

ADMINISTRATIVE COURT
RABAT, MOROCCO

FILE NO. 2010/12/376

**IN THE MATTER OF:
VILLAGE OF HOPE**

Brief Filed on Behalf of Village of Hope

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Introduction

The Alliance Defense Fund (ADF), acting in its capacity as international legal counsel for the interests of the deported Village of Hope workers, is a not-for-profit international legal alliance of more than 1600 lawyers dedicated to the protection of fundamental human rights. The Alliance Defense Fund has argued cases before the United States Supreme Court and the European Court of Human Rights. It has also provided expert testimony to the European Parliament and United States Congress. ADF has full accreditation with the Organization for Security and Co-operation in Europe, full accreditation with the European Union (Fundamental Rights Agency and European Parliament) and provisional accreditation with the United Nations. As a result, ADF is fully-versed in the human rights and international law issues that bear upon this case.

ADF herein argues that the deportation of the applicant Village of Hope foreign workers, who were expelled from Morocco *en masse* in March 2010, was both substantively and procedurally unlawful. Procedurally, none of the preconditions for lawful deportation under Moroccan law were met by the government officials, all of whom were acting *ultra vires* and in violation of Moroccan law. This includes, *inter alia*, warrantless searches and photocopying of private correspondence, the warrantless confiscation of personal property, the deportation of resident aliens protected under Article 26 of Act No. 02-03, the execution of mass deportations, the expulsion of persons legally residing in Morocco without the proper deportation orders, and the deportation of persons in an unlawfully short period of time making it impossible to argue their claims before a tribunal or court.

Substantively, it is clear that there was an absolute failure on the part of local authorities to substantiate the claims of illegal proselytism or threat to lack of national security or to produce

any evidence whatsoever to show illegal proselytism. The fact that the Village of Hope deportees are Christian and had religious materials in their possession for their own personal use is not evidence of proselytism. Furthermore, as will be established, the vast majority of expelled volunteers were simply incapable of proselytism because of language barriers or lack of contact with the children. Finally, the manifestation of faith by the deportees, such as privately worshipping, far from establishing proselytism, is in fact activity protected by Morocco's domestic law and international treaties that have been ratified by Morocco in its sovereign capacity and thereafter incorporated into domestic law.

I. Obligations Under International Law

As the preamble of the Constitution of Morocco attests to, Morocco is fully committed to adhering to the standards of the international treaties it has freely adopted and to the international organizations to which it is member: "Aware of the need of incorporating its work within the frame of the international organization of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organizations, and it reaffirms its determination to abide by the universally recognised human rights."¹

(a) The International Covenant on Civil and Political Rights

Morocco, by freely ratifying the International Covenant on Civil and Political Rights (ICCPR), has chosen to be bound by the legal obligations therein. Among these obligations is Article 13, which governs the issue of deportation of aliens: "An alien lawfully in the territory of

¹ Royaume du Maroc [Constitution], preamble (Morocco, 1996). This preambular language is affirmed by Morocco in its most recent report to the Committee on the Rights of the Child. United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Second Periodic Reports of States due in 2000: Morocco*, CRC/C/93/Add.3 (12 February 2003), para 30.

a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority”.²

The United Nations Human Rights Committee has given general guidance with respect to interpretation of relevant ICCPR provisions, including article 13. The pertinent Committee “general comment” states that “Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law.”³

Commentary on Article 13 further amplifies that: “Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out in pursuance of a decision reached in accordance with law, *its purpose is clearly to prevent arbitrary expulsions*. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 *would not be satisfied with laws or decisions providing for collective or mass expulsions*. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. *An alien must be given full facilities for pursuing his remedy against*

² *International Covenant on Civil and Political Rights*. United Nations General Assembly Resolution 2200A [XXI]. 16 December 1966, Article 13.

³ General Comment No. 15: The Position of Aliens under the Covenant, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument) (See paragraph 7.) [emphasis added]

expulsion so that this right will in all the circumstances of his case be an effective one ...

Discrimination may not be made between different categories of aliens in the application of article 13.”⁴

In the instant matter, the expulsion of the Village of Hope deportees violated ICCPR Article 13. First, no “decision reached in accordance with law” was ever made by a competent authority, and the deportees were never “allowed to submit the reasons against his expulsion and to have his case reviewed by... the competent authority.” Second, the Village of Hope deportees were expelled *en masse* in clear contradiction of Article 13’s requirement of individualized hearings as *ipse facto* prohibiting mass expulsions, per the Human Rights Commission. Third, the deportees were not given the necessary warning required to effectuate the deportation legally, and denied access to a fair and impartial tribunal to argue the merits of their deportations. Fourth, none of the deportees was given a deportation certificate to inform them that they were officially being warned. Fifth, no legal grounds existed for even the individual deportations of the Village of Hope workers.

Moreover, officials erred in their deportation of the Village of Hope workers for proselytism on two procedural grounds. Whereas Moroccan law allows for the deportation of anyone who has been convicted of a crime carrying a penalty of at least one year imprisonment,⁵ this precondition was never met. First, the crime of proselytism in Morocco carries a minimum criminal penalty of less than one year imprisonment.⁶ Therefore, even had the deportees been

⁴ *Id.*, see: para. 10.

⁵ Act No. 02-03, promulgated by Dahir No. 1-03-196 of 11 November 2003 and published in the *Official Gazette* No. 5162 of 20 November 2003. For full text, See: http://www.justice.gov.ma/fr/legislation/legislation_.aspx?ty=2&id_1=140.

⁶ Article 220 of the Moroccan Penal Code: “Whoever, by violence or threats, forces or prevents one or more persons from practicing a religion, or from attending the exercise of worship shall be punished by imprisonment of six months to three years and a fine of 100 to 500 dirhams. Under the same sentence shall be punished anyone using seduction in order to shake the faith of a Muslim or convert him to another religion, either by

found guilty by an actual court of law of criminal proselytism – which they had not– there is no guarantee that the penalty would have met the threshold for deportation enumerated in Act. No. 02-03, Article 26. Second, the crime of proselytism was attributed to the entire group of deportees without the production of evidence; without formal charges being laid; and without there being a trial or conviction.

Finally, the forced expulsion of all of the deportees with only two-hour notice is a gross violation of the law, and the height of arbitrariness. The deportees, some of whom lived in Morocco for more than ten years, were given virtually no time to wind up their lives and affairs in Morocco. They were provided no time to say goodbye to the children in their care, who over the course of years of living together had become like their natural children. Conversely, the children were also given no time at all to say goodbye to the people who they recognized as being their parents, likely causing serious emotional trauma to the children. This would constitute an additional violation of Morocco’s obligations under the Convention on the Rights of the Child, as set forth below.⁷

(b) Parental and Family Rights Under International Law

The rights afforded to family life and private life under the corpus of international law enjoy considerable protection. The relationships recognized under international law falling within the protections afforded to non-nuclear families are also broad. To this extent, foster families enjoy rights under international law with regard to their relationship with their foster

exploiting his weakness or his needs, or using for these purposes schools, health facilities, asylums and orphanages. If convicted, the closure of the facility that was used to commit the offense may be ordered, either permanently or for a period not exceeding three years.”

⁷ See, e.g., CRC art. 3(1) (requiring that in “all actions concerning children,” including those taken by public social welfare institutions, courts of law and administrative authorities, “the best interests of the child shall be a primary obligation”). See also discussion *infra*.

children.⁸ Furthermore, intergovernmental courts have defined that foster care may enjoy the same protections as regular families depending on the closeness of the bond between the foster parents and children, the permanence of the relationship and the length of time together.⁹ Morocco has itself recognized alternative family care environments as enjoying the protection of the law.¹⁰

International case law dictates that any removal of a child from what he knows to be his family is a per se interference with the mutual enjoyment of parents with their children guaranteed by international law;¹¹ a right which constitutes a fundamental element of family life.¹² Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child.¹³ Furthermore, as Morocco has acknowledged, it has voluntarily acceded to respect the best interests of the child standard recognized by the United Nations' Convention on the Rights of the Child.¹⁴ This standard dictates that the separation of the children from their

⁸ See e.g.: ECHR, Application No. 8257/78, *X v. Switzerland*, 10 July 1978, 13 DR 249; see also CRC art. 3(2) (“States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”)

⁹ *Id.* Cf. ECHR, Application No. 9993/82, *X v. France*, 5 October 1982, DR 31, p. 241; ECHR, 5 EHRR 302; ECHR, *Soderback v. Sweden*, judgment of 28 October 1998.

¹⁰ United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Second Periodic Reports of States due in 2000: Morocco*, CRC/C/93/Add.3 (12 February 2003), para. 236. Morocco ratified the Convention on the Rights of the Child in June, 1993.

¹¹ See e.g. *Olsson v. Sweden*, (No 2) (1992) 17 EHRR 134, [1992] ECHR 13441/87, ECtHR.

¹² *Elsholz v. Germany*, ECHR decision of 13 July 2000, Report of Judgments and Decisions 2000- VIII, § 43. Cf. Universal Declaration of Human Rights 16(3)(declaring that the family is the “fundamental group unit of society entitled to protection by society and the State”)

¹³ *Olsson v. Sweden*, *op. cit.*, P. 72.

¹⁴ United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Second Periodic Reports of States due in 2000: Morocco*, CRC/C/93/Add.3 (12 February 2003), para. 171. See also: United Nations Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Fifth Periodic Report (Morocco)*, CCPR/C/MAR/2004/5 (11 May 2004), para. 67.

foster parents through the dramatic means of deportation of their caregivers with virtually no notice provided would run contrary to the best interest of the children in question.¹⁵

The United Nations Convention on the Rights of the Child, for example, clearly states that among the most important rights of the child, besides the right to life, are precisely the right to parental love. The Convention also explicitly states that parents, being the ones who love their children most, are those most called upon to decide on the well-being of their children.¹⁶ This guarantee, which requires that the State respect the right of parents to bring their children according to their own values has also been codified by Article 18(4) of the ICCPR, Article 5(1)(b) of the Convention Against Discrimination in Education, Protocol 1, Article 2 of the European Convention of Human Rights, Article 26(3) of the Universal Declaration of Human Rights and Article 13 of the ICESCR. The Village of Hope deportees not only were fully within their legal rights in the manner in which they raised their foster children, but they also broke no Moroccan laws in doing so.

Democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.¹⁷ The State cannot take such radical methods as separating families simply because they believe that the religion of the parents means that they will proselytize the children. In the instant case all of the deportees signed waivers upon commencement of their volunteer service to Village of Hope that they would not criminally

¹⁵ Morocco has reported to the United Nations that its commitment to this standard is so strong that children should have the same judicial remedies as any other Moroccan citizen regarding their right to parental love and care. The statement goes further in noting that the rights of the child are an integral part of human rights in Morocco. United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Second Periodic Reports of States due in 2000: Morocco*, CRC/C/93/Add.3 (12 February 2003), para. 70.

¹⁶ United Nations, *Convention on the Rights of the Child*, Articles 5, 18§ 1. Cf. UDHR 26(3) (“Parents have a prior right to choose the kind of education that shall be given to their children.”)

¹⁷ *Id.*, § 84(f).

proselytize. Not a shred of evidence has been shown to prove that the deportees deviated from this commitment in any way. Furthermore, the Village of Hope volunteers dutifully had their children study in schools they provided which followed the mandatory Moroccan curriculum including education in Islam. Furthermore, the day-to-day Village of Hope staff, other than the foreign workers, are by great majority Muslim by faith. This, coupled with the education the children were receiving, further underpins that the families had no intent to proselytize the children criminally.

(c) Morocco has Acknowledged Its Obligations under International Law

The Moroccan government submitted its Fifth Periodic Report affirming compliance with the ICCPR in 2004.¹⁸ The country's commentary on Article 13 references its domestic law regarding deportation. To this extent, the government acknowledges that no person may be subject to a deportation order under article 26 of Act Number 02-03¹⁹ unless they have been sentenced pursuant to a confirmed judgment to at least one year's imprisonment, unsuspended.²⁰ Derogation from Article 26 is only prescribed by law where it is imperative for the security of the state or for the maintenance of law and order.²¹

Further, in response to an inquiry concerning the deportation of aliens who had entered the country illegally, Morocco told the Human Rights Committee that "any persons facing the risk of expulsion from Morocco following illegal entry had the right to appeal against

¹⁸ See: United Nations Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Fifth Periodic Report (Morocco)*, CCPR/C/MAR/2004/5 (11 May 2004), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/409/39/PDF/G0440939.pdf?OpenElement>, para. 178-188.

¹⁹ Act No. 02-03, promulgated by Dahir No. 1-03-196 of 11 November 2003 and published in the *Official Gazette* No. 5162 of 20 November 2003.

²⁰ See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/409/39/PDF/G0440939.pdf?OpenElement> and *id.* at Article 26(f).

²¹ *Id.*

deportation orders.”²² Clearly, the rights of aliens who had entered the country legally then would at the very least enjoy an equal right of appeal.

Morocco has also formally stated to the United Nations in its Third Periodic Report to the UN Committee on Economic, Social and Cultural Rights that it has harmonized its laws with international standards, including *kafala* (the law on the legal placement of children and families) and the adoption of laws governing the entry and stay of aliens in Morocco.²³

II. Illegality of Mass Deportations

(a) Lack of Merit in the Individual Cases

None of these preconditions were met with the Village of Hope mass expulsions. Had deportation cases been brought individually as required, they would have uncovered that under no circumstances was it even possible for the majority of the deportees to have been guilty of proselytism. Furthermore, exemptions existed for all of the deportees under Article 26 of Act Number 02-03.²⁴

²² HRC, Summary Record of the 2236th Meeting, 25 Oct. 2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/441/51/PDF/G0444151.pdf?OpenElement> (See: paragraph 51).

²³ UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Addendum to the Third Periodic Reports Submitted by States Parties, Morocco*, 17 January 2005, E/1994/104/Add.29, available at: <http://www.unhcr.org/refworld/docid/45377f890.html> [accessed 3 June 2010], para. 13, 22. Morocco again reasserted its commitment to harmonize its laws with its international treaty obligations in its follow-up report ICESCR Committee. UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Follow-Up to Addendum to the Third Periodic Reports Submitted by States Parties, Morocco*, 2006, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/417/67/PDF/G0641767.pdf?OpenElement>, p. 8. This latter acknowledgment was also made to the United Nations Human Rights Committee. United Nations Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Fifth Periodic Report (Morocco)*, CCPR/C/MAR/2004/5 (11 May 2004), para. 21, 42 *et seq.*

²⁴ Act No. 02-03, promulgated by Dahir No. 1-03-196 of 11 November 2003 and published in the *Official Gazette* No. 5162 of 20 November 2003: “Article 26: Shall not be subject to expulsion:

1 - Aliens who can demonstrate by any means that they have been normally resident in Morocco since their sixth birthday at the latest; 2 - Aliens who can demonstrate by any means that they have been resident in Morocco for more than 15 years; 3 - **Aliens who have been resident in Moroccan territory for 10 years and were not students during that entire period**; 4 - Aliens who have been married for at least one year to a Moroccan spouse; 5- Aliens who are father or mother to a child who is resident in Morocco and has obtained Moroccan nationality, providing that they are in practice the child’s statutory guardians and provide for its needs; 6- **Aliens normally resident in Morocco who hold one of the residence permits provided for by Moroccan law or international**

The mass charges of proselytism are absolutely unfounded. First, no formal charges were filed against the deportees and no evidence was produced. Furthermore, the deportees had no opportunity to defend themselves against the charges of proselytism before a court prior to their deportation precisely because no charges were filed against them.

An examination of the individual cases shows how unfounded the charges of proselytism are:

- Collin and Fiona Dickinson each had been in Morocco for four years. Neither could speak French and both had extremely limited Arabic speaking skills. No Christian materials were seized from their homes. Additionally, the child they had in their full time care was less than two years old, and thus was incapable of being proselytized. Thus the Dickinson's could neither communicate their faith to anyone in Morocco because of their lack of language skills and, even had the Dickinsons been more proficient in Arabic or French, the child in their care could not comprehend the nature of religious concepts because the child is under the age of two. Finally at no time prior had any investigation or claim been made against the Dickinsons regarding criminal proselytism.
- Julie and Andrew Galland had five children in their care and were in Morocco for a period of a year prior to their deportation. Andrew speaks no French and no Arabic. Julie speaks no French and very limited Arabic, and thus they lack language skills necessary for proselytism. Moreover, no religious materials were seized from their home. As with the Dickinsons, no suspicion or claims of proselytism had ever been brought against the couple during their time in Morocco prior to their deportation.
- Herman Boonstra, the managing Director of Village of Hope, and his wife Jettie, had been in Morocco for ten years. During this time they meticulously abided by all laws and kept detailed records for Village of Hope with regard to the children and how they were brought into their care. The Boonstras have never been suspected of, charged with, nor convicted of any crime, including proselytism. Having resided in Morocco for 10 years without being students²⁵, their deportation was forbidden under Article 26 of Act Number 02-03 on two grounds. First, as with all of the deportees in question, the Boonstras were never convicted of a crime with a sentence of more than one year. Second, the Boonsras having [resided] in Morocco for more than 10 years, also enjoyed an exemption under Article 26 because of their length of stay in Morocco. The Boonstras completely

conventions and have not been sentenced by a confirmed judgement to at least one year's imprisonment, unsuspending; 7- Female aliens who are pregnant; 8- Alien minors.

No time is required for expulsion if the conviction for a violation relating to a company in connection with terrorism, molestation or drugs.

²⁵ *Id.*, article 26(3).

deny any allegations of proselytism. They did have religious materials confiscated from their home. However this material was for private use only and the possession alone of Christian materials is not an element of criminal proselytism.²⁶ Furthermore, the vast majority of materials found at the Boonstra home was religious literature which related to Scriptural stories common to both Christianity and Islam. Their children, like all of the children at Village of Hope, received Muslim educations in accordance with Moroccan law.

- Edward and Lynn Padilla had legally resided in Morocco as alien volunteers for a period of two years and cared for two children, ages one and two. The Padillas also have two natural children, one of whom was born in Morocco. The Padillas lived off site from the Village of Hope property. Edward cannot speak French or Arabic and is therefore incapable of proselytism. Lynn cannot speak French and her Arabic is very limited, making it impossible for either of them to have proselytized. The children in their care, being aged one and two, are also unable to understand religious concepts. No evidence was ever produced to explain how the couple could have proselytized without the necessary language skills and with care of children too young to understand religious concepts.
- Wouter and Esther Rols spent one year in Morocco, living off-site from the Village of Hope and having no Moroccan children in their care. Both Wouter and Esther speak very little Arabic and do not have the language skills to proselytize. Wouter, being Maintenance and Agricultural Manager of Village of Hope, had no formal interaction whatsoever with children at the orphanage. Esther was a stay-at-home mother of the family's two children and also has no formal interaction with the Moroccan children of Village of Hope. In sum, both Wouter and Esther, having lived off-site with no real Arabic or French language skills, and having no interaction with the Village of Hope children, could not have been guilty of proselytism.
- Christopher and Christina Broadbent, resident aliens in Morocco for two years, also lived off-site from Village of Hope and also had no formal interaction with the children. The Broadbent's house was not searched and no religious materials were seized. The couple lived in Morocco without incident and were never so much as suspected of proselytism prior to their deportation. Christopher speaks no French or Arabic, thus making it impossible for him to proselytize criminally. His position as Human Resources Manager was administrative and did not put him in a position to seduce, force or exploit anyone -- child or adult -- to accept the Christian faith.²⁷ Christina could not speak Arabic and was a stay-at-home mother of the couple's two infant children. Like Christopher, she was also in no position to proselytize and did not have the capability to do so. The couple thus had neither the intent or capability of committing the crime of proselytism.

²⁶ *Supra* n. 6.

²⁷ *Cf.*: Moroccan Penal Code, Article 220.

(b) Deportations Based on Grounds of National Security under International Law

International law dictates that due process rights must be respected with regard to expulsions where grounds for the deportations are based on national security reasons. First, sufficient scrutiny of the facts of each individual case is necessary to support expulsion based on grounds of national security. Evidence to prove the veracity of the claims is fundamental requirement. Accepting the allegations of the police or executive authority without proper review is not sufficient.²⁸ Second, there is an absolute right to court to challenge the legality of a deportation order, whether based on national security reasons or otherwise. Without the right to judicial review, the human rights enumerated by Moroccan constitutional law and international legal instruments are made ineffectual and illusory. The right to review by a judge encompasses the very substance of due process rights precisely because courts are charged with safeguarding individual and collective legal rights.²⁹ Third, the governmental authorities failed to assess whether the interference with the deportees' rights answered a pressing social need and was proportionate to the aim of national security.³⁰

The government's appeal to national security as a grounds for the mass deportations, stating that this aim sufficiently accounted for the failure to provide the deportees the legally required time to stay within Morocco to appeal their cases, is a weak one. Since 2002, the Village of Hope has been officially registered as a Christian organization within Morocco. The children's home has since operated as such since that time with the full knowledge and acquiescence of the Moroccan authorities. At no point during this time were any complaints or concerns expressed by the authorities over the handling of the affairs of the orphanage. The

²⁸ See: ECHR, *C.G. and Others v. Bulgaria*, application no. 1365/07, judgment of 24 April 2008.

²⁹ ECHR, *Ashingdane v. the United Kingdom*, judgment of 28 May 1985.

³⁰ ECHR, *C.G. and Others v. Bulgaria*, *op. cit.*, §§ 59-64.

foreign workers followed the black letter of the law in how the children were brought into their care, including where appropriate by judicial decision from the local children's court judge. The foreign workers all signed declarations not to proselytize. Further, the orphanage utilized a local staff, comprising overwhelmingly of Moroccan citizens who were Muslims, to handle the day-to-day affairs of the orphanage. Additionally, the children were all educated on-site in accordance with Moroccan educational requirements including education in Islam.

Under no circumstances did the Village of Hope deportees ever act in a manner which threatened the national security of Morocco. Reality shows the opposite to be true. Village of Hope provided a vital charitable service that no one locally was willing or able to provide. The orphanage also acted as the best and most stable employment in the remote local community of Ain Leuh. The officials in question, rather than proving the high burden that such an accusation would entail, simply made the assertion and executed the expulsions without trial or provision of evidence or any charges actually being filed.

(c) Prohibition Against Discrimination

The freedom to choose one's faith and live it out is an inviolable freedom protected under international law. However, mass deportations executed under the unproven charge that criminal proselytism was occurring without evidence, simply because the volunteers were of the Christian faith is *de facto* discrimination and a serious breach of international law.

Morocco has acknowledged both its Constitutional and international obligations to non-discrimination based on religious affiliation to the United Nations: "As stated in article 5 of the Constitution, all Moroccans have equal rights and duties and are equal before the law without any distinction of any sort, whether based on ... religion.... Muslims, Christians and Jews have

been living side by side for centuries, and mosques, churches and synagogues coexist in peace and harmony.”³¹

In its Fifth Periodic Report to the Human Rights Committee, the government of Morocco affirmed that: “Christians are free to worship without any discrimination.”³² This right was categorically denied to the Village of Hope deportees without cause. Furthermore, the deportations create a strong chilling effect against religious belief and worship in contradiction to the statement of Morocco to the United Nations.³³

A sharp distinction must therefore be drawn between freedom of belief and the right to adhere to a faith system of one’s own choosing and the act of proselytism. Simply because a volunteer worker is a Christian does not result in his being guilty of proselytism. Furthermore, the possession by Christians of Christian material is a natural corollary of their faith and necessary in order to meaningfully practice that faith. The mere possession of Christian materials by some of the Village of Hope staff does not evidence that they are guilty of proselytism. Furthermore, as detailed above, the inability of the vast majority of the deportees to meaningfully speak French or Arabic, the young age of many of the children, or their lack of proximity to the children because of their job position at the orphanage literally made it impossible for them to proselytize criminally. The police officials responsible for the effectuation of the deportations

³¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Follow-Up to Addendum to the Third Periodic Reports Submitted by States Parties, Morocco*, 2006, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/417/67/PDF/G0641767.pdf?OpenElement>, p. 8-9.

³² United Nations Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Fifth Periodic Report (Morocco)*, CCPR/C/MAR/2004/5 (11 May 2004), para. 218.

³³ It is important to note the Morocco has further acknowledged its commitment to its equal treatment of persons under Article 6 of its Constitution to the Committee on the Rights of the Child noting that its reservation on art. 14 of the Convention on the Rights of the Child was without prejudice to the rights guaranteed to non-Muslims under Article 6 of the Constitution. United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Second Periodic Reports of States due in 2000: Morocco*, CRC/C/93/Add.3 (12 February 2003), para 215.

could readily see this when the deportees themselves could not understand what was happening to them or comprehend the statements they were being given to sign.

It is important here to define criminal proselytism both under Moroccan and international law. Proselytism is defined in the Moroccan Penal Code under Article 220³⁴. It requires the exploitation of a Muslim's weaknesses or needs with an aim to changing their religious faith or the use or threat of violence or seduction to prevent a Muslim from practicing his religion. Unlawful proselytism is defined in international law as the use of undue influence or manipulation to coerce someone into membership to the religious or belief group of the one who is proselytizing. International law dictates that simply living out one's faith, however, is a recognized and necessary manifestation of freedom of belief.³⁵ Any restrictions on the right to hold a religious belief must meet a pressing social need and must be necessary in a democratic society.³⁶ Bearing witness to one's faith in deed, however, is bound up with the very existence of religious conviction.³⁷ The fact that the workers themselves self-identified as Christians, worshiped privately amongst themselves, had Christian materials to nurture their faith and provided charitable work as a manifestation of their faith have no relationship to illegal proselytism; rather they are core values protected by the freedoms afforded to all regarding religious belief under Moroccan and international law.

These manifestations of faith are protected under Article 6 of the Moroccan Constitution: "Islam shall be the state religion. The state shall guarantee freedom of worship to all."

Additionally, Article 18 of the International Covenant on Civil and Political Rights, to which Morocco is a party, guarantees the rights of manifestation of religious belief and the right to

³⁴ *Supra* n. 6.

³⁵ ECHR, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A, no. 260-A.

³⁶ ECHR, *Larissis v. Greece*, judgment of 24 February 1998, Reports 1998-I, 362.

³⁷ *Kokkinakis v. Greece, op. cit.*, para. 31.

believe. This is echoed by Article 18 of the Universal Declaration of Human Rights. These rights are further bolstered by the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief.³⁸ Article 6 in particular defines what respect for the manifestation of religious belief entails and includes the right to worship and freedom of assembly for this purpose; the right to establish and maintain charitable organizations; and the right to acquire and use religious materials related to one's faith.³⁹ Every activity of the Village of Hope, falls within these enumerated protections recognized in Moroccan and international law.

Illegal proselytism requires improper pressure being placed on someone who would require special protection as a result of their mental or emotional capacities, or because of inferiority of bargaining power.⁴⁰ Proselytism of this sort has never occurred at the Village of Hope. Apart from the inability of the deportees to proselytize because of language shortcomings, the Village of Hope maintained a staff of local Moroccans. The children were educated under the Moroccan curriculum and its teaching on Islam. Every aspect of the black letter of the law was strictly adhered to by the deported Village of Hope workers.

In addition to the legal prohibition against discrimination because of religious affiliation, the rights to be free from arbitrary detention or sentence and to maintain the inviolability of the home and secret correspondence is further guaranteed to all.⁴¹ These rights, including the freedom to worship, are separable from other articles of the Constitution provided only to citizens, and are expressly enjoyable by all resident in Morocco. These collective rights were

³⁸ UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, available at: <http://www.unhcr.org/refworld/docid/3b00f02e40.html> [accessed 25 May 2010].

³⁹ *Id.*

⁴⁰ Article 220, Moroccan Penal Code.

⁴¹ Royaume du Maroc [Constitution], art. 10-11 (Morocco, 1996).

violated by officials, acting in blatant disregard of Moroccan law, in the investigation of Village of Hope without the provision of any warrant. Among these violations were the warrantless searches of the private apartment of the deportees, the confiscation of private property including personal religious materials and the photocopying of Village of Hope documents and correspondence. These searches were begun on the weekend in the evening and continued through the entire night until early morning. They were done without warning and with the frequent assurance that nothing was wrong and that they were not being investigated. Through the late night and unexpected visits, the Village of Hope workers were kept without sleep and helpless to the whims of the police officers performing the investigations. Only when the deportees were told that they were being expelled at the end of this process, did they finally find out what was happening to them.

Conclusion

The Alliance Defense Fund reasserts the illegality of the mass expulsions of the Village of Hope deportees under Morocco's domestic law and its international treaty obligations.

As a result of the deportations and the manner in which they were executed contrary to the law, the deportees lost their ability to challenge the deportations from within the country, suffering an unnecessary and traumatic separation from the children in their care. Reciprocally, the children themselves suffered irreparable damage to their emotional well-being as a result of the sudden and inexplicable deportation of the above-named applicants.

For the reasons set forth above, the unlawful deportations of the foreign Village of Hope workers cannot be allowed to stand. The deportees should, without prejudice, be allowed to return to Morocco under their previous visa status.