



Hostile Shores

Abuse and Refoulement of Asylum Seekers and Refugees in Yemen

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Summary

For several years, tens of thousands of asylum seekers and refugees fleeing to Yemen from the volatile Horn of Africa region have endured terrible human rights abuses that have gone largely ignored by the outside world. Many have suffered violence or lost their lives while attempting the perilous sea crossing from the Horn. And the reception that awaits those who survive the journey depends not on why they have come but on where they come from.

Since the beginning of 2008, more than 100,000 people have set off to Yemen in boats from Djibouti or the Somali port city of Bosasso. More than 99 percent of them are Somalis and Ethiopians, and many are fleeing war or persecution at home. Some have fled seeking protection as refugees, some are looking for work and hope to pass through Yemen to Saudi Arabia and other wealthy countries, and some have left for a combination of reasons.

Yemen is the only country on the Arabian Peninsula to ratify the 1951 Refugee Convention, but it has interpreted the term “refugee” in a way that strips the convention of its core principles. The government of Yemen has displayed an extraordinary generosity towards Somalis, granting all of them *prima facie* refugee status because of the conflict raging in their country. But for Ethiopians the opposite is true. Whether they are economic migrants or asylum seekers in need of protection, the policy of the central government is to track them down, arrest them, and deport them.

The authorities do not recognize Ethiopians as legitimate asylum seekers, a discriminatory policy that violates international law. Even the few who make it to the offices of the United Nations High Commissioner for Refugees (UNHCR) without being arrested by the security forces and who then secure UNHCR recognition as refugees, do not receive official status from the Yemeni authorities. This leaves them vulnerable to serious continuing abuse.

The arduous one-to-three day crossing from Bosasso to Yemen’s southern coast is where the worst horrors take place. Boats are dangerously overcrowded; upwards of 150 passengers are regularly crammed onto dilapidated vessels that could safely carry fewer than half that number. Many are crewed by notoriously brutal smugglers who beat, rob, rape, and even murder their passengers.

To keep overcrowded boats from capsizing, smugglers order their passengers not to move, even to stretch cramped limbs, until they reach land. Since the journey from Bosasso takes at least a day, these orders are impossible to follow. On almost every boat the story is the

same—as the journey stretches on passengers are compelled to stretch, stand up, or otherwise try to relieve the pain building up in their joints and limbs. The smugglers respond by beating those who move using rubber whips, sticks, or their own fists and feet. In some cases disruptive passengers are bound hand and foot or forced into the dank and airless cargo holds below deck. Smugglers have murdered passengers who create too much commotion—beating them to death, stabbing them, or pushing them into the sea to drown. Many female passengers are sexually assaulted and at least a few have been raped while other passengers looked on helplessly.

As terrible as the journey is, the greatest danger often lies just as the exhausted travelers finally come close to Yemen’s shores. Fearing capture if they land on the beaches, smugglers often force their passengers to jump into deep water far from shore. But many cannot swim, or are simply too exhausted from their ordeal to stay above water. Hundreds have drowned within sight of the beaches they set out for, and survivors are haunted by the memory of seeing friends and family members disappear beneath the water.

Those who make the sea crossing to Yemen arrive along one of two coasts. Ethiopians and other non-Somalis face one of two very different receptions, depending which coast they alight on. Most of the Ethiopians who arrive in Yemen by boat leave from Djibouti and land along Yemen’s Red Sea coast. There they encounter security forces who zealously enforce the government’s orders to arrest and deport Ethiopians as they arrive.

Knowing this, many Ethiopians make prior arrangements with smugglers who whisk them off the beaches within minutes of arrival. Those who do not are left on their own and must keep to the shadows, dodging the security forces and moving inland in search of less strictly policed areas. Many are captured. They are detained and put on a fast-track to deportation, even if they are seeking asylum.

Along Yemen’s Arab Sea coast—to the east of the Red Sea coast—the security forces take a more lenient approach. Ethiopians who arrive there after making the dangerous crossing from Bosasso (in Puntland, northern Somalia) can usually seek assistance at one of two UNHCR-run reception centers without immediate fear of arrest. This is truly a life-saving act on the part of the local authorities; many new arrivals are in urgent need of medical attention after the arduous crossing.

At these reception centers, UNHCR staff issue “appointment slips” to Ethiopians who want to apply for asylum. The forms ask the authorities to allow their bearers 10 days to reach the office of the UNHCR in either Sana’a or Aden. But the forms are a deeply inadequate

mechanism of protection. They are not issued by the government and carry no legal weight: on the country's main roads, security personnel arrest or extort bribes from many of the asylum seekers who carry them.

The Yemeni government's refusal to officially recognize Ethiopian asylum seekers as legitimate asylum seekers also leaves them vulnerable to other forms of abuse. Newly arrived Ethiopian women have been raped near the beaches while trying to make their way inland, lost and alone. The victims of these abuses know they cannot complain to the authorities without risking arrest, and the people who target them are well aware of that as well.

The unknown numbers of Ethiopian asylum seekers who are captured by the security forces face refoulement alongside other Ethiopians scheduled for deportation. Ethiopian embassy officials regularly visit all of the Ethiopian detainees in the immigration detention facility in Sana'a, at least in part to verify their nationality. But there is disturbing evidence that in some cases these officials are allowed to coerce asylum seekers into signing forms indicating their willingness to return to Ethiopia. There is no indication that the Yemeni authorities give detained Ethiopians any opportunity to lodge asylum claims, let alone claims where their confidentiality is respected, particularly with respect to their home government which they claim would persecute them. Neither UNHCR nor any other international organization has regular access to any detention facility where asylum seekers and migrants are held.

Ethiopian asylum seekers who manage to navigate all of the obstacles in their path to reach a UNHCR office and are recognized as refugees by the agency are safe from refoulement. The Yemeni government stops trying to apprehend Ethiopian nationals once they apply for refugee status with UNHCR—unless UNHCR ultimately rejects their claims. But even Ethiopians recognized as refugees by UNHCR still face serious human rights problems.

The Yemeni government refuses to issue Ethiopian and other non-Somali refugees with any kind of identification documents. This leads to regular harassment and extortion by the security forces and impairs their ability to claim the rights to which they are entitled as refugees. Many Ethiopian refugees in Yemen suffer discrimination, sexual harassment, and violence and are often unable to obtain any kind of redress from the police or other government authorities. And Ethiopian refugees involved in “political” community organizing activities have been subjected to threats and violence. The head of a prominent Oromo Ethiopian refugee community organization in Yemen was murdered in December 2008 after receiving anonymous death threats from other Ethiopians for months.

The Yemeni government is in a genuinely difficult position—the tens of thousands of Somali refugees it has already welcomed represent an enormous strain on the country’s fragile economy. Yemen is also under strong pressure from Saudi Arabia and other neighboring states to stop the flow of migrants who use Yemen as a transit point to reach their countries. Still, the government bears ultimate responsibility for the human rights abuses generated by its discriminatory approach to dealing with Ethiopian refugees and asylum seekers. Yemen needs assistance in meeting its obligations under international law towards asylum seekers and refugees—but it must meet them nonetheless.

For its part, UNHCR has not done nearly enough to push for better protection of Ethiopian refugees and asylum seekers in Yemen. UNHCR has an excellent relationship with the government of Yemen on the issue of Somali refugees and preserving that good relationship is important. But favorable treatment of one refugee group should not come at the expense of another, especially when this involves systematic refoulement and other abuses directed against the disfavored group. UNHCR faces a government disinclined to change its policies regarding Ethiopians and other non-Somalis, but too often the refugee agency has acted as though the plight of these refugees and asylum seekers in Yemen is a secondary issue.

Human Rights Watch is particularly concerned about UNHCR’s failure to press the Yemeni government more forcefully and consistently to allow asylum seekers to seek refugee status in Yemen regardless of their nationality. UNHCR has had modest success in negotiating better treatment of Ethiopians who arrive along the Arab Sea coast, but has failed to push hard enough at all levels of the agency and using all means at its disposal for an end to the government’s systematic refoulement of Ethiopian asylum seekers arriving on the Red Sea coast. UNHCR says that it has repeatedly raised the issue privately at high levels with the Yemeni government. But Human Rights Watch’s research has found that these quiet interventions have been entirely ineffective.

In other situations, UNHCR has publicly rebuked unresponsive governments for denying asylum seekers access to UNHCR and for committing refoulement. But in Yemen, UNHCR has neither pushed hard enough for access to asylum seekers in detention nor for the government to end its discrimination against non-Somali applicants recognized by UNHCR as refugees. When quiet interventions have failed, UNHCR has not publicly demanded access to detained Ethiopian asylum seekers or publicly criticized the government for committing refoulement. While UNHCR in Yemen has understandably placed a premium on maintaining cooperative relations with the authorities, there are certain times and circumstances where the situation demands a clearly assertive approach. This is such a situation.

Human Rights Watch calls upon the government of Yemen to bring its practices regarding refugees and asylum seekers into line with its obligations under international law. It should begin by immediately ensuring that all asylum seekers are able to apply for refugee status in Yemen regardless of nationality. UNHCR should approach the range of serious protection issues facing Ethiopian refugees and asylum seekers proactively and assertively, even if this means being openly critical of the Yemeni government.

Methodology

This report is based primarily on a two-week mission to Yemen by a Human Rights Watch researcher in mid-2009. Human Rights Watch interviewed about 100 Somalis and Ethiopians in Yemen. They included community leaders, individuals with refugee status, asylum seekers, and undocumented migrants. Many had suffered serious human rights abuses in Yemen and been subjected to violence or other crimes during their maritime crossings to Yemen from Puntland or Djibouti. Human Rights Watch interviewed UNHCR and NGO officials who work with refugees, asylum seekers, and new arrivals from Bosasso and Djibouti along the coasts. The names of many interviewees and dates and locations of interviews have been withheld to protect those who helped facilitate this research. Human Rights Watch also provided UNHCR some of our findings and incorporated into this report UNHCR's response to criticisms about its engagement with the Yemeni government over protection issues facing Ethiopian and other non-Somali asylum seekers and refugees.

Recommendations

To the Government of Yemen

- Immediately halt the widespread practice of refoulement of Ethiopian and other non-Somali asylum seekers.
- Ensure that all asylum seekers are able to apply for refugee status in Yemen regardless of their nationality, including Ethiopian nationals who arrive in Yemen by sea. In particular:
 - Instruct the security forces, especially those stationed along the Red Sea coast, to allow all newly arrived asylum seekers access to the Kharaz refugee camp, the Ahwar and Mayfa'a reception centers, and the transit point at Bab-el-Mandeb, without fear of arrest.
 - Allow UNHCR to carry out Refugee Status Determination for non-Somali asylum seekers arriving at the above locations and along the coasts, or provide government-issued asylum transit passes to all such persons so they can travel to UNHCR offices in Aden or Sana'a without fear of arrest.
 - Allow all asylum seekers and refugees to seek shelter and protection at Kharaz refugee camp, regardless of nationality.
- Allow UNHCR unimpeded access to all migrants and asylum seekers in detention in Sana'a and in other detention facilities across the country, and inform UNHCR of any person in detention seeking asylum.
- Issue official identification documents to all formally recognized refugees living in Yemen, not only to Somali nationals as is currently the case.
- Investigate allegations that Ethiopian embassy officials in Sana'a have coerced Ethiopian detainees in Sana'a's immigration detention facility into signing documents indicating they are willing to return to Ethiopia voluntarily. Ensure that such abuses cannot take place in the future.
- Take all necessary measures to ensure that law enforcement agencies in Yemen actively investigate and prosecute crimes committed against Ethiopian and other refugees and migrants. Discipline or prosecute as appropriate those who fail to investigate crimes against such persons or are responsible for criminal acts against them.

To the Office of the United Nations High Commissioner for Refugees

- As a matter of immediate priority, press the government of Yemen to stop its systematic refoulement of Ethiopian and other non-Somali asylum seekers, using such means—public or private—necessary for success.
- Proactively and assertively seek ways to persuade and pressure the government of Yemen to end discriminatory policies towards Ethiopian asylum seekers and refugees and adhere fully to its obligations under the Refugee Convention. Begin by pushing for the government to implement the recommendations to the government of Yemen listed above.
- Unless the Yemeni government agrees to allow refugee status determinations to take place for non-Somali asylum seekers at Kharaz refugee camp, direct UNHCR staff at Kharaz refugee camp to unilaterally offer 10-day appointment slips to newly arrived asylum seekers at Kharaz and directly facilitate their transportation to UNHCR offices in Sana'a or Aden for refugee status determination procedures. Publicly and privately protest if the police arrest any asylum seeker in the camp for the purpose of deportation.
- Arrange for the 10-day appointment slips issued at the Ahwar and Mayfa'a reception centers to bear an official UNHCR stamp. As a sustainable alternative, press the government of Yemen to replace those appointment slips with government-issued transit passes obtainable at all reception centers, including along the Red Sea coast.
- Continue to provide all possible assistance to the government of Yemen in drafting a legal framework on refugees and asylum seekers that is in full compliance with Yemen's obligations under the Refugee Convention.
- In Ethiopia, monitor the situation of Ethiopian asylum seekers refouled from Yemen and urge the Ethiopian government to ensure that none are subjected to persecution on their return to Ethiopia.

To the Governments of Saudi Arabia and other Gulf States

- Encourage the government of Yemen to ensure that its efforts to stop irregular economic migrants from using Yemen as a transit point into other countries in the region do not infringe on the rights of asylum seekers and refugees.
- Provide assistance to Yemen (or earmarked assistance to UNHCR) to enhance its capacity to provide asylum in Yemen, to provide for the material needs of refugees on its territory, and to promote durable solutions on behalf of refugees in Yemen.

To the Government of Ethiopia

- Direct Ethiopian embassy staff in Sana'a to not interfere with efforts by Ethiopian nationals to seek asylum in Yemen. Recall and take appropriate disciplinary action against embassy staff who do so.

Background: Migrants and Asylum Seekers Arriving in Yemen by Sea

Since 2007 well over 100,000 people have embarked upon a perilous journey, hoping to reach the shores of Yemen in boats that are put to sea from the Somali port city of Bosasso and the coast of Djibouti further west. Nearly all of them are Somali and Ethiopian nationals.¹ Many hope only to pass through Yemen, traveling onwards to find work in the more prosperous economies of Saudi Arabia and beyond. But many others are fleeing war or persecution and seek protection in Yemen as refugees. Some make the journey for a combination of reasons, having found neither safety nor a way to make ends meet at home.

The number of people making this journey has increased dramatically in recent years. In 2008 a record 50,000 asylum seekers and migrants arrived on Yemen's beaches, up from less than 27,000 the year before.² That record had already been broken by the end of September 2009, with 50,486 recorded new arrivals in just nine months—a 50 percent increase over the number of arrivals during the same period in 2008.³

The people these numbers describe are participating in one of the most dangerous—and most ignored—international migrations ongoing anywhere in the world. This report documents abuse faced by people attempting the crossing. It also describes the abuses endured by Ethiopian asylum seekers who arrive in Yemen to face official discrimination and systematic government efforts to arrest and deport them back to Ethiopia.

Somalis Arriving in Yemen

The Yemeni government recognizes all Somalis who arrive in the country as *prima facie* refugees—meaning they are not individually required to prove that they are eligible for refugee status—and they are free to remain in Yemen. There are no reliable statistics on the number of Somalis living in the country. UNHCR has registered some 150,000.⁴ Some Yemeni government officials, without citing any empirical basis for their figures, believe that the true number of Somalis living in the country could be several times higher, since an unknown

¹ During the first nine months of 2009 only 62 out of 50,486 recorded new arrivals were from countries other than Somalia and Ethiopia. They included 22 Tanzanians, 20 Eritreans, 15 Djiboutians, two Sudanese, one Nigerian, and one person whose nationality was unknown. Tracking data on file with Human Rights Watch.

² Mixed Migration Task Force Update, no. 8, August 2009.

³ Tracking data on file with Human Rights Watch. See also “Yemen: humanitarian crisis in the north and growing arrivals by sea,” UNHCR briefing notes, September 29, 2009, <http://www.unhcr.org/4ac1d7719.html> (accessed September 30, 2009).

⁴ As of August 2009 UNHCR estimated that there were 149,586 Somali refugees in Yemen, Yemen Fact Sheet, July-August 2009.

number do not bother to register even though they are automatically entitled to refugee status.⁵ At the same time, many Somalis simply pass through Yemen, moving on to other countries in search of work or for other reasons.

Somalia has been without a functioning central government since 1991. Since the end of 2006 many Somalis have seen the already-precarious situation in their country take a dramatic turn for the worse. The years since then have been characterized by brutal warfare, and every party to the conflict has committed war crimes and other serious abuses.⁶ Thousands of Somalis have been killed and millions rendered destitute by war and drought.⁷

Vast numbers of people, including most of the population of the capital, Mogadishu, have been forced to flee their homes. All told, some 1.3 million Somalis are displaced inside Somalia and the country has generated tens of thousands of refugees in 2009 alone.⁸ The Somalis who arrive in Yemen every year are part of that larger exodus.

Ethiopians Arriving in Yemen

During the first 10 months of 2009, more than half of the people who arrived in Yemen by boat were Ethiopians—35,272 out of 63,718 recorded arrivals.⁹ Most estimates, including those of Ethiopian community leaders in Sana'a, put the total number of Ethiopians living in Yemen at between 10,000 and 20,000. These include refugees, asylum seekers,

⁵ For example Yemen's foreign affairs ministry has stated that the true number of Somalis living in Yemen is close to 700,000. See "Yemen-Somalia: Bracing for a fresh influx of Somali refugees," IRIN, September 1, 2009.

⁶ See Human Rights Watch, "*So Much to Fear": War Crimes and the Devastation of Somalia*, ISBN: 1-56432-415-X, December 2008, <http://www.hrw.org/sites/default/files/reports/somalia1208web.pdf>; *Shell Shocked: Civilians Under Siege in Mogadishu*, vol. 19, No. 12(a), August 2007, <http://www.hrw.org/sites/default/files/reports/somalia0807webcover.pdf>; "Somalia: New Violence Highlights Need for Independent Inquiry," Human Rights Watch news release, February 5, 2009, <http://www.hrw.org/en/news/2009/02/05/somalia-new-violence-highlights-need-independent-inquiry>; "Conflict and drought force more than 50,000 Somalis to flee to Kenya this year," UNHCR news story, September 25, 2009, <http://www.unhcr.org/4abce9e9.html> (accessed October 2, 2009).

⁷ There are no reliable figures on the number of civilians killed by conflict in Somalia. The Elman Human Rights Center, a Somali human rights organization, attempts to track the numbers and estimates some 18,000 civilians were killed in the fighting between January 2007 and June 2009. It is not possible to confirm this figure, but it is widely quoted because no other figures exist. See Stephanie Nebehay, "Violence Taking Heavy Toll on Somalia Aid Agencies," Reuters, June 26, 2009, <http://www.alertnet.org/thenews/newsdesk/LQ422794.htm> (accessed September 29, 2009). Aid agencies estimated that some 3.6 million Somalis—over half of the country's remaining population—were in urgent need of humanitarian assistance by September 2009. See "Somalia Faces Worst Food Crisis in 18 Years: UN," AFP, September 21, 2009, <http://www.google.com/hostednews/afp/article/ALeqM5irookC5PmVWntQsDU45mtgdRmizw> (accessed September 29, 2009).

⁸ UNHCR estimates that between May and September 2009, 250,000 people were forced to flee their homes in Mogadishu alone. In 2009 new refugees have been arriving in Kenya's overburdened Dadaab refugee camps at the rate of over 6,000 per month. See "Conflict and drought force more than 50,000 Somalis to flee to Kenya this year," UNHCR News Story, September 25, 2009, <http://www.unhcr.org/4abce9e9.html> (accessed October 2, 2009); Human Rights Watch, *From Horror to Hopelessness: Kenya's Forgotten Somali Refugee Crisis*, ISBN: 1-56432-465-6, March 2009, <http://www.hrw.org/en/reports/2009/03/29/horror-hopelessness>.

⁹ Tracking data on file with Human Rights Watch.

undocumented people in Yemen, and others—mainly female domestic workers—who arrive in Yemen legally to work.¹⁰

There is a widely held perception, fueled in part by the government of Yemen, that the Somalis arriving in Yemen are all refugees while the Ethiopians are all illegal migrants in search of work. But this is a gross oversimplification. It is probably true that a large majority of the tens of thousands of Ethiopians who arrive in Yemen by boat are primarily motivated by the search for a job. For precisely that reason most travel onwards to Saudi Arabia and beyond almost immediately after landing on Yemeni beaches.¹¹

Many Ethiopians, however, are in Yemen because they face severe persecution at home.¹² Ethiopia's government has grown increasingly repressive over the past decade.¹³ As of September 2009 UNHCR had registered over 11,000 Ethiopian refugees in Yemen. Over 1,500 Ethiopians applied for asylum between January 2008 and October 2009.¹⁴ But as discussed below, these figures underestimate the number of Ethiopians who arrive in Yemen with a valid basis for seeking asylum. Many are discouraged from seeking refugee status by discriminatory government policies or are arrested and deported back to Ethiopia before they have the chance to apply.

¹⁰ Human Rights Watch interviews with humanitarian officials and Ethiopian refugee community leaders, Aden and Sana'a, July 2009. See also Lobna Abdel Hadi and Davide Carnemolla, "Mixed Migration and Yemen as a Transit Country," UNHCR-IOM joint study, February-July 2009, p. 9, unpublished draft on file with Human Rights Watch.

¹¹ A UNHCR-IOM study on mixed migration to Yemen found that of a sample of 112 Ethiopians in Yemen, only 31 intended to remain in the country. "Mixed Migration and Yemen as a Transit Country," p. 11.

¹² Human Rights Watch interviews with Ethiopians recently arrived in Yemen, Sana'a, July 2009. See also Médecins Sans Frontières (MSF), "No Choice: Somali and Ethiopian Refugees, Asylum Seekers and Migrants Crossing the Gulf of Aden," June 2008, p. 27, <http://doctorswithoutborders.org/publications/article.cfm?id=2821&cat=special-report> (accessed October 2, 2009). The report notes that in interviews with Ethiopians arriving along the Yemeni coast by boat, "the majority...cited lack of work and/or poverty as their main reasons for leaving, most of them indicating that they wanted to go to Saudi Arabia to work. However, one fourth of the interviewees mentioned insecurity or political reasons, with some also stating lack of work."

¹³ See Human Rights Watch, *Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region*, vol. 17, no. 7(A), May 2005, <http://www.hrw.org/sites/default/files/reports/ethiopia0505.pdf>; *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region*, ISBN: 1-56432-322-6, June 2008, http://www.hrw.org/sites/default/files/reports/ethiopia0608_1.pdf; "Ethiopia: New Law Ratchets up Repression," Human Rights Watch news release, January 8, 2009, <http://www.hrw.org/en/news/2009/01/08/ethiopia-new-law-ratchets-repression>; and International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," Africa Report no. 153, September 4, 2009, <http://www.crisisgroup.org/home/index.cfm?id=6300&l=1> (accessed October 2, 2009).

¹⁴ Human Rights Watch email correspondence with UNHCR official, October 2009.

Box 1: Ethiopian Somalis

Ethiopia is home to a large population of ethnic Somalis who hail primarily from the country's eastern Somali region. Because they are well aware of the harsh treatment meted out to Ethiopian nationals by the Yemeni government, Somali Ethiopians often claim to be from Somalia when they reach Yemen. This allows them to enjoy the same *prima facie* refugee status the Yemeni government accords to Somali nationals. Because of this, there is no reliable information about the numbers of Ethiopian Somalis in Yemen. The relatively small number who do declare themselves as Ethiopian nationals and seek asylum often tell UNHCR officials that they are fleeing abuses linked to conflict at home.¹⁵ For several years the Ethiopian government and the rebel Ogaden National Liberation Front (ONLF) have been engaged in a protracted and often brutal conflict characterized by widespread military abuses in many parts of the region.¹⁶

A Heavy Burden on a Poor Country

The massive influx of refugees and migrants into Yemen is a difficult burden for the country and its government to bear. Yemen is the poorest country in the Arab world and globally it sits near the bottom of the Human Development Index.¹⁷ Its population suffers from rates of both poverty and unemployment estimated to stand at roughly 35 percent.¹⁸ The country's hosting of so many Somali refugees has put such a strain on the local economy—and on public opinion—that the government is loathe to exacerbate that strain by welcoming any more groups of refugees. Already, the country's worsening economic climate has led to a rise in anti-immigrant sentiment in Yemen and acts of discrimination and violence against refugees are not uncommon.

Regionally, Yemen pays another political price for the refugees and migrants who land upon its shores. Saudi Arabia and other Gulf states place heavy pressure on the government of Yemen to staunch the flow of migrants who transit through Yemen looking to work illegally in the more prosperous economies of the region. As UNHCR told Human Rights Watch, many of Yemen's neighbors are certain to lobby against any effort to push through refugee policy

¹⁵ Human Rights Watch interview with UNHCR official, Sana'a, July 26, 2009.

¹⁶ Human Rights Watch, *Collective Punishment*.

¹⁷ In 2008 Yemen was ranked 140 out of 182 countries, United Nations Development Programme, "The Human Development Indices: A Statistical Update 2008," http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_YEM.html (accessed September 30, 2009)

¹⁸ See Ginny Hill, *Yemen: Fear of Failure*, Chatham House-Middle East Programme, ISBN: MEP BP 09/03, November 2008, http://www.chathamhouse.org.uk/files/12576_bp1108yemen.pdf (accessed September 30, 2009); World Development Indicators database, World Bank, September 15, 2009, http://siteresources.worldbank.org/DATSTATISTICS/Re_sources/GNIPC.pdf (accessed October 2, 2009).

reforms because “they say that if Yemen has a progressive [refugee] legislation it will attract more people who will then come to their countries.”¹⁹

The Yemeni government is also under strong pressure from the Ethiopian government to repatriate all of its citizens who enter the country illegally, including asylum seekers. Many sources interviewed by Human Rights Watch believe that Yemen has entered into a formal agreement with Ethiopia not to recognize any Ethiopian national as a refugee.²⁰ Whether a formal agreement exists or not, Ethiopian government pressure is a real factor inhibiting positive change in the government’s policies towards Ethiopian asylum seekers.

¹⁹ Human Rights Watch interview with UNHCR Country Representative for Yemen, Sana'a, July 26, 2009.

²⁰ Human Rights Watch interviews with humanitarian and UN officials [locations and identities withheld], July and September 2009. UNHCR said that it “cannot confirm the existence of such an agreement between the two countries.” Correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

The Journey to Yemen

If there are 100 boats, maybe the people from only two or three will say there was no problem. Every boat has stories more difficult than the last one. You will meet one person and think, this is terrible. Then you meet the next boat and you will hear something you cannot even imagine. You feel heartache.

—Humanitarian worker at a reception center for arrivals on the southern coast of Yemen.²¹

Nearly every day, boats overcrowded with scores of Ethiopian and Somali migrants and asylum seekers arrive at remote points along the shores of Yemen.²² Many of the people who make this journey suffer horribly along the way. More than a thousand have died during the crossing since the beginning of 2008, including at least 300 people during the first nine months of 2009.²³ Médecins Sans Frontières (MSF), which provides medical and humanitarian assistance to new arrivals along Yemen's Arab Sea coast, published a report in 2008 describing the plight of migrants and refugees who undertake the voyage as a “tragedy” that had been “largely ignored by the international community and Western media.”²⁴ It is a tragedy that has since continued unabated and similarly ignored.

Human Smuggling Routes to Yemen from Puntland and Djibouti

There are two primary routes used to smuggle people into Yemen by sea. The first begins on beaches around the port city of Bosasso in Somalia's semi-autonomous region of Puntland.²⁵ Boats plying this route cross the Gulf of Aden to transport their passengers to

²¹ Human Rights Watch interview, Aden, July 19, 2009.

²² Almost all of the passengers are either Somalis or Ethiopians. During the first nine months of 2009 only 62 out of 50,486 recorded new arrivals were from countries other than Somalia and Ethiopia. Documentation compiled by humanitarian agencies working in Yemen, on file with Human Rights Watch. With the exception of the monsoon months of June and July, when high winds and rough seas make crossing the Gulf of Aden impossible most of the time, boats disembark nearly every day from the area around Bosasso. The equally busy route from Djibouti to Yemen's Red Sea coast is navigable throughout the year.

²³ As of the end of September 2009 145 passengers had been found dead and were buried; another 153 went missing at sea and were presumed drowned. Documentation compiled by humanitarian organizations working in Yemen, on file with Human Rights Watch.

²⁴ MSF, “No Choice,” p. 6.

²⁵ Puntland considers itself to be part of Somalia but has governed itself autonomously for more than a decade. Its territory covers northeastern Somalia and is largely dominated by the Darod/Harti/Majerteen clan.

points along Yemen's Arab Sea coast. The second route originates around Obock, on the coast of Djibouti, and ends along Yemen's western, Red Sea coast.²⁶

The route from Djibouti is normally the faster and safer of the two; the crossing is less than 100 miles and generally takes no more than seven or eight hours.²⁷ By contrast the route from Bosasso across the Gulf of Aden typically takes between one and three days depending on the type of boat, conditions at sea, and whether the vessels suffer engine failure or other mishaps along the way.²⁸ The crews plying the Djibouti route also generally treat their passengers better than the notoriously brutal smugglers operating out of Bosasso, and they often keep their boats in better condition.²⁹ Most of the worst abuses described below are endured by passengers embarking from Bosasso.

The Djibouti route is also more expensive, however. Passage on the boats from Obock typically costs roughly US\$100 to \$150 per person, and for many people travel to Djibouti is itself more expensive than travel to Bosasso.³⁰ The cheapest boats from Bosasso charge only \$50 to \$80 per person.³¹ These are large, slow boats that are extremely unsafe, overcrowded, and often without a spare outboard motor. Faster, smaller, and better equipped boats cost considerably more—in some cases upwards of \$100 or \$150 per person—but travel more quickly and safely to their destination. As one humanitarian worker based at a reception center for arrivals from Bosasso put it, “If you don’t have \$150 you will have to take the chance on the weaker boats—maybe you will survive, maybe you will not.”³²

Reaching the Boats

The following pages focus on the hazards and abuses passengers encounter aboard the boats. But for many people, reaching the point of departure for their journey is itself an enterprise fraught with danger. Overland journeys to Bosasso from south and central Somalia can mean traversing stretches of road controlled by abusive militias or plagued by bandits. Incidents of armed robbery, often leading to murder, rape, and other abuses, occur

²⁶ All told there are at least 36 commonly used landing points along the two coasts. Human Rights Watch interviews with humanitarian workers, southern Yemen, July 2009.

²⁷ Human Rights Watch interviews with former passengers and humanitarian workers, Yemen, July 2009.

²⁸ Human Rights Watch interviews with former passengers and humanitarian workers, Yemen, July 2009. See also MSF, “No Choice,” p. 11.

²⁹ Human Rights Watch interviews with former passengers and humanitarian workers, Yemen, July 2009.

³⁰ Human Rights Watch interviews with former passengers and humanitarian workers, Yemen, July 2009.

³¹ Human Rights Watch interviews with former passengers and humanitarian workers, Yemen, July 2009.

³² Human Rights Watch interview, Aden, July 19, 2009.

with frequency in some areas.³³ Gangs and militias also rob many people while they wait, often for several days at a time, for transport from around Obock or Bosasso. Human Rights Watch interviewed several people who were robbed while waiting near the beaches for days for their boat to leave.³⁴ And in late 2009 there were reports that Puntland security forces had begun cracking down, preventing people from reaching some of the beaches normally used as points of embarkation.³⁵

Violence and Death Aboard the Boats

Overcrowding and Brutality Towards Passengers

Smugglers from Bosasso regularly crowd as many as 150 people onto boats that could safely carry no more than 70 or 80; some boats carry as many as 250 passengers.³⁶ Passengers sit wedged against each other, crammed in so tightly that there is often quite literally no room to move. Many crews use the small cargo holds below deck as storage space for a few additional passengers, who are forced to lie motionless alongside one another for long hours or even days at a time without light, room to move, or enough air to breathe. The holds are often dark, wet, and suffocating, with stale air that is tainted by oil, rotten fish, or other commodities that are sometimes stored below.³⁷

Many passengers are alarmed by these conditions but feel that they have no choice but to acquiesce to them—especially if they have already paid. One man who crossed from Bosasso to Yemen in May 2009 told Human Rights Watch that, “When I paid the money they said we will take 30 people, but when I came to the place I saw more than 60 so I was surprised. I said there are a lot of people and I cannot go. But I could not get my money back, so I had to.”³⁸

Many of the rickety boats are so overcrowded that once at sea they risk capsizing if their passengers move about too suddenly. To allay that danger, most smugglers order their passengers to remain motionless throughout the entire trip. As the journey stretches

³³ Human Rights Watch interviews with migrants and asylum seekers, Yemen, July 2009. See eg., MSF, “No Choice,” pp. 28-31; Human Rights Watch, *So Much to Fear*, pp. 79-83.

³⁴ Human Rights Watch interviews with former passengers from Obock, Yemen, July 2009.

³⁵ See “Somalia: Puntland cracks down as potential migrants gather in Bosasso,” IRIN, September 28, 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/DKAN-7WBKH7?OpenDocument> (accessed September 30, 2009).

³⁶ Human Rights Watch interviews with former passengers, Yemen, July 2009. Tracking data on file with Human Rights Watch.

³⁷ Human Rights Watch interviews with former passengers, Yemen, July 2009. MSF reported that in 2008, of a sample of 250 interviewees, 88 percent reported that people were kept in the holds of the boats they traveled on. MSF, “No Choice,” p. 12.

³⁸ Human Rights Watch interview, Aden, July 20, 2009.

onwards this becomes a practical impossibility as passengers desperately seek to stretch cramped limbs, stand up, or otherwise relieve the pain brought on by so many long hours of immobility. The smugglers cannot prevent this kind of movement altogether but they attempt to minimize it by beating anyone who moves. In some cases they tie up passengers who continue moving in spite of the beatings—often people who are already overwhelmed and agitated by the treatment they are suffering.³⁹ On at least a few occasions, bodies of Somalis and Ethiopians with their hands and feet tied together have washed up on Yemeni beaches.⁴⁰

Human Rights Watch interviewed several dozen people who made the crossing from either Bosasso or Djibouti and all of them said that either they or other passengers on their boats were beaten by crew members using sticks, rubber whips, belts, or the smugglers' bare fists and feet. One young Somali man who traveled to Yemen from Bosasso with his mother told Human Rights Watch: "They beat people throughout the journey. They beat my mother once because she stood up. I could not speak because I was afraid for myself to be dropped into the sea. They beat her on her back badly. They were beating her for several minutes. She was shouting."⁴¹ The 2008 MSF report found that beatings were reported on nine out of 10 boats that made the crossing from Bosasso.⁴²

One Somali man told Human Rights Watch that even his efforts to save another passenger's life were only rewarded with more abuse:

Whenever someone moved, the smugglers came and beat him. I tried to stretch and stand up and they beat me. He was holding a whip made out of a tire, walking on the people and beating everybody who moves.

There was a girl behind me. They beat her and then she fell into the sea. Me and one other boy got her back into the boat. It was in the middle of the ocean—we jumped off the boat and got her back into it. When we got her back the smugglers put her in a very small place near the motor where she could not even move her legs. They were beating her because she kept moving.

³⁹ Human Rights Watch interviews with former passengers, Yemen, July 2009.

⁴⁰ Human Rights Watch interviews with humanitarian workers and officials, Aden and Sana'a, July 2009; see also MSF, "No Choice."

⁴¹ Human Rights Watch interview, Yemen, July 18, 2009.

⁴² MSF, "No Choice," p. 3.

When I sat down again a smuggler came and slapped me. I fell and he kicked me in the back and put me below the deck. He was insulting me. He said, “If you move again I will drop you into the sea.” Below was a very cold place. You can’t move, even your finger. There were three other people down there.⁴³

In many cases smugglers threaten to throw passengers into the sea because they keep moving, talk too much, or become emotionally distraught.⁴⁴ In some cases crew members have even threatened to drown disruptive children if their parents do not find a way to silence them. One woman who made the crossing in February 2009 said that her boat was adrift at sea for nearly 24 hours after the only working motor broke down. When her baby boy started crying incessantly, the smugglers snatched him from her arms:

My child was crying and one of the smugglers said I should stop him from crying or he would drop the child into the sea. I said, “You would not do that” and he said, “I will show you!” And he grabbed him by the shoulders and dipped him three times into the sea. He was one year and two months [old]. He was completely under water. His eyes got red because of the salt water. I tried to get back the child but one of them beat me with a stick on my back. When he beat me I fell onto the [other passengers].

Other passengers threatened to capsize the boat if they did not give the woman her child back; the smugglers began beating the others with sticks as well but ultimately relented and returned the child to his mother. “The child had drunk a lot of salt water,” she recalled, “and we were trying to bring that water out.”⁴⁵

Murder and Suicide Onboard the Boats

Passengers have been murdered by smugglers on board the boats. And in at least a handful of cases passengers have committed suicide by jumping into the sea, apparently because they could no longer endure the cramped conditions or the mistreatment suffered during the crossing.⁴⁶

⁴³ Human Rights Watch interview, Yemen, July 18, 2009.

⁴⁴ Human Rights Watch interviews with former passengers, Yemen, July 2009.

⁴⁵ Human Rights Watch interview, Yemen, July 18, 2009.

⁴⁶ Human Rights Watch interviews with former passengers, Yemen, July 2009; MSF, “No Choice,” p. 18.

One young man described to Human Rights Watch how his aunt, a woman in her early thirties, was raped and murdered by the crew of their ship:

They threw my aunt into the sea. They raped her first. She said to them, “When I reach Yemen I will tell the government and the UN,” and she was shouting and abusing them. That’s when they threw her into the sea. At that time I tried to shout but some of the crew came and beat me on the head many times. The other passengers said if you talk they will kill you. So I became quiet. I had only this aunt in my life and at that time I decided to die. I tried to throw myself into the sea but the other passengers caught me. Now I am alone.⁴⁷

Another woman told Human Rights Watch that the motor broke down on the overcrowded boat she took from Bosasso in early 2009, leaving them adrift for nearly three days. An Ethiopian Oromo passenger on the boat “was going mad and talking and moving. He saw the boat was not moving and that there was no water and no food...he made too much movement and they threw him into the sea.”⁴⁸

Rape and Sexual Assault

In addition to the brutal discipline enforced aboard the boats, some crews subject passengers to other forms of violent abuse including rape, sexual assault, and robbery. Rape is a relatively rare occurrence, in part because most boats are simply too small or crowded to allow for it to take place. It does happen, however—humanitarian organizations have documented several cases.⁴⁹

Human Rights Watch interviewed three women who were raped on board the boats. Two of the victims were members of a minority clan in Somalia and believed this partly explained why they were targeted.⁵⁰ One was raped aboard a relatively large boat that had a small pilot house towards the rear, where the rape occurred. “The other passengers were afraid—they

⁴⁷ Human Rights Watch interview, Aden, July 20, 2009.

⁴⁸ Human Rights Watch interview, Aden, July 21, 2009.

⁴⁹ Human Rights Watch interviews with humanitarian workers, Yemen, July 2009.

⁵⁰ Somalia’s minority clans are small and relatively powerless clans that are widely looked down upon and mistreated by members of Somalia’s larger clan families. Because of their low social status and because they often lack the means to retaliate for abuses carried out against their members, they are frequently targeted for violence and other forms of abuse that are met with impunity.

could not even look at the man while he was raping me,” she said. “They said they would beat anyone who lifted his head, that everyone should look down.”⁵¹

One young Somali man was forced to sit and watch while two smugglers raped his 13-year-old sister:

When we were on the sea she was sitting near the driver. They wanted to rape the girl. When I heard her scream I stood up but they beat me with a stick on my neck. They played with her. They raped her. They did what they wanted. And when they raped my sister they kicked her. I saw her, she was crying. But no one talked. If a person talked they would kick him or throw him to the sea.⁵²

Much more common than rape are acts of sexual harassment carried out by crew members. Human Rights Watch interviewed several male and female passengers who saw crew members grope and sexually harass women on the boats.⁵³ In some cases smugglers keep women on board the boats after the other passengers disembark, at which point they are at serious risk of sexual violence.⁵⁴

Targeting Ethiopian Passengers for Abuse

While the crossing from Bosasso to Yemen can entail terrible suffering and abuse for any passenger, smugglers often single out Ethiopians (generally not including ethnic Somali Ethiopians) for especially violent and degrading treatment. Ethiopian passengers are often more likely to be forced into the cramped and dangerous holds below deck and to be beaten more brutally and more frequently than the Somali passengers.⁵⁵ One worker with a humanitarian agency that assists new arrivals told Human Rights Watch that, “The smugglers don’t like the Ethiopians. They treat them badly. They are always beating them very, very hard and sometimes tie their hands.”⁵⁶

⁵¹ Human Rights Watch interview, Yemen, July 18, 2009.

⁵² Human Rights Watch interview, Aden, July 20, 2009.

⁵³ Human Rights Watch interview, Aden, July 21, 2009.

⁵⁴ See MSF, “No Choice,” p. 16.

⁵⁵ Human Rights Watch interviews with former passengers, Yemen, July 2009. See also MSF, “No Choice,” p. 13.

⁵⁶ Human Rights Watch interview, Aden, July 19, 2009.

The smugglers who operate the boats from Bosasso are for the most part Somali nationals. Former passengers and humanitarian workers told Human Rights Watch that they think the harsh treatment of Ethiopian passengers is partly explained by longstanding animosities between Somalia and Ethiopia—animosities that have run especially deep ever since Ethiopia’s military intervention in Somalia in late 2006. It may also partly reflect the simple fact that smugglers know that with non-Somalis they enjoy an even greater degree of impunity than they do when committing abuses against their countrymen. One Somali refugee who made the crossing from Bosasso, asked by Human Rights Watch why he thought the Ethiopian passengers on his boat were treated more harshly than the others, simply shrugged and replied, “They are not Somali. They are Ethiopian.”⁵⁷

Death in Sight of Shore

The most dangerous part of the crossing is often the moment of arrival. Many smugglers, afraid of risking possible capture by Yemeni security forces if they land on the beaches, force their passengers to disembark several hundred meters from the shore in deep water.⁵⁸ But many do not know how to swim or are too exhausted from their ordeal to make it. Hundreds of people have drowned within sight of Yemen’s shores after being forced overboard, or passengers panic and cause the boats to capsize after refusing to jump.⁵⁹ These deaths are commonplace.⁶⁰ Making matters worse, smugglers often force their passengers to disembark at night in order to further reduce their own chances of being arrested, adding to the confusion and panic that ensues.

Human Rights Watch interviewed more than a dozen people who saw fellow passengers—and in some cases family members—drown in this way. One Somali man, who had sold his family’s home in Afgoye to pay for their journey to Yemen, lost his three-year-old daughter in February 2009:

As the boat came close to Yemen they started beating the people to get them off the boats. [The smuggler] had said everyone should go, but the people

⁵⁷ Human Rights Watch interview, Yemen, July 18, 2009.

⁵⁸ In 2009 some smugglers began working with Yemeni fishermen, transferring passengers to their boats at sea. The fishermen then transport the passengers all the way to shore, and have a better chance of evading capture due to their good networks on the ground. This option is more expensive, however. Human Rights Watch interview with humanitarian official, Aden, July 21, 2009.

⁵⁹ For example on August 29, 2009, a boat carrying 44 people capsized just off the Yemeni coast when panicked passengers lurched to one side of the boat in panic after being ordered to jump out of the boat and swim to shore. At least seven people drowned and washed up on the shore; another three were missing and presumed dead. Incident report.

⁶⁰ MSF reported in 2008 that one-third of 250 former passengers interviewed about their experiences said that people aboard their boats had drowned off the coast or at some other point during the journey. MSF, “No Choice,” p. 20.

did not go because they are afraid. They caught my little girl and dropped her into the sea. She was three-years-old. I fought with the man and he hit me with a stick and I lost some of my teeth. After that they started pushing all of us into the sea. They dropped all of my children into the sea—five of them. The three-year-old girl died. She drowned. One almost died because she swallowed a lot of water but I rescued her and took her to the hospital in Mayfa'a where she stayed for 20 days. She is six-years-old.⁶¹

Many other passengers have seen their journeys end with similar horrors. One man who arrived from Bosasso on a boat with roughly 175 other people recalled that, “When we came to shore they said, ‘You must jump.’ Seven people drowned. Five washed up on the beach, and two are missing.”⁶² Another man was stabbed in the shoulder by a member of the crew and then pushed into the water after he refused to jump out of the boat. He managed to swim to shore in spite of his wound.⁶³

Arriving in Yemen

The brutality and stress of the crossing leaves many passengers physically harmed or emotionally traumatized by the time they reach shore. MSF’s 2008 study found that many passengers suffered from conditions that include body pains from sitting cramped and immobile for long periods of time, wounds inflicted by smugglers aboard the boats, and severe emotional trauma.⁶⁴ For most of the Somali passengers, at least the worst is over when they arrive hungry and exhausted on Yemen’s shores. But for many of the thousands of Ethiopian nationals among them, much of their ordeal still lies before them.

⁶¹ Human Rights Watch interview, Yemen, July 18, 2009.

⁶² Human Rights Watch interview, Aden, July 20, 2009.

⁶³ Human Rights Watch interview, Aden, July 21, 2009.

⁶⁴ MSF, “No Choice,” pp. 32-33.

Systematic Violation of Yemen's Obligations to Asylum Seekers under International Law

Yemen is the only country on the Arabian Peninsula to have ratified the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 protocol.⁶⁵ And the Yemeni government displays a generosity towards Somali nationals who arrive in Yemen that goes well beyond its obligations under international law, according all of them *prima facie* refugee status without distinction. A *prima facie* or group determination of refugee status permits a government to provide refugee status to a large influx of people without having at least initially to address the claims on a case-by-case basis.⁶⁶ But the Yemeni government openly flouts the convention's core provisions in its treatment of non-Somali—and particularly Ethiopian—asylum seekers.

The Refugee Convention establishes that anyone who can demonstrate an inability to return to their home country because of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” is entitled to refugee status.⁶⁷ The convention categorically prohibits *refoulement*—forcibly returning a person to a place where they face a threat to life or freedom on account of any of the five criteria listed above.⁶⁸ Non-*refoulement* is the most fundamental principle of refugee law and is a rule of customary international law, binding even those states that have not ratified the Refugee Convention.⁶⁹ The convention also requires states parties to treat asylum seekers and refugees equally regardless of their country of origin.⁷⁰

⁶⁵ Yemen acceded to both the Refugee Convention and its 1967 Protocol in 1980.

⁶⁶ See Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 133.

⁶⁷ Convention relating to the Status of Refugees (Refugee Convention), 1951, 189 U.N.T.S. 150, entered into force April 22, 1954, and its Protocol relating to the Status of Refugees, 1967, 606 U.N.T.S. 267, entered into force October 4, 1967, http://www.unhchr.ch/html/menu3/b/o_c_ref.htm, art. 1(A)(2). There are certain exceptions to this entitlement, including for persons who commit war crimes, and serious non-political crimes outside the country of refuge, art. 1(D), (E), and (F).

⁶⁸ “No Contracting State shall expel or return (“refoul”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Refugee Convention, art. 33.1.

⁶⁹ The prohibition of *refoulement* is so fundamental that it is a rule of customary international law. (Customary international law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation). ExCom General Conclusion no. 25 on International Protection, 1982, <http://www.unhcr.org/excom/EXCOM/3ae68c434c.html> (accessed September 29, 2009). For more recent joint UNHCR and academic endorsement of the principle, see “Summary Conclusions of Expert Roundtable, University of Cambridge, July 2001”, <http://www.unhcr.org/publ/PUBL/419c76592.pdf> (accessed September 29, 2009).

⁷⁰ Refugee Convention, art. 3.

Under the Universal Declaration of Human Rights, whose provisions are considered reflective of customary international law, “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”⁷¹ The right to seek asylum has been reaffirmed in various UN statements,⁷² repeatedly by UNHCR’s governing body, called the ExCom,⁷³ and in a resolution of the Sub-Commission on Human Rights adopted in 2000.⁷⁴ The fact that an asylum seeker enters the country illegally rather than through a formal border post cannot be used as grounds to deny this or any other right under the terms of the Refugee Convention.⁷⁵

UNHCR’s ExCom, in its conclusions on “Safeguarding Asylum,” emphasized that the right to seek asylum includes: the principle of non-refoulement regardless of whether persons have been formally granted refugee status; access of asylum seekers to fair and effective procedures for determining status and protection needs; the need for states to admit refugees to state territories; the need for rapid, unimpeded, and safe UNHCR access to “persons of concern”; and the obligation to treat asylum seekers and refugees in accordance with applicable human rights and refugee law standards; among other considerations.⁷⁶

Thus, under international law, any asylum seeker claiming refugee status in Yemen has a right to have his or her case considered.

Yemen does not have a law on refugees and asylum, and the unlawful distinctions it makes between Somali and other asylum seekers is not the product of any legislation or regulations. UNHCR has spearheaded an effort to produce a draft law to bring Yemeni government practice into greater conformity with its obligations under international law. However this is likely to be a long-term effort, if it succeeds at all.⁷⁷

⁷¹ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 14(1).

⁷² See, e.g. Vienna Declaration, World Conference on Human Rights, Vienna, 14-25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), para. 23.

⁷³ See, e.g., ExCom Conclusions no. 52 (1988), no. 85 (1998), no. 101 (2004), and no. 103 (2005). While ExCom conclusions are not legally binding, they are adopted by consensus by the ExCom member states, broadly represent the views of the international community, and carry persuasive authority.

⁷⁴ UN Sub-Commission on Human Rights, Resolution 2000/20 on “The Right to Seek and Enjoy Asylum,” August 18, 2000.

⁷⁵ Refugee Convention, art. 31.

⁷⁶ ExCom Conclusions no. 82 on Safeguarding Asylum, 1997, para. d; see also Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (December 13, 2001), UN doc. HCR/MMSP/2001/09 (January 16, 2002), paras. 6 and 7.

⁷⁷ Human Rights Watch interviews with UNHCR officials, Sana'a, July 2009.

Contrary to its obligations under the Refugee Convention, the Yemeni government has interpreted the refugee definition in a way that blatantly discriminates on the basis of nationality. While it considers anyone from Somalia to be a refugee, asylum seekers from Ethiopia and other countries in the region are treated as illegal migrants regardless of the persecution they might face if returned.

The result is a policy of arresting and deporting all non-Somalis—almost all of them Ethiopians—who arrive by boat along Yemen’s coasts. This involves the systematic refoulement of unknown numbers of asylum seekers who travel alongside Ethiopians migrating for other reasons. While the Yemeni government refrains from arresting and deporting Ethiopians who manage against the odds to secure recognition as refugees by UNHCR, it accords them no official recognition of its own and tries to prevent them from ever applying for asylum.

The Yemeni government’s discriminatory policies and practices towards non-Somali migrants and its impact on those swept up by it, are described in the remainder of this report. The government makes no effort to conceal its actions, and sometimes proactively communicates the mass arrest and deportation of Ethiopian nationals to the media.⁷⁸ The primary aim appears to be to stem migration from the Horn of Africa into Yemen and other countries in the region. As previously described, Yemen is under considerable domestic and regional pressure to find a way to accomplish this. Saudi Arabia and other Gulf states view Yemen as the gateway to their own populations of illegal migrants from the Horn of Africa. Since over 99 percent of the non-Somalis who enter Yemen by sea are Ethiopians, as a practical matter stopping the flow of non-Somalis from the Horn of Africa into Yemen means stopping Ethiopians. As one Yemeni interior ministry official told the media, “We are up to our ears with Somalis. We do not want another front of African migration to open.”⁷⁹

⁷⁸ See, for example, “Yemen police arrest over 90 immigrants from Ethiopia,” SABA, September 14, 2009, <http://www.ethiopianreview.com/content/10813> (accessed October 1, 2009); “Yemen Police arrested 72 Ethiopians,” SABA, November 5, 2009, <http://www.ethiopianreview.com/content/11142> (accessed December 3, 2009)

⁷⁹ See “Yemen: Move to stop influx of Ethiopians, Eritreans,” IRIN news, October 28, 2008, <http://www.irinnews.org/Report.aspx?ReportId=81051> (accessed October 2, 2009).

Running the Gauntlet: Ethiopian Asylum Seekers in Yemen

Many of our people come to Yemen because of their political problems, and they suffer many more problems at the beach. Other refugees—the Somalis—they accept them and take them to the [Kharaz refugee] camp, but we are directly captured and deported to the country which we escaped from...if we try to come to UNHCR we are treated badly at every [police] checkpoint. Some, by going a long trip and hiding themselves along the way, arrive in Sana'a. But many are captured first.

—Ethiopian refugee living in Sana'a⁸⁰

Arriving in Yemen: Two Coasts, Two Different Approaches

Ethiopians arriving in Yemen by sea face two substantially different situations depending on where they land. Those arriving along Yemen's southeastern Arab Sea coast—usually on boats that have made the perilous crossing from Bosasso—are often able to reach two UNHCR-run reception centers—at Mayfa'a and Ahwar—that provide food, medical attention, and a place to rest. Those who reach the centers are usually not arrested there and are provided with appointment slips that are of some use in avoiding subsequent arrest after they move on.

Along Yemen's western Red Sea coast—the point of arrival for most of the boats making the shorter crossing from Obock in Djibouti—the reception is significantly harsher. Ethiopian asylum seekers and migrants who arrive there must keep to the shadows, hiding from government security forces deployed to arrest and deport them back to Ethiopia.

Part of the reason for the distinction lies in the differing approaches of local authorities along the two coasts. UNHCR and other humanitarian agencies have successfully negotiated with local authorities on the Arab Sea coast to allow Ethiopians and other non-Somalis to make use of the reception centers. But they have met stiff resistance to requests for similar leniency from security officials along the Red Sea coast.⁸¹ Some humanitarian officials speculate that this is partly linked to the importance of the Red Sea coast as a major

⁸⁰ Human Rights Watch interview, Sana'a, July 24, 2009.

⁸¹ Human Rights Watch interviews with humanitarian workers and officials, Yemen, July 2009.

smuggling route for goods as well as people. The security forces there are engaged in a broader effort to crack down on the flow of contraband into Yemen and beyond.⁸²

At least part of the explanation for the different approaches on the two coasts is more straightforward—it reflects the Yemeni government's overall policy of trying to prevent Ethiopian nationals from seeking asylum in Yemen or transiting onwards through Yemen to neighboring countries. Most of the Ethiopians who come to Yemen by sea arrive on the Red Sea coast, and roughly two-thirds of the total number of arrivals on that coast are Ethiopians.⁸³ If cracking down on Ethiopian asylum seekers and migrants is the goal, the Red Sea coast is the place to do it.

Arriving on the Red Sea Coast: Arrest and Refoulement

Since 2006 Yemeni military forces have been under orders to arrest Ethiopians they find after their arrival on the coast.⁸⁴ These orders are primarily enforced along the Red Sea coast. As one locally based humanitarian official put it to Human Rights Watch, “the order from the local military authorities [on the Red Sea coast] is that no Ethiopian is seen as a refugee.”⁸⁵

Many Ethiopians, aware of the very real danger of arrest that awaits them on the Red Sea coast, make prior arrangements to be met at their landing point by smugglers who collect them from the beaches and immediately travel onwards towards the Saudi border. The crews of the boats that transport the passengers to Yemen often arrange to call the smugglers from mobile phones when the boats are still half an hour or more off the shore. This ensures that they are waiting when the boats arrive but do not arrive too soon and risk being detected by the security forces. These arrangements are carried out with such precision that Ethiopian arrivals are often in a vehicle driving towards their next destination within minutes of arriving in Yemen.⁸⁶

Ethiopians who arrive on the Red Sea coast with no one to meet them have little choice but to start moving inland trying to remain undetected in hopes of finding safety before they are

⁸² Human Rights Watch interview with humanitarian official, southern Yemen, July 2009.

⁸³ During the first nine months of 2009 an estimated 21,131 Ethiopians arrived on the Red Sea coast compared with 9,366 Somalis. The Ethiopians who arrived on the Red Sea coast made up a large majority of the total number of 27,633 Ethiopians who arrived in Yemen along the Red Sea and Arab Sea coasts. Data compiled by humanitarian agencies, on file with Human Rights Watch.

⁸⁴ Human Rights Watch interviews with humanitarian and UN officials and civil society activists, Yemen, July 2009. See also UNHCR-IOM joint study, “Mixed Migration and Yemen as a Transit Country,” p. 8; MSF, “No Choice,” p. 9.

⁸⁵ Human Rights Watch interview with humanitarian official, Aden, July 16, 2009.

⁸⁶ Human Rights Watch interviews with former passengers and humanitarian officials, Yemen, July 2009.

arrested. For example one Ethiopian man who arrived by boat near Bab-el-Mandeb in July 2009 told Human Rights Watch that he spent a night sleeping in the bush, stumbled upon a small town the next day, walked into a local telephone center, and handed the proprietor a scrap of paper with the phone number of a relative in Sana'a. The shop's proprietor then agreed over the phone with the man's relative to transport him to Sana'a in return for a fee.⁸⁷

Humanitarian agencies widely believe that a large majority of the Ethiopians arriving on the Red Sea coast escape arrest in one way or another. Certainly the Yemeni government does not claim to have arrested anywhere near the total number of Ethiopians who land there. Even so, many are caught. Roads along the Red Sea coast are dotted with security checkpoints and the area is heavily patrolled by Yemeni military personnel.

When military personnel arrest Ethiopians along the Red Sea coast they detain them in local detention facilities and then transfer most of them onwards to a large prison in the city of Ta'iz, in southwestern Yemen.⁸⁸ If the security forces intercept a mixed group of Somalis and Ethiopians who have arrived together, they typically stop the group and divide them by nationality. The Somalis in the group are either let go or provided with transportation to the UNHCR-run transit point at Bab-el-Mandeb. The Ethiopians in the group are all arrested and put on a fast track towards deportation or refoulement.⁸⁹

In some cases the security forces have trouble distinguishing between the Somalis and Ethiopians in a group of new arrivals. In such cases the security forces sometimes detain the entire group and call in local humanitarian organizations to help them do the job. One humanitarian official told Human Rights Watch of an incident in July 2009 where military personnel called officials from the Yemen Red Crescent (YRC) to a small detention center at Dubab—near the transit point for new arrivals at Bab-el-Mandeb—and asked them to separate the Ethiopians from the Somalis in a group of detainees. They obliged, and the military sent the 13 Somalis in the group to the reception center at Bab-el-Mandeb while keeping 42 Ethiopians who had arrived on the same boat in detention.⁹⁰

Humanitarian agencies ask Ethiopian nationals who arrive at the Bab-el-Mandeb transit point on their own to leave; if they stay and are detected they face arrest. The Yemeni

⁸⁷ Human Rights Watch interview, Sana'a, July 25, 2009.

⁸⁸ Human Rights Watch interviews with humanitarian workers, civil society officials, and former detainees at Ta'iz prison, Yemen, July 2009.

⁸⁹ Human Rights Watch interviews with asylum seekers, migrants, and humanitarian workers, Yemen, July 2009. See also MSF, "No Choice," p. 9.

⁹⁰ Human Rights Watch interview with humanitarian official, Yemen, July 2009.

military monitors traffic at the Bab-el-Mandeb transit point.⁹¹ Knowing this, the vast majority of Ethiopians who arrive in the area avoid the humanitarian agencies even if they are in need of assistance. As one humanitarian official told Human Rights Watch, “Ethiopians do not come to the reception center [at Bab-el-Mandeb] because if they do they will go to the prison.”⁹²

Arriving on the Arab Sea Coast: A More Lenient Approach

Authorities on the Arab Sea coast take a less aggressive approach to newly arrived Ethiopians than their counterparts on the Red Sea coast. Generally, all new arrivals, regardless of nationality, are permitted access to the UNHCR-run reception centers at Mayfa'a and Ahwar along the Gulf of Aden coast.⁹³ This is literally a life-saving concession on the part of the local authorities as many new arrivals are badly in need of medical and other assistance after the arduous maritime crossing from Bosasso. There have been incidents where security forces have threatened to enter the reception centers and arrest the Ethiopians they find there but these incidents have been rare and have grown less frequent over time.⁹⁴

Ethiopians who reach the reception centers at Ahwar and Mayfa'a and request to seek asylum in Yemen can obtain an “appointment slip” from UNHCR’s implementing partner agencies. The passes are meant to give them 10 days to reach the UNHCR office in either Aden or Sana'a to undergo Refugee Status Determination. This represents another hard-won concession that UNHCR and its partner agencies negotiated with the local authorities.⁹⁵ But as a mechanism of protection for non-Somali asylum seekers, it is inadequate.

The main problem with the 10-day appointment slips is that they are not officially recognized. They carry no stamp or other imprimatur of the Yemeni government. They bear only a UNHCR logo and indeed even UNHCR does not affix an official stamp, which might at least lend them some legitimacy to members of the security forces. They are little more than slips of paper that UNHCR uses to request, but cannot require, police and other authorities to allow their bearers to pass freely to Aden or Sana'a during a 10-day period. They are respected, or not, according to the whims of the police and other security officers encountered by asylum

⁹¹ Human Rights Watch interviews with humanitarian workers and officials, Yemen, July 2009.

⁹² Human Rights Watch interview, southern Yemen, July 2009. The facility at Bab-el-Mandeb is not in fact properly called a reception center. It is a transit point for the reception center at Kharaz refugee camp further inland.

⁹³ Human Rights Watch interviews with humanitarian officials, Yemen, July 2009.

⁹⁴ Human Rights Watch interviews with humanitarian officials, Yemen, July 2009.

⁹⁵ Human Rights Watch interviews with UNHCR and NGO representatives, Yemen, July 2009.

seekers along the roads. Other countries have adopted mechanisms that provide more robust protection from arrest and deportation to newly arrived asylum seekers.⁹⁶

In many cases the 10-day appointment slips do prove adequate to allow Ethiopians to travel safely along the roads to Sana'a or Aden to reach a UNHCR office. In other cases they at least prompt police officials to phone UNHCR when they arrest a person who is in possession of one of the forms.⁹⁷ But in many other cases they are ignored by police officers who, not without merit, consider them to be unofficial documents that contravene their orders to arrest undocumented Ethiopians. As of the time of publication, UNHCR is negotiating with the Yemeni government to replace the 10-day appointment forms with official, government-stamped transit passes. UNHCR's proposal envisions government officials stationed at the reception centers to issue and stamp these forms. But no agreement, let alone any commitment to a time frame, had been realized as of December 2009.⁹⁸

Staff working at one of the two reception centers along the Gulf of Aden coast told Human Rights Watch that they had received at least a handful of Ethiopian new arrivals who refused to accept the 10-day appointment slips because they had previously been arrested in Yemen while attempting to travel with them and were then deported back to Ethiopia—only to begin the entire journey anew.⁹⁹ “They are very afraid,” one humanitarian worker who had spent time working at one of the reception centers said. “When they come back the second time they are asking us to help, not just to give them that appointment form.”¹⁰⁰

Unprotected on the Roads: Extortion and Violent Crime

Ethiopians who arrive in Yemen seeking asylum must do more than simply avoid arrest on or near the beaches. As described, they must make their way to the UNHCR office in Sana'a or Aden without official documents. In addition to the very real possibility of arrest and deportation, these Ethiopian asylum seekers face dangers at the hands of people—security forces and local residents—who recognize that their unprotected status makes them easy targets for extortion and violent crime.

⁹⁶ South Africa, for example, issues non-renewable 14-day asylum transit permits, which allow their bearers 14 days to present themselves to an asylum officer and present their claim. Section 23 of the Immigration Act, 2002, no. 13 of 2002, <http://www.info.gov.za/gazette/acts/2002/a13-02.pdf> (accessed October 1, 2009), as amended by the Immigration Amendment Act, 2004, no. 19 of 2004, http://www.dha.gov.za/legislation_admin.asp (accessed October 1, 2009).

⁹⁷ Human Rights Watch interview with UNHCR country representative for Yemen, Sana'a, July 26, 2009.

⁹⁸ Correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

⁹⁹ Human Rights Watch interviews with humanitarian officials, Yemen, July 2009.

¹⁰⁰ Human Rights Watch interview, Aden, July 19, 2009.

Extortion

Human Rights Watch documented numerous cases of extortion by the security forces—all of them targeting undocumented Ethiopians. It is difficult to ascertain how frequent these incidents are, but Ethiopian refugee community leaders in Yemen say that the problem is widespread.¹⁰¹ In some cases security forces operating along the Red Sea coast have arrested Ethiopian new arrivals and then offered to sell them back their freedom. In other cases asylum seekers and migrants face demands for bribes at security checkpoints along the road. In both cases, failure to comply with the extortionate demands can mean arrest and deportation to Ethiopia.¹⁰²

One ethnic Oromo Ethiopian who arrived on the Red Sea coast in April 2009 told Human Rights Watch that he and all of the other passengers on his boat were arrested by Yemeni military personnel shortly after reaching shore. The Somalis among them were then separated and sent away on a separate truck, presumably to the transit point at Bab-el-Mandeb. The remaining passengers, approximately 50 Ethiopians, were taken to what he described as a camp some distance from the nearest community. Security personnel demanded that they contact any relatives they had in Yemen and tell them to send money in order to secure their freedom. A few people, including one of the men interviewed by Human Rights Watch, managed to make these arrangements by phoning relatives in Sana'a and were released once the money changed hands. The rest were told that they would be taken to the prison in Ta'iz.¹⁰³

Human Rights Watch interviewed a handful of other Ethiopians in Yemen who had similar experiences. One man said that he and a group of Ethiopians who had just arrived on the coast were arrested near the beach and “gathered in tents in the wilderness” by members of the security forces. “They ask if you have a relative in Saudi Arabia or Sana'a,” he said. “They tell you to call them [to ask them to send money]. They say that Ta'iz prison is very bad so you should pay to be released. They collected money from about 10 [of us] and the rest they collected and took to prison.”¹⁰⁴

An Ethiopian refugee in Sana'a told Human Rights Watch that in June 2009 her 14-year-old daughter called another Ethiopian living near the city to say that she had been arrested near Dubab on the Red Sea coast and urgently needed “at least US\$250” to avoid being taken to

¹⁰¹ Human Rights Watch interviews with Ethiopian refugee community leaders, Sana'a, July 2009.

¹⁰² Human Rights Watch interviews with Ethiopians living in Sana'a, Sana'a, July 2009.

¹⁰³ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁰⁴ Human Rights Watch interview, Sana'a, July 26, 2009.

Ta’iz prison and deported to Ethiopia. She had not known that her daughter was coming to Yemen at all, and by the time she received the message she could not contact the original phone number. When Human Rights Watch interviewed the woman a month after these events she had still heard nothing further from her daughter.¹⁰⁵

Human Rights Watch also documented several cases of Ethiopian asylum seekers who were forced to bribe police officers at roadside checkpoints even though they were traveling with appointment slips issued by the reception centers at Ahwar and Mayfa’a. For this reason many of the Ethiopians interviewed by Human Rights Watch derided the appointment forms as “useless” or at least inadequate. In the words of one Ethiopian Oromo refugee, “the police do not respect the forms, so the people are not safe from the police.”¹⁰⁶

Violent Crime

In addition to the threats they face from the security forces, newly arrived Ethiopians find that they are easy targets for violent crime. Their inability to report crimes to the police without risking arrest themselves means that crimes can often be committed against them with impunity.

Generally, Yemeni communities along the coasts where new arrivals land have shown extraordinary generosity and compassion towards migrants and refugees. Local communities regularly report the arrival of new boats to humanitarian agencies so they can transport them to the reception centers. They often provide food, water, and other forms of assistance to people who arrive in urgent need of help after the horrors of the crossing. And it is often left to the same communities to bury the bodies of those who do not survive the journey and wash ashore.¹⁰⁷ Alongside all of this, however, there are also incidents of violent crime against the relatively defenseless new arrivals, carried out by either security force personnel or local residents.

Human Rights Watch interviewed two women who were raped by men who found them lost, one alone and the other with her children, near their respective points of arrival in 2008. One of the women was badly beaten and then gang raped by a group of Yemeni men who left her for dead beneath a tree. She was found later the same day by people from a nearby village who drove her all the way to Aden for medical attention. An official with a humanitarian

¹⁰⁵ Human Rights Watch interview, Sana'a, July 27, 2009.

¹⁰⁶ Human Rights Watch interview, Sana'a, July 24, 2009.

¹⁰⁷ Human Rights Watch interviews with humanitarian officials and Ethiopians living in Aden and Sana'a, Yemen, July 2009.

agency that has provided assistance to victims of similar attacks told Human Rights Watch that they often happen because “people arrive on the coast and just start walking. This is very dangerous. They are not protected; they do not know the language.”¹⁰⁸

Arrest and Refoulement of Ethiopian Asylum Seekers at Kharaz Refugee Camp

The only refugee camp in Yemen is located at Kharaz, near the coast in the southern Lahai governorate. The camp, run by UNHCR, is home to a fluctuating number of refugees that rarely exceeds 12,000 people. Somali refugees come and go, and new arrivals come to the camp on an almost-daily basis. Once they have undergone registration procedures Somalis are allowed to travel as they please. Most choose not to stay; the camp is remote, the climate is harsh, and income-generating opportunities are few and far between.¹⁰⁹

There are almost no Ethiopians among the steady flow of new arrivals to the camp and all of the roughly 700 Ethiopian residents have been living there for many years.¹¹⁰ The reason for this is that UNHCR and its partner agencies refuse to transport Ethiopian nationals to Kharaz from the organizations’ transit point along the Red Sea coast because this would lead to their arrest and deportation. As the UNHCR country representative told Human Rights Watch, “We do not transport Ethiopians to the camp. The authorities would order us to bring them to a detention center.”¹¹¹

Because of these policies and because the fate of Ethiopians who have arrived in Kharaz in the past is widely known, very few Ethiopian asylum seekers go to the camp. But some arrive in spite of all the obstacles, either unaware of what awaits them at Kharaz or simply not knowing where else to go. Some are transported to the camp by UNHCR or its partner agencies after they pretend to be Somali nationals. Others arrive on their own, securing private transport or making the arduous trek inland to the camp on foot.¹¹²

UNHCR’s country representative told Human Rights Watch that “if 10 Oromo [Ethiopians] arrived in Kharaz tomorrow, we would ask them not to stay.”¹¹³ This is not entirely accurate, and the truth is more disturbing. UNHCR’s implementing partners who interview and register

¹⁰⁸ Human Rights Watch interview with NGO official, Aden, July 22, 2009.

¹⁰⁹ Human Rights Watch interviews with humanitarian officials, Yemen, July 2009.

¹¹⁰ Human Rights Watch interviews with humanitarian officials and Ethiopian refugees, Yemen, July 2009.

¹¹¹ Human Rights Watch interview with UNHCR country representative for Yemen, Sana'a, July 26, 2009.

¹¹² Human Rights Watch interviews with humanitarian workers and Ethiopian refugees, Yemen, July 2009.

¹¹³ Human Rights Watch interview with UNHCR officials, Sana'a, July 26, 2009.

new arrivals to Kharaz are required to inform UNHCR whenever they discover an Ethiopian national among the people they interview. UNHCR staff then informs the police officers who are stationed in the camp. The police then arrest the Ethiopians—the first step towards eventual refoulement or deportation.

By entering the Kharaz refugee camp, Ethiopians are giving a strong indication that they are seeking protection. UNHCR has a responsibility to ensure that they are able to seek asylum, are not mistreated, and that those entitled to refugee status are not subjected to refoulement. Yet UNHCR practice is to turn them over to the police without adequate assurances that they will have an opportunity to have their refugee claims heard, that UNHCR will be able to visit them in detention, or that they will not be returned to Ethiopia.

UNHCR has made only ineffectual private protests against the government's treatment of the Ethiopians. According to UNHCR, the agency has told the Yemeni government that there is a conflict between the government's obligations under the Refugee Convention and its instructions to security authorities in Lahaj, but these protests have fallen on deaf ears and have not resulted in any positive change on the ground. This scenario has left UNHCR and implementing partner staff in the position of effectively having to cooperate with police actions that bring serious risk of refoulement for refugees the agency is mandated to protect.

Perhaps the most egregious of these incidents took place in October 2008. A group of 56 Ethiopians and one Somali were transported to Kharaz camp. They began registration procedures with UNHCR's implementing partners, but when the police became aware of their presence they asked that UNHCR hand them over to police custody. The police accused UNHCR of "aiding terrorists" by taking in the new arrivals and insisted that they be detained inside of the compound until trucks could be brought to transport them to a detention facility. After UNHCR staff informed the group that they were to be arrested, several of them escaped from the compound overnight. The police captured some of these and then surrounded the compound.¹¹⁴

The UNHCR country representative later described the incident to Human Rights Watch as "tragic."¹¹⁵ The Ethiopians, who had come to Kharaz seeking shelter and protection, instead found themselves detained in the UNHCR compound overnight.¹¹⁶ Only one of them—the

¹¹⁴ Human Rights Watch official correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹¹⁵ Human Rights Watch correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹¹⁶ Human Rights Watch interviews with UNHCR officials, workers with UNHCR implementing partner NGOs, and Ethiopian refugees, Yemen, July 2009.

Somali national—was ultimately released. The next day all the remaining asylum seekers from this group were taken away in large trucks. One refugee who witnessed the scene told Human Rights Watch that, “The police took them away in a big truck that looks like a prison.”¹¹⁷

UNHCR tried to obtain access to them in detention but in the end failed to locate any of the detained asylum seekers.¹¹⁸ UNHCR officials told Human Rights Watch that they did not know what became of them. Roughly a week after the incident Yemen’s *Al Jammuriya* newspaper reported that 50 Ethiopians arrested from Kharaz camp had been deported back to Ethiopia through Aden.¹¹⁹

The October 2008 mass arrest was unusually dramatic, but it reflects the Yemeni government’s usual approach to Ethiopian asylum seekers with the misfortune to arrive at Kharaz. UNHCR informed Human Rights Watch in October 2009 that its current standard operating procedure is to inform the police of any Ethiopian arrival at the camp, and that since April 2009 Ethiopians are interviewed by UNHCR officials in the presence of the police, are not detained, and are issued with 10-day appointment slips to enable them to reach a UNHCR office if they wish to seek asylum.¹²⁰ However, UNHCR officials and other sources interviewed by Human Rights Watch in mid-2009 stated that Ethiopian nationals who arrived at the camp at that time *were* detained and that UNHCR access to them in detention was sporadic.¹²¹

In July 2009 a 19-year-old Ethiopian, whose name and details are on file with Human Rights Watch, arrived at the camp falsely claiming to be a Somali national. When the truth came out during his registration with an NGO official in the camp, UNHCR informed the head of the police in the camp who then arrested the young man.¹²² UNHCR managed to visit him in detention only after he had been in custody for several weeks, and determined that he “did not have any protection needs,” according to correspondence on the case between Human

¹¹⁷ Human Rights Watch interviews, southern Yemen, July 19, 2009.

¹¹⁸ Human Rights Watch official correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹¹⁹ *Al Jammuriya*, October 11, 2008.

¹²⁰ UNHCR also states that particularly vulnerable Ethiopian cases can undergo Refugee Status Determination (RSD) at Kharaz camp. Human Rights Watch correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹²¹ Human Rights Watch interviews with UNHCR officials and UNHCR implementing partner staff, Yemen, summer 2009. UNHCR’s country representative acknowledged to Human Rights Watch that Ethiopian nationals discovered at Kharaz are arrested but expressed optimism that the new ranking police official in the camp could prove more amenable to negotiation and compromise around their treatment. Human Rights Watch interviews, Sana'a, July 26. 2009.

¹²² Human Rights Watch interview with NGO official, Aden, July 22, 2009.

Rights Watch and UNHCR.¹²³ According to UNHCR, 10 out of 16 Ethiopians who arrived at Kharaz camp since the beginning of 2009 were referred for Refugee Status Determination (RSD) without being detained, and that five of the remaining six were detained for only a few days and then released.¹²⁴

In other cases police have reportedly arrested Ethiopians who arrive at the camp before they were able to present themselves to UNHCR. Ethiopian community leaders from the camp told Human Rights Watch that in June 2009 a group of roughly 20 Ethiopian Oromo asylum seekers arrived at the camp late at night and sought shelter with registered Ethiopian refugees living in the camp. They were arrested hours later. “We provided food for them,” said one refugee who witnessed their arrest. “They were sitting behind the mosque, but the police came during the night and arrested them. No one knows where they took them.”¹²⁵

The failure of UNHCR’s limited efforts to push for change in the Yemeni government’s treatment of non-Somali asylum seekers at Kharaz and on the Red Sea coast is illustrated by one of its own initiatives. Unable to prevent the arrest and refoulement of Ethiopian asylum seekers, UNHCR has resorted to an awareness campaign that seeks to make Ethiopians and other non-Somali asylum seekers understand that they face arrest if they arrive on the Red Sea coast or at Kharaz camp.¹²⁶

Refoulement of Asylum Seekers

There are no reliable statistics regarding the number of Ethiopians who are refouled or deported each year by the Yemeni government. UNHCR estimates that in 2008 there were roughly 500 individual cases of deportation or refoulement from Yemen to Ethiopia that they learned about.¹²⁷ The agency also estimates that there were “several hundred” such cases between the end of 2008 and October 2009. But the Yemeni government does not inform UNHCR of these cases, so the figure does not include the unknown number of cases that UNHCR did not discover on its own.¹²⁸ Nor is there any way of knowing how many of the people sent back to Ethiopia were in fact seeking asylum. As one senior UN official put it, “We do not even know how many people are coming, where they are being detained. We

¹²³ Correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

¹²⁴ Ibid.

¹²⁵ Human Rights Watch interviews, southern Yemen, July 19, 2009.

¹²⁶ Human Rights Watch correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹²⁷ Human Rights Watch interview with UNHCR official, Sana'a, July 26, 2009.

¹²⁸ Human Rights Watch interviews with UNHCR officials, Sana'a, July 2009; correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

really have no information. Zero information. It is impossible to guess at the number of Ethiopians deported...They don't allow any of us access to these people.”¹²⁹ The International Organization for Migration (IOM) receives frequent requests from the Yemeni government for financial assistance with returns to Ethiopia, all of which it has declined on the basis that there is no evidence the repatriations are voluntary.¹³⁰ UNHCR has reportedly been approached with similar requests.¹³¹

Another source of confusion is the uncertainty over the number of different locations from which Ethiopians are being deported and refouled. UNHCR believes—but cannot confirm—that all deportations to Ethiopia take place from the capital, Sana'a. This is partly because Ethiopian embassy officials say that they must visit every deportee at the immigration detention facility in Sana'a in order to verify their nationality.¹³² But at the same time, several sources told Human Rights Watch that some Ethiopians are flown back to Ethiopia directly from Ta'iz, where Ethiopians captured along the Red Sea coast are often initially detained.¹³³ And Yemeni newspapers have reported the deportation of at least one group of Ethiopian asylum seekers from the international airport in Aden.¹³⁴

Ethiopian Embassy Involvement in Refoulement

UNHCR has almost no access to the immigration detention facility in the capital, Sana'a, or to other detention facilities where people awaiting deportation are held. By contrast, Ethiopian embassy officials have unfettered access to all Ethiopian detainees in the Sana'a immigration detention facility. There is evidence that embassy officials have coerced asylum seekers into declaring themselves willing to return home.

Ethiopian embassy officials regularly visit Ethiopian detainees awaiting deportation in Sana'a. According to UN and humanitarian officials, they emerge from these interviews with forms, thumb-printed by the detainees and bearing their photographs, which indicate that they wish to return to Ethiopia. The Yemeni government has approached international humanitarian agencies in an effort to solicit financial assistance in repatriating detainees to Ethiopia, producing the forms as evidence that no one is being coerced into returning

¹²⁹ Human Rights Watch interview with UN official, Sana'a, July 2009.

¹³⁰ Human Rights Watch interview with UN official, Sana'a, July 28, 2009.

¹³¹ Ibid.

¹³² Human Rights Watch interview with UNHCR, Sana'a, July 26, 2009.

¹³³ Human Rights Watch interviews with international and local NGO officials, southern Yemen, July 2009.

¹³⁴ *Al Jammuriya*, October 11, 2008.

home.¹³⁵ But no one other than guards at the detention facility and Ethiopian government officials are present to monitor these interviews. On one of the rare occasions when UNHCR staff obtained access to the detention facility, guards quite suddenly asked them to leave, saying that this was because officials from the Ethiopian embassy were due to arrive for detainee interviews.¹³⁶ UNHCR officials in Yemen told Human Rights Watch that it was concerned about the practice of Ethiopian embassy officials interviewing Ethiopian nationals in detention prior to deportation “in view of the fact that systematic access [to UNHCR] is not granted to all non-Somalis to ascertain their protection needs.”¹³⁷

During 2008 the Yemeni government did not refer to UNHCR even one case of an Ethiopian detainee at the Sana'a immigration detention facility who wished to claim asylum in Yemen.¹³⁸ In other words, the Yemeni government’s position is that every Ethiopian national who passes through the immigration detention facility agrees without being coerced to return home—a highly implausible claim under any circumstances.

All of this tends to lend additional credibility to the accounts of Ethiopian nationals in Yemen who allege that Ethiopian embassy officials coerce would-be asylum seekers into thumb-printing the voluntary repatriation forms.¹³⁹ Human Rights Watch interviewed one rejected asylum applicant whose appeal of that adverse decision was still pending at the time he was arrested by police in early 2009. He was taken to the immigration detention facility in Sana'a and placed in a large cell with some 80 other Ethiopian detainees. He described to Human Rights Watch what he saw during the 15 days he spent in detention there:

There were people from Ta'iz [prison]. Most of them said they were arrested on the road or on the beach. After four days the Ethiopian government came and obliged people to take photographs. They are then forced to fingerprint a paper with their photograph. The paper comes from the embassy. It allows these people to go to Ethiopia. It says this person wants to return to Ethiopia. Then they took away to Ethiopia all the people whose file had already been prepared. Together they would fill one big bus. I overheard some of their interviews. They asked them, “Why did you come here [to Yemen]?” Some of the people said they had problems but they did not want to explain their

¹³⁵ Human Rights Watch interview with IOM official, Sana'a, July 28, 2009.

¹³⁶ Human Rights Watch interview with UNHCR official, Sana'a, July 26, 2009.

¹³⁷ Human Rights Watch correspondence with UNHCR, October 2009, on file with Human Rights Watch.

¹³⁸ Human Rights Watch interview with UNHCR official, Sana'a, July 26, 2009.

¹³⁹ Human Rights Watch interviews with Ethiopian refugees, Sana'a, July 2009.

problem because they were afraid. They just said, “We cannot return to Ethiopia.”¹⁴⁰

The former detainee said that a handful of the people interviewed by the Ethiopian officials refused to thumbprint the forms or submit to having their photograph taken and that they were roughed up by the prison guards to coerce them into doing so.¹⁴¹

¹⁴⁰ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁴¹ Ibid. The interviewee was ultimately released, without being interviewed himself, because a relative was able to produce documentation proving that he was in the process of appealing UNHCR's denial of his application for refugee status and therefore had the right to stay in Yemen.

Discrimination and Abuse Against Ethiopian Refugees, Asylum Seekers, and Migrants in Yemen

We are escaping from danger in our country. We are the same as other refugees, and yet we are not treated that way. We have food and water but no protection. We ask why we are different from others, and UNHCR says, “The government does not want to accept you, so we can do nothing.”

—Ethiopian refugee living in Sana'a¹⁴²

There are limits to the assistance that Yemen's overburdened government can reasonably be expected to provide to the tens of thousands of refugees living on its soil. But the government discriminates against Ethiopian and other non-Somali refugees, relegating them to a second-tier refugee status that leaves them exceptionally vulnerable to harassment and abuse. The negative impact of this policy on Ethiopian refugees is especially acute.

Refusal to Issue Identification Documents to Non-Somali Refugees

All Somali refugees receive government-issued identification documents (ID) that accord them the right to live and work in Yemen. But non-Somali refugees are not issued these or any other official identification documents; they receive only a form issued by UNHCR acknowledging that the agency has recognized them as refugees. This is perhaps the clearest and most substantively important manifestation of the Yemeni government's discriminatory, two-tier approach to the country's refugee population.¹⁴³

The UNHCR-issued documents, carried by Ethiopian and other non-Somali refugees, protect their bearers from refoulement. But they are good for little else. The lack of any valid government-issued identification documents severely limits non-Somali refugees' ability to assert basic entitlements as recognized refugees in Yemen.¹⁴⁴ As one Ethiopian refugee in Sana'a told Human Rights Watch, “The UNHCR ID has no value. The police look at it and say,

¹⁴² Human Rights Watch interview with Ethiopian refugee, Sana'a, July 25, 2009.

¹⁴³ The Refugee Convention requires its parties to issue identity papers to “any refugee in their territory who does not possess a valid travel document.” Refugee Convention, art. 27.

¹⁴⁴ The Refugee Convention guarantees refugees the right to access a range of government services on equal terms with host country nationals. Refugee Convention, arts. 20-25.

‘What is this? It is just paper,’ and throw it away. We can do nothing with it. Anything you need an ID card for, they do not accept it.”¹⁴⁵

Lacking government-issued ID documents also leaves non-Somali refugees vulnerable to a range of abuses, particularly extortion and arbitrary arrest by abusive members of the security forces. Human Rights Watch interviewed several Ethiopian refugees in Sana'a who said that they had been stopped on the street by police officers who demanded to see their identification and then threatened to arrest them when they could produce only their UNHCR documentation. The pattern that emerges from the accounts gathered by Human Rights Watch is that some police and military personnel deliberately approach Ethiopian nationals and demand to see their IDs precisely because they know they could not possibly have any. In each case the aim appeared to be to use this as a pretext for extortion rather than arrest.

Human Rights Watch interviewed one physically handicapped Ethiopian refugee who had been arrested three times while begging in the capital. The most recent incident occurred in July 2009, when police officers approached him in the street and demanded that he produce his ID card. When he showed them his UNHCR refugee form, he said they told him, “We do not know this card.” They arrested him and then released him before reaching the police station—after he gave them all of the money he had in his pockets.¹⁴⁶

Another Ethiopian refugee told Human Rights Watch that in February 2009 police officers extorted money from him and another refugee after approaching them at a bus stop. The police insisted that their UNHCR documents were no substitute for a valid ID and put the two men into a police car. “They said, ‘Pay us money,’” one recalled. “They abused me, saying I am bringing bad things to their country and am ruining the country, saying, ‘You are blacks and you are bad people.’” He paid a small bribe and the officers released them both.¹⁴⁷ Other refugees offered similar accounts, and Ethiopian community leaders allege that this kind of low-level extortion is commonplace.¹⁴⁸

The lack of IDs affects refugees in other ways. For example, Human Rights Watch interviewed two Ethiopian refugees who said that their employers refused to give them several months of back pay after they were fired from their jobs. Both of them told Human Rights Watch that they complained to their employers, the police, and other government agencies. In each

¹⁴⁵ Human Rights Watch interview, Sana'a, July 27, 2009.

¹⁴⁶ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁴⁷ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁴⁸ Human Rights Watch interviews with Ethiopian refugees including refugee community leaders, Sana'a, July 2009.

case they were turned away and told that they had no right to redress since they could not produce ID documents proving that they had the right to work in the country.¹⁴⁹

Harassment of Ethiopian Refugees and Migrants

In addition to the practical obstacles and dangers, for many non-Somali refugees their second-class refugee status reinforces deeper patterns of discrimination in Yemen. This is especially true of Yemen's Ethiopian refugee community. There is widespread racism against Ethiopians and other Africans living in Yemen, a problem made worse by the country's own high levels of poverty and unemployment. Many Yemenis, struggling to make ends meet themselves, resent African refugees and migrants as people who lay claim to scarce public resources and job opportunities. These sentiments tend to be at least somewhat less pronounced towards Somalis due to longstanding historical ties between the two peoples.

Ethiopians who are not ethnic Somalis also face widespread anti-Christian sentiment. This affects even Muslim Ethiopians due to a widely held public perception that all Ethiopians are Christian. "Even if we are Muslims, they don't believe us," one Muslim Oromo man complained to Human Rights Watch. "Even if we pray with them."¹⁵⁰

This compounded prejudice manifests itself most commonly in small humiliations that many Ethiopians and other Africans living in Yemen endure on a regular basis. Human Rights Watch interviewed many Ethiopian refugees in Sana'a who complained of being regularly insulted on the street and sometimes physically assaulted. Many female Ethiopian refugees complained of being insulted, sexually harassed, and groped by Yemeni men on the streets or while traveling on crowded public buses. "When I go on the bus and they [Yemeni men] are sitting behind me, they are grabbing me," one Ethiopian woman in Sana'a told Human Rights Watch. "If you shout at them they threaten you."¹⁵¹ Some people said that they had been hit with rotten vegetables or even rocks while walking through the streets. One Ethiopian man told Human Rights Watch, "One time someone threw a rotten tomato at me when I was out with my family. To avoid being beaten I kept quiet."¹⁵² Another complained that, "We have to watch our children all the time...if they go outside people are shouting at them."¹⁵³

¹⁴⁹ Human Rights Watch interviews, Sana'a, July 2009.

¹⁵⁰ Human Rights Watch interview, Sana'a, July 25, 2009.

¹⁵¹ Human Rights Watch interview, Sana'a, July 25, 2009.

¹⁵² Human Rights Watch interview, Sana'a, July 25, 2009.

¹⁵³ Human Rights Watch interview, Sana'a, July 25, 2009.

Perhaps the worst and most unrelenting discrimination and harassment is endured by Ethiopians who are known or believed to be HIV positive. One HIV-positive Ethiopian woman living in Sana'a told Human Rights Watch, "I can't even go shopping because young men are always throwing stones at me and saying I am a prostitute *habesha* [Ethiopian]."¹⁵⁴ Another Ethiopian refugee complained that ever since his Yemeni neighbors became aware of his HIV status, "Even animals stay away from me. Nobody respects me."¹⁵⁵

Violent Assaults

In some cases the prejudice endured by Ethiopian and other African refugees escalates into serious acts of violence. Human Rights Watch interviewed several Ethiopian refugees who suffered attacks that appeared to be motivated by racial or religious prejudice. In many such cases the victims are unable to secure a meaningful response from the police, who at times appear unwilling to respond to crimes committed by Yemenis against Ethiopians.

One Ethiopian refugee described to Human Rights Watch the attack he suffered in Sana'a one evening in August 2008:

I was walking on the street with my friend and some Yemeni men came and said, "What is that language you are speaking?" We said, "What do you need from us, we are just walking." They said, "You are destroying our country, get out of our country." Then they attacked us. My friend ran away and they beat me. They beat me with sticks and fists, all over my body. There were more than five persons beating me.

The man made his way to a police station, returned in the company of several officers, and found some perpetrators of the attack still near the scene. But he said that the men who had attacked him turned to the officers and said, "Are you speaking for these black people from Africa or for us? They are destroying our country. Why are you bothering us about this?" The police left without arresting anyone and did not pursue the case further.¹⁵⁶

Human Rights Watch gathered accounts of several similar incidents in Sana'a. One man said that he was attacked by a group of eight Yemeni men in the street in early 2009. When he went to the police, an officer told him, "If you have a problem with it you can return to your

¹⁵⁴ Human Rights Watch interview, Sana'a, July 27, 2009.

¹⁵⁵ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁵⁶ Human Rights Watch interview, Sana'a, July 26, 2009.

own country.”¹⁵⁷ An Ethiopian woman told Human Rights Watch that after a Yemeni man assaulted her on the street and grabbed her breasts, “When I went to the police, they just said ‘Our people would never do anything like that,’ and sent me away.”¹⁵⁸ Another Ethiopian woman had regularly gone to the police to complain about harassment from a group of men in her neighborhood. The police took no action but she persisted; she said that the last time she visited the station an irritated police officer told her to stop coming to the station and threatened to arrest her if she returned. “I didn’t go back since,” she said, “though the problems continue.”¹⁵⁹

Attacks on Oromo Community Activists

Human Rights Watch interviewed several leading members of the Oromo refugee community in Sana'a who said that they had received threatening phone calls. Some had subsequently been attacked. Their callers had demanded that they stop their “political” work, organizing the Oromo refugee community.

Most of the recipients of these calls with whom Human Rights Watch spoke said they believed the threats originated with officials at the Ethiopian embassy in Sana'a, but government involvement could not be confirmed. Some of the threatening phone calls received had been made by people speaking Amharic, one of Ethiopia's national languages. Many members of the refugee community are openly sympathetic to the outlawed Oromo Liberation Front (OLF), an armed opposition group the Ethiopian government has been trying to eradicate since the early 1990s. Allegations of OLF support frequently lie behind government human rights abuses in Ethiopia's Oromia region, targeting both OLF supporters and peaceful critics of the government.¹⁶⁰ But whatever their source, the danger the threats pose are real.

On December 20, 2008, Ahmed Ibrahim Rore, the head of the Oromo Refugee Association of Yemen (ORAY), was murdered in the street while walking home. For several months he had been receiving anonymous phone calls threatening him with death if he did not discontinue his work with ORAY. ORAY was an organization that sought to promote the interests of the Oromo refugee community in Yemen and arrange cultural activities; many of its members

¹⁵⁷ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁵⁸ Human Rights Watch interview, Sana'a, July 27, 2009.

¹⁵⁹ Human Rights Watch interview, Sana'a, July 27, 2009.

¹⁶⁰ See Human Rights Watch, *Suppressing Dissent*; “Charge or Free Ethnic Oromo Terrorism Suspects,” Human Rights Watch news release, November 27, 2008, <http://www.hrw.org/en/news/2008/11/26/ethiopia-charge-or-free-ethnic-romo-terrorism-suspects>; “Repression Sets Stage for Non-competitive Elections,” Human Rights Watch news release, April 9, 2008, <http://www.hrw.org/en/news/2008/04/09/ethiopia-repression-sets-stage-non-competitive-elections>.

were quite political and promoted an Oromo nationalist and anti-Ethiopian government ideology.¹⁶¹ On the day he was murdered, Rore had gone to the UNHCR office and asked to meet with a protection officer. He was unable to secure an appointment; the office is often overwhelmed with refugees seeking immediate attention.¹⁶² On his way home he was attacked and murdered. There were no witnesses and the police never identified any suspect in the case.¹⁶³

Rore's successor as head of ORAY told Human Rights Watch that he began receiving threatening phone calls almost immediately after taking up the organization's leadership. He said that in August 2008 a group of people visited his home late at night, knocking at the door. He did not open it or see who was there, but before leaving one of them shot and killed a dog that had been barking in the yard. In February 2009 several Ethiopian men accosted him on the street and attempted to push him into a car; a group of Yemeni men intervened and his assailants fled. He also said that in May 2009 he was attacked on the street by an Ethiopian man wielding a metal bar; he ran away and took shelter in a police station. Shortly after this last attack he stepped down as head of ORAY.¹⁶⁴ No one stepped forward to take his place and the organization has since become largely defunct. "ORAY is not still active," one former member explained to Human Rights Watch, "because we are afraid."¹⁶⁵

Each year on World Refugee Day, June 20, UNHCR-Yemen organizes a cultural program that features songs and other cultural performances by Sana'a's various refugee communities. In 2009 the event was marred by a minor controversy when UNHCR barred Sana'a's Oromo Ethiopian refugee community from singing politically controversial Oromo nationalist songs, or indeed any songs that touched on their reasons for fleeing Ethiopia or which criticized the government of Ethiopia in any way.¹⁶⁶ UNHCR's country representative told Human Rights Watch that this was done partly out of fear that songs on any of these topics could put their performers at risk of violence.¹⁶⁷

¹⁶¹ Human Rights Watch interviews with former ORAY members, Sana'a, July 2009.

¹⁶² Human Rights Watch obtained a copy of the Request for Service Form Ahmed Ibrahim Rore submitted to the UNHCR protection unit hours before his murder, complaining of continued threats against his life. According to friends and relatives, he had met several times with protection staff to discuss this problem in the weeks and months leading up to his death. Document on file with Human Rights Watch.

¹⁶³ Human Rights Watch interviews with Ethiopian refugee community members, Sana'a, July 2009.

¹⁶⁴ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁶⁵ Human Rights Watch interview, Sana'a, July 26, 2009.

¹⁶⁶ Human Rights Watch interviews with Oromo refugee community leaders, Sana'a, July 2009; recording of conversation between UNHCR official and Oromo refugee community leaders, on file with Human Rights Watch.

¹⁶⁷ Human Rights Watch interview with UNHCR, July 26, 2009.

The Role of the Office of the United Nations High Commissioner for Refugees

UNHCR is in a difficult position in Yemen. It is attempting to strike a balance between goals that are, at least to some degree, in tension with one another. The UN refugee agency is mandated to ensure that the government respects the rights of all refugees and asylum seekers. This necessitates that it maintain a good relationship with the government to continue assisting those considered to be refugees by the government, but also persuading and pressing the government on behalf of those who are wrongly denied refugee protection. Complicating matters further, increasingly since 2007, UNHCR has been involved in delicate negotiations around the fate of internally displaced Yemeni citizens trapped in the midst of a conflict in northern Yemen between government forces and Huthi rebels.¹⁶⁸

Admittedly there are serious practical limits to UNHCR's ability to directly influence the Yemeni government's policies or to mobilize outside pressure to build positive momentum. But too often UNHCR's actions have suggested that the problems facing Ethiopian refugees and asylum seekers in Yemen are secondary to other concerns.

UNHCR officials in Yemen told Human Rights Watch that the agency is working "stone by stone" to address some of these issues quietly and behind closed doors.¹⁶⁹ But UNHCR can point to few tangible successes in addressing the widespread patterns of refoulement and human rights abuse affecting Ethiopians in Yemen.

Human Rights Watch is concerned that UNHCR has not been sufficiently assertive or proactive in seeking to find ways to persuade and pressure the Yemeni government to address the following three core issues, all of which are discussed in detail elsewhere in this report.

¹⁶⁸ "Yemen: Get Aid to Trapped Civilians," Human Rights Watch news release, November 5, 2009, <http://www.hrw.org/en/news/2009/10/05/yemen-get-aid-trapped-civilians>; Human Rights Watch, *Invisible Civilians: The Challenge of Humanitarian Access in Yemen's Forgotten War*, ISBN: 1-56432-396-X, November 2008, <http://www.hrw.org/en/reports/2008/11/18/invisible-civilians-0>.

¹⁶⁹ Human Rights Watch interview with UNHCR officials, Sana'a, July 26, 2009.

Systematic Detention and Refoulement of Ethiopian Asylum Seekers

Ethiopians arriving in Yemen, and in particular those arriving along the Red Sea coast by boat, lack any legal route to reach a UNHCR office and undergo Refugee Status Determination. UNHCR's private interventions with the Yemeni government to stop arresting and refouling people seeking asylum and to put in place procedures to help them to do so have not worked. When UNHCR's access to asylum seekers is blocked and when refoulement is imminent, particularly after private interventions have failed, UNHCR should publicly hold the government accountable. In Yemen, whether at transit points on the coast, at the Kharaz refugee camp, or along travel routes from Kharaz to Sana'a or Aden, UNHCR should identify, register, accompany, and provide appropriate documents (10-day appointment slips, person of concern letters, or refugee certificates) to highly vulnerable asylum seekers needing its protection. UNHCR has also not sufficiently pushed the Yemeni government to allow Ethiopian asylum seekers in need of medical attention to access the services at UNHCR's transit point near the coast at Bab-el-Mandeb without fear of immediate arrest and refoulement.

Asked by Human Rights Watch to describe its efforts to push for a change to Yemeni government policies that violate refugee rights, the UNHCR country representative replied that officials, including the High Commissioner for Refugees himself, had expressed his "deep concern" about the issue in several private meetings with Yemeni government officials since 2008.¹⁷⁰ But given the seriousness of the human rights violations and that these private expressions of concern have proven ineffective in bringing change, they do not by themselves represent an adequate attempt by UNHCR to advocate forcefully for the rights of Ethiopian asylum seekers. UNHCR has also helped spearhead the creation of a Mixed Migration Task Force involving key regional stakeholders—a useful coordinating mechanism across a range of issues, but not one that has translated into effective advocacy targeting the Yemeni government's policies towards refugees and asylum seekers.¹⁷¹

UNHCR also told Human Rights Watch that it has invited the Yemeni government to establish a presence on both the Red Sea and Gulf coasts to issue government-certified transit passes to non-Somali asylum seekers.¹⁷² This would be a welcome development if the government

¹⁷⁰ UNHCR has also carried out training and organized workshops with government officials where concerns about the status of non-Somali refugees and asylum seekers were raised. Correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

¹⁷¹ Ibid.

¹⁷² Ibid.

agreed to it.¹⁷³ But simply “inviting” the Yemeni government not to exclude non-Somali nationals from its refugee-protection procedures is not an appropriate response to a policy that violates the government’s core obligation under the Refugee Convention not to deport asylum seekers. UNHCR has indicated to Human Rights Watch that it is now issuing 10-day appointment slips at Kharaz and in some particularly vulnerable cases is also conducting refugee status determinations there.

Access to Ethiopian Nationals in Detention Awaiting Deportation

UNHCR says that it has a “long-term goal” of gaining regular access to Ethiopian nationals in detention awaiting deportation.¹⁷⁴ This, of course, should be a short-term priority and not simply a long-term goal. UNHCR has expressed concern about its lack of access to, or information about, detainees in private meetings and workshops with government officials, but this has not resulted in any positive change and has not been accompanied by more robust advocacy efforts.¹⁷⁵ UNHCR has helped set up a Detention Working Group with the involvement of the government and nongovernmental organizations and believes that this mechanism could prove to be an effective mechanism to exchange information and push for better access to detention facilities.¹⁷⁶ It should also rapidly implement plans to establish mobile teams capable of visiting detention facilities and conducting refugee status determinations.

UNHCR has also tried to work within the limits of the current context by seeking out informal sources of information about the numbers and treatment of migrants and asylum seekers in detention. Such efforts are welcome but are no substitute for effective advocacy aimed at securing regular access to and information about Ethiopians and other non-Somalis in detention.

As described above, there are credible allegations that Ethiopian embassy officials in Sana'a have coerced Ethiopian nationals in detention into stating that they are willing to return to Ethiopia. Human Rights Watch asked whether UNHCR had raised this issue with either the Yemeni or Ethiopian governments. UNHCR replied only that it was “concerned” about the practice and did not elaborate.¹⁷⁷

¹⁷³ This suggestion is reflected in the recommendations to the Yemeni government contained in this report.

¹⁷⁴ Human Rights Watch interview with UNHCR officials, Sana'a, July 26, 2009.

¹⁷⁵ Correspondence between UNHCR and Human Rights Watch, October 2009, on file with Human Rights Watch.

¹⁷⁶ Ibid; Human Rights Watch interviews with UNHCR officials, Sana'a, July 2009.

¹⁷⁷ Correspondence between UNHCR and Human Rights Watch, on file with Human Rights Watch.

Identification Documents for Non-Somali Refugees

The most direct way to alleviate some of the protection and discrimination issues faced by Ethiopian and other non-Somali refugees in Yemen would be for the Yemeni government to issue them valid ID documents like those it issues to Somali nationals. There is no defensible basis for the government's discriminatory approach to this issue but UNHCR has not demonstrated that it has taken sufficient steps to push the government to immediately issue ID documents to all recognized refugees regardless of nationality. UNHCR has, however, signed a Memorandum of Understanding (MoU) with the government that registration of all non-Somali refugees will begin during the first half of 2010.¹⁷⁸ UNHCR appears confident that this will ultimately result in the issuance of valid government ID documents to all refugees, but this has not been clearly spelled out in the MoU. And as discussed below, the registration exercise raises concerns of its own regarding the status of non-Somali refugees.

Failure to Address Discrimination Effectively

UNHCR's failure to effectively address some of the most serious issues facing the Ethiopian refugee population in Yemen stands in contrast to the commitments laid out in the agency's new policy on "refugee protection and solutions in urban areas." The policy states that UNHCR will "strive to ensure that refugees...are treated as equals before the law and are not subjected to any form of discrimination by law enforcement agencies and other representatives of the state."¹⁷⁹ But UNHCR has largely failed to make robust efforts to address this issue in the case of Ethiopian refugees in Yemen. The policy also states that UNHCR will endeavor to ensure that in situations where the authorities do not provide documentation to refugees it will provide that documentation itself and "endeavor to ensure that such documents are formally recognized by the authorities."¹⁸⁰ But in Yemen the authorities do not formally recognize either the documentation UNHCR issues to non-Somali refugees or the 10-day appointment slips it issues to non-Somali asylum seekers at the Ahwar and Mayfa'a reception centers.¹⁸¹

¹⁷⁸ The agreement is that the registration of non-Somali refugees will commence one year after registration of Somali refugees begins. Registration of Somali refugees began in March 2009, so registration of non-Somalis should theoretically commence in March or April 2010.

¹⁷⁹ UNHCR policy on refugee protection and solutions in urban areas, September 2009, para. 26.
<http://www.unhcr.org/refworld/docid/4ab8e7f72.html>

¹⁸⁰ UNHCR policy on refugee protection and solutions in urban areas, para. 65.
<http://www.unhcr.org/refworld/docid/4ab8e7f72.html>

¹⁸¹ See above, Arriving on the Arab Sea Coast: A More Lenient Approach.

UNHCR states that since the October 2008 arrest of 56 Ethiopian asylum seekers who were detained in UNHCR's compound at Kharaz, it has "firmly conveyed to the Yemeni government its categorical refusal to permit the use of its facilities for retention purposes"¹⁸² and that there have been no such incidents since October 2008. While this is welcome, UNHCR's current policy is to cooperate with the Yemeni security forces by turning over to the police Ethiopian asylum seekers from Kharaz refugee camp, an action that puts them at risk of refoulement. UNHCR also now warns Ethiopian asylum seekers not to come to Kharaz and refuses to transport them there, although there are no alternative sites where they can find protection. Although UNHCR also states that it has a goal of being able to welcome all asylum seekers, regardless of nationality, at Kharaz, its current policy is to deter non-Somali asylum seekers from seeking assistance at the camp.

UNHCR has agreed with the government of Yemen to carry out a registration exercise of all refugees in the country. The exercise, which is mandatory, began in March 2009 with Somali refugees. In March or April 2010 it should then also commence with non-Somali refugees. At the conclusion of the registration exercise any refugee who has failed to participate will be considered as being in the country illegally and subject to deportation. One very worrying aspect of the registration exercise is that UNHCR has neither sought nor received any assurances from the government of Yemen that it will not seek to use the registration of non-Somalis as a pretext to revisit and strip the refugee status given to them by UNHCR.¹⁸³ Some UNHCR officials privately expressed concerns about this possibility to Human Rights Watch. UNHCR has sought to ensure that any new legislation on refugees in Yemen—passage of which is a central goal of UNHCR—includes provisions that safeguard the status of refugees recognized by UNHCR.¹⁸⁴ There is no expected timeline for the drafting and passage of such legislation, however. Given that the government of Yemen does not wish to recognize non-Somalis, especially from the Horn of Africa, as refugees, this is a very real concern.

On other issues, such as the Yemeni government's treatment of Ethiopian nationals who arrive along the Arab Sea coast, UNHCR has achieved some progress. However, as defined in the recommendations at the start of this report, UNHCR still has considerable work to do to push for further improvements in the Yemeni government's adherence to its international obligations.

¹⁸² Ibid.

¹⁸³ Human Rights Watch interview with UNHCR, Sana'a, July 26, 2009.

¹⁸⁴ Correspondence between UNHCR and Human Rights Watch, on file with Human Rights Watch.

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