



Slow Movement

Protection of Migrants' Rights in 2009

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Summary

Migrants drowning at sea after being turned away from shore. Children detained with adults and at risk of physical and sexual abuse. Workers cheated out of wages and confined to their workplace. Authorities extorting bribes. Governments denying health care benefits to those who might most need it.

In 2009, through field research and ongoing monitoring, Human Rights Watch documented human rights violations against migrant women, men, and children in every region of the world, publishing dozens of materials, including 14 reports. Whether moving from the countryside to urban areas, or across oceans, deserts, and international borders, migration carries the potential for both great reward and great risk. For those who are lucky, migration can mean a better life, greater freedoms, more money, and reuniting with family. But for others, restrictive and xenophobic immigration policies, inadequate labor protections, and barriers to justice mechanisms translate into human rights abuses with little hope of redress.

The United Nations estimates that by mid-2010 there will be approximately 214 million international migrants worldwide,¹ and this number balloons into hundreds of millions when internal migrants are included. Migrant workers are often touted as modern-day heroes given the importance of their remittances to the economies of their home countries—an estimated US\$444 billion in 2008. But migrants are also seen as threats—unfairly blamed for crime or changes in demographics and culture.

Whether as heroes or criminals, government policies have typically failed to provide comprehensive protections to migrants, often discriminating on the basis of immigration status and national origin. Only 42 countries have ratified the International Convention on the Protection of all Migrant Workers and their Families, none of which include a major host country for migrants.

In 2009, Human Rights Watch researchers documented how stringent entry and return policies in several countries led to brutal treatment, detention, and even death of migrants. For example, Italy returned African migrants traveling by boat to Libya where they are often subjected to physical abuse and detention in unsanitary conditions. Countries such as Malaysia and Greece often failed to screen migrants adequately for asylum-seekers.

¹ United Nations Population Division, “International Migrant Stock: The 2008 Revision,” <http://esa.un.org/migration>.

Unaccompanied children in France were treated more like criminals than children and detained or returned to unsafe conditions.

Entry policies often discriminate against migrants on the basis of their HIV-status, denying them entry or mandating immediate deportation, often without access to life-saving treatment or health care in accordance with global commitments. Migrants without valid immigration status or who face persecution from employers, locals, or government authorities often suffer limited access to health care and clinics, as in South Africa. Those in detention even in rich countries such as the United States may be forced to go without basic health treatment readily available in the community.

Many migrants leave their homes in search of work. Immigration and labor policies often restrict the rights of these workers. For example, poor oversight over labor brokers means that many migrants are deceived about the terms of work and may become heavily indebted after paying recruitment fees. Many governments link workers' visas to their employers, giving the employer the power to cancel a worker's permit and cause their deportation or to refuse workers' requests to transfer employment. This inordinate power often permits employers to confiscate passports, withhold salaries, and demand excessive work hours with impunity.

Both domestic workers, who are additionally excluded from key labor protections in most countries, and construction workers, usually heavily indebted from excessive recruitment fees in their home countries, are subject to a wide range of abuses, most commonly unpaid wages, poor work conditions, and limited access to redress.

In general, the fear and xenophobia that a country's government and population harbor against migrants can lead them to implement harsh laws, policies, and practices that violate migrants' rights. Italy and Malaysia have allowed vigilante-style monitoring of undocumented migrants by specially formed civilian groups. Cuba restricts who can migrate to the cities, using screening policies to clamp down on those involved in organizing civil society. In Thailand, the large numbers of migrants from Burma, Cambodia, and Laos have been subjected to severe restrictions on their freedom of movement, freedom of assembly and even their ability to possess mobile phones. Impunity for authorities who regularly extort money from migrants through the threat of violence, detention, and deportation leave them with nowhere to turn.

There have been pockets of improvement. The South African government announced it would issue special permits for an estimated 1.5 million Zimbabweans fleeing turmoil at

home to remain and work in South Africa. The Greek government pledged to create a police department to investigate alleged abuses against migrants and closed its Lesbos Island detention center. In the United States, immigration authorities agreed to implement the same standards for health care for women in immigration detention centers as the higher standards for prisoners. Though still awaiting full implementation, Lebanon, Saudi Arabia, and Jordan all announced measures to increase the labor protections for domestic workers.

Key Recommendations

As a new year approaches, Human Rights Watch urges governments to review their policies towards migrants and ensure protections for their rights, regardless of national origin. In particular:

Immigration authorities should:

- Lift restrictions on freedom of migrants' movement within countries and ensure that policies are designed to facilitate documented, legal migration but are not disproportionately punitive against those without proper documents.
- Lift discriminatory entry and exit requirements for migrants living with HIV or other health conditions and ensure uninterrupted access to treatment.
- Punish individuals in authority who abuse their power over migrants and adopt separate policies for treatment of unaccompanied migrant children in accordance with their best interests.

Labor authorities should:

- Extend equal protections to domestic workers equivalent to that of other workers, strengthen inspections of workplaces with migrants, create accessible complaints mechanisms, and speed up redress mechanisms.

Governments should ensure national law conforms to international standards and:

- Sign and ratify the UN International Convention on the Protection of All Migrant Workers and Members of Their Families.
- Sign and ratify the core International Labor Organization Conventions and support the proposal for a binding convention and recommendation on domestic work.

Women Migrant Domestic Workers

Sometimes, she would close the door and lock me like a dog. From 8am to 2pm. She would do this if she could not take me out with her. I cried so much. I am not an animal, I am human. Madam said, "if I [let] you outside, you will run away."

—Manori L., Sri Lankan migrant domestic worker, Kuwait

The Middle East hosts millions of live-in migrant domestic workers from Asia and Africa, primarily Sri Lanka, Indonesia, the Philippines, India, Nepal, and Ethiopia. Labor recruiters in their home countries often deceive these migrants about their employment contracts or charge excessive fees. Jordan reformed its labor law in 2008 to include domestic workers, but most countries in the Middle East where Human Rights Watch has done research exclude domestic workers from standard labor protections such as a minimum wage, limits to hours of work, rest days, and workers' compensation. In previous reporting, Human Rights Watch has found that domestic workers typically work 15-18 hours a day, seven days a week. The most common complaints include unpaid wages for months or years, forced confinement in the workplace, and excessive workload. There are many complaints of verbal, physical, and sexual abuse and situations that amount to forced labor and trafficking. Migrant domestic workers typically have little access to legal redress mechanisms, and when they do, these are so lengthy and poorly enforced that justice remains elusive.

While several countries have begun to implement incremental reforms, such as standard employment contracts, these are being introduced very slowly and fall short of the comprehensive protections required.

Kuwait

Over 600,000 migrant domestic workers currently work in Kuwait, making it the second largest host country for domestic workers in the Persian Gulf region after Saudi Arabia. Kuwait's labor law excludes domestic workers and many work long hours with no rest days for little pay.² In research conducted in November 2009, Human Rights Watch documented how current practices in the sponsorship system exacerbate the abuses these workers face. Under Kuwaiti law, employers control whether domestic workers can change their jobs, and can file "absconding" cases against domestic workers who leave their employment without permission. Domestic workers who leave their employers without their consent, even when escaping abuse, have no clear mechanism for reclaiming unpaid wages or negotiating

² Human Rights Watch news release, "Kuwait: Bring Domestic Workers under Labor Law's Mantle," December 4, 2009, <http://www.hrw.org/en/news/2009/12/05/kuwait-bring-domestic-workers-under-labor-law-s-mantle>.

payment of their return ticket home and must often rely on informal settlements brokered by their embassies. They may spend weeks or months in detention and be blacklisted permanently from future employment in Kuwait.

Human Rights Watch recommends that the Kuwaiti government:

- Include protection of domestic workers as a major reform to the country's labor law, which is currently being finalized, and strengthen and speed up resolution of labor disputes.
- End employers' control over migrant domestic workers' legal status in the country and ability to transfer jobs, and establish a government authority with independent oversight to manage these.

Saudi Arabia

With at least 1.5 million migrant domestic workers, Saudi Arabia hosts the largest number in the Middle East. Human Rights Watch has previously documented egregious labor rights violations, and the risk of domestic workers being prosecuted on spurious allegations of adultery, theft, or witchcraft. Forced confinement and the requirement that employers grant an “exit visa” before the worker can leave the country contributes to many cases of forced labor. In July 2009, Saudi Arabia’s Shura Council finally passed, after deliberation for several years, an annex to the labor law that requires employers to provide domestic workers at least nine hours of rest each day and suitable accommodation.³ However, it still contains vague provisions that leave workers exposed to abuse, such as the duty to obey employers’ order and a prohibition against leaving the workplace without a “legitimate reason.”

Human Rights Watch recommends that the Saudi government:

- Adopt comprehensive labor and immigration reforms for domestic workers that protect their freedom of movement, guarantee limits on working hours in parity with other sectors, and abolish the current sponsorship system.
- Rigorously prosecute employers and employment agents who abuse migrant domestic workers, and reform criminal justice laws including evidence laws that make it difficult to prove rape and easy to convict for witchcraft.

³“Saudi Arabia: Shura Council Passes Domestic Worker Protections,” Human Rights Watch news release, July 10, 2009, <http://www.hrw.org/en/news/2009/07/10/saudi-arabia-shura-council-passes-domestic-worker-protections>.

Lebanon

There are an estimated 200,000 domestic workers, primarily from Sri Lanka, the Philippines, and Ethiopia in Lebanon. New arrivals have also come from Nepal, Madagascar and Bangladesh. The restrictive kafeel residency system has direct implications for a domestic worker's ability to have recourse to the Lebanese justice system. Disputes between employers and migrant workers regularly take years to be adjudicated by courts. Human Rights Watch research found that at least 45 migrant domestic workers died in Lebanon in 2008, a majority of whom committed suicide or died while trying to escape in a hazardous way.⁴ The high death rate persisted in 2009 with at least eight domestic workers dying in October alone.⁵

In January 2009, the Ministry of Labor finally introduced a standard employment contract that clarifies certain terms and conditions of employment for domestic workers, such as the maximum number of daily working hours, the need for a 24-hour rest period each week, and paid sick leave. While the standard contract is a step forward, there are no clear enforcement mechanisms, and the contract is vague or omits the worker's right to leave the workplace and retain her passport.

Human Rights Watch recommends the Lebanese government:

- Amend the labor code to provide comprehensive legal protections for domestic workers, and for the Ministry of Labor to create an inspection unit tasked with monitoring working conditions for migrant domestic workers.
- Reform sponsorship laws that require the consent of the employer to change sponsors. Facilitate transfer of sponsorship by making temporary, employment-based visas issued to a migrant nonspecific with respect to the migrant's employer.
- Enact legislation that sets up a quick and simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers. In addition, grant migrant workers temporary visas (or an alternative to detention) while they have pending legal procedures.

Jordan

Jordan in July 2008 became the first Arab country to include its estimated 70,000 domestic workers under the protections of its labor law, but it took until September 2009 for the

⁴ "Lebanon: Migrant Domestic Workers Dying Every Week," Human Rights Watch news release, August 26, 2008, <http://www.hrw.org/en/news/2008/08/24/lebanon-migrant-domestic-workers-dying-every-week>.

⁵ "Lebanon: Deadly Month for Domestic Workers," Human Rights Watch news release, November 9, 2009, <http://www.hrw.org/en/news/2009/11/09/lebanon-deadly-month-domestic-workers>.

Ministry of Labor to issue a regulation detailing those protections. The regulations contained welcome aspects, such as requiring the employer to pay salaries into a bank account, provide medical insurance and 14 days of medical leave, in addition to 14 days of annual leave. Domestic workers now have limits to daily working hours, and a weekly day of rest. However, the September regulation continues to allow employers to lock their live-in workers inside the house, stipulating that the worker cannot leave without the consent of the employer, even after working hours.

Human Rights Watch recommends the government of Jordan:

- Revise urgently its regulations in order to grant domestic workers freedom of movement and to improve their access to services, the police, and the justice system.
- Ensure rigorous enforcement of the new protections for domestic workers now provided under the country's labor law.

Migrant Construction Workers

"Whether you want to work or not, you will work. We will have you deported."

-Siarkhon T., a migrant worker who became a victim of forced labor in Russia, reporting the words of an employment agency representative who had confiscated Tabarov's passport

Despite the recent global economic crisis, millions of workers continue to migrate for work in the construction sector. These workers are often misled about the terms of their employment by intermediaries and their employers, and have limited recourse when they do not receive their due wages, have poor housing, or are forced to work in unsafe conditions.

Russia

Russia attracts millions of migrant workers, most from countries of the former Soviet Union. Human Rights Watch documented how employers in Russia failed to provide promised salaries and conditions, and cheated migrant workers of wages, forced them to work excessively long hours, threatened and physically abused them, and provided substandard on-site living conditions and unsafe working conditions.⁶ Employers in most cases refuse to provide migrant workers with written employment contracts, as required under Russian law, making workers even more vulnerable to abuses and limiting their ability to access official avenues of redress. In some of the worst cases, employers, intermediaries, and employment agencies confiscated migrants' passports and forced them to work without wages.

Human Rights Watch recommends the Russian government:

- Rigorously investigate and prosecute employers in violation of migration and labor laws, regardless of the workers' migration or contractual status.
- Ensure that migrant workers, regardless of immigration status, who face abuses at the hands of employers, police, or others can file complaints regarding labor violations and abuses without fear of retribution.

United Arab Emirates (UAE)

Migrant workers comprise up to 95 percent of the workforce in the UAE. Thousands of workers from India, Pakistan, Bangladesh, and other South Asian countries are building the infrastructure of Saadiyat Island, a US\$27 billion development which will host branches of the Louvre and the Guggenheim museums, a campus of New York University (NYU), and

⁶ Human Rights Watch, *Are you Happy to Cheat Us?: Exploitation of Migrant Construction Workers in Russia*, February 2009, <http://www.hrw.org/en/node/80466/section/1>.

other institutions. Human Rights Watch documented how these migrants pay unlawful recruiting fees that leave them heavily indebted and are forced to sign contracts in the UAE on much worse terms than those promised in their home countries.⁷ UAE laws that prohibit these practices are not enforced.

UAE laws do not protect rights to form unions, bargain collectively, or strike. Instead, the UAE's "sponsorship" system gives employers nearly absolute control over the workers' lawful presence in the country, with visas tied to individual employers. Employers typically confiscate migrant workers' passports. These conditions mean that workers have little recourse against agencies or employers who exploit them. While the UAE government has moved to improve housing conditions and ensure the timely payment of wages in recent years, they have yet to reform the immigration and labor practices that set the stage for abuse.

Human Rights Watch recommends the UAE authorities:

- Ensure employers return all confiscated passports to workers immediately and penalize those who fail to comply.
- Identify and cease working with any labor supply agencies in labor-sending countries or the UAE that charge fees to workers instead of to construction companies, as required by UAE law, or that engage in deception regarding contracts.

Human Rights Watch recommends the Louvre, Guggenheim, NYU, and other institutions with buildings on Saadiyat Island should:

- Pledge publicly that all development partners, contractors, subcontractors and their affiliates involved in the construction of the Abu Dhabi branch of each respective institution will not engage in abusive labor practices, including withholding employee passports and wages, or do business with recruiting agents who charging illegal fees.

⁷ Human Rights Watch, *United Arab Emirates – “The Island of Happiness”: Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi*, May 2009, <http://www.hrw.org/en/reports/2009/05/18/island-happiness-o>.

Right to Health

I was robbed [and] assaulted. People on the street just watched it happen. I went to Hillbrow clinic. I asked for an x-ray but they said, "No, that's not for foreigners. Go back to Zimbabwe if you want x-rays." I went back four times but it was always, "No, my friend. That's for South Africans."

—Trevor K., asylum seeker, Johannesburg, South Africa

Worldwide, migrants face legal and cultural barriers to accessing health care. Those in detention may be subject to standards of care far lower than those available in the community or for prison populations. For HIV, tuberculosis (TB) or flu, migration can increase the risk of infection, while at the same time, discrimination against migrants can impede their access to care. Human rights law requires that a core minimum of health care services—including anti-retroviral therapy (ART) for HIV—be provided without discrimination on the basis of citizenship or social origin. Yet, Human Rights Watch researchers have found that both internal and international migrants frequently face legal, logistical, and linguistic barriers to accessing treatment, thus risking illness, the development of drug resistance, and death.

Barriers to Minimum Health Care Services

In 2006 at the UN General Assembly, governments around the world committed to ensure universal access to comprehensive HIV treatment programs by 2010. These efforts have typically disregarded the needs of internal and international migrants. Continuing discrimination, in over 60 countries, over restrictions on the entry, stay and residence of people living with HIV worldwide, further complicates access to care as does deportation of those found to be positive.⁸

Lack of inclusion in national care programs can also be an issue for influenza: In November 2009, the Beijing municipal government announced a plan for free influenza A H1N1 immunization to all officially registered Beijing residents, about 12 million people. Unfortunately, this plan left an estimated five million long-term residents—also Chinese citizens, but mostly internal migrant workers from the countryside—ineligible. After public outcry, government officials announced an extension of the vaccination plan to include internal migrants. Even when countries claim to provide treatment to all individuals

⁸ Human Rights Watch, *Discrimination, Denial, and Deportation: Human Rights Abuses Affecting Migrants Living with HIV*, June 2009, <http://www.hrw.org/en/reports/2009/06/18/discrimination-denial-and-deportation> and Human Rights Watch, *Returned to Risk: Deportation of HIV-Positive Migrants*, September 2009, <http://www.hrw.org/en/reports/2009/09/24/returned-risk>.

regardless of citizenship or residency status, as in the case of TB, formidable barriers such as lack of awareness and hidden costs remain.

Human Rights Watch recommends that governments:

- Repeal existing HIV-related restrictions on entry, stay, and residence immediately. Ensure that national laws permitting the deportation of HIV-positive individuals to countries where treatment is inaccessible comply with international law obligations against refoulement (unlawful return).
- Provide essential medicines and vaccines to all internal and international migrants on the same terms as citizens or residents, regardless of national or social origin.

South Africa

Migrants in South Africa are subject to xenophobic violence, internal displacement, and discrimination that pose serious risks to their health and survival. Migrants in transit, especially those crossing the border with Zimbabwe, are frequently assaulted and raped. Xenophobic attacks targeted at migrant communities occur regularly throughout the country. Migrants displaced by violence are forced into unsafe living conditions in abandoned buildings, churches, and open fields where they are vulnerable to disease, mass arrest, and eviction. South Africa has progressive laws and policies toward migrants' rights, but has failed to implement many of them. It guarantees access to health care for asylum seekers, refugees and regional migrants whether they are documented or not, but Human Rights Watch found that in practice migrants face serious discrimination in health care facilities, including verbal abuse, unlawful user fees, and denial of even basic and emergency health care to which they are entitled.⁹

Human Rights Watch recommends that the South African government:

- Enhance protection for migrants from opportunistic criminal violence near the Zimbabwean border and from xenophobic violence throughout South Africa. Ensure that rape survivors are not forced to contact the police before receiving life saving medical attention.
- Develop prevention and treatment programs for mobile and migrant populations, provide improved access to health and rights-related information, initiate cross border treatment initiatives, and incorporate such programs in government budgets and planning.

⁹ Human Rights Watch, *No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa*, December 2009, <http://www.hrw.org/en/reports/2009/12/02/no-healing-here-o>.

United States

Human Rights Watch has conducted research on the health concerns of women caught up in the fastest growing form of incarceration in the United States: immigration detention.¹⁰ Human Rights Watch documented dozens of instances in which women's health concerns went unaddressed by facility medical staff, or were addressed only after considerable delays.¹¹ Women reported struggling to obtain important services such as Pap smears to detect cervical cancer, mammograms to check for breast cancer, prenatal care, counseling for survivors of violence, and even basic supplies such as sanitary pads or breast pumps for nursing mothers. Problems obstructing access to health services include inadequate communication about available services, unexplained delays in treatment, unwarranted denial of services, breaches of confidentiality, failure to transfer medical records, and ineffective complaint mechanisms.

Many of these problems are traceable to official policy of US Immigration and Customs Enforcement (ICE) which has focused on emergency care and effectively discourages the routine provisions of some core women's health services. Human Rights Watch welcomes plans announced by ICE officials in October 2009 to reform the immigration detention system, including plans to improve access to medical care and plans to develop policies and programs around women detainees.

Human Rights Watch recommends that ICE:

- Use detention only as a last resort, increase the use of alternatives to detention, and exercise its discretion to grant humanitarian parole to qualified individuals with serious medical concerns.
- Implement plans to institute policies and programs that address the health needs of all persons in immigration detention, and that addresses the particular needs of women.
- Work with the US Congress to establish legally enforceable detention standards through regulation or legislation.

¹⁰ Women are 10 percent of immigration detainees.

¹¹ Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, March 2009, <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>.

Discriminatory Treatment of Migrants

Government attempts to “control” international and internal migrant populations often include discriminatory policies, violations of migrants’ rights, and inadequate monitoring of officials to ensure they do not abuse their power. By linking social benefits to specific travel documents or issuing blanket decrees stripping migrants of their rights, these regulations further marginalize migrant populations and heighten the risk of abuse. Governments’ arrest, detention, and deportation policies often have no regard for migrants’ rights including access to legal counsel, hygienic conditions, complaints mechanisms in situations of abuse.

China

China has an estimated 150 million migrants—citizens who migrate internally from the rural countryside to find work in China's cities as migrant workers. The Chinese government's household registration, or hukou, system, which is based on a person's place of birth, continues to effectively render large numbers of internal migrants unable to access public benefits including medical care and children's education.¹² In March 2009 the Guangzhou municipal government announced that it would grant migrant workers rights to social insurance, vocational training, and legal aid previously reserved only for hukou-bearing residents. In June 2009 the Shanghai municipal government unveiled a plan to extend permanent residency status to migrants who meet rigorous educational, family planning, and tax payment history criteria, though this will only apply to a small fraction of Shanghai's estimated total of six million migrants.

Human Rights Watch recommends that the Chinese government:

- Eliminate the discriminatory aspects of the household registration permit system.
- Extend automatically permanent household registration status to all migrant workers in China's cities or ensure that temporary urban household registration permits provide migrant workers the same social welfare benefits as city residents with permanent household registration permits.

¹² “China: Congress Should End Migrant Discrimination,” Human Rights Watch news release, March 3, 2009, <http://www.hrw.org/en/news/2009/03/03/china-congress-should-end-migrant-discrimination>.

Thailand

More than two million migrant workers, primarily from Burma, Cambodia, and Laos, migrate to Thailand for work. Decrees in five provinces enacted during the previous military government continue to be enforced, including curfews for migrants, prohibitions on the use of vehicles and mobile phones, and restrictions on gatherings. A new policy in 2009 requires registered migrant workers to verify their nationality. This means more than one million registered Burmese migrant workers must return to Burma and seek the approval of the State Peace and Development Council (SPDC) to receive a temporary passport before February 28, 2010. In doing so, they risk possible criminal sanction for leaving the country illegally.

In 2009, Human Rights Watch documented arbitrary arrest, killings, beatings, torture and systematic extortion inflicted on migrants by police and local officials with impunity. Fear of retribution, unresponsive Thai justice institutions, and language barriers leave migrants without access to redress.

Human Rights Watch recommends the Thai government:

- Establish a special investigatory commission to independently investigate the serious allegations of systematic abuses and extortion perpetrated by the Royal Thai Police against migrant workers across the country.
- Immediately revoke the provincial decrees restricting migrant workers' rights in Phang Nga, Phuket, Ranong, Rayong and Surat Thani provinces, and guarantee rights to freedom of movement, assembly and association and protection from arbitrary interference with privacy, family, or home.

Malaysia

Malaysia hosts an estimated three million documented and undocumented migrants, primarily from Indonesia, Bangladesh, Nepal, and the Philippines. Corruption, extortion, and information shortfalls during the recruitment process contribute to deception of migrants about the jobs promised or the validity of their travel documents. Those who do not have legal work permits, including refugees, asylum-seekers, and victims of deception may be subject to arrest, prosecution, and deportation through Malaysia's harsh immigration laws. Punishments can include imprisonment, caning, heavy fines and prolonged detention in overcrowded, unhygienic immigration detention centers.

RELA (Ikatan Relawan Rakyat or People's Voluntary Corps), a half million strong government-backed untrained paramilitary force whose members, in conjunction with immigration and

police officers, routinely rounds up suspected undocumented migrants. Abuses committed during raids include physical assault, threats, humiliating treatment, forced entry into living quarters, extortion, theft, and destruction of identity or residency papers.

Human Rights Watch recommends that the Malaysian government:

- Expedite judicial processes and end any form of corporal punishment for immigration offenses. Ensure asylum seekers, refugees, trafficked persons, and abused workers are not subject to penalties imposed under the Immigration Act 1959/63.
- Establish a mechanism for migrants, refugees, and asylum seekers to report allegations of abuse anonymously. Those filing charges should be guaranteed legal counsel, permission to work, and safety from detention or deportation until judicial processes are complete.
- Abolish RELA, and until such time, restructure it as a volunteer agency with no role in apprehension of irregular migrants.

Italy

Government policies and legislation have exacerbated a general climate of racism and xenophobia. Law 94 of July 2009 made undocumented entry and stay in Italy a criminal offense punishable by a fine of up to 10,000 euros. All public officials are required to report criminal conduct, leading to concerns officials may report undocumented migrants who seek medical attention or other services they are entitled to receive under Italian law irrespective of their status. Legislation adopted in 2008 had already made undocumented migrants liable to up to one-third longer prison sentences if convicted of a crime.

Hostility against migrants, in particular Romanians, and Roma has been sparked in part by several high profile crimes allegedly attributed to foreigners or Roma. The response has been a wave of attacks targeting those communities. Recent incidents have included the beating and lighting on fire of an Indian immigrant (February 2009), and an attack by a large group of club-wielding men on four Romanians, two of whom required hospitalization (February 2009). Rather than discourage vigilante action, the Government of Prime Minister Berlusconi has officially sanctioned vigilante groups, first through an emergency decree, and then through Law 94 of July 2009 (the so-called “Security Package.”) The law created a national framework for “citizen’s groups,” and regulations adopted in August 2009 provide general guidelines with respect to membership. Although requests for authorization to create such groups have been few so far, the government’s move, given the climate of

hostility, creates a real of risk of what would be state-sanctioned violence against migrants and Roma.

Human Rights Watch recommends that the Italian government:

- Repeal the provision in Law 94 of 2009 criminalizing irregular entry and stay in Italy and the provision authorizing citizens' groups.
- Ensure that attacks by on migrants, Roma and other ethnic minorities are promptly investigated by the police and those responsible are brought to justice.
- Condemn forcefully and consistently all racist and xenophobic statements, especially by public and elected officials, and make clear that racist discourse has no place in Italian society.

United States

In 2009, Human Rights Watch investigated how many migrants in the United States are first arrested and detained by the US Immigration and Customs Enforcement agency (ICE) in major cities like Los Angeles or Philadelphia, places where they have lived for decades and where their family members, employers, and attorneys also live. Often with no notice, detained migrants are loaded onto planes for transport to detention centers in remote corners of states such as Texas, California, and Louisiana. In the decade from 1999 to 2008, 1.4 million detainee transfers have occurred.¹³

Detained migrants have the right, under both US and international human rights law, to be represented in deportation hearings by an attorney of their choice at no expense to the government and to present evidence in their defense. But once they are transferred, migrants are often so far away from their lawyers, evidence, and witnesses that their ability to defend themselves in deportation proceedings is severely curtailed. The data show that transfers are on the rise: 53 percent of the 1.4 million transfers have taken place since 2006, and most occur between state and local jails that contract with ICE to provide detention bed space.

Human Rights Watch recommends that ICE and the US Congress:

- Pass the necessary legislative and regulatory reforms to ensure that ICE holds deportation proceedings in the jurisdiction nearest to the place where migrants are arrested.

¹³ Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2009, <http://www.hrw.org/en/reports/2009/12/02/locked-far-away>.

- Create strict guidelines about who may be transferred and how when transfers are necessary.

Cuba

Cuba forbids its citizens from leaving or returning to the country without first obtaining official permission. Unauthorized travel can result in criminal prosecution. The government frequently bars citizens engaged in authorized travel from taking their children with them overseas, essentially holding the children hostage to guarantee the parents' return. Given the widespread fear of forced family separation, these travel restrictions provide the Cuban government with a powerful tool for punishing defectors and silencing critics. Cuba also routinely denies travel visas to individuals who are critical of the government, such as journalists and human rights defenders. For example, prominent blogger Yoani Sánchez has repeatedly been denied permission to leave Cuba to accept awards in Spain and the United States.

Human Rights Watch recommends that the Cuban government:

- Abolish restrictions on travel that violate the right of any individual to leave his or her country and return to it, including by reforming the criminal code to eliminate the crimes of illegal exit and illegal entry (articles 215, 216, and 217) for Cuban nationals.
- End all policies and regulations that serve to unjustifiably separate families, including the restriction, in place since 1999, barring those who have left without permission or overstayed their travel authorization from returning to Cuba for five years. It should also end the practice of obliging those traveling abroad to leave their children behind in Cuba.

Treatment of Migrants Crossing Borders

We were one group of twelve persons they took out from the detention centre.... to a small river. This side was Greece, the other side was Turkey.... After we arrived to the other side he told us to get out quickly...we were, for twelve days, in Turkish detention. They beat me too much.... I asked them not to send me back to Afghanistan, because I had problems. I asked them to keep me. But they did not care.

—Afghan boy, age 17, expelled from Greece into Turkey and later Afghanistan

Men, women, and children may risk their lives to cross borders. The border control policies of many countries are often hostile, discriminatory, and flout international standards. Governments may fail to screen migrants to identify asylum-seekers and trafficking victims, or subject them to violence or poor conditions in detention.

Unaccompanied migrant children in Greece and France

Unaccompanied migrant children in Europe are all too often treated simply as irregular migrants instead of receiving the protection they are entitled to as children. In Greece, they are sometimes detained with adults for up to three months, which puts them at risk of physical and sexual abuse, in conditions that may amount to inhuman and degrading treatment.¹⁴ Greece summarily expels migrants arriving in the country to Turkey, including unaccompanied children. Migrant children who are not detained in Greece do not fare any better: without state assistance they are left to survive on the streets and too often end up in exploitative work.

Unaccompanied migrant children arriving at France's Charles de Gaulle airport by plane are detained in a transit zone. There, based on the legal fiction that they have not yet entered France, they are granted fewer rights than those who enter the country overland.¹⁵ Police may threaten children with deportation and coerce them into signing documents they don't understand and detain them with adults. Police may deport them to countries these children merely transited on their journey to France, and without safeguards that they will be reunited with their families or taken into state care. Some children are barred from challenging their detention, unsafe deportation, and negative asylum decisions because they never meet their legal guardian or because guardians may prevent them from doing so.

¹⁴ Human Rights Watch, *No Refuge: Migrants in Greece*, November 2009, <http://www.hrw.org/en/reports/2009/11/02/no-refugess>

¹⁵ Human Rights Watch, *France – Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport*, October 2009, <http://www.hrw.org/en/reports/2009/10/29/lost-transit>.

Human Rights Watch recommends that host governments in Europe:

- Treat unaccompanied migrant children first and foremost as children. Authorities should only detain migrant children as a last resort and for the shortest possible time and should immediately appoint competent guardians to safeguard children's interest.
- Ensure that any decision to return children be based on a best interest assessment, the availability of care for the child, and not on migration control considerations.

Italy and Libya

On May 6, 2009, Italy began unilaterally interdicting boat migrants on the high seas and returning them summarily to Libya. No screening was conducted to identify refugees, the sick or injured, pregnant women, unaccompanied children, victims of trafficking, or victims of violence against women. In one of the subsequent boat interdictions, on July 1, 2009, Human Rights Watch received credible reports that Italian officials used undue force, as well as confiscating, and not returning, the personal property of migrants, including money, mobile phones, passports, and refugee certificates. Human Rights Watch learned from another source that Italian personnel used electric-shock batons and clubs that day to force migrants off the boat, and that some of the passengers had to have lacerations on their heads stitched even before leaving the Italian vessel.

All interdicted boat migrants are detained upon arrival in Libya. Human Rights Watch research documented how migrants detained in Libya reported overcrowded and unsanitary conditions and brutal treatment.¹⁶ They said that they lived in fear of being robbed, beaten, and extorted not only by common criminals, but also by the police in Libya, and fear of being returned to their home countries or dumped in the desert.

Human Rights Watch recommends that the Libyan government:

- Improve the deplorable conditions of detention in Libya, establish asylum procedures in conformity with international refugee standards, and prosecute officials responsible for abusing migrants in and out of detention.

Human Rights Watch recommends that EU institutions and member states:

¹⁶ Human Rights Watch, *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, September 2009, <http://www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around>.

- Stop Italy from forcibly returning migrants to Libya where they are routinely subjected to inhuman and degrading treatment and where potential refugees are not effectively and ensure that the EU external border control agency, Frontex, is not involved in activities that result in refoulement.

Egypt and Israel

Since May 2009, Egyptian border guards shot and killed at least 17 migrants from countries such as Eritrea, Ethiopia and Sudan as they tried to cross into Israel at or near the Sinai border. General Muhammad Shousha, the governor of North Sinai, was quoted after the killings of four migrants in September justifying the policy of shooting at the migrants as "necessary."

Migrants and refugees who Israel forcibly returns to Egypt face arbitrary arrest and detention, unfair trials before military courts, and forcible deportation without the chance to make asylum claims. Egypt forcibly returned up to 1200 Eritreans to Eritrea in June 2008 despite calls from the United Nations High Commissioner for Refugees (UNHCR) to halt the deportations since the Eritrean government is likely to torture or mistreat returnees; Egypt returned dozens more Eritreans in December 2008 and January 2009 and has also forcibly returned detained Sudanese migrants.

Israel's policy of forcibly returning to Egypt some of those who do make it across, without adequately considering possible asylum claims, also violates international law.¹⁷ Despite the risk of ill-treatment and forcible return by Egypt to countries where they could be persecuted, the IDF forcibly returned 217 migrants to Egypt from January to September 2009. Israel forcibly deported at least 139 migrants in separate incidents in August 2007 and 2008; Egypt in turn forcibly returned some of them to Eritrea.

Human Rights Watch recommends that the Egyptian government:

- Order border police to use lethal force only as a proportional and necessary response to a threat to life, and conduct a thorough and impartial investigation into the killings of African migrants, make the results public, and prosecute responsible border police officers and officials with oversight responsibility.

¹⁷ "Israel: Court Should Halt Forced Returns of Migrants to Egypt," Human Rights Watch news release, December 12, 2009, <http://www.hrw.org/en/news/2009/12/12/israel-court-should-halt-forced-returns-migrants-egypt>.

- Cease using military tribunals to try civilian migrants, refugees, and asylum seekers detained in the Sinai and guarantee UNHCR access to all migrants who have international protection needs in official custody.

Human Rights Watch recommends that the Israeli government:

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

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