants’ rights advocates had hoped. The lack of a uniform interpretation of the criteria by and the de facto discretionary powers bestowed upon state agents at the different regularization offices prevented numerous applicants from gaining legal status. In the Nador region for example, there were about 280 applications of which 99% received a negative response.61 Morocco’s tactic in dealing with sub-Saharan migrants is to get them as far away as possible from the Spanish enclaves of Melilla and Ceuta. This makes Nador de facto off-limits for sub-Saharan migrants.62

Furthermore, the criteria that were imposed on applicants were difficult to satisfy. For instance, proving that a migrant had lived for 5 years in the country was difficult, given that the authorities asked for proof such as a lease, electric bills, and the like, forgetting that renting an accommodation in Morocco is largely informal. Moreover, presenting an employment contract was near impossible, since many migrants work in the informal sector of the economy where workers do not enjoy even basic rights, let alone have an employment contract that is governed by Morocco’s labor law.

During the second regularization campaign, however, Moroccan authorities showed more flexibility regarding the criteria for regularization. For example, Morocco was automatically favorable to requests submitted by unaccompanied minors, and by women and their underage children.63 Migrants suffering from chronic illnesses were also granted legal status. This expansion of criteria to groups that might have been excluded in the first regularization, demonstrates that Moroccan authorities were responsive to the critiques formulated by many civil society actors about the stringent criteria of the first regularization.

After going through the regularization process, migrants whose applications were approved fell into limbo. While they had legal status in the country, they did not receive in a timely fashion the

62 The AMDH’s report talks about the forced displacement of African migrants from the Nador region and other cities in the north to cities in the interior of the country or the south. The same observations are highlighted in GADEM’s report cited above.
residency permit, which is an important document that gives its holder the same rights as a Moroccan national, mainly the right to work and enjoy social services such as access to primary healthcare and education.

The regularization of the legal situation of undocumented migrants was seen by critics as being politically motivated, and as a public relations campaign aiming to embellish the kingdom’s image; it did not yield significant results when it came to the number of migrants whose situation was regularized, or to its impact on the lives and living conditions of migrants. This new cluster of the Moroccan population still lives in the fringes of society in challenging socio-economic conditions. Nonetheless, if one evaluates these campaigns, taking into account the regional context and the political sensitivity of migration worldwide, the regularization campaigns are still a good-first step taken by Morocco and an important opportunity for the country to align its legal and institutional frameworks with international standards. As a matter of fact, under its migration strategy Morocco should have enacted two laws: a law on Asylum (No. 26.14) and a law on human trafficking and smuggling of persons (No. 27.14). If the former were enacted that would have ensured an effective concretization of international protection mechanisms, especially protection against refoulement. However, Morocco put this law on the backburner and expedited instead the enactment of the antihuman trafficking law. The first question that comes to mind is why Morocco chose this trajectory.

A plausible answer, is that the north African country wanted to achieve several objectives at the same time.

- First, the enactment of the antihuman trafficking law put the country in synch with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, which Morocco accessed on 25 April 2011.

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• Second, Morocco chose the law that is less costly financially and politically, and that gives it the necessary cover to crack down on illegal migration under the pretext that it combats human trafficking and smuggling.

• Third, this law sends a message to the European partners that the country is building its legal arsenal to stem illegal migration to Europe.

• Fourth, Morocco is reluctant to build a comprehensive migration and asylum machinery because it wants to have some room for maneuvering in its political dealings with its external partners, especially with its European and African partners. Morocco shows a degree of responsiveness depending on the intensity of the pressure being exerted on it, and the incentives it receives. Besides, Morocco seems not to perceive, at least in the short run, any interest for it to build the necessary frameworks, and prefers instead to go gradually about this endeavor as to gain as much political, diplomatic, and financial points as possible.

• Fifth, not having a fully-fledged protection system could be a strategy to dissuade migrants and a tactic to escape responsibility. On the other hand, however, putting the building blocks for a comprehensive and operational protection system requires financial and human resources that Morocco lacks. This might explain why Morocco prefers ad hoc frameworks which, offer flexibility and are transient in nature.
Part 2: EU-Morocco Cooperation on Migration: What Outcome at What Cost?
EU – Morocco cooperation dates back to the early years of the European Economic Community (EEC) created in 1957 by the Treaty of Rome. In fact, Morocco signed its first association agreement with EEC in autumn 1968. Furthermore, in the 1970s, the cooperation between the EU and Morocco, as well as the other Maghreb countries, was encapsulated in the Global Mediterranean Policy (GMP) initiated in 1972, then revamped in 1992 to come to an end in 1996. The Barcelona process was short-lived, for it covered only three years from 1995 to 1998. Nonetheless, it culminated with the creation in 2008 of the Union for the Mediterranean, which is headquartered in Barcelona, Spain.

The bulk of the aforesaid agreements and policies was focused more on trade development between the EEC and Morocco. Recent studies, however, show that this cooperation failed due to the asymmetrical trade relation between the two parties (B. Khader, 2015). Morocco’s relative advantage resides in the export of agricultural products to which the EEC imposed heavy restrictions, hence, making the balance of payments always in favor of EEC countries. Furthermore, the asymmetrical nature of their trade relation, make Morocco heavily dependent on European economy and influenced by EU’s different trade regulations and policies.

The entry into force in 2000 of the Association Agreement between the EU and the North African kingdom deepened and gave legal basis to their multifaceted cooperation. Furthermore, the contours of the EU-Morocco cooperation are also defined by two relatively recent EU external policy frameworks which, target Southern Mediterranean countries, the 2004 European Neighborhood Policy (ENP) and the Union for the Mediterranean which took form in 2008.65

A survey of EU-Moroccan cooperation shows that it has evolved over time and that its salient focus is on trade and migration. In recent years, however, the focus has shifted towards migration management and security. Migration management has gradually gained prominence over the other aspects of this multilayered, complex cooperation. The Rabat Process, which is a regional dialogue

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platform, initiated in 2006 with the aim to involve countries of origin, transit, and destination in migration management, and the Mobility Partnership signed between Morocco and the EU in 2013, are good examples of this shift in priorities. Financial instruments such as the European Neighborhood Instrument (ENI) and the EU Emergency Fund for Africa, are also indicators of this shift in priorities from trade and diplomatic relations, to security and migration management, which both are on the top of the agenda of the EU and its member states.

The EU has put in place policy frameworks and gave life to these policies through an array of financial instruments, with the aim to ensure that migrants are contained and kept as far as possible from its borders. Achieving this objective requires an active participation of partner countries such as Morocco which, the EU and its members states, especially Spain, consider a key partner and a major player in the migration dossier.

This section will discuss Morocco’s role in curbing migration to Europe, how EU’s policies and financial incentives made Morocco a de facto Europe’s gendarme, and the impact of the EU-Moroccan cooperation on the human right of migrants.
Chapter 1: Morocco a de Facto Europe’s ‘Gendarme’?

Morocco’s experience with migration went through three different stages,\(^\text{66}\) that were the result of changing migratory trends and patterns. Before the turn of the 21st century, Morocco was known as a major migrant-sending country, then by the beginning of the third millennium, Morocco became a transit-country for thousands of migrants, mainly from sub-Saharan Africa. Europe’s stance on migration changed, especially after the 2008 financial crisis which rocked many economic sectors in European countries. In particular, those that employ low skilled workers (e.g. construction). We also witnessed public policies of European governments became more restrictive and public opinion became intolerant towards migrants, especially low-skilled and undocumented migrants. This development and the broad range of policies adopted by the EU under its Global Approach to Migration and Mobility (GAMM) turned Morocco into a country of destination in its own rights. Moreover, Morocco’s new status got confirmed after the country regularized the legal situation of thousands of undocumented migrants in 2014 and 2017.

The migration policies of the EU and its member states, are turning Morocco into a de facto “Gendarme de l’Europe,” a function that the country adamantly does not want to fulfill nor be identified with. Morocco’s position and sentiment in this regard, were clearly stated in 2013 by Mr. Saad Eddine El Othmani, the then minister of foreign affairs,\(^\text{67}\) when he unequivocally stated that Morocco refuses to be Europe’s gendarme.\(^\text{68}\)

Morocco’s political public position on this issue is disjointed from what is actually happening on the ground. EU pressure (political, economic, and financial) and the commitments of the country under the different cooperation frameworks with the EU and its members states, have in fact, turned Morocco into the first line of defense against ‘undesirable migrants.’ In recent years,

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\(^{66}\) These were discussed in part 1, chapter 2
\(^{67}\) Mr. El Othmani is currently Morocco’s Prime Minister
Morocco has become active in combatting the illegal migration of its citizens and that of third country nationals that got enticed by the country’s geographical proximity with Europe. In fact, Morocco shares land borders with Spain as well as maritime borders, therefore, offering many seemingly easy points of entry to the old continent.

EU’s cooperation with Morocco on migration management and control, has many moving parts, yet Europe’s main focus is on border control and management, and readmission agreements. On the former, Morocco has a deep cooperation with the EU and its member states, namely Spain. On the later, Morocco has concluded many bilateral readmission agreements with European countries such as Spain, France, and Germany. However, despite starting in 2000 negotiations with the EU in view to conclude an EU readmission agreement (EURA), these negotiations came to a halt in 2013.\textsuperscript{69} In fact, the EU was unsuccessful in concluding an EURA with any of the Maghreb countries.\textsuperscript{70} This failure, could explain the motives behind the EU’s 2018 disembarkation platforms proposal, which despite some enticing incentives could not gain momentum due to the strong opposition of Morocco, Algeria, and Tunisia. Maghreb countries saw in this proposal an unfair share of responsibility and a way for the EU to escape and deflect its international responsibility under international as well as European law.

A: Border Control, Surveillance and Management:

According to the European Border and Coast Guard Agency (FRONTEX), 2018 has seen an increase in migratory pressure on Spain. The number of detected illegal entries was double that of 2017. The same report indicated that departures from Morocco increased five folds during the same period, and that most of the migrants taking the West Mediterranean route came from sub-Saharan Africa in addition to a significant number of Moroccans (20.55% of the total entries).\textsuperscript{71} This could be seen as the result of the spillover effect of the unstable situation in Libya and the

\textsuperscript{69} Carrera, S. al (2016)
\textsuperscript{70} Abderrahim, T. (2019, January 15) Pushing the boundaries: How to create more effective migration cooperation across the Mediterranean. (2019). Retrieved from https://www.ecfr.eu/publications/summary/pushing_the_boundaries_effective_migration_cooperation_across_Mediterranean
Italian crackdown on migrants through its restrictive and repressive policies. These security and policy changes turned the West Mediterranean route into the most frequently used route in 2018,\(^\text{72}\) and Spain into the main entry of undocumented migrants into the EU.

![Map of detections of illegal border crossing at the EU's external borders, 2018](image)

Source: FRONTEX 2019

This situation brought Morocco and Spain closer and deepened their cooperation on migration. Spain has become Morocco’s advocate in the EU, networking on behalf of the North African Kingdom to secure more funding under different EU’s financial instruments.\(^\text{73}\)

In recent years, several high-level Spanish officials visited Rabat to meet their Moroccan counterparts to discuss matters of common interest with migration being top of the agenda. In 2018, for instance, Mr. Joseph Borrell, the Spanish Minister of Foreign Affairs said that:

\(^{72}\) Ibid, P. 8
“immigration is a European problem that [Europe] will not be able to solve if we do not count on Morocco’s help.”

It is evident that curbing migration requires a strong commitment from Moroccan authorities which, need to adopt policies and consecrate human and financial resources to effectively secure and control its terrestrial and maritime borders with Europe. However, Morocco seems to be in a delicate situation vis-à-vis its European partners, for the ‘migration problem’ that Europe, as stated by Mr. Borrell, wants to solve might become its own problem. In other words, the toughening of its border controls and their securitization means that more and more migrants would be trapped in Morocco. The increase of the number of migrants on its soil is something that the Moroccan government wants to avoid because of its economic and societal ramifications. Would this explain why Morocco has not put in place the legal and institutional frameworks necessary for an effective migration policy and a working asylum system despite the recommendations of its human rights institution, the CNDH?

Morocco seems to be willing to cooperate with Europe on migration as long as this cooperation does not jeopardize its strategic interests (discussed in the first part of this paper), nor put it in a situation where Europe’s responsibility is shifted to it, especially when, as indicated by Spain’s foreign minister:

“Morocco is not well treated in terms of the aid granted by the European Union—for the fight against illegal immigration,”

In comparison with the funds that Turkey was promised under the EU-Turkey Deal, Morocco is only receiving a small fraction. The magnitude of the numbers of migrants that Turkey hosts on its soil is a legitimate and plausible argument to support the financial preferential treatment bestowed on this country, however, Turkey’s economy is much bigger than that of Morocco, which struggles to provide economic opportunities even for its own people. This is one of the main reasons why more Moroccan youth is resorting to illegal migration. Moreover, most of those present in Turkey are from neighboring countries (mainly from Syria and Iraq) that share historical
and religious ties with their hosts, and there is a big possibility that they will go back once the wars end.

In the case of migrants in Morocco, however, the situation is different, hence there is an unspoken about fear of the gradual erosion of the so-called ‘Moroccan identity.’ This fear has no plausible data to back it, but it is present in the political and collective psyche. Xenophobic attitudes towards sub-Saharan migrants are on the rise as could be evidenced by the 2017 violent confrontations between young Moroccans and migrants in a neighborhood in Morocco’s biggest city, Casablanca.76 Morocco is now facing challenges, and the resentment that some Moroccan youth have towards migrants is on the rise due to the fact that they “see migrants as having everything easy.”77 The way the media covers events about migrants particularly those from sub-Saharan Africa is also to blame for their negative depiction in society.

1. Direct Measures

To control its borders, Morocco needs considerable financial and human resources that the country lacks. Therefore, Morocco cannot afford to divert its scare resources to fight illegal migration on behalf of the EU. Besides, fighting illegal migration is costly politically and financially, and Morocco seems to be not willing to risk its interests without receiving ‘a fair compensation’ in exchange from Europe.

In 2017 and 2018 Morocco was hit by two major social unrests in the city of Hoceima, North, and the former mining town of Jerrada, East of the country. These two cities are not major urban centers and are, indeed, located in the periphery of the country, however, the magnitude and longevity of the protests there, are a strong indication of the social and economic malaise of Morocco. The government chose a repressive approach in dealing with the legitimate socio-economic demands of the residents of the two cities which are still marginalized and economically not viable for their residents, especially to the majority of youth who face bleak prospects. Hence, pushing thousands


77 Ibid
of young men and women to look for alternative ways to secure a better future for them and for their families. This would also explain the exponential rise of Moroccan illegal migrants attempting to reach Europe in comparison to previous years. In 2018, Moroccans were the largest single nationality arriving to Europe through Spain.\(^78\)

Morocco needs to create the right socio-economic, democratic and institutional conditions to dissuade its citizens from attempting to cross to Europe illegally, as well as it needs to secure its borders to prevent the illegal migration of third country nationals. This double function cannot be achieved without considerable resources that should not be mainly devoted to border control and neglect addressing the root-causes of migration.

During 2014 to 2018, the EU disbursed Euro 232 million to fund 27 projects related to migration in Morocco.\(^79\) A quick survey of these projects and that of the funds allocated to them reveal the following:

- Morocco holds the largest cooperation portfolio amongst North African countries.
- EU-Morocco cooperation on migration is financed through mainly three financial instruments: The EU Emergency Fund for Africa (EUTF Africa) created after the EU-Africa Valetta Summit, European Neighborhood Instrument (ENI), and the Development Cooperation Instrument (DCI)
- Most of the funds, that is, 73% (Euro 170 million) go towards border management and the fight against human trafficking and smuggling, and the remainder of these funds is geared towards socio-economic integration (4%), protection (10%), and governance and migration policy (13%).
- Most of project implementers are either Moroccan state institutions or European NGOs and member states development agencies (e.g. Spanish, German GIZ, French AFD), and UN specialized agencies (e.g. UNICEF, UNHCR, IOM). Only five Moroccan NGOs are among the list of implementers. This situation would be counterproductive in the long-run.

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\(^79\) For more details see the factsheet of the EU cooperation on migration with Morocco available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eu-morocco-factsheet.pdf
because Moroccan NGOs will not develop their capacity nor be effectively involved in finding solutions and facilitating the integration of migrants if they continue to be deprived from funding, which is very crucial and indispensable in every field.

As was highlighted above, most of EU funding to Morocco goes towards border management and control. This is a clear indication that the EU supports the Kingdom’s repressive approach to migration and that the securitization of borders is the predominant response to migrants’ influx. Besides, there have been media reports that Morocco has requested Euro 60 million in additional funding from its EU partners to buy high-tech surveillance equipment such as radars, scanners, helicopters, and other gear for its security agents in charge of border control.\(^{80}\) It is reported that the Moroccan authorities sent the list of the aforesaid equipment to the Spanish government which in turn sent it to the European Commission.\(^{81}\)

There is, indeed, close operational cooperation between Spain and Morocco. The two countries conduct joint patrols at sea, share information gathered through radars, satellites, and drones about the movements of undocumented migrants either at sea or in the forests surrounding the two enclaves of Ceuta and Melilla. The enhancement of Spain’s monitoring capabilities of its coastlines after it deployed in mid-2000s the External Surveillance Integrated System (SIVE) has also contributed to intelligence sharing between the two parties which is necessary for their fight against human traffickers as well as migrants and narcotics smugglers.\(^{82}\) They even work together, sometimes, to circumvent European and international law through their malicious cooperation on ‘hot returns’ at the buffer zone between the fences surrounding the two enclaves of Ceuta and Melilla where migrants are reportedly kept until Moroccan border control agents arrive to take them back to Morocco.

Spanish-Moroccan bilateral efforts are supplemented by EU resources. The border control and surveillance between the two states are partially EU-funded, and reinforced through FRONTEX’s

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\(^{81}\) Ibid

\(^{82}\) Carrera, S. al. (2016)
two main operations in the Western Mediterranean, *Minerva* and *Indalo*. The main objective of these operations is to assist national authorities in their fight against illegal migration and drug trafficking. They provide information, and conduct rescue missions at sea. There are, in fact, 180 officers from several EU member states providing assistance to the Spanish authorities to inter alia fight criminal smuggling networks, register migrants, and conduct border checks.

Border control and surveillance are done through a multilayer cooperation between Spain, Morocco, and the EU. Each of these three actors seems to have a particular task to fulfill. Morocco, for instance, is apparently tasked with taking all the necessary preventive and precautionary measures to dissuade migrants from approaching the popular illegal migration hot spots. Spain then intervenes as a second line of defense, by providing technical support and some funding to their Moroccan counterparts, the EU then joins the efforts of the two countries by providing financing, political and diplomatic support, and institutional policies and legal frameworks legitimizing the fight against illegal migration which, is not always done in total respect of the basic human rights of migrants.

2. **Indirect Measures**

Morocco uses, under the impulse of its EU partners, other means to curb illegal migration. Moroccan authorities have made northern cities like Nador and, to some extent, Tangier and Tetouan off-limits even for sub-Saharan migrants who acquired legal status after the two regularization campaigns of 2014 and 2017. The Nador branch of the Moroccan Association for Human Rights (AMDH) frequently reports on the illegal arrests, detention, and displacement of sub-Saharan migrants from Nador and towns around it. The same NGO has criticized the authorities in numerous occasions for the detention conditions of migrants, especially vulnerable groups such as women and minors.

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83 Ibid
84 For more detail about FRONTEX main operations, please see [https://frontex.europa.eu/along-eu-borders/main-operations/operations-minerva-indalo-spain/](https://frontex.europa.eu/along-eu-borders/main-operations/operations-minerva-indalo-spain/)
85 Through financial and political support, the EU and its member states seem not to take the respect of human rights at heart when it comes to the so-called fight against illegal migration.
The arrest of sub-Saharan migrants is mainly based on racial profiling.\textsuperscript{86} As it is reported by GADEM, AMDH, and others, Moroccan security agents arrest migrants from Africa even when the person being arrested is legally residing in the country. Reports talk of arrests done in hospitals, markets, streets, and anywhere a ‘black person is seen.’\textsuperscript{87} The authorities’ conduct is a clear violation of the country’s constitution which prohibits discrimination based, inter alia, on race, color, and national origin. With this conduct, Morocco violates also the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), which it ratified on 18 December 1970.

Morocco uses also forced displacements of migrants from its northern cities as a way to fight illegal migration. Displacing potential illegal migrants as far as possible from the two enclaves of Ceuta and Melilla, and from Moroccan coastal cities known to be the point of departure for boats carrying illegal migrants, has become one of Morocco’s privileged techniques. This technique does not differentiate between those migrants legally residing in the country and those that are undocumented. Forcefully displacing people is against the right of free movement enshrined in the 2011 constitution (art. 24). Furthermore, it causes to migrants a lot of psychological and material harm and damages like loss of property and separation from loved ones, to cite a few.\textsuperscript{88}

There are instances where Morocco used administrative barriers as a way to created unbearable conditions for migrants to make them rethink their plans of settling in northern ‘hot spots’ such as Nador and the towns and localities in its vicinity. For instance, during the regularization campaigns all of the 278 applications filled by sub-Saharan migrants in the northern city of Nador got rejected. The two applications that got approved out of the 280 that were filled, belonged to migrants from the Middle East.\textsuperscript{89} It is worth mentioning here, that the populations that live in Moroccan cities adjacent to the two Spanish enclaves have, based on agreements between Morocco and Spain, the right to enter these two enclaves without a visa, only with an identification card

\begin{itemize}
\item \textsuperscript{86} active identity checks / profiling of sub-Saharan Africans occurs mainly in cities like Tangier and Nador whereas almost no identity checks are conducted in other cities.
\item \textsuperscript{87} AMDH Nador (2018), « La Situation de Migrants et Refugiés à Nador », Retrieved on 15 June 2019 from: \url{http://amdhparis.org/wordpress/?p=4645}
\item See also GADEM (2018)
\item \textsuperscript{88} See AMDH-Nador (2018), and GADEM (2018)
\item \textsuperscript{89} AMDH-Nador (2018)
\end{itemize}
showing residency in one of these towns. Perhaps, this is why Moroccan authorities did not approve the regularization requests made by sub-Saharan migrants in Nador for this would have given them access to Melilla, and therefore, a foot on EU territory or at least keep them closer to Europe.

Through the use of its strategy of direct and indirect migration control mechanisms, Morocco managed, according to its minister of interior, in 2018 alone to foil 89,000 illegal migration attempts, dismantle 229 migrant trafficking networks, and to rescue 29,715 migrants at sea. However, did this elaborate toolkit of border control techniques and the so-called long and ‘model’ cooperation between Spain and Morocco bring down the number of illegal entries to EU territory?

A 2016 paper by several researchers from the Center for European Policy Studies (CEPS) found that, for the period 2008 – 2015, the number of illegal border crossings were on the rise almost every single year, and that despite the deep bilateral cooperation between Spain and Morocco, and the EU support through funding and advanced surveillance through, inter alia, the European Border Surveillance System, EUROSUR.

The survey of the illegal crossings of migrants through the Western Mediterranean route for the period 2015 – 2018 confirms the previous findings, and shows that despite all the efforts deployed, the financial and political cost, and most importantly the human cost, the fight against illegal migration is, as evidence shows, failing.

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92 Ibid
Table 1: Illegal crossings by year on all Mediterranean routes.

<table>
<thead>
<tr>
<th>Year</th>
<th>Eastern Mediterranean (EM)</th>
<th>Central Mediterranean (CM)</th>
<th>Western Mediterranean (WM)</th>
<th>Share of WM irregular crossings in total.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>885,386</td>
<td>153,946</td>
<td>7,004</td>
<td>0.67%</td>
</tr>
<tr>
<td>2016</td>
<td>182,277</td>
<td>181,376</td>
<td>9,990</td>
<td>2.67%</td>
</tr>
<tr>
<td>2017</td>
<td>42,319</td>
<td>118,962</td>
<td>23,063</td>
<td>12.51%</td>
</tr>
<tr>
<td>2018</td>
<td>56,561</td>
<td>23,485</td>
<td>57,034</td>
<td>41.6%</td>
</tr>
</tbody>
</table>

Source: Data compiled by the author from FRONTEX statistics.

These findings prove that, in spite of all the high-tech surveillance, joint patrols, and the fencing off of Ceuta and Melilla, the borders between Spain and Morocco are difficult to seal off. Indeed, the numbers of illegal crossings have more than doubled each year since 2016. This goes to say, that migrants still find ways to circumvent these measures and manage to reach Europe. Unfortunately, to circumvent Moroccan and Spanish border controls, migrants do resort to dangerous ways, hence the increasing number of recorded deaths.

Table 2: Total deaths by year on all Mediterranean routes.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Death of Migrants (EM, CM, WM)</th>
<th>Western Mediterranean</th>
<th>Share of Deaths in Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>452</td>
<td>19</td>
<td>4.20%</td>
</tr>
<tr>
<td>2015</td>
<td>2,103</td>
<td>38</td>
<td>1.80</td>
</tr>
<tr>
<td>2016</td>
<td>2,911</td>
<td>86</td>
<td>2.95%</td>
</tr>
<tr>
<td>2017</td>
<td>2,155</td>
<td>69</td>
<td>3.20%</td>
</tr>
<tr>
<td>2018</td>
<td>1,177</td>
<td>293</td>
<td>24.89%</td>
</tr>
<tr>
<td>2019 (January - June)</td>
<td>597</td>
<td>201</td>
<td>33.67%</td>
</tr>
</tbody>
</table>

Source: Data compiled by the author from IOM website: missingmigrants.iom.int

Data shows the limits of a security-driven approach, as it shows the human cost of these measures. Therefore, is not it time for Europe to think of innovative ways to tackle illegal migration instead of ‘throwing more money at the problem’ and causing tragedies at sea and land borders?

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For a migrant to reach Morocco he or she transits through other countries, therefore, it is important to involved these countries in the fight against illegal migration. The EU Commission seems to have reach this conclusion. In its 2019 report to the EU parliament and Council, the Commission concluded that:

“Addressing migratory flows and tackling smuggling routes towards Morocco from its neighbours should also be part of this closer cooperation.”

It is time to see illegal migration through a multi-colored lens instead of seeing it through a security prism per se. As has been highlighted in other studies, the prevalent media and policy discourse in Europe persist in advocating for a security-driven approach to migration. Would other voices rise and propose other alternatives especially after the focus on border control proved to be limited and costly in financial terms as well as in human lives?

**B: Readmission of Nationals and Third Country Nationals:**

The other major aspect of EU-Morocco cooperation on migration is readmission. Morocco has signed readmission agreements with some EU member states as early as 1992, and started negotiations on a EURA since the 2000s. The negotiation between the EU and Morocco on this mechanism of migration control has come to a halt in 2013. Bilateralism is the path that Morocco and its European partners seem to prefer when it comes to the readmission of Moroccan nationals as well as third country nationals (at least in the case of Spain).

1. **Bilateral Readmission Agreements**

The first readmission agreement between Morocco and an EU member state that comes to mind, is the Agreement Between the Kingdom of Spain and the Kingdom of Morocco on the Movement

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of People, the Transit and Readmission of Foreigners who Have Entered Illegally (readmission agreement) signed in 1992. This agreement has come to the forefront in recent years, especially in the context of the increasing fight against illegal migration and the human rights violations that occurred in this context. The illegal push-backs or hot-returns from the two Spanish enclaves of Ceuta and Melilla, are violations of international law as well as European law, namely the European Convention on Human Rights, as has been exemplified in the emblematic ECtHR case of *N.D and N.T v. Spain* (this case will be discussed further in chapter 2). The case of *Doumbe Nnabuchi v. Spain* which is still pending before the ECtHR proves that push-backs are not isolated but used systematically.

The Spanish government invokes its readmission agreement with Morocco to legitimize its actions. So, what is the particularity of this agreement?

The main particularity of this agreement which, came into effect on 21 October 2012, is that it responds to the issue of the readmission of third country nationals (TCN). This clause that most transit countries south of the Mediterranean seem not inclined to incorporate in their agreements with European destination countries is the *raison d’être* of the Spanish-Moroccan agreement; and thus far it is the only agreement where Morocco accepts to readmit third country national. However, this agreement targets in particular sub-Saharan African migrants for it excludes in its article 8(e) the expulsion of illegal migrants from the Maghreb States.

Morocco has also concluded arrangements with Spain for the repatriation of thousands of unaccompanied Moroccan minors present either in the two enclaves of Ceuta and Melilla or on the Spanish mainland. This step caused the outrage of human rights NGOs which saw in this agreement an infringement of the rights of these minors. To assuage the concerns of these

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98 The English version of the agreement is available at: [https://therightsangle.files.wordpress.com/2013/12/19920213-spain-morocco-readmission-agreement-eng.pdf](https://therightsangle.files.wordpress.com/2013/12/19920213-spain-morocco-readmission-agreement-eng.pdf)


NGOs, the Spanish government has stressed that these returns would be voluntarily. However, there are media reports that a Moroccan delegation has traveled to Spain and started conducting interviews with a first group of these minors for the purpose of identification as a first step in the process of their repatriation. Would the return of these minors be done according to what the Spanish authorities promised and in total respect of the best interest of these children or would these minors be the victims of the political and financial dealings between the two governments? The months or perhaps the years to come would answer our interrogation.

What matters at this time is the fact that the Morocco-Spain bilateral cooperation on return policy seems to be deepening and could be even qualified as being problem-free at least in its political aspect. Morocco seems to be more flexible when concluding return agreements bilaterally than when the same proposition is made in a multi-actor setting like the EU, especially when it comes to the inclusion of a TCN clause.

Morocco is also cooperating with Germany on the return of thousands of Moroccan nationals whose applications for international protection were denied, and with France which, in recent years returned 1,161 of undocumented Moroccan migrants with a staggering cost of Euro 171 million. There are studies that showed that Morocco is not reluctant in its cooperation with member states when it comes to the readmission of Moroccan nationals. A study carried out by the Center for European Policy Studies (CEPS) and commissioned by the Heinrich Böll Stiftung’s North Africa Office in Rabat found that there were instances where the identification and issuance of travel documents by Morocco’s consular services were done in a faster pace than the steps taken by the requesting state. One aspect of the return policy that Morocco seems not be keen about is the use of charter flights, something that Algerian authorities are also against. Tunisia, however, does not seems to have a problem with the use of charter planes when returning its citizens.

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101 Ibid
104 Abderrahim, T. (2019)
Bilateral readmission agreements between Morocco and several EU member states are operational and seems to be increasingly used despite some practical barriers such as the localization of individuals to be deported, and the reintegration of those readmitted into the country’s social fabric. Leaving illegal migration drivers and push factors unaddressed is what keeps the vicious cycle of illegal migration turning. A recent study[^105] by the BCC News Arabic and the Arab Barometer for the period fall 2018 – Spring 2019 revealed that an alarming number of youths from the Middle East and North Africa (MENA) wish to emigrate to one of the developed countries. The case of Moroccans is quite alarming for over 43% of youths surveyed wish to leave the country as soon as an opportunity presents itself. These findings should inform policy-makers and politicians to rethink their strategies and overhaul the EU’s external policy on migration. Working with partners south of the Mediterranean to create opportunities for the disenfranchised youths and to promote the necessary conditions for a real democracy and rule of law might the solution.

2. EU Readmission Agreement: Disjointed Expectations?

The negotiations between the EU and Morocco on an EURA started in the early 2000s, and continued until 2013 where, after more than 15 rounds of negotiations, it came to a halt. The signing of 2013 Mobility Partnership between the EU and Morocco left the door open for further negotiations on an EURA. The Commission concluded in its 2011 evaluation of EURAs that:

“*If a TCN clause was not demanded by the EU or was underpinned with appropriate incentives, some negotiations [e.g. Morocco, and Turkey] could have been concluded already.*”[^106]

EU member states see that the added value of an EURA with Morocco is in the inclusion of a TCN clause. Morocco rejects adamantly the TCN clause for practical reasons as well as political ones. On the practical side, Morocco sees that it would be quite difficult, if not impossible, to prove that a migrant transited through Morocco or not. For instance, what kind of proof could be


considered?\textsuperscript{107} On the political side, Morocco sees in an EURA a way through which the EU wants to transfer its problems to other countries. The TCN clause is costly both financially and politically. In the political side, Morocco will appear as a country that ‘sub-contracts dirty jobs’ from Europe, and this will be detrimental to its public image in Africa especially in the context of ‘politique Africaine.’\textsuperscript{108} On the financial side, readmitting third country nationals means that Morocco needs to build its reception infrastructure, and negotiate and offer financial incentives to African countries in order to readmit their nationals.

Moroccan officials legitimately ask why EU member states do not conclude readmission agreements with the countries of origin whose citizens are illegally residing in Europe instead of concluding an EURA with Morocco that includes the contentious TCN clause?\textsuperscript{109}

A plausible answer to this question could be that most member states decisions concerning return go through administrative as well as judicial reviews which, slow and sometimes even annul such decisions. In fact, the recast EU Asylum Procedures Directive (2013/32/EU) sets appeal procedures including the right to an effective remedy.\textsuperscript{110} Furthermore, certain EU member states use the concept of ‘safe countries of origin’ in their review process of asylum applications.\textsuperscript{111} According to this concept, a country is considered safe if it has a democratic system and consistently there is no persecution as define in article 9(2) of Directive 2011/95/EU,\textsuperscript{112} no torture or inhumane or degrading treatment or punishment, no threat of violence, and no armed conflict.\textsuperscript{113}

\textsuperscript{107} Carrera, S. al. (2016)
\textsuperscript{112} Directive 2011/95/EU of the EU Parliament and of the Council of 13 December 2011 on common on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).
Most sub-Saharan countries are not considered as safe countries of origin by most EU member states. This means that the removal of these undocumented migrants from Europe would be challenging. Therefore, an EURA with Morocco that includes a TCN clause seems to be what member states see as the adequate solution.

A: Border Control: Lucrative for Business, Deadly for Migrants.

The signing in 2000 of the Association Agreement between Morocco and the EU made migration a constant element of their cooperation. Since then, many policies and arrangements have been devised to curb illegal migration and open some venues for legal mobility between Morocco and EU member states.

The policy responses to migration since the 2000s, especially after the so-called European migration crisis, focused on ways to stem illegal migration and neglected – purposefully or by mishap – the impact of these policies on the rights of migrants. Illegal migration originating from Africa as well as the MENA region has increasingly been defined – in light of the mushrooming terrorist activities – in terms of security threats. Hence creating a distorted image about these migrants in European public opinion. Furthermore, the fight against illegal migration has been equated in policy circles as well as in media discourse to the fight against human trafficking and smuggling. Therefore, giving the impression that all governments are doing is fighting ruthless traffickers.

Reality however, is quite different and complex. Migrants – as shown by the rising death toll – are the first victims of the restrictive and repressive migration policies. Traffickers on the other hand, at least in the Moroccan context, seem to be the ones making profits. It is reported that sub-

116 Ibid
117 Ibid
118 Ibid
Saharan migrants pay between €2000 and €5000 to smugglers to help them cross the Moroccan – Spanish border.\textsuperscript{120}

The fight against illegal migration is also profitable for the security industrial complex, and some state actors within the cooperating countries.\textsuperscript{121} For instance, in 2017 the renowned Spanish newspaper El Pais reported that the fences separating Ceuta and Melilla from Morocco cost €72 million between 2005 and 2013, and that Spain’s “coastal surveillance system SIVE had a cost of €230 million from 2000 to 2008(…).”\textsuperscript{122}

Given the ‘migrant phobia’ sweeping through Europe and the predominance of the security logic amongst politicians and the ‘loud voices’ of the European far-right, security companies are expected to make more profits in the years to come. Some researchers have even estimated that “the global border security industry will be worth €50 billion in 2022.”\textsuperscript{123}

In contrast to the EU growing expenditure on internal security, there is an EU shrinking budget on migrants’ integration. This paradoxical evolution is well exemplified by the graph below, which shows that between 2015 and 2017 there was a considerable increase in the budget of the Asylum, Migration and Integration Fund. However, in 2018 it decreased sharply to the point that it became equal to the Internal Security Fund, which kept increasing since 2015, the year of the so-called ‘migrant crisis.’\textsuperscript{124}

\textsuperscript{120} Ibid
\textsuperscript{121} De Haas, H. (2008)
\textsuperscript{123} Ibid
\textsuperscript{124} For EU priorities, please see https://www.dw.com/en/follow-the-money-what-are-the-eus-migration-policy-priorities/a-42588136
The increasing and multifaceted cooperation between the EU and African countries of origin and transit of migrants, has relatively proved its efficacy by extending the reach of Europe’s border control policies thousands of kilometers deep into the African continent. For instance, the EU cooperation with Sahel countries such as Niger has made access to Libya – a major transit country and one of the major departure platforms for migrants headed to Europe – difficult, and costly financially and in migrants’ lives.\textsuperscript{125} This cooperation has also other so-called ‘unintended consequences.’\textsuperscript{126} For instance, it made the free movement of African people within the visa-free space of the Economic Community of West African States (ECOWAS) more and more difficult.\textsuperscript{127} Checkpoints – where identity checks of passengers are done regularly – have mushroomed within Niger and along its borders with neighboring countries, such as Burkina Faso.\textsuperscript{128}

\textsuperscript{125} DW, Docfilm (2019). “Outsourcing Border Controls to Africa.” Available at: https://www.dw.com/en/outsourcing-border-controls-to-africa/av-45599271
\textsuperscript{126} Ibid
\textsuperscript{127} Ibid
\textsuperscript{128} Ibid
The externalization of Europe’s border control and the outsourcing of migration management to countries like Morocco, where migrants originate or transit, has been in the making for many years and is considered a model to be emulated.129

What is less talked about however, are the human rights consequences of this cooperation, and how funding and, political and diplomatic legitimacy the EU bestows upon undemocratic or semi-democratic countries, potentially contribute to lack of accountability and encourage state agents to worry less about respecting the human rights of migrants. Media, UNHCR, OIM, and NGOs reports and statistics focus mainly on the deaths of migrants in the Mediterranean. However, they neglect the big number of migrant deaths and the multifaceted exploitation they go through along their migratory journey that spans through the many transit countries they cross before reaching the Mediterranean.130 This, distorts reality and gives an incomplete picture of the consequences of EU cooperation with African countries on migration control and management, like that which Morocco, has on migrants’ well-being and physical integrity.131 For instance, AMDH has reported that in 2018, Nador’s public hospital has received 244 corpses of sub-Saharan migrants. Five of whom died in makeshift camps, two while trying to climb the fences at the Melilla border, and two others died while they were being transferred from Nador to other Morocco’s internal cities.132 AMDH has also accused Moroccan authorities of laxity in their rescue operations.133

In the coming sections, the human rights consequences of the so-called model cooperation between the EU and Morocco will be discussed, mainly through aspects of the Spanish-Moroccan close cooperation on curbing illegal migration, and how EU policies, funding, diplomatic legitimation, facilitate and encourage the continuation of these practices. Already in 2010, a study concluded that the EU-Morocco cooperation on immigration policy “runs the risk of contributing directly to the implementation of migration policies that are contrary to the basic rights of migrants and refugees.”134

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130 DW, Docfilm (2019).
131 The documentary “Outsourcing Border Controls to Africa” is worth watching for it captures the nuances and the calamitous ramifications of EU’s border externalization.
132 AMDH Nador (2018)
133 Ibid

The drafters of the Universal Declaration of Human Rights (UDHR) were very optimistic when they wrote its first article in the following words “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”\(^{135}\) Unfortunately, the rights and dignity of many people are violated every day. The spirit of brotherhood has subsided and left room for selfish, ego-centric, and isolationist attitudes. The decline of human rights could not be better exemplified than in the way migrants – many of whom are in need of international protection – are treated at the international borders of countries that take the high moral ground when it comes to human rights. What is happening along the United States – Mexican borders as well as Europe’s is case in point.

Even the minimal protection granted under refugee law is not respected in many cases and governments tend more than ever to circumvent its provisions or grant temporary protection to applicants after making them go through a thorough triage. Several scholars and human rights activists critiqued the narrow definition of “refugee” found in the 1951 refugee Convention, as being “narrow as to leave many migrants unprotected from violence and other threats to their existence.”\(^{136}\)

The border control practices used at the Spanish-Moroccan borders have been denounced by many NGOs, UN treaty bodies, and international judicial review mechanisms such the European Court of Human Rights (ECtHR). Nonetheless, these practices continue in total defiance of international law. The cynicism of states in regards to the rights of migrants might lead to the dismantlement of the whole protection edifice if the current trend continues and is left unaddressed.

1. The Right to Asylum: The Inconsistencies Between Law and Practice.

Seven decades has passed since article 14(1) of the UDHR enshrined the right to asylum. This article stipulates that “Everyone has the right to seek and to enjoy in other countries asylum from

\(^{135}\) UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/dociudhr.html

persecution.” It is this article of the UDHR that set the stage for the development of refugee law and international protection that is now present in regional as well as in national legislations.

However, the ever-changing world context and politics has widened the gap between the theoretical enunciation of the right to asylum and the possibility of its actual enjoyment. The erosion of this right has pushed some opinion writers to qualify asylum law as farce. The right to asylum exists in international legal texts as well as national ones but there are many practical barriers preventing asylum seekers from enjoying it. The possibility to apply for asylum exists in most European countries, however the applicant needs to be, in the majority of cases, present on European soil to be able to lodge an application, hence making asylum out of reach to many.

In March 2017, the European Court of Justice (ECJ) ruled against humanitarian visas for refugees in connection with a case brought by a Syrian family who applied for a visa at the Belgium Embassy in Lebanon with the intention to apply for asylum upon arrival in Belgium (see Case number = C-638/16PPU ), but their visa application got denied on the motif that they intended to stay longer than 90 days. The ruling handed down by the ECJ stipulated that the decision to issue humanitarian visas or not rests with states.

Legally, potential asylum seekers can set foot in Europe only through the new EU resettlement program, which is limited and does not offer many spots in comparison to the big demand. The other option would have been through a humanitarian visa, but the proposition for this mechanism did not rally enough support in the European parliament. This proposition, if passed, would have been a gamechanger in the context of the increasing struggles of asylum seekers to access some sort of international protection. It is shocking to know that 90% of those granted international

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138 Ibid
140 Ibid
141 Ibid
protection arrived to the EU illegally, and that between 2000 and 2018 more than 30,000 died while attempting to reach Europe.

The Spanish – Moroccan borders are a good example of the elusiveness and difficulty to access asylum. Morocco has an incomplete protection system which is difficult to access. Asylum seekers have no way to lodge an application in any of the country’s ports of entry. The only possibility that it exists, is to lodge an application with the UNHCR office in the capital Rabat which is risky for many practical reasons. First, Morocco’s 2003 Immigration Law criminalizes the illegal entry and residency. Therefore, migrants always run the risk of being arrested, imprisoned, and expelled. Secondly, travelling to Rabat requires financial as well as logistical resources that most migrants, especially vulnerable groups such as unaccompanied minors and women, do not possess. Thirdly, even those who manage to lodge an application with the UNHCR need to go through the stringent refugee status determination which Morocco delegated to this UN institution. The receipt of the refugee card does not automatically entail any rights for the holder.

There are many reports that document the expulsion of refugees and migrants with a valid residency permit. Legal uncertainty is another challenge that migrants face when applying for international protection in Morocco. Consequently, given the lack of a fair and efficient asylum procedure in Morocco many asylum seekers try to enter one of the Spanish enclaves or cross the Strait of Gibraltar to apply for international protection guaranteed under refugee and European law.

Before November 2014 there were no asylum offices at the border crossings of the two Spanish enclaves of Ceuta and Melilla. Crossing the treacherous fences or crossing the Strait of Gibraltar were the only options available to asylum seekers. This situation has relatively come to an end when the Spanish government responded to the pressure from the international community and

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143 Ibid
144 See AMDH Nador (2018), and GADEM (2018).
145 GADEM (2018)
146 Supplementary observations by the UNHCR in the cases of N.D and N.T v. Spain before the Grand Chamber of the ECtHR.
opened an asylum office at the international border crossings of each of the its enclaves.\textsuperscript{147} This was a positive development for it allowed thousands of asylum seekers to apply for protection and to have their individual situation assessed by the Spanish authorities. In practice however, asylum offices are only accessible to people from the Middle East and North Africa.\textsuperscript{148} Almost all of the 11,185 applicants at the Beni-Enzar border post between November 2014 and December 2017 were from Syria (9,379), Palestine (904), Morocco (446), Yemen (209), and Algeria (82).\textsuperscript{149} In contrast, during the same period there were only 35 asylum applications from migrants from sub-Saharan origin.\textsuperscript{150} It is worth stressing that these African asylum seekers did not access the Beni-Enzar asylum office directly. Their applications got formalized at the border post after they were transferred by the Spanish authorities from Isla de Tierra – an uninhabited Spanish islet – which is adjacent to Morocco’s coastline.\textsuperscript{151} On the other hand, El Tarajel, Ceuta’s main border crossing with Morocco, seems impenetrable. The UNHCR has reported that not a single asylum seeker has been able to apply for asylum.\textsuperscript{152}

The joint Moroccan – Spanish efforts at border control and policing through the use of a plethora of deterrent tactics made borders inaccessible, in particular to potential asylum seekers from sub-Saharan Africa who virtually have no access to the border area.\textsuperscript{153} This situation shows that the ‘less-talked-about’ selectivity at Europe’s African borders is becoming more and more institutionalized and stakeholders are dangerously normalizing with it. It is migrants from sub-Saharan origin who are left with no other choice but to use the riskiest methods in order to access asylum procedures. Consequently, putting their lives at risk, incurring bodily injuries, and subjecting themselves to ill-treatment and human rights violations from the border control agents of both sides.

\textsuperscript{148} See Supplementary observations by the UNHCR in the cases of N.D and N.T v. Spain before the Grand Chamber of the ECtHR.
\textsuperscript{149} Ibid
\textsuperscript{150} Ibid
\textsuperscript{151} Ibid
\textsuperscript{152} Ibid
\textsuperscript{153} Ibid
2. **Push-backs or the Erosion of the “non-Refoulement” Principle.**

This illegal practice referred to as ‘hot returns’ or ‘devuociones en caliente’ in Spanish, is one of the major and most recurring human rights violations in which Moroccan and Spanish authorities are accomplices, and where the EU provides cover through its complacency and laxity to uphold the EU asylum acquis.\(^{154}\) Likely, there are on the one hand, NGOs and individuals who work to expose this unlawful practice and try to put an end to it by legal as well as other institutional means.

The UNHCR in its Supplementary Observations in the case of *N.D and N.T v. Spain*,\(^ {155}\) estimated that during the period April 2015 – April 2018 more than “1,500 persons were returned without any proper individual identification procedure in several incidents in Ceuta and Melilla.”\(^ {156}\) The big number of migrants being pushed back at the border illustrates that this practice is a constant element of the Spanish border control policy and Morocco’s willingness to facilitate this practice which violates the 1951 Geneva Convention as well as the ECHR.


\(^{155}\) A thorough analysis of this case by Cristina Gortazar Rotaecho and Nuria Ferre Trad, is available at: https://eumigrationlawblog.eu/a-cold-shower-for-spain-hot-returns-from-melilla-to-morocco-n-d-and-n-t-v-spain-ecthr-3-october-2017/

\(^{156}\) Ibid
The European Court of Human Rights (ECtHR) found, in the emblematic case of *N.D and N.T v. Spain*, that push-backs at the Moroccan-Spanish borders violate the ECHR, especially article 4 of protocol n. 4 which prohibits the collective expulsion of foreign aliens, in conjunction with article 13 of the ECHR pertaining to the right to an effective remedy.

When it comes to summary returns, the *N.D and N.T v. Spain* case is only the tip of the iceberg. Many other similar cases are never brought to broad daylight through a judicial review or other mechanisms of international investigation. A big segment of the sub-Saharan migrant population in Morocco is not aware of nor have access to legal assistance, and NGOs and activists do not have the resources to monitor the border continuously. This is why the case at hand is of paramount importance for it sets a precedent that might have a trickledown effect. Subsequently, it could put an end to the summary returns that are practiced by EU member states not only in Spain’s southern borders but also in places like the Greece – Turkey border, and elsewhere.157

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N.D, a Malian national, and T.D, an Ivorian national arrived in Morocco respectively in March 2013, and end of 2012. Both settled in the makeshift mount Gurugu camps located in the Nador region which shares borders with the Spanish enclave of Melilla, and stayed there for few months before attempting on 13 August 2014 – with a group of about 80 other migrants – to cross to Melilla by climbing the multi-fence barrier. N.D managed to climb the third fence and T.D made it to the second fence. Both stayed atop the fences for few hours until they climbed down with the help of the Spanish Guardia Civil. All 80 migrants were arrested, handcuffed, and immediately returned to Morocco without going through the proper procedural due process nor received any medical assistance. This incident was documented by witnesses and journalists, and videos were later on submitted to the court by the applicants.158

In Spanish authorities’ rationale, the collective expulsion of this group of migrants is not unlawful for they had not set foot in Spanish territory. Spain considers that its jurisdiction starts after the three fences that it uses as a protective buffer zone, a kind of no man’s land where Spanish laws are not applicable. The “operational border concept” has been consolidated since 2005 and is what guides the authorities in their approach to border control.159 The ECtHR rejected this claim since migrants were under “the ongoing and exclusive control, at least de facto, of the Spanish authorities” (N.D and N.T, ECtHR October 3, 2017, par. 54). Moreover, the findings of the Committee on the Prevention of Torture (CPT) contradicts the Spanish assertion. In its April 2015 report on Spain, the CPT noted that “the multi-fence barrier along the 13 km land border separating Melilla from Morocco was built within Spanish territory and is therefore, on both sides, under the full jurisdiction of Spain.”160

Spain has also argued in regards to its violating of Article 4 of Protocol n. 4 that “an expulsion is only collective if it affects a group of people characterised by common and specific circumstances

158 See the Court’s press release on N.D and T.N v. Spain available at https://hudoc.echr.coe.int/eng-press#/[%22itemid%22:[%22003-6202629-8050614%22]]
Furthermore, Spain has argued that the claimants could have entered legally through the Beni-Enzar border post. This argument is misleading. First, the events being reviewed by the ECtHR occurred before the opening of an asylum office at border post, and second, the high selectivity at the Melilla border practically makes the asylum office inaccessible to migrants from sub-Saharan origin.

The Strasbourg court dismissed Spain’s argument by “explaining that a collective expulsion is the forced return of a group of aliens except if there is a reasonable and objective examination of each individual case.”

As in the case of 

As in the case of Hirsi Jamaa and others v. Italy, (par. 171), the court has reaffirmed that states cannot invoke difficulties in managing migratory flows and asylum applications to carry out practices incompatible with their conventional obligations.

Despite its convoluted arguments, Spain could not convince the court that it did not violate article 4 of protocol n. 4 nor article 13 of the ECHR. The court has addressed, in previous cases brought before it against Italy, the scope and meaning of the obligation of states to ensure that an effective remedy is available to complainants in law as well as in practice (Hirsi Jamaa, para. 197 and Khlaifia, para. 268).

The ECtHR handed down its decision on 3 October 2017 in which it found that Spain violated article 4 of protocol n. 4, and article 13 of the ECHR. However, the court rejected the claim on the violation of article 3 on the prohibition of torture. It would be interesting to see if the court would, in the pending case of Doumbe Nnabuchi v. Spain, consider the circumstances and conditions under which collective expulsions from Spain to Morocco are made as infringing article 3 of the Convention, especially in light of the findings of the CPT, which collected migrants’ testimonies indicating that they are systematically subjected to ill-treatment after they are handed over to Moroccan authorities. The CPT recommended, given the high risk of ill-treatment by members of

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161 Ibid
162 See UNHCR’s supplementary observations referenced above.
163 Rotaeche, C. et al. (2017)
164 Ibid
165 Ibid
the Moroccan Auxiliary Forces (MAF), “that Spanish authorities ensure that no person is handed to them [MAF].”\textsuperscript{166}

The Spanish authorities decided to persist in their convoluted interpretation of their conventional obligations and asked the case to be referred before the Grand Chamber. Would the Court reach a different conclusion or would it confirm that Spain’s ‘hot returns’ are an unequivocal violation of the ECHR?

3. Border Control: Minors are no Exception.

The gravity of the Spanish summary returns is that they are done in an indiscriminate fashion. Minors whom the Spanish government asserts that they would not be subjected to automatic push-backs,\textsuperscript{167} in practice are not spared from this human rights violation. In February 2019, the UN Committee on the Rights of the Child (CRC) ruled against Spain in the \textit{D.D. v. Spain} individual communication, after it determined that the automatic expulsions of minors at the Spanish-Moroccan land border violate children rights.\textsuperscript{168} The Committee determined that Spain violated articles, 3, 20, and 37, pertaining respectively to three core principles of the CRC, the best interest of the child, the special protection of unaccompanied minors, and the prohibition of torture and inhumane or degrading treatment.\textsuperscript{169}

D.D, a Malian minor, was 14 years old when he left his home country due to the armed conflict.\textsuperscript{170} He arrived in Morocco in early 2014, he then joined mount Gurugu where he found protection amongst sub-Saharan migrants. In March 2014, he was violently prevented from crossing the fences separating Morocco from Melilla. Moroccan forces broke his front teeth and continued to hit him after he fell to the ground. He escaped and made it back to the mount Gurugu camp. Despite being bloodied and in pain, he was unable to receive any medical care.\textsuperscript{171}

\textsuperscript{166} CPT Report on Spain, April 9, 2015, para. 54.
\textsuperscript{168} Ibid
\textsuperscript{169} Ibid
\textsuperscript{170} Ibid
\textsuperscript{171} Ibid
In his December 2014 second attempt, D.D (a.k.a Bambino) managed to reach the top of the third fence.\footnote{Ibid} He stayed atop for few hours before he succumbed to his exhaustion and claimed down the fence in the Spanish side. He was intercepted by the Guardia Civil, immediately handcuffed, and handed over to Moroccan authorities. He was not identified nor received any legal assistance, or went through any form of asylum procedure.\footnote{Ibid} The celerity by which D.D was returned to Morocco prevented him from going through an initial assessment, a step which is essential in the identification process and “evaluation of protection needs and specific vulnerabilities.”\footnote{Ibid} The CRC General Comment No. 6 provides key protection elements that states are required to follow. Spain however failed to comply with any of these requirements.\footnote{Ibid}

The challenging situation in which migrant children live and the treatment they are subjected to by Spanish as well as Moroccan authorities raised the concerns of the CRC Committee which urged Spain in its 2018 Concluding Observations to “[e]nd the practice of the automatic pushback of some children, ensuring that all procedures and standards are in accordance with their status as children and with national and international legislation.”\footnote{Committee on the Rights of the Child. (2018, March 5). CRC/C/ESP/CO/5-6, Concluding observations on the combined fifth and sixth periodic reports of Spain, §44(d).}

The same Committee has noted that, in Morocco, unaccompanied minors live in makeshift camps, and are left without access to healthcare nor basic provisions.\footnote{Committee on the Rights of the Child. (2014, October 14). CRC/C/MAR/CO/3-4, Concluding observations on the combined third and fourth periodic reports of Morocco, § 62.} Furthermore, the Committee stressed in its 2014 Concluding Observations that Morocco “does not provide these children with any type of assistance and protection.”\footnote{Ibid} This is illustrative of Morocco’s failure to fulfill its conventional obligations towards children, especially those in a vulnerable situation like unaccompanied migrant minors and street children.

In this context the predicament of unaccompanied minors in Morocco and in Spain should not be ignored. These two governments should be pressured to act in the best interest of these children and put safeguards to ensure their full protection. The decision of the CRC Committee in the D.D
v. Spain is interesting in that it reaffirmed that the Spanish government uses automatic pushbacks at its border in an indiscriminate manner and confirmed that these ‘hot returns’ are more common than one might think. Obligations under EU law, the ECHR, and the Refugee Convention must not be “disregarded by Spain in its North African enclaves, turning these spaces into lawless zones devoid of human rights.”

The CRC Committee referred to the CMW and CRC’s joint General Comment N.4/23 to further reaffirm that children should be guaranteed the right to “access to the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights.” The Committee has further determined that Spain failed to assess the risk of ill-treatment and the precarious living conditions of D.D upon his return to Morocco where he had in the past been subjected to ill-treatment and where there is a “general situation of violence perpetrated against migrants in Morocco’s border zones.” The Committee concluded that Spain has, indeed, violated articles 3 and 37 of the CRC.

In light of the above, it is safe to conclude that the Committee’s reasoning and findings tacitly condemn Morocco for lacking protection safeguards capable of ensuring the socio-economic as well as the physical and psychological safety for minors, especially those in a vulnerable situation. The Committee’s conclusions have shed light on the indiscriminate use of violence against migrants at the border which, in some cases, amounted to torture as has been demonstrated in D.D v. Spain and Diory Barry v. Morocco individual communications.

179 ECCHR, (2019).
180 Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, §17. As cited in ECCHR, (2019). Available at: https://www.refworld.org/docid/5a12942a2b.html
181 ECCHR, (2019)
C: Morocco: Not yet a Safe Country for Migrants?

The concepts of the safe country of origin (SCO) and the safe third country (STC) have been in use for some time. Policymakers and media pundits bring them to the forefront every time migration becomes the hot topic of the day.

A dozen EU member states have established a list of countries they consider as SCO.\(^{182}\) The asylum applications of citizens of the countries designated as safe are not likely to receive a positive outcome. EU states use this concept to assuage the pressure on their asylum systems.\(^{183}\) Morocco along with Algeria, and Tunisia are considered as relatively safe countries of origin by several European governments. Therefore, many asylum seekers from the Maghreb see their applications rejected more frequently.\(^{184}\) Hence, SCO is a concept that European countries use to prevent the clogging of the asylum system by persons coming from countries where the situation is relatively safe.\(^{185}\)

The STC, on the other hand, is a concept which has its origin in international agreements,\(^{186}\) and in the idea that “international cooperation is a necessary prerequisite for the satisfactory solution to the plight of refugees.”\(^{187}\) At EU level, the Dublin mechanism is an incarnation of the STC concept in its practical sense. However, “its actual implementation remains one of the most complex issues in refugee protection.”\(^{188}\)

Countries that treat asylum seekers and refugees under their international protection scheme in accordance with Directive 2013/32/EU are considered by the EU as STC. Article 38 of the EU Directive specifies the principles that states need to respect. Mainly, that life and liberty are not at risk in accounts of, inter alia, race, religion, and nationality, there should not be any risk of serious

\(^{183}\) Ibid
\(^{184}\) Ibid
\(^{185}\) Ibid
\(^{187}\) Ibid
\(^{188}\) Ibid
harm as defined in Directive 2011/95/EU, and that the principle of non-refoulement, as enshrined in article 33 of the 1951 Geneva Convention, is respected, and removal is precluded if it violates the international legislation against torture, cruel and inhumane treatment, and most importantly there should be the possibility to request and enjoy refugee status as laid out in refugee law.

In the case of Morocco, it would be difficult to ascertain that it fulfills any of the prerequisites enumerated above. UN treaty bodies and procedures of international investigation have shown that Morocco’s legal and institutional frameworks are not effective in providing an adequate international protection for those in need of it. Several treaty bodies have expressed their concern in regards to the situation of migrants, in particular those in a vulnerable situation like unaccompanied minors, and women. For instance, the UNHCR has indicated, in its 2016 submission to OHCHR for Morocco’s third UPR Cycle, that despite the “identification of refugee survivors of SGBV and the legal intervention through [UNHCR] consultant lawyer towards the national judiciary systems, there has been little success in bringing the perpetrators to justice. At times, the cases brought to the police authorities have not been thoroughly and timely followed up.”\textsuperscript{189}

Furthermore, there have been reports of pregnant women and women with babies expelled or forcibly displaced from Nador and Tangier in dangerous conditions and dropped off in inhabited areas many kilometers from urban centers without food nor water.\textsuperscript{190} Despite, these NGO reports no investigation has been opened by Moroccan authorities nor did this practice stop.\textsuperscript{191} In Regards to children, the UNHCR has indicated that “Morocco does not provide them with assistance and protection from violence, exploitation or trafficking in persons.”\textsuperscript{192} In its 2014 Concluding Observations, the CRC made the same observation to the Moroccan authorities.\textsuperscript{193} This could not be more illustrative of Morocco’s lack of motivation to protect this cluster of vulnerable groups.

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\textsuperscript{189} UNHCR (2016). P. 4  \\
\textsuperscript{190} GADEM (2018)  \\
\textsuperscript{191} See AMDH Nador (2018)  \\
\textsuperscript{192} UNHCR (2016)  \\
\textsuperscript{193} CRC (2014).
\end{flushright}
Violence against migrants has been thoroughly documented and denounced by Moroccan NGOs like AMDH and GADEM as well as by international NGOs like AI and HRW to cite a few. To counter these reports, Morocco invokes their so-called political and impartial character. The aim of these accusations is to discredit these NGOs and minimize the gravity of their reports. Morocco cannot however invoke these arguments when the facts are established by an international investigation mechanism, such as the CAT Committee.

In a suffocating Mauritanian summer, Diory Barry, a Senegalese national, embarked in a pirogue – with a group of undocumented migrants – from Nouadhibou, Mauritania with the aim to reaching the Spanish Canary Islands. Their journey had seen dramatic turns and had not gone as they had hoped. They were adrift at sea for about 13 days during which some 30 unlucky migrants perished. The Moroccan Royal Navy intercepted the embarkation where 40 migrants were still alive, then took them to a detention camp in Dakhla, Morocco, where they remained for about 10 days.

The Moroccan authorities took this group of migrants to the Mauritanian border, provided them with some sandwiches, few bottles of water, and flip-flops and asked them to walk in the direction of Mauritania without informing the Mauritanian authorities, and without informing the expelled migrants that there is a large minefield on their way. They had to walk 50 km to reach the first inhabited area. During their long walk, a member of the group was killed after he stepped on a landmine, and the others were found in no man’s land in the desert between Morocco and Mauritania suffering from serious wounds.

Despite Morocco claiming that it acted in accordance with the national legislation pertaining to migration, namely the Immigration Law (known as law 02.03), which provides that illegal migrants can be expelled but that they can ask for a judicial review of the decision within 48 hours. Morocco claimed that no migrant had made use of this mechanism. However, it failed to indicate if migrants were effectively informed of the domestic remedies available to them. The Committee

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195 Ibid
196 Ibid
197 Ibid
determined, after considering the facts of the case that “the circumstances of the complainant’s expulsion by the State party constitute the infliction of severe physical and mental suffering on the complainant by public officials. They can therefore be considered cruel, inhuman or degrading treatment as defined in article 16 of the Convention.”

It follows from the above that when it comes to migrants’ rights Moroccan authorities do not respect either national legislation nor international treaties Morocco is party to. In many instances, there has been inconsistencies between law and practice, and there seems to be a total disregard to the procedural as well as legal safeguards every time the administration deals migrants in an irregular situation.

Since Morocco accepted individual complaints procedure on 19 October 2006, the CAT Committee has received nine individual communications. In six of these communications, the Committee found that Morocco infringed the CAT Convention. The communications pertained to migrants who were expelled from Morocco in conditions amounting to torture (Barry Diory v. Morocco) or to migrants who were extradited to their country of origin despite the existence of eminent threats to their physical integrity like in the case of Alexey Kalinichenko v. Morocco (Communication N.428/2010).

Even though the CAT Committee called on Moroccan authorities “to take steps to prevent similar violations from occurring in the future,” Morocco has not parted ways with its repressive approach towards migrants, and continues to violate their human rights. It would be difficult to confirm whether this is a well-thought policy adopted by Morocco to create unhospitable conditions to dissuade migrants from settling in or using the country as a departure platform to Europe, or whether the continuation of these human rights violations is due, at least in part, to lack of training on human rights and an endemic lack of accountability.

\[\text{\underline{References}}\]

198 Ibid
199 For details see the CAT Committee’s jurisprudence pertaining to Morocco available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=MAR&Lang=EN
200 Diory Barry v. Morocco (2014)
The human rights violations highlighted above don’t constitute, nor the intent was to give an exhaustive list of human rights abuses engendered by the EU-Morocco cooperation on migration control. The violations discussed above, are those that made it before an international review mechanism and where Morocco and Spain (and indirectly the EU for it provides fund and political legitimacy) infringed the human rights of migrants. The Reports of NGOs and international institutions talk of systematic and deliberate human rights violations. However, states dismiss these reports by questioning their accuracy and magnifying their so-called political nature. The decisions of international review procedures, on the other hand, are difficult for states to dismiss and are rendered after serious investigative work. Furthermore, these decisions can be enforceable and create precedents that are states need to respect.
Conclusion:

Even though the official rhetoric of EU officials and their Moroccan counterparts puts respect for and protection of the rights of migrants as one of their top priorities, the reports of NGOs, regional and UN human rights bodies, and decisions of international investigative mechanisms tell another story.

The situation of migrants on the ground is bleak to say the least. The lack of mediatization that the question of migration suffers from, should not be interpreted as if tragedies do not occur or are less frequent, and that Moroccan and Spanish border control agents act in accordance with their legal obligations.

Serious human rights violations such as beatings, destruction of property, and forced removals have become so common, that it seems that everyone has normalized with such practices. The many cases of human rights violations (which despite many practical barriers – had been investigated by international courts or other international human rights monitoring bodies) pinpointed the grave and recurring human rights violations committed by both Morocco and Spain in what seems as deliberate efforts to violate migrants’ rights. For instance, the ECtHR condemned the Spanish summary returns once it determined that this practice violates the ECHR and its Protocol 4. The Spanish authorities started calling upon their Moroccan counterparts to enter the fence area in order to return sub-Saharan migrants from the so-called buffer zone. By doing so, Spain intends to deflect its legal obligation to Morocco, which is not governed by the ECtHR, nor any other international or regional human rights court. The cooperation on paper is different from that which is on the ground. Both sides do all they can to prevent the ‘undesirable migrants’ from reaching European soil.

Morocco faces increasing pressure “from Europe in matters relating to migration governance, in light of the geopolitical significance of the Kingdom’s location.” Nonetheless, Morocco should

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not succumb to this pressure, nor should it hide behind Europe’s pressure to not respect the human rights of migrants and not fulfill its conventional responsibilities. Morocco needs to take proactive steps and stand its ground as it did when it rejected EU’s proposition of “regional disembarkations.”

Morocco cannot pretend to be a major player and a champion of a critical dossier such as migration, without building its own adequate migration framework. Hence, it needs to complete its legal and institutional protection systems, and bridge the gap between law and practice. It is important to keep in mind that laws are mere text on paper if they are not implemented and effectively enforced. It is time for Morocco to effectively implement the laws it has already enacted and expedite the creation of those that it lacks in order to fulfill its conventional obligations. The incomplete protection system it has, is insufficient and inconsistent with Morocco’s political stance and its promises under its National Strategy on Immigration and Asylum. Furthermore, Morocco’s 2011 constitution enshrined the supremacy of international conventions over national legislation. This is a laudable development, however, it will remain “lettre morte” if Morocco does not align its legislation with international law and the treaties it has ratified and if it does not train judges and law practitioners to apply treaties when litigating a case or rendering a verdict on one. Morocco needs also to strengthen its judiciary system to ensure that the right to an effective remedy is attainable in practice.

Furthermore, if Morocco is serious about improving its human rights record and ensuring that the human rights of persons under its jurisdiction are fully and diligently respected, then it needs to effectively adhere to UN and regional treaty bodies by submitting its reports on time and accepting individual complaints procedures. This would offer venues for its citizens and those under its jurisdiction to protect their rights. The North African kingdom needs also to join the AU’s human rights mechanisms, in particular the African Charter on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights. This would ensure some sort of accountability for a system without accountability is a system that encourages abuse.
Concerning the European Union, this institution has to be realistic when drafting and humanistic when implementing its migration control policies. It would be judicial to conduct an impact assessment of these policies and to make sure that their application would not engender any human rights violations. The EU needs also to create monitoring bodies in order to make sure that migration control is done in total respect for the rights of migrants, and to work with countries of origin and transit on sustainable solutions and pathways that open Europe’s doors to those in need of protection. Transferring the burden or delegating border control to countries where the question of human rights is marginal is not the solution.
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