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Spain

The Southern Border

The State turns its back on the human rights of refugees and immigrants

Amnesty International's work on refugees and asylum-seekers forms part of its work fighting for the protection of Human Rights throughout the world. A key priority is to prevent the return of any person to a country where s/he runs the risk of being subjected to grave human rights violations. To this end, Amnesty International intervenes in favour of thousands of asylum-seekers who risk being returned to countries where their basic human rights may be violated. As part of this work, Amnesty International requests governments all over the world, including the Spanish government, to ensure that asylum-seekers have access to a fair and satisfactory asylum procedure that adequately identifies and protects those who are in danger of being subjected to human rights violations.

1. Introduction and methodology

Refugees are invisible in Spain. In public, the government and the media refer to them and to the asylum-seekers and irregular migrants who arrive at Spain's Southern border (Ceuta, Melilla, Andalusia and the Canary Islands) as "illegal", clandestine or economic migrants. Not often do the Spanish press or government bodies speak of the need to protect refugees. For example, when speaking in the Congress of Deputies in October 2004, Spain's Secretary of State for Immigration and Emigration hardly mentioned asylum-seekers or refugees. Her speech focused on the Spanish government's efforts to stem the flow of irregular migration from the South¹. People who were attempting to enter Spain by its Southern border were referred to as "irregular" migrants, without mentioning the possibility that some of them may, in fact, be fleeing persecution and grave violations of human rights.

¹ See: *Diario de Sesiones del Congreso de los Diputados. Comparecencia de la señora Secretaria de Estado de Inmigración y Emigración. Sesión nº 14*, (Verbatim record of the sittings of the Congress of Deputies. Speech by the Secretary of State for Immigration and Emigration. Sitting No. 14.) Thursday 14 October 2004. p.13 et seq. (at www.congreso.es).

Amnesty International is not opposed to governments - including the Spanish government - controlling immigration and recognizes that it is entitled to regulate the entry of foreign nationals onto its soil. However, the organisation has investigated and supervised asylum and immigration policies in Spain and other European countries over recent years and concluded that governments – by focusing almost exclusively on immigration control – have undermined the protection of refugees. It has condemned the situation and the erosion of the rights of asylum-seekers throughout Europe and, in particular, the fact that they are returned to third, supposedly “safe”, countries². All of this has caused a worrying reduction in the protection of those who continue to flee human rights violations throughout the world.

In Spain, in September 2001, the organisation published a report (*El asilo en España: Una carrera de obstáculos – Asylum in Spain: An obstacle course*), in which it expressed its concern about policies and practices that prevented many people reaching Spain and seeking asylum.³ It also set out the problems encountered during the asylum process by those who were granted asylum and showed how persons who were refugees were not adequately or effectively identified. Similarly, it expressed alarm at the small number of applications and the even smaller number of cases in which refugee status was granted by the Spanish government.

Since then, the number of applications for asylum has continued to fall and Spain has one of the lowest per capita rates in the European Union: one application for every 10,000 residents.⁴ In addition, Spain is also unusual in that it is one of the Member States with the lowest percentage of cases of granting asylum. The number of cases where refugee status has been granted has fallen continually in recent years⁵:

² For Amnesty International’s concerns about asylum in Europe, see Amnesty International www.amnesty-eu.org.

³ Asylum-seekers faced considerable obstacles when they travelled by sea or air or when they arrived at Spanish embassies in other countries or in the towns of Ceuta and Melilla.

⁴ During 2003, Austria received 40 applications for every 10,000 residents, France and the United Kingdom 10 and Germany 6. See *Asylum Levels and Trends in Industrialized Countries: Third Quarter, 2004* (UNHCR), Table 1.

⁵ There has been an increase in alternative protection cases, of which there were 66 in 2001, 126 in 2002, 142 in 2003 and 190 in 2004 (source: OAR (*Oficina de Asilo y Refugio*); 2004 data provisional).

	Applications for asylum	Status	%
2001	9,490	278	11
2002	6,309	157	9
2003	5,918	215	8.05
2004 ⁶	5,544	166	2.9

Source: Oficina de Asilo y Refugio (OAR)

Complaints of ill-treatment of refugees, asylum-seekers and immigrants on the part of the Spanish authorities also continue to be made. In its 2002 report (*Spain: Crisis of Identity: Race-related Torture and Ill-treatment by State Agents*), Amnesty International documented cases of ill-treatment of unaccompanied minors in Ceuta and Melilla, of foreign nationals and members of ethnic minorities (such as Roma) during “identity” checks or at police stations. It also highlighted the excessive use of force when expelling foreign nationals⁷.

One year later, the organisation published a report on the reform of legislation on aliens, in which it reiterated its concern about the impact that the proposed changes in relation to migration control could have on the protection of refugees who flee to Spain. It also condemned the significant limitations that the new aliens law imposed on the effective protection of the human rights of migrants, as well as the worrying increase in complaints of racist or xenophobic behaviour⁸.

Spain’s policy with regard to refugees, asylum-seekers and migrants has also been criticized by other human rights organizations. For instance, in 2002, Human Rights Watch condemned the treatment of foreign minors, migrants and asylum-seekers by the Spanish authorities as well as the failure on the part of Spain to meet its obligations under international human rights instruments.⁹ Médecins sans Frontières (hereafter MSF), which provides assistance to foreign nationals who arrive at the

⁶ The 2004 data are provisional, taken from the *Boletín de Asilo* del MIR nº 53, December.

⁷ AI Index EUR 41/001/2002.

⁸ See, for example, Amnesty International: “¿Somos todos iguales ante la ley? Preocupaciones y recomendaciones de Amnistía Internacional al proyecto de reforma de la ley de extranjería”; “España: Oportunidades perdidas y mejoras insuficientes en materia de derechos humanos. Recomendaciones de AI a la reforma del Reglamento de Extranjería”, “España: Mujeres invisibles, abusos impunes”, etc.

⁹ See Human Rights Watch: *Discretion without Bounds: the arbitrary implementation of Spanish Immigration Law* (2002); *Nowhere to turn: State abuses of unaccompanied Migrant Children by Spain and Morocco* (2002); *The other Face of the Canary Islands: Rights violations against Migrants and Asylum Seekers* (2002). <http://www.hrw.org/spanish/espana.html>;

Southern border of Spain and the Canary Islands, has reached similar conclusions.¹⁰ The French non-governmental organization (NGO) *Cimade*, for its part, recently published a report on the situation of sub-Saharan immigrants on their journey through Morocco to Spain and other countries of the European Union (EU).¹¹ In addition to strongly criticising the Moroccan authorities, it condemned the Spanish authorities' practice of unlawfully expelling foreign nationals in Ceuta and Melilla without giving them access to the asylum-seeking process to determine whether they are fleeing human rights violations and require protection. Similarly, the *Comisión Española de Ayuda al Refugiado* (Spanish Commission for Assistance to Refugees, hereafter CEAR) has repeatedly shown concern in its annual reports at the lack of protection for refugees fleeing to Spain.¹²

Various bodies of the United Nations system have also visited Spain to investigate the treatment of refugees, asylum-seekers and immigrants. After her visit to Spain in 2003, the Special Rapporteur on the human rights of migrants showed her concern at the lack of respect shown by the Spanish authorities for the guarantees and rights that the law attributes and recognizes with regard to migrants, in particular in the context of interception, returns, expulsion and detention, and the absence, or inadequacy, of legal assistance, leaving them with no protection in the face of possible abuses and violations of human rights.¹³ For its part, the delegation in Spain of the United Nations High Commissioner for Refugees (UNHCR) frequently travels to the Southern border to monitor the situation of refugees and asylum-seekers and has, on several occasions, expressed its concern at the reception conditions and at the lack of access to adequate procedures for asylum-seekers.¹⁴

The European Commission against Racism and Intolerance (ECRI), in its second report on Spain, also demonstrated its concern about the difficulties encountered by foreign nationals in accessing the asylum-seeking process in the Canary Islands, Ceuta and Melilla.¹⁵

This concern is further documented in the annual reports of the Spanish Ombudsman, which have been very critical of the Spanish authorities at the lack of fair and

¹⁰ See MSF: *Deficiencias en las Condiciones de Acogida de Immigrants y Asylum seekers; El Caso de Ceuta and Melilla* (2003).

¹¹ See CIMADE: *La Situation Alarmante des Migrants Subsahariens en Transit au Maroc et les Conséquences des Politiques de L'Union Européenne* (2004)

¹² See CEAR: *Informe 2003: La Situación de los Refugiados en España* (2003), and *Informe 2004: La Situación de los Refugiados en España*.

¹³ See *Specific Groups and Individuals: Migrant Workers. Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2003/46 of the Commission on Human Rights*, E/CN.4/2004/76/Add.2 (14 January 2004).

¹⁴ UNHCR: *UNHCR Concern on Ceuta Conditions*, 21 November 2003, <http://www.unhcr.ch>.

¹⁵ ECRI: *Second report on Spain*, December 2002, para. 12.

adequate legal procedures, and for the failure to provide asylum-seekers and immigrants with reception conditions –social, medical and legal– consistent with the commitments entered into by Spain by virtue of international human rights law.¹⁶

Unfortunately, in spite of the reports and recommendations of all these bodies, serious problems persist, because Spain continues to fail adequately to identify persons who are fleeing human rights violations. This could mean that in some cases there may be violation of the “principle of *non-refoulement*” enshrined in international human rights legislation.

1.1. Definition of refugee and of the principle of non-refoulement

Persons fleeing persecution in their country of origin are entitled to protection as refugees under the 1951 United Nations Convention relating to the Status of Refugees, (hereafter the 1951 Convention), and its 1967 Protocol.¹⁷ Most of the countries that have ratified these treaties, including Spain, have promulgated national laws, standards and procedures on asylum.¹⁸

Under the 1951 Convention, a refugee is any person who:

[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹

It is important to stress that a person is a refugee if s/he meets the criteria set out in the 1951 Convention, something which necessarily occurs before that person is formally recognized as a refugee.²⁰ It is, therefore, essential that States should have asylum processes that correctly identify persons fleeing persecution and human rights violations in their countries.

¹⁶ See *Informes Anuales del Defensor del Pueblo a las Cortes Generales*.

¹⁷ United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol, ratified by Spain in 1978.

¹⁸ Asylum is a process whereby anyone fleeing persecution seeks protection *after* arriving in another country.

¹⁹ Article 1.2 of the Protocol, incorporating, by reference, article 1.A.(2) of the 1951 Convention.

²⁰ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 28 (Geneva, 1992).

One of the cornerstones of the international arrangements for the protection of refugees is the principle of *non-refoulement* set out in the 1951 Convention and in other human rights treaties (such as the European Convention on Human rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union)²¹. This is a widely-accepted principle of international customary law which is regarded as binding on all States, whether or not they have signed the international treaties on refugees. The principle establishes that States - including Spain - may not send anyone to a country where they may suffer persecution or run the risk of losing their life, or being subjected to torture or to cruel, degrading or inhuman treatment.

The 1951 Convention also sets out a series of rights for refugees such as the right to education, freedom of movement, employment, housing and social security²². The Spanish State consequently has important international obligations towards political refugees and asylum-seekers. However, as has been mentioned above, many of the discredited policies and practices that prevent the adequate identification of persons who are fleeing human rights violations still exist in Spain. Amnesty International decided to launch an investigation to determine what protection refugees, asylum-seekers and immigrants currently receive in Spain. Specifically, this report focuses on what happens when they arrive in Ceuta, the Canary Islands and the coast of Andalusia, especially in relation to the following aspects: circumstances of their arrival, reception facilities, legal and interpreting assistance and information; and access to the asylum process, the determination of nationality and expulsion procedures. It is based on the investigation carried out by Amnesty International in 2004, in Ceuta, Algeciras and the Canary Islands.²³

The report is divided into four parts, plus the Introduction. Section II focuses on the principal concerns of AI in relation to asylum-seekers, refugees and migrants in Ceuta, while Section III studies what happens to these groups in the Canary Islands,

²¹ European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), ratified by Spain in October 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Spain in 1987; International Covenant on Civil and Political Rights (ICCPR), ratified in April 1977.

²² Articles 22, education; 28, travel documents; 17 and 18, employment; 21, housing and 24, social security, of the Convention.

²³ When investigating human rights abuses, Amnesty International takes great care never to rely on a single source of information. The organisation always endeavours to verify data, gathering information from as many sources as possible. To this end, interviews were conducted with national and local officials and police officers, as well as more than 50 with refugees, asylum-seekers and other migrants in cooperation with representatives of different NGOs. AI also met officials and personnel of the UNHCR, NGO personnel and religious representatives who work directly with migrants.

and Section IV, on the coast of Andalusia. Section V contains the conclusions of the investigation and includes a list of recommendations for the Spanish authorities and other bodies.

2. What happens to people who seek protection in Ceuta

For a long time, Amnesty International has expressed its concern that migration controls - imposition of visas, fines on haulage companies, immigration controls in countries of origin, etc. - are preventing asylum-seekers reaching Spain, compromising their right to an assessment of whether they require protection as refugees. They are also the reason why many people go to underground immigrant trafficking networks and try to enter Spain, and Europe, by the North African towns of Ceuta and Melilla, where they join a large population of foreign nationals.

This section focuses on the shortcomings detected in the protection of asylum-seekers and respect for the rights of migrants in Ceuta. The town is located on the north coast of Morocco, just 14 kilometres from the Spanish peninsula, covering an area of 20 square kilometres and has a population of approximately 72,000. Under Spanish legislation on 'aliens', Moroccan nationals living in the province of Tetuán – neighbouring on Ceuta – can enter Ceuta for work purposes, or to shop. However, nationals of other countries, mainly sub-Saharan Africans, are required to have a visa to enter Spain, which is why they try to enter under cover.

2.1. The journey to Ceuta

Many of the people who arrive at the Moroccan frontier with Ceuta are from countries where grave human rights violations take place, such as Algeria, Côte d'Ivoire, Congo, Iraq, Liberia, Democratic Republic of Congo, Sudan, and so on.²⁴ Some of them decide to abandon their homes, communities and countries because they suffer persecution and fear for their lives, for the lives of their children or their loved ones. Others are obliged to do so for social or economic reasons.

They travel for years across the African continent and the Sahara desert, suffering great hardship along the way. They spend time in refugee camps in gruelling conditions, with no prospects for the future. Others go hungry, surviving by begging or working in towns along the way.²⁵ In many cases, they try to save money to pay the networks of human traffickers. It is reported that many more die or suffer grave human rights violations on the journey (ill-treatment, torture, arbitrary detention, 0

²⁴ Data on the nationality of asylum-seekers in Ceuta, source OAR. For the human rights situation in those countries, see www.amnesty.org.

²⁵ S.O., a young man from Gambia who travelled for more than a year before reaching Ceuta, told AI that he had lived for eight months on the streets in Rabat, where he had begged for food. November 2004, February 2005.

Foreign nationals hide in Bel Younes wood, on Moroccan soil, waiting for an opportunity to enter Ceuta. ©APDH.

When they reach the Moroccan border to try crossing into Ceuta under cover, they tend to gather in the area known as the Bel Younes wood, on Moroccan territory²⁶, where it is estimated that 500-800 foreign nationals gather habitually. According to the CIMADE report, the majority are young men, 42% of whom are between 26 and 30. They come from the Democratic Republic of Congo (36.8%), Cameroon (12.6%), Côte d'Ivoire (12.6%), Mali (8.4%) and Senegal (8.4%). 57.8% of those interviewed by CIMADE stated spontaneously that they had abandoned their country because of political persecution or war and the remainder cited economic reasons.²⁷

Few NGOs have access to this wooded area, but those who do condemn the inadequate living conditions and violent incidents that occur. Of particular concern are the complaints about the situation of women. Some women suffer sexual violence and others have been obliged to prostitute themselves to pay the cost of the journey and clandestine entry. Some are victims of the trafficking networks that bring them to

²⁶ There are other clandestine camps around Melilla (Mount Gurugú) or on the border with Algeria (Oujda), Tangiers (Mesnana), el Aaiún and Dajla in the Sahara. See the CIMADE report.

²⁷ Of 95 interviews that took place in July 2004. See the CIMADE report, November 2004, pp. 12-18.

Europe where they will be exploited sexually.²⁸ There have also been complaints of ill-treatment and human rights violations on the part of members of the Moroccan security forces against foreign nationals living in Bel Younes. Specifically, CIMADE condemns the pressure being brought to bear on Morocco from the European Union to control immigration. This pressure may have aggravated the situation of the foreign nationals in the woodland “provoking a policy of *refoulement* on the part of the Moroccan authorities to the detriment of the international protection of refugees”.²⁹ There have also been reports of the illegal expulsion by the Moroccan authorities of foreign nationals to Algeria.

A. S., from Mali, abandoned his home in June 2001 to head north. During the journey, he stopped in different places to work as a tailor, which is his occupation. In August 2004, he reached a wood on the outskirts of Ceuta and was planning to climb over the railings when some Moroccan soldiers arrived, carried out a raid and took him and many others to the border with Algeria. A. S. returned on foot and, 22 days later, arrived at Bel Younes. Again, the soldiers arrived and again they expelled him illegally to Algeria. The second time, he took 25 days to get back, arriving very tired and with little food or water. In October 2004, he managed to get into Ceuta after paying someone to do the crossing with him by sea, swimming.³⁰

There is no procedure for this type of expulsion, where those being expelled receive no legal assistance or interpreter and there is no identification or protection of persons fleeing human rights violations. It is reported that expulsions of this nature have increased due to pressure exerted by the European Union on Morocco to control its borders.

In this connection, the organisation has received complaints that, in February 2005, the raids by the Moroccan authorities on the Bel Younes wood had increased and the situation of those living there had significantly worsened because, wishing to remain there in hiding, they have little access to food and water. There has also been an increase in complaints of ill-treatment or expulsions to Algeria by members of the Moroccan security forces.

AI recommends that the Moroccan and Spanish authorities guarantee that migration control fully respects the migrants’ human rights, without compromising the right to protection of those fleeing human rights violations.

²⁸ Amnesty International interviews with NGO representatives who have access to the wood, November 2004.

²⁹ See the CIMADE report, November 2004.

³⁰ AI Interview with A.S., November 2004.

Amnesty International has expressed its concern on more than one occasion at the current policy of the European Union - and its Member States - of signing agreements with “transit” third countries to control immigration: Re-admission and Association Agreements. The overarching logic of that policy within the “external dimension” of the Common European Asylum System³¹ is that transit countries, backed by the European Union, should increase their capacity to control their borders and thus limit secondary movements of asylum-seekers and immigrants into the European Union. This could go against the national and international obligations of Member States with regard to refugees, in particular the principle of *non-refoulement*.³²

Another proposal in the context of the European Union giving cause for concern involves the creation of closed centres for migrants in transit and asylum-seekers in transit countries. This proposal was put forward initially by the United Kingdom in June 2003 and was strongly criticized by human rights NGOs and some States - Germany, France and Sweden - with the result that it was not approved by the European Council. Amnesty International expressed its grave concern with regard to the repercussions the initiative could have on the system for the international protection of refugees. Its principal objective was to reduce the number of people arriving in an ad hoc manner in Member States of the European Union by denying access to the territory and transferring asylum-seekers to processing centres where responsibility, compliance with standards and accountability for the protection of refugees would be more limited, less effective and less transparent.³³

Amnesty International is concerned that, in recent months, the governments of Italy and Germany have proposed the creation of transit camps for refugees and migrants in North African countries such as Algeria, Morocco, Tunisia, etc. Amnesty International welcomes the Spanish government’s opposition to the proposal and recalls that all policies developed in this area must guarantee strict compliance with standards of international law in relation to human rights and refugees.

Amnesty International also urges the European Commission, Spain and the other Member States of the European Union to set out their respective positions on the “external dimension” of asylum and disassociate themselves unambiguously from the traditional “carrot and stick” approach - in association with transit countries - which

³¹ This has become a priority in the second stage of the creation of a common European asylum system.

³² See, for example, Amnesty International, European Union Association: *More resources for human rights: a ten-point program for the Luxembourg Presidency of the European Union*, AI Index: IOR 61/028/2004, p. 8, or *Threatening refugee protection. Amnesty International’s Overall Assessment of the Tampere Asylum Agenda*, July 2004, p. 16.

³³ See Amnesty International: *UK/EU/UNHCR: Unlawful and Unworkable - Amnesty International’s views on proposals for extra-territorial processing of asylum claims* (AI Index: IOR 61/004/2003).

has proved to be ineffective in terms of regulating irregular migration and prejudicial in terms of affording protection to refugees.

2.2. What happens when they arrive?

Asylum-seekers and migrants who arrive in Ceuta without documentation do so in one of the following three ways. Some arrive by sea in *pateras*³⁴ and others swim from Benzu, a small Moroccan village neighbouring on Ceuta, for which the trafficking networks charge between 500 and 1,000 euros³⁵. According to the *Asociación Pro Derechos Humanos de Andalucía* (Human Rights Association of Andalusia, hereafter APDH-Andalucía), two people died in 2004 attempting to swim into Ceuta.³⁶ On 14 February 2005, this same organisation and *SOS Racismo* (SOS Racism) claimed that another five people had died in the same way.³⁷

The great majority of foreign nationals, however, try to get in by a third way: scaling the fence at the frontier. This is a long, double metal fence, with barbed wire, 2.7 metres high, which extends the length of the frontier with Morocco and is equipped with watch towers and cameras, infrared rays and fibre optic thermal sensors. A road runs through the middle for use by patrols of Civil Guard and army patrols, who keep a permanent watch on the frontier.³⁸

Some who try to cross are injured as they climb the barbed wire, shredding their hands, arms or feet.³⁹ According to information from the Civil Guard and quoted by APDH-Andalucía, during 2004 around 50,000 attempts to climb over the fence at Ceuta and Melilla are said to have been foiled⁴⁰. Riot-control gear is used for this purpose, together with shots into the air. Some do manage to climb over the fence, but many are intercepted by the Spanish authorities, either at the fence itself or close to it.

³⁴ These are small wooden boats, usually with the capacity to carry a maximum of 25 people. According to data gathered by the *Ministerio de Trabajo* (Ministry of Employment), 15 vessels were intercepted in Ceuta in 2002 (241 persons), five in 2003 (63 persons) and 118 in 2004 (288 persons).

³⁵ AI interviews with migrants in Ceuta, November 2004.

³⁶ Another four in Melilla. APDH Andalucía: *Informe sobre la inmigración clandestina durante el año 2004*, 2004, pp. 4-9.

³⁷ SOS Racismo and APDH-Andalucía press release.

³⁸ APDH-Andalucía, *Informe sobre la inmigración clandestina durante el año 2004*, p. 12. According to the report, the fences are to be raised to over six metres and the perimeter road is to be extended.

³⁹ P. M. showed AI his hands. November 2004.

⁴⁰ APDH-Andalucía: *Informe sobre la inmigración clandestina durante el año 2004*. p. 11

Number of immigrants without documentation intercepted at the Ceuta border (2000-2004)⁴¹

2000	2001	2002	2003	2004*
47,005	42,102	37,661	25,536	6,790

Source: 2.-Civil Guard Station in Ceuta. * Data relate to September 2004

As the table shows, the number of immigrants intercepted appears to have fallen significantly in the past three years, particularly in 2004. The local government attributes this to improvements made to the border perimeter, effective operation of the SIVE programme⁴², an increase in the number of personnel devoted to border control and, above all, the recent collaboration between the Moroccan and Spanish authorities in relation to immigration control.⁴³

Spain signed a Re-Admission Agreement with Morocco in 1992⁴⁴ to return foreign nationals entering Ceuta illegally, especially if they are Moroccan. The agreement does not contain any of the elements that Amnesty International considers essential to guarantee full compliance with the principle of *non-refoulement*. It contains no guarantees that the person returned to Morocco will be protected from torture or ill-treatment, or that they will not be subjected to arbitrary detention. Nor does it guarantee that, if they wish to seek asylum, they will have access to a fair and effective procedure to determine their status as refugees; or that they will be protected from being returned to a country where they may be the victim of human rights violations. It does not, either, guarantee that, if that person is a refugee, s/he will have access to sufficient subsistence resources to maintain an adequate living standard or access to durable solutions. Spain has signed similar re-admission agreements with countries such as Nigeria⁴⁵ Mauritania,⁴⁶ Guinea Bissau⁴⁷ and Algeria.⁴⁸ Amnesty

⁴¹ *Delegación de Gobierno in Ceuta: Situación de la Inmigración Irregular en Ceuta.(2004)*

⁴² *Sistema Integrado de Vigilancia Exterior* (Integrated External Surveillance System) (SIVE). See below, in Section III, Canary Islands.

⁴³ *Delegación del Gobierno in Ceuta: Situación de la Inmigración Irregular en Ceuta.(2004)*

⁴⁴ Signed on 13 February 1992, BOE (Spanish Official Gazette) of 25 April 1992 and 30 May 1992.

⁴⁵ Agreement between the Government of the Kingdom of Spain and the Government of the Federal Republic of Nigeria on Immigration Matters (12 November 2001), BOE no. 232, 21 December 2001. According to the *Subdirector General del Gabinete Técnico de la Dirección General de la Policía* (Under-Director General of the Technical Office of the General Police Authority) the agreement is, temporarily, not being applied. Letter of 21 December 2004.

⁴⁶ Agreement between the Kingdom of Spain and the Islamic Republic of Mauritania on Immigration Matters dated 1 July 2003, BOE no. 185, 4 August 2003.

⁴⁷ Agreement between the Kingdom of Spain and the Republic of Guinea Bissau on Immigration Matters, 7 February 2003, BOE no. 74, 27 March 2003.

International urges the Spanish government to incorporate all these elements into its bilateral agreements with third countries on immigration control. The UNHCR has also stated that re-admission agreements do not, as a rule, concern themselves with the needs of asylum-seekers and ought to be amended to ensure that they include guarantees against *refoulement* and give access to procedures that are consistent with international standards.⁴⁹

Despite the agreement, until recently the Moroccan government did not, as a rule, permit the return of non-nationals into its territory. In such cases, Spanish legislation on aliens makes provision for two methods of returning foreign nationals who do not have the appropriate documentation to remain in Spain: expulsion or return. The second is the accelerated return applicable to: 1) foreign nationals intercepted at the moment of irregular entry into Spain whether at the fence, in the small boats, or at sea; and 2) persons previously expelled from Spain.⁵⁰ The expulsion process is used when a foreign national without documentation is found on Spanish soil. In both cases, Spanish law states that such persons are entitled to legal assistance and an interpreter and, if they seek asylum, their expulsion should be suspended until a decision is reached concerning that application.⁵¹

Amnesty International recognizes the right of the Spanish government to regulate the entry of foreign nationals onto its soil. It is concerned, however, that migration control measures in Ceuta and Melilla could prevent persons fleeing human rights violations reaching Spain to seek asylum. In this respect, mention has already been made of the fact that many foreign nationals intercepted at the frontier at Ceuta come from countries where grave human rights violations take place.

The organisation is also seriously concerned that, despite all of the complaints made by different international bodies and NGOs for the defence of refugees, violations such as those set out below continue to occur in Ceuta. These are:

⁴⁸ Protocol between the Government of Spain and the Government of the People's Democratic Republic of Algeria on the movement of persons, signed *ad referendum* in Algiers and signed on 31 July 2002.

⁴⁹ UNHCR: *Composite Flows and the Relationship to Refugee Outflows, including Return of Persons not in Need of International Protection, as well as Facilitation of Return in its Global Dimension*, EC/48/SC/CRP.29 (25 May 1998), paras. 18, 19. <http://www.acnur.org/biblioteca/pdf/2251.pdf>.

⁵⁰ Art. 58 of Organic Law 4/2000, amended by LO 8/2000 and 11/2003, Law on Aliens, and art. 157 of the *Reglamento de Extranjería* (Regulations governing Aliens) approved by RD 2393/2004 of 30 December.

⁵¹ Arts. 26.2 and 63.2 of the Law on Aliens; art. 131 of the Regulations governing Aliens.

2.2.1. Clandestine expulsion of foreign nationals

As a rule, when foreign nationals enter Spain in an irregular way, they try to avoid the Spanish authorities so as not to be expelled. However, in Ceuta, their aim is to get to a police station to “register” with the National Police.⁵² In so doing, they hope to avoid what it is claimed has been taking place for years: the clandestine expulsion of foreign nationals.⁵³ As long ago as September 2001, Amnesty International, along with other organizations, condemned the fact that the Spanish security forces were detaining foreign nationals in the streets of Ceuta or in the woods surrounding the town. They were then taken to the border fence, where they were expelled into Morocco through gates in the fence, the purpose of which is not known, since there is no border post at that point. Such expulsions were unlawful, since they did not follow the procedure established by law, give those concerned access to counsel or an interpreter or permit them to request asylum.

Different sources state that this type of expulsion has been a frequent occurrence in the past two years.

In June 2004, 10 sub-Saharan Africans arrived at a local NGO in Ceuta. Afterwards, they went to eat at the *Cruz Blanca*. When they had finished eating, they were detained by the police as they left the premises and never seen again. It is suspected that they were illegally expelled.

In October 2004, members of the Civil Guard approached two men from Mali who were waiting in the Immigration Office in Ceuta to “register” their arrival in the town. They were taken away and, according to their statements, were expelled illegally to Morocco.

Throughout 2004, Amnesty International received complaints of at least 50 expulsions of persons from Côte d’Ivoire, Mali, Republic of Congo, Guinea Conakry, Democratic Republic of Congo, Ghana, Burkina Faso, Benin and Sierra Leone.⁵⁴ Some also complained, in addition, of having been mistreated by members of the Civil Guard:

A national of Mali said that on 26 May 2004 he got to Ceuta by climbing over the fence. He had a bad fall and lost consciousness. Members of the Civil Guard arrived and poured water over his head, then hit him several times with a gun. When they realized that he could not move, they took him to hospital. When he regained consciousness, and despite the fact that he could not stand

⁵² AI interviews with NGO representatives and migrants, March and November 2004.

⁵³ Amnesty International: *Asylum in Spain: An Obstacle Race*, pp. 43 and 44.

⁵⁴ Amnesty International has received statements from 50 people that they were illegally expelled from Spain over the fence during the recent year.

up, state agents took him back to the fence and made him go back to Morocco.⁵⁵

Amnesty International has also received complaints of cases where people have been obliged by the Civil Guard to take off their clothes and shoes at the fence, then cross it naked. In some cases it is claimed that, on occasion, members of the Civil Guard had fired rubber bullets to oblige them to climb over the fence. At least one person said that a bullet grazed his head, wounding him.⁵⁶ Almost everyone said that their documentation had been taken from them, including documentation issued by the Immigration Office or the National Police. Complaints of the illegal expulsion of foreign nationals were also made in Melilla.⁵⁷

The total number of people who have been secretly expelled is not known, nor is the presence of refugees fleeing human rights violations who were entitled to request asylum among them. Amnesty International would like to recall that that right is recognized in article 14 of the Universal Declaration of Human Rights of 1948. This also contravenes Spanish legislation on ‘aliens’ and the right of all foreign nationals to be assisted by a lawyer in all entry or expulsion proceedings.

There was a particularly serious incident where members of the Civil Guard expelled to Morocco a woman who was five months pregnant. The woman had got into Ceuta by going over the fence and she injured herself as she was climbing. State agents intercepted her and took her to a medical centre where she remained for five days. When she was discharged, the state agents took her to the fence and expelled her to Morocco, where her child was born and where she is living at present.⁵⁸

This case gives particular cause for concern because the authorities did not investigate whether the woman had been the victim of gender-based violence previously, or whether she was entitled to refugee status. As we have already indicated, some women are the victims of sexual violence, either during the journey to Ceuta or in the Bel Younes wood in Morocco. In addition, Spanish legislation states that pregnant women should not be returned “when such action could pose a risk for the pregnancy or for the health of the mother”, which could have been seriously compromised in this case.⁵⁹

Amnesty International considers it to be of serious concern that complaints continue to be made of the illegal expulsion of foreign nationals in secret across the border with

⁵⁵ Statement of D. S., May 2004.

⁵⁶ Statement of S. I., from Côte d’Ivoire, May 2004.

⁵⁷ Colectivo SUR: Press release of 18 February 2005.

⁵⁸ Claims made by SOS Racismo, which will appear in their 2005 annual report.

⁵⁹ Art. 57.6, Law on Aliens.

Morocco. Amnesty International urges the Spanish government to launch an investigation and publish the results, to punish those responsible and to guarantee that a final stop will be put to such practices which so flagrantly contravene international human rights legislation.

2.2.2. Illegal expulsion of asylum-seekers

Especially serious is the clandestine expulsion of asylum-seekers. In its 2001 report, Amnesty International also condemned the fact that, in some cases in Ceuta and Melilla, people had been expelled who had requested asylum, although because of delays in accessing the asylum process, their application had not been formalized.⁶⁰ Such expulsions are in flagrant contravention of the Spanish government's obligations with regard to international legislation on refugees.

Since then, there have been further complaints from asylum-seekers, who claim they have been clandestinely expelled. For example:

In November 2003, S. F., a man from Gambia, was detained by state agents who took him to the border fence with Morocco. Before expelling him on the other side, they tore up his documentation, including the appointment to formalize his asylum application. The next day, he was detained close to the fence by a Moroccan patrol and taken to Oujda, where he was abandoned in a desert area near the border with Algeria⁶¹.

A further expulsion of asylum-seekers took place on 28 December 2004.

Exactly as claimed by organizations such as CEAR and SOS Racismo⁶², the Civil Guard detained 10 asylum-seekers⁶³ during a raid on the Colegio de San Antonio, an educational institution in Ceuta where they had been temporarily lodged. It appears that seven of them were expelled over the border in secret. The other four avoided expulsion and complained of ill-treatment by the Civil Guard.⁶⁴ Amnesty International and other organizations demanded that the government investigate the facts; the State Public Prosecutor and the Ombudsman, for their part, opened an investigation. To date, the results of this investigation are not known.

⁶⁰ See Amnesty International report: "Asylum in Spain: An obstacle race", p. 41, 2001.

⁶¹ MSF claim.

⁶² See, for example, CEAR press release of 12 January 2005.

⁶³ Two of them were from Ghana (and had the initials T.A. and B.P.), two from Gambia (C.N. and D.S.), one from Liberia (E.V.) and one from Sudan (B.T.).

⁶⁴ Three nationals of Ghana, I.J., E.I., J. I., and one of Sudan, A.A., whose application for asylum had been admitted.

Amnesty International has again and again vigorously condemned expulsions that flagrantly contravene international law on refugees, which prohibits the expulsion of asylum-seekers. Such practice also violates Spanish legislation, which states that no asylum-seeker may be expelled until his/her application has been deemed inadmissible. Consequently, the organisation urges the Spanish government to investigate these events in full, in order to ascertain whether there is any truth in these claims and, if so, to prosecute the alleged perpetrators.

Similarly, the organisation calls on the Spanish government to put an immediate stop to this type of practice so that no further expulsions of asylum-seekers take place, since such action flagrantly violates the principle of *non-refoulement*.

2.2.3. Illegal expulsion of minors

Amnesty International has also, in the past, condemned the inadequate protection afforded by the Spanish authorities to unaccompanied foreign minors. In previous reports, it has documented the illegal expulsion of foreign minors from Ceuta and Melilla as well as so-called “family regroupings” where, without taking account of due legal process, or securing their subsequent integration into their families, minors were returned to the Moroccan police authorities. The organisation also received complaints of alleged ill-treatment of minors by some members of the Spanish security forces or the Moroccan police. Claims of ill-treatment within reception centres, or the precarious and degrading conditions in such centres also gave rise to particular concern.⁶⁵

Various international bodies have echoed this concern in recent years. For instance, in June 2002, the United Nations Committee on the Rights of the Child voiced its “deep alarm about the conditions of unaccompanied foreign children” and recommended that the authorities take urgent steps to improve the situation, including avoiding irregular expulsions and effectively investigating complaints of ill-treatment.⁶⁶

In November 2003, Amnesty International condemned the order of the State Public Prosecutor of 23 October 2003 as a violation without precedent in Spain of the Convention on the Rights of the Child (hereafter CRC)⁶⁷. The said order urged prosecutors to take steps to return to their country of origin unaccompanied minors

⁶⁵ Amnesty International: *Spain: Crisis of identity: Race-related torture and ill-treatment by State Agents* (AI Index AI: EUR 41/001/2002), pp. 73-82.

⁶⁶ See Human Rights Watch: *Nowhere to turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco* (2002).

⁶⁷ Ratified by Spain on 30 November 1990.

aged over 16, without guaranteeing that they would be protected or returned to their families.⁶⁸

In spite of the fact that that order flagrantly fails to meet the Government's obligations with regard to the CRC, APDH-Andalucía has condemned the expulsion of around 100 minors in implementation of the order.⁶⁹ Similarly, throughout 2004, Amnesty International received various complaints of Moroccan minors being returned to Ceuta and Melilla, and only rarely were they sent to their families or taken in by the Moroccan reception network as required by international human rights law. Foreign minors from third countries were also expelled to Morocco.

When S.L. from Liberia climbed over the fence for the first time, he was 16 years old. However, when members of the Civil Guard detained him, they opened the fence and handed him over to members of the Moroccan police who, according to his testimony, started to beat him up and took him to Oujda in Algeria. S. L returned to the frontier with Spain and once again entered illegally via Ceuta. He is currently seeking asylum⁷⁰.

Complaints were also made that the Public Prosecutor's order was having the effect of preventing foreigners aged over 16 being admitted to reception centres, which left them without protection and in a particularly vulnerable situation.

Amnesty International would like to remind the Spanish authorities of their obligation to protect and shelter all minors present on Spanish soil, regardless of their origin. Consequently, it takes a very positive view of the decision of the new State Public Prosecutor to set aside order 3/2003. It has also welcomed the new regulations on aliens, which expressly guarantee that no minor will be repatriated when "there is a risk or danger to his/her integrity, or of persecution of him/her or members of his/her family", thereby respecting the principle of *non-refoulement*.⁷¹ However, the organisation is concerned that the new regulations do not expressly set out the right of minors to legal assistance or to an interpreter. It also regrets that there is no express mention of the fact that all action will be in conformity with the CRC.⁷²

⁶⁸ In the order, it was implied that "it is not possible to imagine any clearer evidence of an independent life than [...] those who attempt to enter in secret, unaccompanied by their parents". See Amnesty International: *España: Los menores extranjeros no acompañados y sin papeles están en riesgo. Una instrucción discriminatoria del Fiscal General del Estado que viola obligaciones internacionales de Spain y vulnera derechos fundamentales de los menores*, www.es.amnesty.org.

⁶⁹ APDH-Andalucía: "Informe sobre la inmigración clandestina durante el año 2004" (Report on clandestine immigration during 2004), p. 17.

⁷⁰ AI Interview with S.L on 24 January 2005

⁷¹ In its articles 92 et seq.

⁷² See Amnesty International: "Mejoras insuficientes y oportunidades perdidas en el nuevo reglamento de extranjería", pp. 19-21. www.es.amnesty.org.

Another aspect which is of great concern to the organisation is the Memorandum of Understanding between the Kingdom of Morocco and the Kingdom of Spain *on the Assisted Repatriation of Unaccompanied Minors* signed on 23 December 2003, because this also fails to comply with the provisions of the CRC. Amnesty International calls upon the governments of Spain and Morocco to meet their international obligations to protect and provide shelter for minors. It also requests the Spanish government to adopt the necessary measures to prevent further expulsions of minors and provide adequate guarantees that, if they are returned, they are reintegrated into their families, or placed in reception centres where they will find adequate living conditions, will be treated with dignity and where their human rights will be respected.

The organisation also wishes to record its surprise at the very limited number of applications for asylum submitted by unaccompanied minors in Ceuta. The town's immigration office admitted that in the last seven years there had been only one case of a 15-year-old boy from the Congo.⁷³ According to sources at the immigration office, it was thought that minors could not seek asylum, but would be allocated a guardian, although this is a requirement that neither international nor Spanish legislation demands.

AI takes the view that it is very important that the asylum process take account of the special needs of applicants who are minors. The UNHCR has also expressed a similar view⁷⁴ and some countries have published specific guidelines in this regard.⁷⁵ Spain is not one of these countries, and Amnesty International recommends the adoption of specific guidelines for minors in the asylum-seeking process.

2.2.4. Inadequate reception facilities for asylum seekers and foreign nationals.

The Geneva Convention of 1951 establishes the obligation for States to guarantee the economic, social and cultural rights of refugees, for example the right to employment, housing and education, to practice their religion, have access to the courts, to social security and welfare benefits; as well as the right to be free from discrimination.⁷⁶

The European Union, for its part, approved the *Directive on minimum standards for the reception of asylum seekers* in January 2003, which Member States had to

⁷³ It appears that in this case the application was admitted for processing, but the final decision is not known.

⁷⁴ UNHCR: "Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum" (1997).

⁷⁵ See Canada: *Child Refugee Claimants: Procedural and Evidentiary Issues* (1996); United States: *Guidelines for Children's Asylum Claims* (1998).

⁷⁶ Arts. 17, 21, 22, 4, 16, 24 and 23 and 3 of the 1951 Convention respectively.

incorporate into national law by 6 February 2005⁷⁷. That directive recognizes the right of asylum-seekers to: receive information concerning their rights, legal assistance and an interpreter, medical assistance, family unity, be issued with documentation, be guaranteed access to education in the case of minors and the right to move freely within the host state, etc.⁷⁸ It also urges States to pay particular attention to the special needs of vulnerable persons, such as minors, the disabled, the elderly, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence⁷⁹. It also obliges States to provide physical reception facilities for asylum-seekers to ensure a standard of living adequate for their health and capable of ensuring their subsistence⁸⁰. Although Amnesty International welcomed some points of the directive, it considers that some elements give rise to concern such as, for example, the detention of asylum-seekers, the possibility of denying asylum-seekers reception facilities at the border, or the benefits of subsidiary protection⁸¹.

Until recently, Spanish legislation only allowed access to reception facilities to the persons whose application for asylum had been admitted for processing⁸². In this respect, Amnesty International welcomes the fact that the most recent reform of the asylum regulations expressly included meeting the basic needs of asylum-seekers. However, it is concerned that assistance is conditional upon the availability of the administration's budgetary resources and that these "might differ in the case of applicants whose cases are awaiting admission for processing"⁸³. The organisation recommends that the Spanish government guarantee economic and social rights and appropriate reception conditions for all asylum-seekers.

International human rights treaties also guarantee that migrants are treated with dignity. For instance, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognize their right to an adequate standard of living, mentioning the provision of food, clothing and housing for anyone.⁸⁴ The International Covenant on Civil and Political

⁷⁷ Council Directive 2003/9/EC of 27 January 2003 laying down Minimum Standards for the Reception of Asylum-seekers, Official Journal of the European Union L 31/18 of 6 February 2003 (hereafter, "Directive on the Reception of Asylum-seekers").

⁷⁸ Directive on the Reception of Asylum-seekers, arts. 5-8, 10, 15, respectively.

⁷⁹ Ibid., art. 17.

⁸⁰ Ibid., art. 13.

⁸¹ See Amnesty International EU Office: *Threatening refugee protection. Amnesty International's Overall Assessment of the Tampere Asylum Agenda-June 1999-May 2004*, pp. 5-6.

⁸² Art. 15.1, - 15.3 of R. D. 203/1995, of 10 February. In practice, there are some reception programs for people awaiting a decision on admission.

⁸³ Additional Provision III of R D. 2393/2004, amending article 15.1 of the regulations on asylum.

⁸⁴ Article 11.1 of the ICESCR.

Rights (ICCPR), for its part, protects them from arbitrary detention, torture or cruel, inhuman or degrading treatment.⁸⁵ Both covenants prohibit discrimination as to national origin.⁸⁶

In spite of the provisions of international legislation, reception facilities for asylum-seekers and irregular migrants in Ceuta have clearly been inadequate. In recent years, the numbers of foreign nationals has exceeded the town's capacity to accommodate them. Many of them have been obliged to live in cars, abandoned houses or improvised camps and in totally inadequate living conditions. For instance, it has been calculated that during 1999 approximately 3,000 people were without adequate housing, in spite of the fact that many of them were asylum-seekers.⁸⁷

Those who are not admitted to the *Centro de Estancia Temporal de Inmigrantes* Short-Stay Immigrant Centre (CETI) are obliged to live in sub-human conditions. Ceuta, 2003. ©MSFE

Reception facilities improved from March 2000 with the opening of the *Centro de Estancia Temporal* (Short-stay Immigrant Centre, hereafter referred to as CETI)

financed by the Spanish Ministry of Employment and Social Affairs. This centre has 448 places, although it is intended to increase these to 512⁸⁸. Although there are no

⁸⁵ Articles. 7, 9, 10 and 14 of the ICCPR.

⁸⁶ Article 2.2 ICESCR and article 2.1 ICCPR

⁸⁷ See, for example, *El País* of 4 August 2004.

⁸⁸ Officials of the *Instituto de Migraciones y Servicios Sociales del Ministerio de Trabajo y Asuntos Sociales* (Institute of Immigration and Social Services of the Spanish Ministry of Employment and Social Affairs) in Ceuta, November 2004.

express limitations, the average stay at the CETI for asylum-seekers and migrants is three months, although there are instances where people have stayed for more than a year.⁸⁹ According to official sources, priority is given to women coming in with children, even when the centre is full. However, in September 2003 MSF complained that four sub-Saharan women had been denied access.⁹⁰

Foreign nationals living at the CETI may remain in the centre during the day, or go out. There are modules for families, Spanish language classes, IT classes, integration and guidance programmes, as well as medical and legal assistance (see paragraph 6). However, in many cases, the residents are in difficult circumstances - in particular from a psychological point of view - due, amongst other factors, to the great uncertainty about their future: not knowing how long they will be at the CETI, whether they will go to the mainland or whether they will be expelled.⁹¹

Although in the past only asylum-seekers were allowed in, currently all foreign nationals – whether they have applied for asylum or not – are entitled to housing and assistance at the CETI. Whether or not they will be admitted to the centre depends on the number of persons who have succeeded in gaining access to Ceuta and the periodic transfer of immigrants to the mainland (see paragraph 8). However, in practice, the centre is almost always full, with the result that many asylum-seekers and migrants - usually an average of 90 people a day - wait outside in the hope of getting into the CETI. These people have been obliged to sleep on the streets, in abandoned houses or in improvised camps in the woodland close to the centre.

In recent years, different organizations have asked the Spanish authorities to provide these people with food and housing and, faced with a lack of action on the part of the administration, have provided them themselves. For instance, in the summer of 2003, the existence of large numbers of asylum-seekers and migrants - more than 300 - living outside the CETI and receiving no attention at all, led MSF to open up a temporary humanitarian camp because, it is claimed, their inadequate living conditions were having a direct effect on their health.⁹²

The government did not support the assistance the NGO was providing and, at the end of September, closed the camp where 300 foreign nationals were living, alleging that

⁸⁹ Interview with local NGO leaders. Something similar occurs in Melilla. For instance, a report of the Office of the Secretary of State for Immigration mentions the case of a group of 10 families (35 persons) which, in June 2004, had been at the CETI in Melilla since 2001. Another group of 15 families (50 persons) had been there since 2002.

⁹⁰ MSF press release 30 September 2003.

⁹¹ See paragraph 8.

⁹² Between June and August, 542 people were attended to in the MSF camp. MSF: “*Deficiencias en las condiciones de acogida de inmigrantes y solicitantes de asilo*” (Inadequacies in reception facilities for migrants and asylum-seekers). September 2003.

it was occupying military land. In addition, it admitted the migrants into the CETI, thereby increasing its occupancy to 150% above its capacity.⁹³ Days later, the UN Special Rapporteur on the human rights of migrants visited. The Ombudsman, for his part, complained that this was no way to solve the problem, since more foreign nationals were flowing into Ceuta, where there was nowhere for them to go, nor were there any reception facilities.⁹⁴

In October 2003, a local organisation and the Catholic Church opened temporary facilities in the Colegio San Antonio, in the hope that the government would soon fulfil its responsibility and provide the necessary facilities to accommodate all those who were arriving. Although the school provided mattresses for sleeping in former classrooms and some shower facilities, it could not provide adequate conditions in terms of the necessary social and sanitary provision for so many people. However, it is still open, despite its temporary nature, and regularly provides accommodation for 200 foreign nationals who would otherwise be sleeping on the streets.⁹⁵ Another 25 beds have been made available in other premises run by a religious organisation: *los hermanos de la Cruz Blanca*.⁹⁶ Some women, in particular Nigerian minors, who were not admitted to the CETI, were accommodated in boarding houses.⁹⁷

Neither of these institutions received public funds to meet the needs of asylum-seekers and migrants until January 2004. The Hermanos de la Cruz Blanca started to receive four euros per person - from Red Cross funds - to cover the three daily meals of people living in either of the centres or on the streets.

The people living at the Colegio San Antonio or at the Cruz Blanca premises were obliged to leave the premises during the day, between 9:00 and 18:00, and had no access to the CETI classes or programmes financed by the government.

However, the foreign nationals who are in the most vulnerable position are the Algerians, because if they are unable to get into the CETI, they cannot go to the Colegio San Antonio or the Cruz Blanca; it is alleged that Algerians are 'difficult to manage and they do not get on well with the sub-Saharan population'.⁹⁸ As a result,

⁹³ See *Informe Anual del Defensor del Pueblo*, 2003, p. 476.

⁹⁴ *Ibid.*, p. 452.

⁹⁵ AI interviews with local NGOs. During AI's visits to Ceuta, there were 141 (in April) and 94 (in November) men staying at the Colegio San Antonio, awaiting admission to the CETI.

⁹⁶ AI Interview with NGO members, 18 November 2004.

⁹⁷ MSF mentions that, in March 2004, there were 14 sub-Saharan women living in boarding houses.

⁹⁸ AI interview with local NGOs.

they find themselves living on the streets or in improvised camps until they can get into the CETI. On 15 November 2004, more than 90 Algerians were in this situation.⁹⁹

All of this demonstrates that there are still insufficient reception facilities to meet the needs of the constant flow of asylum-seekers and irregular migrants arriving in Ceuta. On average, around 200 individuals are obliged to live outside the CETI - although at times, there are in excess of 400 -¹⁰⁰ and, despite the support given by local NGOs, the economic and social rights of many asylum-seekers and immigrants are compromised. In June 2004, the Spanish administration itself recognized that services for foreign nationals had reached saturation point and that the resources were clearly insufficient, with serious social and health consequences.¹⁰¹

According to various sources, the situation has deteriorated since February 2005, after the tightening of migration control measures by the Moroccan authorities. A greater number of foreign nationals attempt to climb over the fence, thus increasing the number of people who, unable to get into the already overcrowded CETI, wander the streets. At the same time, the Colegio San Antonio, the Cruz Blanca and the town's health and reception facilities are also at breaking point.

A further cause for concern is the deterioration in health services for asylum-seekers and migrants, who arrive in poor health as a result of the difficult nature of the journey to Ceuta, the hardship they suffer en route, the injuries they sustain when they try to climb over the fence, and so on¹⁰². It has been claimed that, on occasion, the health services do not provide adequate assistance to such persons. Recently, not even the doctor contracted for them by the Red Cross has been attending to them, since it appears that his contract has come to an end.

On these grounds, Amnesty International recommends that the Spanish government adopt appropriate measures to provide all asylum-seekers - and irregular migrants in general - arriving in Ceuta with the necessary means of subsistence to live in dignity. Moreover, the principle of non-discrimination enshrined in international human rights legislation must be respected at all times. The Ombudsman, for his part, recommended the creation of an integral plan to be put into effect at times when large

⁹⁹ As the local NGOs provide the government with weekly reports on the number of meals they serve and the nationalities of those receiving them, it is possible to calculate the number of Algerians and foreigners living outside the CETI.

¹⁰⁰ *El País*, 4 August 2004.

¹⁰¹ Office of the Secretary of State for Immigration and Emigration: *Propuesta de actuación en las ciudades autónomas de Ceuta and Melilla y Comunidad Autónoma de Canarias sobre la mejora de la acogida de inmigrantes*, (Proposal for action in the autonomous cities of Ceuta and Melilla and the Autonomous Community of the Canary Islands to improve the reception of migrants), p. 2.

¹⁰² Interview with local NGOs, March 2005.

numbers of foreign nationals arrive, in order to guarantee their subsistence, health and social care and the provision legal advice.¹⁰³

2.2.5. Inadequate information provided to foreign nationals on arrival

Under Spanish legislation, all foreign nationals should have access to information about their rights and the administrative and judicial decisions concerning them in a language they understand.¹⁰⁴ However, foreign nationals arriving in Ceuta do not receive adequate information from the Spanish authorities about their rights. They tend to receive “guidance” from the trafficking networks that bring them to Ceuta and, as a result, usually go to the police to “be registered” so as to avoid illegal expulsion.

There are few bodies in the town that attempt to provide those asylum-seekers and migrants who visit their offices with information on their rights. They are encouraged to go to the Immigration Office to be documented and they may, in this way, go to the *Cruz Blanca* to eat: they are also told how to avoid possible illegal expulsion.¹⁰⁵ These bodies have, however, been under pressure not to assist migrants and asylum-seekers.¹⁰⁶ Amnesty International would like to remind the Spanish authorities in Ceuta that both domestic and international refugee and human rights standards and principles recognize the right of asylum-seekers and migrants to receive information and advice concerning their rights; the asylum process or expulsion; reception facilities; and social benefits to which they might be entitled.

When foreigners visit the Immigration Office for the first time, they are identified and given a date several days ahead for a formal interview. According to their testimony, while some of them were asked only their name and nationality, others did receive documentation, but it was all in Spanish. Of these, there were a list of NGOs working in defence of refugees and immigrants, all with addresses in Madrid. There was no information about local NGOs or lawyers in Ceuta. Some of them, including some asylum-seekers, told AI that they did not understand what they were told there.¹⁰⁷

In general, it can be said that the Spanish authorities do not offer foreign nationals sufficient general guidance or information about rights, including the right to asylum as laid down by law. Access to adequate information is particularly difficult for those persons who cannot read or write or who have only French or English, as occurred with several of the people interviewed by the organisation. Some applicants had great

¹⁰³ *Informe Anual del Defensor del Pueblo*, 2003, p. 454.

¹⁰⁴ Organic Law 4/2000 (amended by LO 8/2000), art. 63.2; Immigration Regulations, art. 127.7.

¹⁰⁵ AI interview with local NGO.

¹⁰⁶ According to press sources, the *delegación de gobierno* accused them of inciting foreign nationals to seek asylum or encouraging the unlawful trafficking of persons.

¹⁰⁷ AI interview with P. M., S. O., O.Y., in Ceuta.

difficulty communicating in English or French and could not explain their case in sufficient detail to support their asylum application.¹⁰⁸

Consequently, Amnesty International requests the Spanish authorities to guarantee that all asylum-seekers and migrants arriving in Ceuta receive adequate information about their rights, their legal situation and the processes in which they are involved - whether this be asylum, return or expulsion - as well as about reception facilities. Such information should be provided in a language they understand adequately. The work of local NGOs in this field should also be facilitated.

2.2.6. Insufficient legal and interpreting/translation assistance

Spanish legislation establishes the right of foreign nationals without sufficient resources to the assistance of a lawyer and interpreter in any administrative or judicial process, be it return, expulsion or asylum¹⁰⁹. They are also entitled to the assistance of a lawyer when they are rejected at the border, with Morocco, for example, or intercepted at the border fence, at sea or in the town itself.

However, reference has already been made to the fact that in the case of Ceuta, this right in the case of illegal expulsions of migrants and asylum-seekers has been infringed. Similarly, according to the Ombudsman's 2003 Report, this right is not being guaranteed when entry is denied at the frontier post of Tarajal, because the Ceuta Lawyers' Association had not received any application for legal assistance from that frontier post.¹¹⁰

In the town of Ceuta, legal assistance for foreign nationals - in expulsion processes and for asylum-seekers - is provided by the lawyer at the CETI, a member of the CEAR organisation, or the pool of lawyers of the Ceuta Lawyers' Association, which has a team of two duty lawyers. The Lawyers' Association does not have any interpreters of its own and has to depend on the availability of Immigration Office interpreters. The number of lawyers does appear to be clearly insufficient, given the large numbers of foreign nationals in Ceuta. According to official data referred to above, in the year 2003 alone, 25,536 people were intercepted at the frontier, 3,316 expelled and 1,439 applied for asylum.

The Ombudsman has been voicing his concern for years on the nature of the legal assistance available to foreigners in Spain. At the beginning of 2003, he visited Ceuta and carried out an investigation into the type of legal assistance offered by the pool of lawyers in cases of expulsion of foreign nationals. In none of the 281 cases studied,

¹⁰⁸ AI interview with migrants, Ceuta.

¹⁰⁹ Organic Law 4/2000, amended by LO8/2000, articles 22.1, 63.2; Asylum Law, art. 4.1; Asylum Regulations, art. 8.4 (petition filed on Spanish soil); art. 19.2 (petition filed at the border).

¹¹⁰ *Informe Anual del Defensor del Pueblo*, 2003.

had any case been made against expulsion, nor had they interviewed their clients in private or requested an interpreter for them. The Ombudsman highlighted the number of foreign nationals who were awaiting the duty lawyer each day - more than 40 - which “made physically impossible the existence of genuine legal assistance, reducing it to [...] presence of a lawyer”.¹¹¹ Apparently, this complaint led the Ceuta Lawyers’ Association to adopt measures to improve the service to foreign nationals. However, the Ombudsman has continued to voice his concern regarding legal assistance to foreign nationals throughout Spain, which has given rise to a monographic research which is yet to be published.

Amnesty International welcomes the fact that there have been some improvements, but takes the view that legal assistance in Ceuta is clearly still inadequate and guarantees no more than the mere presence of a lawyer. There needs to be a guarantee of effective legal assistance, and that lawyers will have the appropriate interpreters to enable them to interview their clients. The organisation urges the government to allocate to the Ceuta Lawyers’ Association the necessary resources and means to this end.

It also recommends that the Ceuta Lawyers’ Association - with the support of the General Council of Lawyers, the UNHCR and organizations for the defence of refugees - provide their lawyers with more extensive and detailed training in the law on aliens, asylum and human rights. Similarly, the organisation calls on all lawyers who assist foreign nationals to bear in mind that their role is essential to guarantee the right of foreign nationals to detailed information about their rights, as well as to identify any who may be refugees. To this end, they must receive training in interview techniques and information on the human rights situation in the countries of origin of the foreign nationals.

2.2.7. Problems and irregularities in the asylum process

Fair and effective procedures are essential if States are to meet their obligations under the 1951 Convention, because these are the best guarantee that persons who are in danger will be correctly identified and that the principle of *non-refoulement* will be respected.

Ceuta has become the second most important location in Spain, after Madrid, for the submission of asylum applications, with 26.15% of all applications in 2003. However, Amnesty International has found serious cause for concern in relation to the asylum process in Ceuta, as follows:

¹¹¹ Ibid., pp. 212-213.

Continuing delays in gaining access to the asylum process

As a rule, foreign nationals who apply for asylum in Ceuta are given an appointment to return days later to make a formal application. In its report *Asylum in Spain: An Obstacle Race*, Amnesty International has already shown that in many cases the practice left applicants defenceless in the face of possible illegal expulsion. The Ombudsman, for his part, in his 2003 report, observed that delays of several months continued to exist between the first appointment and the formal submission of the asylum application and recommended that the application be made with greater urgency, admitting only “the minimum delay essential to meet the requirements of having, where appropriate, the assistance of a lawyer and an interpreter”.¹¹²

Another problem is that the administration starts to count the time limits laid down by law for the admission for processing stage from the formal application and not from the moment the applicant requests asylum. This means that, despite frequent delays, article 17.2 of the asylum regulations is not applied; this states that the application is deemed to have been admitted if the administration does not respond within 60 days. By not taking account of this, many applications which ought to be admitted by law, are not admitted.

Amnesty International urges the Spanish authorities to reduce to a minimum the delay between the first appointment and the formal application, to apply the asylum regulations in cases where there is delay and to guarantee, from the very beginning, the rights of such persons as asylum-seekers, in particular, to protection when faced with expulsion or return to a third country. The town’s ‘aliens’ office should also be provided with adequate resources and staff to implement such measures.

Insufficient and inadequate information on the rights of asylum-seekers.

As a rule, asylum-seekers in Ceuta do appear to receive information in either written or verbal form concerning their right to legal and interpreting/translation assistance. Some state that they received an information leaflet about the right of asylum in Spain during their first visit to the Immigration Office. This leaflet is translated into English and French and, in abbreviated form, into Arabic. It is 20 pages long and was produced by the *Oficina de Asilo y Refugio* (OAR), without the participation of refugee NGOs, in spite of the fact that they asked to have a part in drafting it. The leaflet has been heavily criticized by NGOs, who consider that it is written in language that is too legalistic and difficult to understand. After the second interview, applicants tend to be given another document with information relating to rights and obligations, also written in very formal and legalistic language and available in

¹¹² *Annual Report of the Ombudsman*, 2003, p. 622.

Spanish only. According to the Immigration Office, an interpreter gives the applicant a verbal translation at the end of the interview.

However, during its interviews with asylum-seekers, Amnesty International had difficulty ascertaining exactly what information they had been given. Many did not understand the role of the lawyer in the process. Others did not understand what the asylum process involved or what they were being asked to prove in order to be granted asylum, nor did they know what the consequences of an expulsion order were.

Consequently, Amnesty International recommends that the Spanish government produce a leaflet explaining the rights of asylum-seekers in a language that is transparent and comprehensible, and that it be translated into different languages: French, English and Arabic. The organisation also urges that every asylum-seeker should be guaranteed such a leaflet, together with information about organizations for the defence of refugee rights, or lawyers' associations to which they can have effective access in order to receive advice. It also recommends that the presence in Ceuta of organizations to assist asylum-seekers and migrants should be guaranteed.

Insufficient and inadequate legal assistance

Although reference has already been made above to shortcomings in the provision of legal assistance to foreign nationals in Ceuta, this also applies in the case of asylum-seekers. Almost all migrants go at some time to the Immigration Office to "register". It appears that some say the word "asylum" and the officials at the office advise them to return in a few days or even weeks, to arrange an asylum interview.¹¹³ They are also handed a small card, available in English and French, with the name and address of the CEAR lawyer at the CETI. Generally speaking, it does not appear that they are told about the possibility of also contacting a lawyer from the Lawyers' Association until the asylum interview is about to take place. According to one Sudanese asylum-seeker, he asked for a lawyer for the interview, but when it was about to take place, he was told that none was available; to avoid having to delay the interview, he agreed to the interview continuing without a lawyer being present¹¹⁴. Amnesty International has received information about similar cases.

The Ceuta Lawyers' Association acknowledged that it has assisted only 121 asylum-seekers in the last three quarters of 2003, and 298 in the first quarter of 2004.¹¹⁵ However, such assistance is given at the time of the interview and only infrequently prior to that to prepare the case. As mentioned above, the lawyers have problems obtaining the services of interpreters. The role of the lawyer again appears to consist

¹¹³ Interview at the Immigration Office in Ceuta, November 2004.

¹¹⁴ AI interview with P.M., November 2004.

¹¹⁵ AI interview with the Ceuta Lawyers' Association, March 2004.

of being present at the interview, without actually assisting the applicant, for example asking questions that clarify, complement or relate in some respect to the history the applicant is relating.¹¹⁶

The Ceuta Lawyers' Association admitted to Amnesty International that few lawyers had received training in asylum and human rights. A course had been run in November 2003 by representatives of the UNHCR. To begin with, none of the lawyers attended the course and the Association had to call its members and persuade them of the importance of their presence¹¹⁷.

The CEAR lawyer has his office at the CETI to deal with the 400 foreign nationals living there on a temporary basis. Every Wednesday, the lawyer conducts a collective presentation for new residents on their rights and the asylum law and the law on aliens. The lawyer usually meets with between 15 and 40 foreign nationals, the majority of whom are asylum-seekers, and can count on the services of the interpreters who work at the CETI. According to the lawyer, he meets both CETI residents and foreign nationals who do not live there. However, there is no record of the number of people he deals with each week, or whether they live at the centre or not. As a result, it is difficult to know how many of the people who do not live at the CETI actually have access to the CEAR lawyer.¹¹⁸ As a rule, in view of the heavy workload, the lawyer cannot accompany any asylum-seeker to the interview with the police and can only help them to prepare for this in advance at the CETI.¹¹⁹

Amnesty International urges the government to effectively guarantee adequate legal assistance for all asylum-seekers in Ceuta. In order that such assistance is not limited to a mere "legal presence" and that proper assistance can be given to the increasing number of asylum-seekers, the organisation recommends increasing the number of lawyers devoted to providing this service.

The organisation also recommends that the Ceuta Lawyers' Association guarantee that all lawyers undergo specialist training in international law on refugees and human rights, as well as in interview techniques, to enable them adequately to identify persons fleeing human rights violations.

Shortcomings in the asylum interview to identify refugees

AI takes the view that only if an individual and detailed examination is made of each asylum application, can this be considered a fair and satisfactory asylum process, with the due guarantees. Such an interview must be conducted in conformity with

¹¹⁶ AI interview at the Immigration Office, November 2004.

¹¹⁷ AI interview with the Ceuta Lawyers' Association, March and November 2004.

¹¹⁸ AI interview, refugee NGO, December 2004.

¹¹⁹ Ibid..

legislation on refugees, and bearing in mind the human rights situation in the country of origin.

In the case of Spain, the first interview is usually decisive in the asylum process because, in many cases, it is the only element on which the Spanish authorities base their decision. It is, therefore, very important that it should be conducted with great attention to detail, putting together all the points of the applicant's history, in the presence of a lawyer and an interpreter. The officials conducting the interview should receive instructions and specialist training to this end.

In the case of Ceuta, the task of interviewing asylum-seekers falls to three examiners at the Immigration Office. Given the numbers of asylum-seekers in Ceuta, as stated earlier, there is a wait for interviews. Until July 2004, this could be anything between several weeks and several months¹²⁰. Currently, it has been reduced to 3-5 days, although it does depend on the number of foreign nationals seeking asylum¹²¹. When there is a massive influx of foreign nationals, the interview could be delayed by up to six months in some cases.

In 2003 the overload of work at the Immigration Office - caused by the huge numbers of asylum-seekers - meant that, on two occasions, four asylum officers came from the *Oficina de Asilo y Refugio* (OAR) in Madrid, to process applications.¹²² The Ombudsman expressed his concern at the serious shortcomings identified on each of these occasions. The CEAR made similar comments in its 2004 annual report.¹²³ Many interviews were conducted without an interpreter and many asylum-seekers "waived" their right to legal assistance. Lawyers were present in only 15 of the 59 cases interviewed each day and in none of the cases had they previously interviewed their clients. Only two of the 281 asylum-seekers interviewed on these visits had written supporting statements from their lawyers. The shortcomings of the legal assistance received in Ceuta have already been reported above; as a rule, foreign nationals and asylum-seekers in particular hardly every have a lawyer at the time of the interview. If the applicant asks for a lawyer, the interview is interrupted and the Lawyers' Association contacted; the interview is resumed when the lawyer arrives, although his contribution is, as has already been reported, often reduced to nothing more than his presence.

In Ceuta, the interview usually takes the form of the immigration office official completing the standard form based on answers provided by the applicant. In the case

¹²⁰ See Amnesty International: "Asylum in Spain: An Obstacle Race" p. 41, 2001; and AI interview with local NGO, November 2004.

¹²¹ AI interview with the Immigration Office in Ceuta, November 2004.

¹²² Ibid..

¹²³ CEAR: "La situación de los refugiados en España", Annual Report 2004, p. 66.

of applicants from Liberia, Sierra Leone, Palestine and Côte d'Ivoire, a nationality questionnaire is also completed.

D.M., a national of Liberia, can neither read nor write. During the asylum process, he had no lawyer to prepare for the interview, nor was one present at the interview. The only lawyer he had spoken to previously was the CEAR lawyer, to enquire how to recover his identity documents, which had been taken by the Civil Guard. According to his statement, during the asylum interview, he felt uncomfortable at the number of questions he was asked; he found it difficult to understand the questions, so could not answer many of them.¹²⁴

The interview plays a vital role in determining whether an applicant is a refugee. It must be detailed, precise and exhaustive, to be able to ascertain the applicant's full history. However, in Ceuta, the official takes the view that his is a purely administrative function, limited to completing the form referred to above.¹²⁵ As a rule, the applicants' statements are short summaries, and it is unusual for questions to be asked in order to clarify anything obscure, ambiguous, controversial or contradictory. The interviews usually last between 30 minutes and an hour and a half¹²⁶.

The interviewers in Ceuta do not use information about the human rights situation in the applicants' country of origin, nor do they receive adequate instruction in international legislation with regard to refugees and human rights. On the contrary, they tend to fulfil a purely bureaucratic role in the process.

This all contributes to the fact that the OAR admits few asylum applications from Ceuta, regarding them as "clearly unfounded", consisting of general, vague statements, which are contradictory or lacking in credibility. However, the conditions in which these interviews are conducted in Ceuta need to be taken into account; asylum-seekers are often in a situation of particular vulnerability, in unfamiliar surroundings, and may experience great difficulty telling their stories to the authorities, often in a language that is not their own.¹²⁷

It is important to state that this first interview is usually the only interview for the great majority of asylum-seekers. According to the Ceuta Immigration Office, the

¹²⁴ AI interview with D.M., 16 November 2004.

¹²⁵ AI interview with an Immigration Office official, November 2004.

¹²⁶ As a rule, this has been the length of time mentioned in many of the testimonies gathered by AI, although in one case it was reported that the interview lasted only ten minutes.

¹²⁷ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, paras. 190, 198 and 200, Geneva, 1992. The UNHCR Handbook recognises that asylum-seekers, in many cases as a result of their fear of the authorities in their respective countries of origin, may be afraid of speaking freely and openly to the authorities in the host country.

OAR rarely calls to ask for additional information about the interviews.¹²⁸ Consequently, it is very important that, in that first interview, the examiner plays a more active role and attempts to clarify any possible discrepancies, contradictions or ambiguities in the applicant's statement¹²⁹.

When the interview is over, the applicant is given a sheet informing him/her of his/her rights as an applicant which, as has been reported above, is available only in Spanish and is written in a formal and legalistic style. The file is then sent to the OAR, which usually responds within 30 days to say whether the application has been admitted or not.

Amnesty International consequently recommends the authorities that the right of asylum-seekers to an individual, exhaustive interview on the circumstances of the case should be effectively guaranteed. In spite of an increase in the number of asylum-seekers in Ceuta, there has been no improvement in the material or human resources of the Immigration Office to deal with them. The organisation also urges the government to ensure that the officials conducting the interviews receive adequate training to enable them to follow the guidance contained in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. These officials play an essential role in identifying persons fleeing human rights violations.

Improper use by the Spanish authorities of the admissibility process in Ceuta

Since the reform of the Law on Asylum of 1994, the Spanish asylum process has a stage where the application is admitted for processing and a further stage involving "studying the basis of the application"; this applies both to applications made at the frontier and to those made within the country.¹³⁰ Given that no records of asylum applications exist at the frontier at Tarajal, the majority of asylum-seekers request asylum at the Immigration Office in Ceuta.

In 2001, and in its report *Asylum in Spain: An Obstacle Race*, Amnesty International condemned the fact that the Spanish government was using the admissibility stage improperly, because it was, on many occasions, examining the basis of the application.¹³¹ This trend has continued since then and has been condemned by both the Ombudsman and the principal Spanish NGOs for the defence of refugees.¹³²

¹²⁸ AI interview with Immigration Office official, November 2004.

¹²⁹ The UNHCR Handbook recognises that one or more interviews may be necessary before an examiner can properly gather all the necessary information and reach a decision.

¹³⁰ Albeit with different timescales. Law on Asylum, art. 5.6., arts. 18, 19, 20, 21.

¹³¹ Art. 5.6b and d of the Law on Asylum.

¹³² See, for example the 2004 Annual Report of the CEAR, p. 56.

Number of applications deemed inadmissible in Spain between 2001 and 2004

Year	N° of applications/year	N° of applications deemed inadmissible (Cases)	General annual percentage of decisions of inadmissibility (cases)
2000	7,926	4,905	70.8 %
2001	9,490	5,689	73.8 %
2002	6,309	4,029	73.1 %
2003	5,918	3,943	75.3 %
2004 ¹³³	5,401	4,648	Approx 86%

Many applications are deemed inadmissible for processing because they are considered to be “clearly unfounded”, due to the incoherence or vague nature of the arguments, and in other cases because of the absence of any evidence to corroborate the history or identity. This tends not to take account of the fact that refugees are, in many cases, fleeing in circumstances that prevent them from bringing with them documentation to support their history, or they may have lost it - or had it stolen - during the long journey they make to reach Spain. In very many cases, the decision of inadmissibility is not limited to the exceptional circumstances provided for by law, but involves an examination of the basis of the applicant’s history.

Amnesty International is concerned at the high number of asylum applications that are deemed inadmissible in Spain which, in its view, constitute hidden rejections. This detracts from the exceptional nature of the admissibility stage and also has the effect of invalidating the second stage - “study of the basis of the application” - during which, under the Law, the veracity of the history should be examined. At this stage the applicant has more guarantees and more time to provide evidence and arguments, and the authorities have to investigate the case. Transferring the study of the basis of the application to the admission stage leaves asylum-seekers in a very vulnerable position, in particular in the case of applications made at the border or at places such as Ceuta.

Asylum-seekers en Ceuta between 2001 and 2004

Year	Total N° of annual applications	N° of applications deemed inadmissible	Percentage of total annual applications deemed

¹³³ The 2004 are provisional, *Boletín de Asilo* for December 2004.

			inadmissible
2002	339	224	66%
2003	1,507	1,267	84%
2004	1,819	1,289	95% ¹³⁴

Source: OAR

Number of asylum applications deemed inadmissible in Ceuta in 2004 by nationality:

Algeria	487	Guinea	151	Sudan	13
Benin	23	Guinea Bissau	68	Togo	6
Burkina Faso	2	India	3	Tunisia	4
Cameroon	25	Liberia	42	Uganda	6
Chad	13	Mali	143	Zambia	1
Congo	4	Niger	18	Zimbabwe	15
Côte d'Ivoire	27	Nigeria	8		
Gabon	8	D. R. Congo	50		
Gambia	56	Rwanda	3		
Ghana	55	Sierra Leone	32		

As the tables show, in many cases asylum-seekers in Ceuta come from countries where grave violations of human rights take place so that, generally speaking, the only cases which ought to be deemed inadmissible should be those which make no mention of persecution, or in which the history is obviously a fabrication. In all other cases, the application should be admitted for processing and should be examined minutely to determine whether the person in question might suffer human rights violations if s/he is returned to his/her country of origin.

Amnesty International has, for some time, been voicing concern at the inadequate grounds on which many of the OAR's decisions not to admit an application are made. Although some improvements have been made, decisions not to admit an application - received by many asylum-seekers in Ceuta - continue to be made, being reduced in many cases to a general list of the grounds for inadmissibility set out in the Law on Asylum on which the decision is based, but without making any specific reference to the circumstances reported by the applicants. This concern has also been expressed by

¹³⁴ Calculated on the 1,352 applications for which a decision has been given, of the 1,819 presented that year.

bodies such as the Ombudsman¹³⁵ and the CEAR who complained, for example, that during the visit made by officials of the OAR in January 2003 (referred to in paragraph 7.5), all decisions of inadmissibility was identical and did not give sufficient justification for the decision. Concern has also been voiced by the *Asociación Jueces para la Democracia* Judges for Democracy, which pointed out that many applications were rejected within 24 hours without giving any justification whatsoever¹³⁶. Similarly, many of the decisions not to admit an application for processing produced by asylum-seekers and shown to Amnesty International only contained general references such as “lack of credibility” or “false documentation” without specifying exactly what was deemed to lack credibility or be false. It creates considerable problems if the asylum-seeker wishes to appeal against the decision to admit, if s/he is unaware of the grounds on which it was made, since that is the only way to make a successful appeal.

Amnesty International considers it vital that, as laid down in the Spanish law on asylum¹³⁷ and established by the case law of the *Audiencia Nacional* (National Criminal Court), any decision not to admit an application should detail the grounds on which that decision was made, rather than merely using generic and non-specific terminology which could leave asylum-seekers with no defence.

Inadequate protection for women who have been the victims of trafficking and gender-related persecution

Amnesty International has received claims that some foreign women who arrive in Ceuta - in particular Nigerian girls - are brought in by networks specialising in the trafficking of persons for sexual exploitation¹³⁸. However, it is not known whether the Spanish authorities have carried out any investigation to determine whether they are, indeed, the victims of trafficking; if that were the case then such women would be the victims of grave human rights violations: ill-treatment, sexual abuse and rape, threats, slavery, reprisals taken against members of their family and so on, and ought to be protected by the Spanish authorities.

Recently, Amnesty International has received several claims about the vulnerability of foreign women who are the victims of trafficking and, although it is very difficult for such women to complain about their situation, for fear of reprisals on the part of networks against them or their families, Amnesty International has obtained the following testimony:

¹³⁵ *Annual Report of the Ombudsman* for 2003, pp. 619-620, and 2003 CEAR annual report, pp. 65-69.

¹³⁶ Press release of 21 February 2003

¹³⁷ Articles 17 and 20c) of the Law on Asylum.

¹³⁸ Local NGO, March 2004.

M., from Nigeria, is 25 years old and was studying business administration in her own country. She lived with her parents and nine brothers. A group of people offered her the opportunity to come to Spain to get a good job, so that she could help her family. After a difficult journey over six months, either by lorry or on foot, she arrived in Spain with a group of 48 people. She crossed the Straits in a small boat, a journey she says she will never forget. On arriving in Madrid, the people in question were waiting for her; they told her that she would have to work as a prostitute in order to pay the debt of 50,000 euros that had been incurred for the journey and that, until that was paid, she would not be free. M asked if they would let her pay her debt working in any other job, but they refused, and kept her locked up for three months without seeing anyone until she agreed.¹³⁹

Amnesty International would like to recall the obligation of the Spanish government to exercise due diligence, not only to prevent trafficking and pursue those responsible, but also to protect and offer compensation to women who are the victims of trafficking, assuring them of the availability and accessibility of effective remedies. To this end, it urges the Spanish government to investigate thoroughly the situation of female migrants arriving in Ceuta - and especially those of Nigerian origin, since it is claimed that many of them may be the victims of such networks - in order to ascertain their situation and, where they are the victims of trafficking, to give them adequate protection as victims of grave human rights violations as defined by international legislation on human rights.¹⁴⁰ Such women ought to be regarded as victims, rather than offenders and should receive full support to ensure that they are protected, are not stigmatized, are compensated¹⁴¹ and are integrated into society. In addition, as indicated by the UNHCR, women who are the victims of trafficking should be guaranteed access to the asylum process, and refugee status if found to meet the criteria of the 1951 Convention¹⁴². Furthermore, there should be special procedures

¹³⁹ Case provided by the organisation *Proyecto Esperanza* (Project Hope), which works with victims of trafficking.

¹⁴⁰ For example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children that supplements the United Nations Convention against Transnational Organized Crime (the Palermo Convention) of 2000.

¹⁴¹ The term "compensation" should include financial compensation, full support and rehabilitation.

¹⁴² The UNHCR, demonstrating its concern on this issue, dealt with the question of trafficking and asylum in a recent working document. See Shearer Demir, Jenna, *The trafficking of women for sexual exploitation: a gender-based and well-founded fear of persecution?*, Working Paper No. 80 (UNHCR, March 2003).

and training for immigration or asylum officials to enable them adequately to deal with possible victims of trafficking, torture or sexual violence.¹⁴³

Similarly, the organisation recommends modification of the current law on aliens - in particular article 59 of the Law - focusing on the protection of victims of trafficking and thereby of grave human rights violations, so that their protection and compensation is not linked exclusively to collaboration with the courts. Amnesty International also urges the Spanish government to sign and ratify the European Convention against Trafficking in Human Beings which has just been approved in the Council of Europe¹⁴⁴.

On the other hand, the Spanish authorities should also adequately investigate whether, among the foreign women arriving in Ceuta, there are women who are fleeing gender-related persecution. This type of persecution includes acts of sexual violence, domestic violence, compulsory family planning, female genital mutilation, forced marriage, dowry murder, punishment for not obeying social norms, "honour" killings, persecution of lesbians and forced prostitution.

Historically, the definition of a refugee has been interpreted principally through the experiences of men fleeing persecution, and has excluded gender-related persecution. However, during the last decade there has been a growing consensus that gender-related persecution constitutes grounds for obtaining refugee status¹⁴⁵ because, as the UNHCR has observed, this would fall within the various grounds set out in the Geneva Convention definition¹⁴⁶. The European Union has also taken this view, having issued a directive that recognizes gender and sexual orientation as grounds for granting asylum¹⁴⁷. Progress has also been made in adapting asylum processes to the special needs of female asylum-seekers in some countries –Australia, Canada, the United States, Norway, the Netherlands, the United Kingdom and Sweden¹⁴⁸

¹⁴³ See *Global consultations on International Protection, Asylum Processes, Fair and efficient Asylum Procedures*, para. 50, EC/GC/01/12, 31 May 2001.

¹⁴⁴ Adopted by the Committee of Ministers on 3 May 2005.

¹⁴⁵ See E. Dana Neacsu, "Gender-Based Persecution as a Basis for Asylum: An Annotated Bibliography", 1993-2002, 95, *Law Library Journal* 191 (Spring 2003).

¹⁴⁶ UNHCR: *Guidelines on International Protection. Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/01), 7 May 2002. *Guidelines on International Protection. 'Membership of a particular social group' within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 15 (HCR/GIP/02/02), 7 May 2002.

¹⁴⁷ *Proposal for a Council Directive laying down minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or persons who otherwise need international protection in accordance with the 1951 Convention or as persons who otherwise need international protection*, art. 7(d)(d), art. 12(d), COM (2001) 510 final (12/09/2001).

¹⁴⁸ On this subject, see Centre for Gender and Refugee Studies, <http://www.uchastings.edu/cgrs>.

However, Spain has not produced any similar guidelines and, in the past, the Spanish authorities have applied the definition of refugee in a very restrictive manner, taking the view in some cases that gender-related persecution was not included in the Geneva Convention. Although public statistics are available on the gender of asylum-seekers in Spain, no relevant information is published concerning the number of applicants who have alleged gender-related persecution, or the type of protection they have been given.

For many years Amnesty International has been calling on the Spanish government to include in its asylum legislation an express acknowledgement that persons fleeing gender-related persecution, or persecution on account of sexual orientation, are entitled to refugee status. The organisation urges the government, when incorporating the European Directive into national law, to include an express reference and to protect persons fleeing gender-related persecution or persecution on account of sexual orientation. It also recommends that guidelines be drafted to assist examiners in asylum cases on issues concerning gender-related persecution and on interviewing victims of such violence with sensitivity and efficiency.

In the case of Ceuta, the Immigration Office recorded the case of only one woman who had alleged gender-related persecution: a case of female genital mutilation. However, he could not recall the date of the application, or whether it was admitted for processing. As a rule, no investigation is made as to whether the foreign women arriving in Ceuta have suffered gender-related persecution or sexual violence in their country of origin, in particular if they come from countries where there is conflict¹⁴⁹ or, as stated above, during the journey to Ceuta, or while waiting on the other side of the Moroccan border. Immigration Office officials have no special training to recognize such cases, or to provide special assistance or support.

Violation of the right to effective appeal

The right to appeal against the decision not to admit, or the rejection of an application for asylum, is an essential right for asylum-seekers under international law. However, Amnesty International has, for some time, been voicing concern that Spanish legislation does not adequately guarantee the right of asylum-seekers to appeal, because their expulsion is not suspended when they lodge an appeal.¹⁵⁰ For the organisation, if an asylum-seeker is deported to his/her country of origin before the

¹⁴⁹ For more information on violence against women in times of conflict, see Amnesty International, *Lives blown apart. Crimes against women in times of conflict*, 2004, AI Index: ACT 77/075/2004.

¹⁵⁰ Except in two cases: when an application at the frontier which receives a favourable report from the UNHCR and the applicant lodges a contentious-administrative appeal, article 21.2 of the Law on Asylum, or when the *Audiencia Nacional* adopts a protective measure to suspend the expulsion. Article 129 et seq of the Law on Contentious-Administrative Jurisdiction.

appeal has been heard, this renders void his/her right of appeal, so appeals ought to have a suspensive effect on expulsion.

In spite of this, many asylum-seekers in Ceuta and the rest of Spain find that the appeal - against the decision not to admit or the rejection of the application for asylum - does not suspend the expulsion, with the result that they may again be sent back to their country of origin - especially if they come from countries with whom readmission agreements have been signed - before the appeal has been decided, depriving them of their right.¹⁵¹

Another cause for concern in connection with the right to appeal is the problem of legal assistance. When an asylum-seeker in Ceuta wants to appeal against a decision not to admit, or to reject his/her application, s/he is assigned a lawyer based in Madrid.¹⁵² In many cases, the asylum-seeker does not know how to contact the lawyer and hardly ever communicates with him/her properly to prepare the appeal, and this is even more improbable if the applicant is returned to his/her country of origin.

The organisation takes the view that all asylum-seekers should be entitled to remain in Spain during the entire asylum process, including the court appeals. For this reason, appeals ought to have suspensive effect, especially taking account of the fact that the time required for the *Audiencia Nacional* to reach a decision on an appeal is, in many cases, between one and two years. During that time, the applicant ought to be authorized to remain in the country until a final judicial decision has been reached in his case. The Executive Committee of the UNHCR has also expressed this view.¹⁵³

In spite of this, the Member States of the European Union have reached a political agreement on the proposed directive on asylum procedures which does not expressly recognize the right to an appeal having suspensive effect, but leaves this to the discretion of the Member States.¹⁵⁴ Spain was one of the most vociferous opponents of the idea of guaranteeing the suspensive effect of an appeal which, in Amnesty International's view, constitutes a violation of international law and the well established right of every individual to an *effective* remedy before the courts. Consequently, the organisation urges the government to guarantee, in a future amendment of the Law on Asylum, the right of asylum-seekers to an effective remedy

¹⁵¹ This would apply, for example, to the cases of J.E.E., J.F., J.T, L.M.E. and E.M., all of whom were expelled after having lodged an appeal against the decision not to admit their application, or to reject their asylum application.

¹⁵² Given that appeals against decisions not to admit an application and against rejections are brought before the Central Contentious-Administrative Courts and the *Audiencia Nacional*, respectively.

¹⁵³ See UNHCR: *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 192.

¹⁵⁴ Art. 38 of the approved proposal for a directive on procedures.

with suspensive effect on return, especially in those cases where accelerated procedures are applied.

2.3. The lawful expulsion of migrants and transfer to the mainland

Generally speaking in Ceuta, an expulsion process is initiated in the case of migrants who are not seeking asylum and asylum-seekers whose application is deemed inadmissible for processing. However, some applicants whose application has been deemed inadmissible receive a residence permit on exceptional grounds¹⁵⁵, being placed on NGO reception programmes on the mainland, in particular, in the case of vulnerable groups, principally families with young children, the sick, persons who have family members in Spain, who have been living at the CETI for over a year. They are provided with documentation, transferred to the mainland, provided with accommodation for three months and given access to employment guidance programmes, social services and other benefits.¹⁵⁶ Through this programme, it is anticipated that approximately 1,000 persons from Ceuta and Melilla will be assisted.¹⁵⁷

All other foreign nationals are subject to the expulsion procedure. The total number of expulsions and returns in Ceuta in recent years is shown in the table below:

2002	2003	2004
5,893	3,316	2,804

Source: General Immigration Office¹⁵⁸

Amnesty International has encountered some irregularities in these processes and has documented some cases where international law on refugees and, specifically, the principle of *non-refoulement* has been violated.

¹⁵⁵ These permits are granted pursuant to Organic Law 4/2000, amended by LO 8/2000, art. 31.3, which authorises temporary residence on humanitarian grounds or other exceptional circumstances.

¹⁵⁶ CEAR, the Red Cross and the *Asociación Comisión Católica Española de Migración* Spanish Catholic Commission Association for Migrants (ACCEM) are three NGOs that provide accommodation and integration activities for this group of people. The programme was initiated in July 2004.

¹⁵⁷ AI interview with local NGO, November 2004.

¹⁵⁸ According to the same source, the majority of those expelled come from Morocco, Nigeria, Algeria and Senegal.

Inadequate identification in the expulsion process:

Under Spanish law, a “compulsory exit” order is imposed on persons whose asylum applications have been rejected, requiring them to leave the country within 15 days.¹⁵⁹ However, this measure is not usually applied in the case of rejected asylum-seekers in Ceuta whose applications have been deemed inadmissible or have been rejected, because, generally speaking, a process of expulsion is instigated against such persons.¹⁶⁰ In these processes, which apply to those whose applications have been rejected and to migrants, the police need to establish the nationality of the person involved in order to make arrangements for his/her repatriation to the country of origin.

However, the procedure used by the Spanish authorities to determine nationality has been demonstrated in more than one case to be clearly inadequate. It is conducted by officers of the National Police, embassy staff or “experts” who, as a rule, have neither the appropriate knowledge nor special training in countries of origin or linguistic matters.

In the case of Algerian or Moroccan nationals, the National Police in Ceuta has two linguists on their staffs who – in addition to acting as interpreters – conduct the interview on nationality with such persons to distinguish one nationality from the other. The difficult cases, according to the police, are those who live near the border between Algeria and Morocco because they have similar accents and customs.¹⁶¹ They also state that the majority of those who say they are Algerian are, in fact, Moroccans who are trying to avoid immediate expulsion, because anyone who is identified as Moroccan is immediately returned to Morocco. Algerians, however, are taken to the detention centre in Alicante, where they are visited by staff from the Algerian consulate, to confirm their nationality.¹⁶²

The sub-Saharan Africans are dealt with differently. English-speakers are issued with expulsion orders and taken from Ceuta to the detention centre at Algeciras, in Andalusia, where their nationality is determined. According to the National Police, if a foreign national has no identity documents, this usually means that s/he is not telling the truth, so in such cases the interview is based on a nationality questionnaire with questions about the national flag, for example, or the principal cities, etc.; if the answers are inadequate, “experts” are brought in; in many cases, these are foreign nationals who are in Spain legally, who come from Africa and claim that they can

¹⁵⁹ Organic Law 4/2000, art. 28.3.

¹⁶⁰ AI interview with the Ceuta Lawyers’ Association, 17 November 2004; AI interview with UCRIF, November 2004.

¹⁶¹ AI interview with UCRIF, November 2004.

¹⁶² Ibid.

quickly determine the nationality of an African by the skin, the shape of the face and the accent. The police admitted that such people have no special training and “know by experience who is who and can tell when someone is not telling the truth”¹⁶³.

Sometimes, the presence of a representative from the embassy of the country of origin is required to confirm nationality. According to staff at the Nigerian Embassy, three years ago an agreement was signed in this connection between the Spanish government and their embassy¹⁶⁴. A representative of the embassy – such persons do not usually have any special linguistic training – goes to Ceuta or to the Canary Islands, or any other detention centre, to speak directly with the detainees. One of them explained to Amnesty International how Nigerian nationals were identified: “he tries to trick them by speaking French and if they don’t respond this means that they are probably Nigerian; he was sure that they were right in 90% of cases”.

When the embassy identifies a person as being Nigerian, travel documents are issued within three days and s/he is put on one of the two flights that fly each week to Nigeria from Spain. According to official sources, in 2002, 1,424 people were repatriated; in 2003 the figure was 1,151 and in 2004 (up to September), 756¹⁶⁵. On their arrival, they are met by the Nigerian police, who interrogate them and then send them back to their place of origin¹⁶⁶.

However, Amnesty International has received complaints that the identification process is not always carried out properly, and on some occasions people are sent to countries of which they are not nationals; for instance, there have been cases of nationals of other countries being expelled to Nigeria.

J.J., a national of Liberia, fled his country and finally arrived in Ceuta in 2003. He made an application for asylum, but it was rejected. He was finally taken to the *Centro de Internamiento de Extranjeros*, the Immigrant Detention Centre, in Algeciras, where he was wrongly identified as being Nigerian and was expelled to Nigeria in November 2004. No account was taken of the fact that his partner was five months pregnant when he was expelled. At the time of writing, she is living in Madrid with her baby, in the hope that J.J. will be allowed to return to Spain.

¹⁶³ AI interview at the police headquarters (Documentation and Aliens), 2 December 2004.

¹⁶⁴ AI asked for a copy of the agreement, but this was refused. It appears that, in addition to the determination of nationality, this agreement also refers to training programmes for the Nigerian police and assistance for repatriated migrants.

¹⁶⁵ Letter from the General Immigration Office of the Spanish Ministry of Employment and Social Affairs.

¹⁶⁶ AI interview with Nigerian Embassy official, 1 December 2004.

In view of this, the organisation urges the Spanish government to guarantee proper identification of the nationality of foreign nationals by personnel who have specialist experience and training in nationality and linguistic matters. It also recommends particular caution when contacting staff at the embassy of the country of origin, especially in the case of asylum-seekers who have alleged persecution by the government of their country, since this would compromise their safety or that of their family if they were returned¹⁶⁷.

Cases of persons being returned in violation of the principle of non-refoulement

As mentioned in the introduction, the principle of not forcibly returning a person to a country where his/her life, physical integrity or liberty is at risk is a fundamental pillar of the international system of refugee protection. Despite this, many countries are obliging men, women and children to return to the place where they are being persecuted. Every time the principle of *non-refoulement* is violated, the life or liberty of some person is put at risk. States must observe this principle scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether or not they have officially been recognized as refugees. The principle of *non-refoulement* excludes not only transferring a person directly to a country where s/he may be in danger, but also taking them to a country from which they may later be transferred to a third country where they may run the risk of persecution.

In spite of the difficulty of tracking persons who have been expelled or returned to their country of origin, or to third countries, Amnesty International has, in previous reports, condemned cases where the principle of *non-refoulement* has been violated,¹⁶⁸ as well as cases of individuals who have been returned and who, on the grounds of their being migrants, have been imprisoned. This happened with some of the Nigerian nationals who, in July 2001, were returned to their country from Ceuta and, according to Médecins sans Frontières, were held at a detention centre known as *Alagbon Close* until their families paid large sums of money – up to 500 US dollars in some cases – for their release¹⁶⁹.

During this investigation, too, it has proved extremely difficult effectively to follow the fate of foreign nationals and asylum-seekers who are expelled from Ceuta and

¹⁶⁷ In this connection, the organisation is concerned about cases such as that which occurred in Ceuta in January 2003 when a group of Congolese nationals, including some asylum-seekers, openly and publicly demonstrated their discontent on recognising the representative of the Embassy of the Congo, and refused to be identified by him.

¹⁶⁸ Amnesty International: *Asylum in Spain: An Obstacle Race*, 2001, p. 55.

¹⁶⁹ Amnesty International: *Spain: Crisis of identity: Race-related torture and ill-treatment by State Agents* 2002, p. 90.

returned to their country of origin. Even so, it has been possible to trace one case of a person being returned to a country where he suffered human rights violations. This is the case of a national of Cameroon:

H.D. said he had fled his country after being imprisoned by members of the police force in connection with an alleged attempt on the life of the president of his political party, the U.N.D.P; he also said that he had been tortured during his detention. This was his reason for leaving Cameroon on 4 November 2002.

After a long six-month journey, he arrived in Ceuta on 29 June 2003 and sought asylum. He had to live on the streets for two months, until he was admitted to the CETI. At the end of August 2003, he was told that his application was deemed inadmissible for processing and at the same time given an expulsion order. Days later, he was taken with 38 other sub-Saharan Africans to the Immigrant Detention Centre in Algeciras, then to the one in Malaga. From there they were returned to Cameroon by air. On the plane, each foreign national was escorted by two Spanish police officers who, on arrival, handed them over to the Cameroon police.

According to his statement, he was taken by his country's police with another five people to a prison, where they were put in a single, dark, windowless cell, in a kind of trench full of excrement, where he remained naked and tied up for a week, treatment which can be qualified as cruel, inhuman and degrading. From time to time a police officer would bring him some water or something to eat. In his interview with Amnesty International, he revealed the consequences of a major skin lesion all over his body¹⁷⁰.

He said that he was then taken to Koolengu prison in Yaoundé to be taken before the courts. During his transfer to the court, he managed to escape and again set off for Ceuta, where he was at the time of the interview.

For this reason, Amnesty International has, for some time, been calling on the Spanish government to include in its 'aliens' legislation an express guarantee that, during the expulsion or return process, an assessment will be made whether the person who may be about to be expelled, if returned to his/her country, runs the risk of becoming a prisoner of conscience, of being subjected to torture, or to cruel, inhuman or degrading treatment or punishment; of being subjected to extra-judicial execution or of "disappearing". The organisation regrets that approval of the new regulations on

¹⁷⁰ According to the medical certificate issued by the CETI health department, this is a maculo-depigmented puntiform dermatitis that covers the entire body as a consequence of a generalised pruriginous skin infection.

aliens has been one more lost opportunity to guarantee that, during the expulsion process, close consideration will be given to whether the person about to be expelled runs the risk of human rights violations¹⁷¹.

The organisation also urges the Spanish government to comply fully with the obligations entered into by virtue of article 13 of the International Covenant on Civil and Political Rights, which establishes guarantees of due process in cases of expulsion and return. Amnesty International also encourages it to ratify, at the earliest opportunity, Protocol 4 of the European Convention on Human Rights, which prohibits the collective expulsion of foreign nationals. Similarly, the organization urges the government to draw up and implement an action protocol with regard to the use of force and the means of immobilisation that may be used during expulsion.

Transfer to the mainland

Spain has no re-admission agreements with many of the countries of sub-Saharan Africa; consequently the nationals of such countries cannot be expelled. When there are large numbers of foreign nationals in Ceuta, the Spanish authorities transfer them to the mainland. In spite of the fact that they cannot be expelled, they are issued with an expulsion order which prevents them from regularising their situation in Spain, thus trapping them in a situation of irregularity which, in turn, makes them vulnerable to possible abuses and violations of human rights.

In this connection, Amnesty International has repeatedly voiced its concern about the situation of migrants in Spain, in particular those who are in an irregular situation. In recent years, the organisation has observed an increase in claims of racist or xenophobic behaviour, and even cases of ill-treatment or serious assault on the part of individuals or State agents. It has also condemned the particular vulnerability of women migrants who are in an irregular situation¹⁷². Migrants have seen their human rights eroded by different legislative measures and immigration policies in recent years¹⁷³. For all these reasons, it is necessary that the Spanish administration adopt a series of measures to guarantee such persons access to basic rights, regardless of their situation vis-à-vis the authorities; that they will no longer be victimized because they are migrants, whether or not they have valid documentation. In particular, the

¹⁷¹ Amnesty International: *Mejoras insuficientes en materia de derechos humanos en el nuevo reglamento de extranjería*, p. 6.

¹⁷² See, for example Amnesty International: *Spain: Crisis of identity: Race-related torture and ill-treatment by State Agents*. AI Index: EUR 41/003/2002. See also the annual reports of SOS Racismo or the report of the University of Zaragoza: *Inmigración y Justicia. El tratamiento de la inmigración en el ámbito de la administración de Justicia*; www.unizar.es/sociologia_juridica.

¹⁷³ See, for example Amnesty International: *España: ¿Somos todos iguales ante la ley?*; *ESPAÑA: mujeres invisibles, abusos impunes*, or *España: los menores acompañados sin papeles están en riesgo*. All of these can be found at www.es.amnesty.org.

organisation has urged the administration to adopt measures to reduce and eliminate the vulnerability of migrants to abuses and violations of human rights, especially in the case of migrant women and children. It is for this reason that Amnesty International welcomes the measures adopted by the Spanish authorities designed to facilitate legal channels to enable immigrants to obtain the full and effective recognition of their fundamental rights¹⁷⁴. Such measures should also be consistent with international human rights treaties which recognize the basic rights of all migrants, regardless of their situation vis-à-vis the authorities. The organisation would like to recall that the adoption of measures to alleviate the “administrative invisibility” of migrants should be effected in such a way as to avoid provoking a contrary and perverse effect, involving direct or indirect discrimination against migrants¹⁷⁵.

To conclude this chapter on Ceuta, Amnesty International recalls that major irregularities continue to exist in all matters relating to the rights of asylum-seekers and migrants: the expulsion of foreign nationals, including refugees seeking asylum and minors; inadequate reception facilities, legal assistance, interpreting facilities and information; the vulnerability of possible victims of trafficking, delays in the asylum process, improper interpretation of the grounds for inadmissibility, absence of effective remedy, etc. These are irregularities which must be remedied immediately by the Spanish authorities, taking account of the recommendations made by the organisation in this section.

¹⁷⁴ Temporary Provision III of the new regulations on aliens.

¹⁷⁵In this connection, our organisation has already warned of the adverse effects that could result if the police had access to the electoral register. Amnesty International: *Mejoras insuficientes en materia de derechos humanos en el nuevo reglamento de extranjería*.

3. What happens to people who seek protection in the Canary Islands

The journey to, and arrival on, the islands....

Another location with a massive presence of foreign nationals – refugees, asylum-seekers or migrants – is the Canary Islands, a group of seven islands off the north coast of West Africa, about 1,050 kilometres from the Spanish mainland. The islands are Fuerteventura, Lanzarote, La Palma, Tenerife, Gran Canaria, El Hierro and La Gomera. In the past four years, over 30,000 foreigners have arrived by small boat in the Canary Islands, from North Africa, Morocco and Mauritania.

Data on the arrival of foreigners by small boat in the Canary Islands:

Year	n° of persons
2001	4,112
2002	9,875
2003	9,388
2004	8,426
Total	31,801

Source: Ministry of the Interior

Although people started arriving in the Canary Islands by small boat in the 1990s, there has been a big increase in recent years, due mainly to the greater control of migratory flows in northern Morocco, Ceuta, Melilla and in the Straits of Gibraltar. Most of the small boats - 82% of the total in 2004 – arrive on the island of Fuerteventura, which is located 54 nautical miles off the coast of Africa. It is usually North Africans who arrive in this way – especially Moroccans and people of the Sahara – and sub-Saharanans from Cameroon, Congo, Gambia, Ghana, Guinea-Bissau, Guinea Conakry, Côte d’Ivoire, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo¹⁷⁶. In many of these countries, grave violations of human rights take place¹⁷⁷. The majority of these people arrive on the islands after a long journey, not without danger, for the most part following the same route as those who go to Ceuta. This is a journey which, as mentioned in section II, involves crossing the Sahara desert in very difficult conditions, with little food or water, and many of them die en route. According to some statements, they also suffer human rights violations at the hands of networks involved in the trafficking of persons, or of the Moroccan security forces¹⁷⁸. As stated above, the Moroccan security forces have recently increased the number of raids carried out and tightened migration control as a result of pressure from Spain and the European Union.

Migrants and asylum-seekers make the journey in small boats from the shores of Morocco. Various human rights organizations have voiced their concern about the dangerous nature of this journey¹⁷⁹. The small boats normally transport between 20 and 35 people on a journey that lasts an average of 20 hours, during which they can hardly move for fear of these very unstable vessels capsizing¹⁸⁰. In addition, since the penalties for trafficking networks were increased in 2003, many of the small boats sail

¹⁷⁶ The data on nationalities are official.

¹⁷⁷ Niger: *The right to justice* (AFR 43/001/2000); Republic of the Congo: *A past that haunts the future*. AFR 22/001/2003; Liberia: *No impunity for rape - A Crime against Humanity and a War Crime*, AFR 34/017/2004); Sierra Leone: *Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law*, AFR 51/012/2003; Guinea-Bissau: *Torture/lack of medical care for several detainees: Medical Action*, AFR 30/007/2003; Guinea: *Maintaining order with contempt for the right to life*, AFR 29/001/2002; Senegal: *Casamance women speak out*, AFR 49/002/2003

¹⁷⁸ See section II, paragraph: *The Journey to Ceuta*.

¹⁷⁹ Ugarte, C: *Muertos a la deriva*. In this article, the author condemns the fact that the number of people transported in small boats in 2004 had increased by 40% compared with the figure for 2003.

¹⁸⁰ These figures were obtained following interviews with migrants who had arrived in the Canary Islands by small boat. See also the report of the MSF exploratory mission to Fuerteventura, January 2004.

without their master¹⁸¹ and carry more passengers. According to MSF, in the first quarter of 2003, 1,366 people arrived in 65 small boats and in the same quarter of the following year, a similar number, 1,365, arrived on board 49 small boats, although there had been no increase in the size of the boats, nor had there been any improvement in their navigability¹⁸². It appears that the number of persons per boat depends on the price paid for the voyage: the higher the payment, the fewer the passengers¹⁸³. According to the APDH, the increased political and judicial pressure on owners has given rise to an increased risk of shipwreck¹⁸⁴.

Arrivals in by small boat on the coasts of the Canary Islands:

	2002	2003	2004
Las Palmas	11	32	21
Lanzarote	162	145	12
Fuerteventura	470	390	168
Tenerife	-	13	2

Source: Ministry of the Interior

3.1. Inadequate rescue facilities for people arriving in small boats

The dangerous conditions on the voyage mean that many small boats sink at sea or near the coast of Fuerteventura. As in Ceuta, in 2002 the *Sistema Integrado de Vigilancia en el Estrecho y en alta mar* Integrated System of Surveillance on the Straits and at sea (SIVE)¹⁸⁵ was put in operation to detect any small boats that were approaching the islands. However, in spite of the huge sums of money that have been invested in it, different human rights organizations have complained about the inefficiency of the system in locating the small boats and rescuing those who have

¹⁸¹ Art. 54.1b) of L.O. 4/2000 and art. 318(1) bis of the Spanish Criminal Code, according to LO 11/2003, of 29 December. The punishment may be as much as 8 years in prison, 10 if the trafficking of human beings is for the purposes of sexual exploitation.

¹⁸² Médecins sans Frontières report for the *Foro Canario de la Inmigración* (Canary Islands Immigration Forum), 28 April 2004. In 2004, this figure rose to up to 28 people per boat .

¹⁸³ AI interviews with D.K., O.T. and G.K., 2 December 2004.

¹⁸⁴ APDH-Andalucía: *El Estrecho: la muerte de perfil*, December 2003

¹⁸⁵ Initially with mobile units, with the gradual installation of fixed units throughout the island. It is currently also intended to install it on Lanzarote.

been shipwrecked¹⁸⁶. Similarly, some organizations have condemned the fact that the SIVE is not fully operational at weekends, a time when most of the small boats – 64.3%¹⁸⁷ – usually arrive.

On 16 January 2004, a small boat, that had not been intercepted, sank in Cala de San Roque at the foot of the Entallada lighthouse, where the Civil Guard have installed their main electronic surveillance equipment. It is an area where there are many cliffs and rocky coves which are difficult to approach. The bodies of the drowned foreign nationals were recovered a few metres from the shore. On 17 April 2004, another small boat sank in the area of Jacomar, a few miles north of that cove: 16 people died. This vessel was not detected by the SIVE either.

When the small boats are located, the Civil Guard intercept them either at sea or when they reach the coast. However, some NGOs have expressed concern that the vessels used by the Civil Guard to intercept the boats at sea are not appropriate for rescuing people¹⁸⁸. Unlike those used by the Civil Guard in Andalusia, these are high-sided vessels. When they come alongside a small boat, the occupants are often very alarmed and, when they move about, the boat sometimes capsizes, or on other occasions the waves created by the Civil Guard vessel sink the small boat. The poor conditions during the long crossing, hypothermia and the inability to move as a result of numb muscles mean that, in some cases, these people fall “like stones” into the sea and drown easily, offering little resistance¹⁸⁹. During the first week of December 2004, off the coast of Fuerteventura, two boats capsized during Civil Guard rescue operations.

After receiving complaints, the Civil Guard has started to use Zodiac launches – which have much lower sides and are easier to board – to intercept the small boats, but these cannot be used for all interceptions¹⁹⁰. On 21 February 2005, the Director General of the Civil Guard recognized that the main purpose of the mission in the Canary Islands was linked to surveillance on the borders and that the rescue work was secondary to that. Furthermore, he admitted there was a shortage of material resources for the assistance and rescue work at sea, expressing his “frustration at the inability to avoid the loss of human life”¹⁹¹.

¹⁸⁶ MSF report to the *Foro Canario de la Inmigración*, 28 April 2004 and *Asociación Pro-Derechos Humanos de Andalucía: El Estrecho: la muerte de perfil, los derechos humanos y la inmigración clandestina*, December 2003.

¹⁸⁷ MSF report for the *Foro Canario de la Inmigración*, 28 April 2004.

¹⁸⁸ Interview with local NGO.

¹⁸⁹ Information supplied by MSF during the visit to the Canary Islands.

¹⁹⁰ AI interview with a local NGO in Fuerteventura, December 2004.

¹⁹¹ Appearance in the Senate of the Director General of the *Guardia Civil* on 21 February 2005. *Diario de avisos*. Com., 22 February.

The rising numbers of people travelling in secret by sea has led States to strengthen migration control measures and, specifically, measures relating to interception at sea or on the coast but without, in many cases, including adequate safeguards to protect the lives of such persons, especially if they are shipwrecked. However, under international law, States have a fundamental obligation to rescue anyone in danger at sea, including migrants and asylum-seekers and to give them whatever assistance they need¹⁹². In addition, the human rights of rescued persons must be fully respected and they must be treated humanely in safe conditions, regardless of either their origin or their mode of arrival. The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air states that migrants – including asylum-seekers – may not be deprived of the right to protection, including asylum, or to assistance. These rights must not be compromised by measures adopted by States to combat illegal trafficking in human beings, especially in the context of maritime rescue¹⁹³.

Consequently, Amnesty International urges the Spanish authorities to ensure that migration control measures and the interception of small boats at sea or near the coast are fully compatible with the Spain's obligation to rescue and protect the lives of the persons intercepted, establishing procedures that are compatible with international law on human rights and maritime rescue. It also recommends that the State security forces in charge of migration control and the SIVE be allocated adequate material and human resources to carry out rescue operations.

¹⁹² UNHCR, Executive Committee, Conclusion n° 23 (1981), *Problems related to the Rescue of Asylum Seekers in Distress at Sea*; United Nations Convention on the Law of the Sea, 1982; International Convention on Maritime Search and Rescue, 1979; Geneva Convention on the High Seas, 1958.

¹⁹³ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000. *Background note on the protection of Asylum-Seekers and Refugees Rescued at Sea* (UNHCR Global Consultations).

A small boat carrying 20 foreign nationals is intercepted by the Civil Guard in the waters off Fuerteventura, 200 metres from the coast. Canary Islands, 2000. ©AP Photo/Ramón de la Rocha.

3.2. Inadequate assistance on the coast for migrants, asylum-seekers and refugees arriving on Fuerteventura by small boat

According to MSF, foreign nationals who arrive on Fuerteventura, in small boats, often have symptoms of dehydration, weakness, stiff muscles, dislocations, cuts and, in some cases, hypothermia, caused by the difficult conditions of their journey from the Moroccan coast. The crossing can take more than 20 hours and it is impossible either to move around or, in many cases, eat and drink in a small and unstable boat. Despite this, for years, there has been no programme of immediate assistance for such people when they arrive on Fuerteventura in this condition.

In April 2002, MSF asked the authorities to begin to provide urgent assistance on the coast. The Red Cross has also requested funds from the government, over many years, but the government has always refused. According to CEAR, the situation is different on Gran Canaria. Small boats occasionally arrive there, but there are adequate resources to look after the people on them. In 2003, a boat containing 152 sub-Saharan Africans beached on Gran Canaria. The local authorities organized a team of doctors, 10 lawyers, five judges and interpreters of English, French, Portuguese and several African languages, to provide immediate assistance to these people. Meanwhile, on Fuerteventura, when 340 people arrived on the same day, they doctors,

doctors, 10 lawyers, five judges and interpreters of English, French, Portuguese and several African languages, to provide immediate assistance to these people. Meanwhile, on Fuerteventura, when 340 people arrived on the same day, they received little attention. No immediate medical care was made available on the shore and their medical needs were not attended to until they arrived at the El Matorral Centre, a few hours later. Legal assistance was also insufficient, with only three lawyers, one duty judge and two interpreters.¹⁹⁴

After the government's refusal to set up an urgent assistance programme on Fuerteventura, MSF took the initiative in March 2004. The government then approved an urgent assistance programme with the Red Cross, for an initial period of six months. However, the Red Cross did not begin to provide assistance until June 2004, so MSF continued to provide basic medical care to people who arrived on the island in small boats. However, MSF occasionally experienced problems with the Civil Guard, which did not always let the organisation know in time for it to assist migrants.¹⁹⁵ The agreement between the Red Cross and the government has been prolonged indefinitely and it is intended to increase the human resources available. There is currently only one team, which is sometimes not enough, especially if several boats arrive on the same day.¹⁹⁶

A group of foreign nationals is intercepted just off the road. Fuerteventura, 2004. ©Daniel Loewe

Amnesty International considers the improvements in emergency care for foreign nationals who arrive on the Canary Islands in small boats is a very positive step. However, it urges the government to ensure there are sufficient resources and

¹⁹⁴ See "Informe 2004: La Situación de los Refugiados en España", p. 33 (CEAR, 2004).

¹⁹⁵ According to a report by MSF to the *Foro Canario de la Inmigración*, Canaries Immigration Forum, 20 May 2004.

¹⁹⁶ Information provided to AI by a local NGO, in Las Palmas, January 2005.

personnel to provide adequate assistance to all foreign nationals who arrive on its shores, guarantee that assistance is adequate on all islands and adopt practical measures to attend to the needs of the most vulnerable groups.

3.3. Lack of adequate guarantees in the expulsion procedure

Most foreign nationals who arrive on Fuerteventura by boat do not fulfil the legal requirements for entry and residence in Spain, so the Spanish authorities initiate forced return¹⁹⁷ or expulsion procedures.¹⁹⁸ After being intercepted and assisted, they are usually taken to Civil Guard barracks and then to the National Police station to be identified and for forced return or expulsion procedures to be initiated. They are then taken to the El Matorral detention centre. They are sometimes taken directly to El Matorral, where the said procedures are begun.

During its investigation, Amnesty International found causes for concern about expulsion procedures in Fuerteventura.

3.3.1. Inappropriate use of expulsion procedures in cases of refoulement

In Fuerteventura, the 1992 Readmission Agreement is immediately applied for Moroccan nationals and they are flown back to their country of origin within a few days.¹⁹⁹ However, the authorities begin expulsion procedures for Sub-Saharan. If they are captured at sea, the law establishes that forced return orders should be issued²⁰⁰, but the police usually issue expulsion orders.²⁰¹ Several lawyers have made judicial appeals against this measure because they consider it illegal, on the grounds that immigration law (until the reform of December 2003) provided for either detention or prohibition of entry to Spain in the case of expulsion but not in the case of forced return.²⁰² Some sources say that the government began expulsion procedures in order to justify the detention of migrants, even though most were intercepted at sea or on the shore. However, the Ombudsman indicated, as far back as 2001, that the commencement of expulsion procedures for people who arrive in the Canary Islands by boat “is not in line with current law, as the foreign nationals were detained when they were trying to enter the country and not once they were already on national

¹⁹⁷ *Devolución*

¹⁹⁸ See Section II: What happens on arrival?

¹⁹⁹ As mentioned above, Morocco has signed such an agreement with Spain.

²⁰⁰ See Organic Law 4/2000, art. 58; *Reglamento de Inmigración*, art. 138.

²⁰¹ AI interview with a local NGO, December 2004.

²⁰² Such a prohibition would assume that the foreign national in question is on the Schengen list, which would limit any attempt to regularise the situation of that person in Spain or the rest of the European Union.

territory.”²⁰³ Reform of the Law on Aliens, in December 2003, changed the situation. It established a three year entry ban and allowed detention in cases of forced return.²⁰⁴

Amnesty International considers it to be extremely serious that a procedure that has serious implications for migrants’ rights should be applied in such an arbitrary way, especially given the right to not be detained in an arbitrary manner.

3.3.2. Discrimination and insufficient justification for the detention of people who arrive on small boats

The Law on Aliens provides for the detention of foreign nationals as a preventive measure to facilitate their administrative expulsion and ensure their presence during the procedure.²⁰⁵ As this is a deprivation of liberty, it should be a clearly exceptional measure (used when there are no other means of ensuring the presence of the person concerned) and should be authorized by the judicial authorities, after a court hearing.²⁰⁶ The *Tribunal Constitucional Español*, Spanish Constitutional Tribunal made a decision to this effect when it said “that detention should be governed by the principle of exceptionality.”²⁰⁷

In general, the police usually ask the judicial authorities to authorize the detention of all foreign nationals who arrive on the Fuerteventura coast, at the El Matorral Centre, except for cases in which readmission agreements apply and migrants can be legally sent back within 72 hours.²⁰⁸ However, it is important to remember that the aim of detention is to ensure the presence of foreign nationals during expulsion procedures and prevent them from absconding and avoiding expulsion, which is difficult on an island like Fuerteventura.

In 2002, the Ombudsman indicated his concern about certain irregularities in detention procedures. First, he complained that, in some cases, foreign nationals were not physically put at the disposal of a judge and the obligatory interview of foreign nationals by a judge had therefore not taken place. In other cases, groups of foreign nationals attended a hearing together, rather than being interviewed individually.²⁰⁹ Second, many judicial authorisations used a “previously prepared form, giving the same reason in all cases”, which violates article 248.2 of the *Ley Orgánica del Poder*

²⁰³ *Informe Anual*, 2001.

²⁰⁴ Article 58.6 and 5 respectively of Organic Law 4/2000, amended by LO8/2000 and Law 13/2003.

²⁰⁵ Article 61, LO 4/2000. Also see article 153.3 of the *Reglamento de Extranjería* (R.D 2393/2004, 30 December).

²⁰⁶ *Ibid.*.

²⁰⁷ STC 41/1982 of 2 July, STC 115/1987, of 7 July.

²⁰⁸ Article 153.1 of the Immigration Rules establishes the period of 72 hours. Information provided by Centre officials during AI’s visit, in May 2004.

²⁰⁹ This violates article 62.1 of Law 4/2000, amended by LO8/2000.

Judicial, Organic Judicial Power Law.²¹⁰ Third, there was no record of any visit by judicial authorities to the place where foreign nationals were detained.

The situation seems to have improved in Fuerteventura since a support judge was assigned to deal only with immigration issues. A team composed of a judicial secretary, a judge, an interpreter and a lawyer often go to El Mattoral to interview foreign nationals and issue detention orders.

However, during its visit to the island, Amnesty International received complaints that visits from the judge sometimes took place four or five days after detention, especially at times of a massive influx of boats.²¹¹ The organisation also received complaints that many judicial interviews of foreign nationals continue to take place in groups of two.²¹² In these interviews, foreign nationals are only asked about their links with Spain and no attempt is made to find out whether they are fleeing human rights violations in their country of origin. In general, it seems that foreign nationals continue to be routinely detained and the interview with the judge is treated as a merely bureaucratic procedure to obtain official authorisation, as happened in the past, according to Human Rights Watch denunciations.²¹³

Furthermore, Amnesty International would like to highlight the fact that the Spanish authorities generally detain migrants who arrive from African countries, even though they cannot send them back because either there are no readmission agreements with these countries, or because of the refusal of those countries to accept their return. It is difficult to understand why the Spanish authorities find it necessary to deprive people of their liberty when they know they will have to release them anyway after the expiry of the maximum period of 40 days, within which a decision has to be taken about whether to expel them or not. During its visit, the organisation was able to verify that Latin Americans or other non-African foreign nationals are not automatically interned, even when expulsion procedures are initiated against them.

In interviews conducted during the organisation's visit, in May 2004, the Spanish authorities justified the measure by "the need to hold them in the centre, because they would alarm society if they were allowed in the streets."²¹⁴ They also indicated that foreign nationals were detained because of the risk they would flee, having neither contacts nor roots in the community, and because they had entered the Canary Islands

²¹⁰ *Defensor del Pueblo, Informe Anual, 2002*, p. 105.

²¹¹ AI interview with local NGO, May 2004.

²¹² AI interview with judicial authorities, May 2004 and *Informe Anual del Defensor del Pueblo, 2002*, p. 105.

²¹³ Human Rights Watch: *The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum-seekers*, chapter IV.

²¹⁴ AI interview with Island Director, Fuerteventura, May 2004.

in an irregular way. Leaving them at liberty would alarm public opinion and have a negative effect on tourism.²¹⁵ These reasons are not included among the reasons for detention listed in immigration laws, which establish that detention “should not be prolonged longer than essential for the procedure of expulsion, forced return or return.”²¹⁶ Amnesty International believes that this measure could violate article 9 of the International Covenant on Civil and Political Rights 1966, which establishes that nobody can be deprived of their liberty for any reason that is not established by law.

Similarly, the different treatment given to Africans – who may be fleeing human rights violations – and their routine detention, violates Spain’s duty to respect the principle of non-discrimination, as set out in many international treaties, for example, the International Convention on the Elimination of All Forms of Racial Discrimination.²¹⁷ In addition, the UNHCR considers it undesirable to detain foreign nationals and advises against automatic detention, especially of minors, for whom detention should always be a last resort.²¹⁸

Amnesty International would like to express great concern at the way that this measure is applied in a discriminatory and often generalized way to people of African origin. These people cannot be expelled or returned to their country of origin and are released after being detained for a maximum of 40 days. For all these reasons, the organisation reminds the Spanish authorities that detention should be an exceptional measure and should respect international standards about people deprived of their liberty.

3.3.3. Inadequate information for migrants and refugees

It is important to emphasize that many people who arrive on the Canary Islands have had a long journey, organized by trafficking networks and have not received adequate information. Some of those interviewed believed that when they arrived in Spain, they would be able to work immediately and have a dignified life. Some of them believed they had arrived on mainland Spain rather than the Canary Islands.²¹⁹ They often arrive in a confused state and with little information about what is going to happen to them when they are intercepted by the Spanish security forces.

As mentioned in section II, under international law, migrants, asylums seekers and refugees have the right to receive adequate information about the administrative and judicial procedures that apply to them, especially when they are deprived of their

²¹⁵ AI interview with judicial authorities, May 2004.

²¹⁶ Art. 153.3, *Reglamento de Extranjería*.

²¹⁷ Art. 2.

²¹⁸ *UNHCR Guidelines on the Detention of Asylum-seekers*.

²¹⁹ As mentioned on p. 39, the Canary Islands are 1,050 km. from the Spanish mainland.

liberty, and legal assistance and interpretation.²²⁰ However, many foreign nationals interviewed by the organisation said that, in Fuerteventura, they had been provided with very little information about either their rights or the expulsion and forced return procedures taken against them, both when they were taken to the Civil Guard barracks and at the Police Station and the El Matorral Centre.

Mr. A. S. cannot read or write. When he was detained at the El Matorral Centre, he received no information about his rights and did not understand the procedures initiated against him. He currently lives on the streets in Madrid and his lawyer is trying to find out which legal procedures were taken during his detention in El Matorral.²²¹

According to some interviewees and NGO representatives,²²² members of State security agencies and forces only asked them about their nationality and personal particulars; all the documentation they received was in Spanish. In some cases, they received a verbal explanation of what they were signing²²³ but no information was given to them about asylum.²²⁴ The government has refused CEAR's repeated requests for access to detention centres and to be allowed to provide information to recently arrived immigrants.²²⁵ Amnesty International has verified that many foreign nationals detained in El Matorral did not know the reasons for their detention nor had a very confused idea about the consequences of their detention or of their legal situation in Spain.²²⁶

Amnesty International urges the government to guarantee that all asylum-seekers and migrants who arrive on the Canary Islands receive adequate information about their rights, legal situation and the procedures against them, whether be it asylum, expulsion or forced return, and about reception facilities. This information should be available in a language they have an adequate understanding of.

3.3.4. Violation of the right to adequate legal assistance and interpretation

According to national and international legislation, all foreign nationals have the right to legal assistance and interpretation during expulsion, forced return or asylum

²²⁰ For example, see United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. Resolution 43/173 of the United Nations General Assembly, 9 December 1988.

²²¹ Interview conducted on 3 December 2004.

²²² AI interview with a CEAR lawyer, December 2004.

²²³ Interview with a Nigerian and a local NGO, May 2004.

²²⁴ AI interview with D. K., G.K., O.T. and A.S., December 2004.

²²⁵ AI interview with a representative of CEAR's legal team, October 2004.

²²⁶ AI interviews, May 2004.

procedures.²²⁷ However, for some years, various bodies, including the Ombudsman and NGOs, have denounced the lack of adequate legal assistance for foreign nationals who arrive by boat, which seriously prejudices their capacity to protect their rights.

These reports have been especially critical of the failure of Fuerteventura Lawyers' Association's pool of immigration lawyers to provide adequate legal assistance.²²⁸ This service is currently provided by 32 lawyers, with three lawyers on duty at any one time. It deals with most of the foreign nationals detained at El Matorral. Meanwhile, CEAR lawyers are banned from entering the El Matorral detention centre, despite having repeatedly requested access.²²⁹

However, in recent years, the work of association immigration lawyers has been heavily criticized for the alarmingly poor quality of the service. During his visit in 2002, the Ombudsman found that lawyers interviewed between 14 and 120 clients per day, which means between one minute and one and a half minutes per detainee.²³⁰ He also complained of frequent "collective interviews", in which lawyers did not speak directly to foreign nationals and never provided information on either asylum or Spanish immigration laws. This violates the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, which establishes the right of all people deprived of their freedom to have confidential access to a lawyer.²³¹ The Ombudsman also commented on the amount of money that such lawyers were paid for providing a "legal presence". For example, he mentioned the case of a lawyer who charged € 8,654.40 for two hours of work, assisting 120 people for an average of two minutes and 20 seconds each.²³²

These complaints prompted the Las Palmas Lawyers' Association to conduct an investigation. However, it closed the file on the disciplinary proceedings opened against the accused lawyers, on the grounds that it could find nothing irregular in their actions. However, it did change the way immigration lawyers were paid in Fuerteventura. They were henceforth paid by the day and not by the number of people they assisted.

There have also been complaints of one case in which no legal assistance was available at the moment the judicial authority issued the detention order in El

²²⁷ Organic Law 4/2000, amended by LO8/2000, articles 22.1, 63.2; Asylum Law, art. 4.1; Asylum Rules, art. 8.4 (request made on Spanish territory); art. 19.2 (request made on the border).

²²⁸ Human Rights Watch: *The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum-seekers.*

²²⁹ AI interview with CEAR, 11 December 2004.

²³⁰ 300 deportation cases were examined, corresponding to January and February 2002.

²³¹ Principle 18 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment.

²³² *Informe anual del Defensor del Pueblo*, 2002, pages. 131-32.

Matorral,²³³ which clearly violates immigration laws. This was recognized by the Las Palmas Provincial Court, on 27 November 2003, when it decided that the fact that “the judge continued with the procedure without the presence of legal assistance, flagrantly violated one of the most important rights of a person deprived of their freedom.”²³⁴

Many migrants and asylum-seekers interviewed by the organisation complained that the only occasion they saw a lawyer while detained in Fuerteventura was during judicial visits to decide on their detention.²³⁵ According to testimony, the role of lawyers is limited to being present and, as in Ceuta, they do not provide any legal assistance.²³⁶ According to testimony, lawyers hardly ever interviewed clients alone, or provided their name, address or explained how to contact them. Neither did they ask any questions during the appearance before the judge.²³⁷

Spanish legislation establishes that internees have the right to request an interview with their lawyer at any time.²³⁸ According to officials at El Matorral, detainees can contact lawyers from public telephones from the patio of the centre, to which they have limited access. Detainees can only make calls if they have Euros, which is often not the case. However, Amnesty International verified that none of the foreign nationals interviewed had their lawyer’s telephone number. Although the El Matorral Centre authorities explained to the organisation that they could provide such information to detainees, nobody had requested this since the centre opened in 2002.²³⁹ In addition, lawyers rarely visited the Centre and, even then, did not generally request an interpreter. However, Principle 18 of the United Nations Minimum Rules for the Treatment of Prisoners establishes the right of all detainees to have access to a lawyer and determines the duty to give “the detainee or prisoner, adequate time and means to consult their lawyer.”

The absence of adequate legal assistance is especially worrying given deficiencies in the identification of people who are fleeing human rights violations. The work of the lawyers can be essential in identifying refugees among the people who have arrived by boat in Fuerteventura. However, there were complaints that some lawyers refused

²³³ Complaint made by several lawyers to the Court of First Instance nº 1, Puerto Rosario, 28 November 2003.

²³⁴ Decision 155/04 of the First Section of the Las Palmas provincial court, second legal reason.

²³⁵ During Amnesty International’s visit in May 2004, some lawyers confirmed to the organisation that lawyers were only rarely present when detainees are read their rights.

²³⁶ AI interviews with D.K. in November 2004; and G.K., O.T., and O.S. in December 2004.

²³⁷ AI interviews with foreign nationals, May 2004.

²³⁸ Article 62 bis f), Law 4/2000, as drafted in Law 14/2003.

²³⁹ AI interview with the Director of the El Matorral Centre.

to comply with their clients' wish to request asylum either because this involved much more work or they did not know how to proceed.²⁴⁰

The lack of communication between foreign nationals and their lawyers is especially serious because detention decisions are notified directly to the lawyers, not to the detainees. In most cases in which the lawyer has appealed against these decisions, they have not interviewed the client or prepared the case with them. This means that a successful outcome to the appeal cannot be guaranteed. When interviewed by Amnesty International, the judicial authorities themselves recognized that most appeals against detention orders did not provide any arguments in defence of the client.²⁴¹

For all these reasons, Amnesty International urges the Spanish authorities to guarantee effective legal assistance to foreign nationals who arrive in the Canary Islands. The organisation considers that NGOs that can provide legal assistance to detained refugees and migrants should be guaranteed access to the El Matorral Detention Centre.

Amnesty International is greatly concerned that association immigration lawyers in Fuerteventura do not receive compulsory and specific training for the identification of asylum cases. UNHCR has, on several occasions, insisted on the need to improve training of lawyers on asylum issues and interview techniques. The only training provided to these lawyers by the UNHCR was at the beginning of the summer of 2002 and this has not been repeated.

The organisation recommends that the Spanish authorities guarantee all association immigration lawyers receive adequate training on immigration and asylum. It also reminds all association immigration lawyers in Fuerteventura – and the rest of Spain – of their important role as guarantor of foreign nationals' rights. They should provide adequate assistance rather than restricting their role to merely providing a legal presence. They should also play an essential role in identifying people who are fleeing human rights violations. They should also guarantee that all complaints of ill-treatment of foreign nationals by members of the State security forces are duly investigated by the judicial authorities.

3.4. Problems of access to asylum procedures

In recent years, Amnesty International has repeatedly expressed its concern at the increasing confusion between asylum and immigration procedures. This is no doubt due to the fact that European countries are increasingly reducing international

²⁴⁰ AI interview with local NGOs, May 2004.

²⁴¹ AI interview in the courts, May 2004.

protection, by not establishing adequate guarantees to identify refugees among the foreign nationals arriving on their territory.²⁴²

As mentioned above, many people arriving on the Canary Islands, in small boats, come from countries in which serious human rights abuses take place. This is not corroborated by the number of asylum requests presented on the Canary Islands, which continues to be very low.

Year	Asylum requests
2004 (until 22 Sept.)	51
2003	174
2002	183

Source: Secretary of State for Emigration and Immigration

Year	Las Palmas de Gran Canaria Province (Fuerteventura, Lanzarote and Gran Canaria)	Santa Cruz de Tenerife Province (Tenerife, La Palma, La Gomera and El Hierro)
2004	42 (until August)	6
2003	149	25
2002	173	10

Ministry of the Interior, Asylum Department

The low number of requests on the Canary Islands contrasts with the situation in Ceuta, even though most of the foreign nationals arriving on the islands come from the same countries. Some sources state that the difference could be due to the belief of many foreign nationals that an asylum request on the islands may prevent them proceeding to the Spanish mainland.²⁴³ However, during its investigation, several people complained to Amnesty International that they were not given the opportunity

²⁴² AI: *EU-Asylum: Amnesty International calls on European Justice and Home Affairs Ministers to amend or withdraw policy proposals*. AI Index: POL 30/025/2003.

²⁴³ AI interview with an immigrant, a Ghanaian national, who confirmed that he had preferred to wait until he arrived on the mainland before presenting his request for asylum. See AI interview of D.M., 22 July 2004.

to request asylum on the Canary Islands and had to wait until they were sent to the mainland.

A.D., asylum-seeker from the Côte d'Ivoire, said he had repeatedly requested asylum in Lanzarote. Initially, the official who dealt with him told him not to worry and that he would be able to stay in Spain because he was from the Côte d'Ivoire. Then, at the police station, he again requested asylum, but a police officer again told him not to worry and that he would not be expelled. On the following day, he was transferred to the airport detention centre, where he again expressed his intention to request asylum, but he was denied the opportunity of doing so. During a group visit, in the presence of a lawyer and an interpreter, he again requested asylum; again he was denied his rights and told that there would be "no problem" as he was from the Côte d'Ivoire.

At no time during the 30 days he was detained, was he offered information about his rights or allowed to request asylum. Three days after his arrival, he was again taken to the police station and asked to sign some papers; on refusing, they told him that he could have problems at the centre if he did not sign. He later realized that the document was an expulsion order. A.D. was later taken to Malaga, where he was taken to a police station and then the Red Cross. He was not provided with accommodation, legal advice, social or medical attention. He was only asked where he wanted to go. He said Madrid, and he was put on a bus, without any money. After arriving without a cent at Madrid, a man in the street asked him if he was in difficulty and told him he could go to the offices of Karibu, where he was told how to request asylum. His request for asylum was finally admitted for processing.²⁴⁴

Amnesty International considers it extremely serious that barriers are placed in the way of asylum-seekers, as this is in flagrant violation of international and Spanish legislation on refugees. The organisation is unaware of any investigation being opened to punish officials who are preventing or dissuading foreign nationals from requesting asylum. An end should be put to all practices preventing people from requesting asylum who claim to be fleeing persecution. Officials who do not comply with legislation on this matter should be punished.

The problems of access to asylum become more serious when, as in the case of Fuerteventura and Lanzarote, foreign nationals do not receive adequate information or have access to appropriate legal assistance. In some cases, asylum-seekers thought that asking the Civil Guard for asylum when arriving on shore meant their requests were being processed, when no such procedure had, in fact, been initiated.

²⁴⁴ AI interview with A.D., 18 November 2004.

During its investigation, Amnesty International discovered that Fuerteventura police and judicial authorities, and El Matorral Centre lawyers and staff, almost never inquire adequately into why immigrants leave their country of origin. Although asylum legislation does not establish the duty to ask immigrants if they want to request asylum – and the authorities refuse to do so because they believe this would be tantamount to ‘inducing’ them to request asylum – international human rights legislation places a duty on the Spanish authorities to adequately inquire about the reasons for their flight and to inform them, if appropriate, of their right to request asylum and the procedure. Officials should be especially careful when interviewing people arriving from countries where serious human rights violations are committed; when they possess refugee documentation; or if they claim to have come from refugee camps in Africa.

Amnesty International urges the Spanish government to guarantee that all people who want to request asylum on the Canary Islands can do so, in accordance with article 14 of the Universal Declaration of Human Rights.

3.4.1. Detention of asylum-seekers

During its visit to the El Matorral Centre, the centre authorities informed the organisation that if anyone requested asylum, the request was formalized and sent to the Madrid OAR. Asylum-seekers remain in detention at the centre until their request is dealt with.

The organisation is concerned that asylum-seekers in Fuerteventura remain detained in El Matorral Centre. EXCOM (the UNHCR Executive Committee) has stated that the detention of asylum-seekers should generally be avoided. International standards only allow detention if it is necessary, legal, not arbitrary and used for one of the following reasons: to verify identity, determine the factual basis for the request or where travel or identity documents have been destroyed or false documents used to mislead the authorities.²⁴⁵ The authorities should demonstrate, case by case, the need for such a measure, and detention should continue for no longer than necessary. The decision to detain asylum-seekers should not be based on the availability of detention places or be taken without reason. Amnesty International urges the government to take EXCOM recommendations into account.

Furthermore, according to some sources, asylum requests at the El Matorral Centre are processed in the same way as those in any other detention centre and it is assumed that requests are “manifestly unfounded” and made to avoid expulsion from the country. However, the organisation would like to remind the authorities that, in the case of Fuerteventura, migrants are sent to the El Matorral Centre as soon as they

²⁴⁵ EXCOM conclusion 44.

arrive and it is the first place they are able to request asylum. Amnesty International therefore urges the authorities to conduct a detailed and in-depth examination of asylum requests presented in Fuerteventura to identify people fleeing human rights violations.

3.5. Inadequate reception conditions in the Fuerteventura and Lanzarote detention centres

As mentioned above, the 1951 Geneva Convention and international human rights law establish the State's duty to provide adequate reception facilities for asylum-seekers and migrants. Basic human rights, included in a wide range of human rights instruments, are applicable to all people, irrespective of their migration situation; this includes detainees. So, for example, article 10 of the International Covenant on Civil and Political Rights states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

The United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment contains basic principles to guarantee the right of detainees to dignified treatment. The United Nations Human Rights Commission states that these principles also apply to detained migrants.²⁴⁶ Among these principles is the right of all detainees to be treated with the respect due to their inherent dignity as human beings.²⁴⁷ These rights are also recognized by the Council of Europe's European Prison Rules.²⁴⁸

As indicated above, in Fuerteventura, all migrants intercepted by the Civil Guard, and handed over to the National Police, are immediately taken to the El Matorral Centre, after receiving initial medical assistance on the shore.

There is no short-stay reception centre (CETI) on the island, like the one in Ceuta, for migrants and asylum-seekers. However, some vulnerable groups (pregnant women or families) are transferred to small reception centres, with 20 and 15 places respectively, managed by the Red Cross with government funds, where they generally stay for an average of three months before being deported to their country or sent to other reception centres on another island or on the mainland.²⁴⁹ However, these centres are clearly not enough to cope with the enormous influx of foreign nationals, among

²⁴⁶ General Comment N° 15 en *The Position of Aliens Under the Covenant*, HRI/GEN/1/Rev4, 7 February 2000, p. 98, para. 7

²⁴⁷ Principle 1 of the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. Resolution 43/173 of the United Nations General Assembly, 9 December 1988.

²⁴⁸ Recommendation 87/3 of the Council of Ministers of the Council of Europe, Article 1.

²⁴⁹ There are no fixed criteria established for the transfer of these people to the El Matorral Centre. AI interviews with Red Cross personnel.

which are vulnerable groups of people; pregnant women often have to stay for days at El Matorral.

View of the “El Matorral” Internment Centre in Fuerteventura. Canary Islands, 2003. ©EFE.

The El Matorral Centre was opened as a reception centre for foreign nationals, in May 2002, making a notable improvement to the reception facilities that had till then been available for people arriving on the island in small boats. The old Fuerteventura airport terminal had been used until then.

On several occasions, organizations and institutions denounced the conditions in which foreign nationals were kept at the airport terminal. A Human Rights Watch report, in 2002²⁵⁰, described the conditions in which these people were kept, crowded together in an old baggage handling room, with capacity for about 50 people, but which often housed more than 400, and even 500 on one occasion.²⁵¹ There were only three cold water showers and four toilets and people were not allowed to leave the

²⁵⁰ Human Rights Watch, 2002: *The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum-seekers*.

²⁵¹ At the end of 2001, *ibid.*, p. 9.

room at any time. They were not allowed visitors or access to lawyers or immigrant protection organizations.

The Ombudsman also complained about these facilities.²⁵² Refugee and migrant protection organizations, such as CEAR, SOS Racism, MSF, the *Asociación pro Derechos Humanos de España* (Human Rights Association of Spain), and the *Asociación de Trabajadores Marroquíes en España* (Association of Moroccan Workers in Spain) have made similar complaints. They denounced the violation of these people's right to receive dignified treatment and enjoy adequate reception facilities.²⁵³ In its 2003 Annual Report, Amnesty International also expressed its concern at the "unacceptable conditions" and difficulties associated with trying to obtain legal assistance at the migrants detention centre at the old airport terminal in Fuerteventura.²⁵⁴

As a consequence of the pressure from NGOs and national and international institutions over a period of several months, the government closed the old airport installations and opened the El Matorral Centre. This made a significant improvement in the detention conditions for migrants.

The El Matorral Centre is composed of five units, accommodates men and women, and has the capacity to accommodate 1,200 people.²⁵⁵ Centre staff include: four National Police officers, two doctors, two nurses, a social worker and an administrator. Given the difficulties represented by having so few staff to deal with so many people, the Centre authorities nominated approximately ten *chairmen* from among Centre inmates to organize the immigrants in the Centre. These *chairmen* are not paid for their work but receive other benefits: better quality boots, double rations of food and better medical attention.

According to the authorities, recently arrived migrants are accommodated in the first unit, the "retention" unit, formed by a room with 70 closely spaced bunk beds; there are some showers, wash basins and toilets at the end of the unit. During its visit to the Centre, the organisation saw that conditions of hygiene were not at all adequate; there was a strong smell coming from the room and the toilets due to the limited services for the unit.²⁵⁶ Amnesty International would like to remind the Spanish authorities that

²⁵² *Informe Anual del Defensor del Pueblo*, 2002, p. 241.

²⁵³ Report on health and legal conditions at the Fuerteventura Interment Centre for Foreign Nationals, by Amnesty International, SOS Racism, the *Comisión Española de Ayuda al Refugiado*, Spanish Commission to Support Refugees, MSF, The Spanish Human Rights Association and the Association of Moroccan Workers in Spain.

²⁵⁴ AI Annual Report. AI Index: POL 10/001/2003, p. 178.

²⁵⁵ AI research visit in May 2004.

²⁵⁶ In an article published in *La Vanguardia*, by Javier Bauluz, 25 May 2004, the journalist writes that some witnesses have described these cells as "animal cages".

the Council of Europe Rules for Prisoners recommend that cells, whether they are individual or shared, should have proper hygienic conditions, reasonable physical space for each detainee and adequate personal hygiene installations. They also recommend appropriate maintenance and cleaning for all detention areas.²⁵⁷

According to the Centre authorities, recently arrived migrants stay in this unit until the judicial authority issues a detention order, when they are transferred to the second or third units, depending on their nationality and other circumstances.²⁵⁸ However, people interviewed by the organisation said they had been allocated indiscriminately to this and other units.²⁵⁹

The Centre units open on to an enormous patio, which detained migrants can use during recreation periods: two hours in the morning and two hours in the afternoon. It is not the only area available for recreational use, although it does not provide shelter from either sun or rain, nor is there any seating. For the rest of the time, detainees remain locked up in the units, apart from meal times.²⁶⁰

However, Amnesty International has gathered testimony from detainees who stayed at El Matorral, who say they went out into the patio very few times during their stay. This is how they described it in their testimony.

Edison,²⁶¹ who at the time of the interview was in the Barranco Seco Detention Centre, in Las Palmas, on Gran Canaria, told the organisation that during the week he was in El Matorral, he went out into the patio only once. In the written statement he gave to Amnesty International, he also complained that a police officer hit migrants, that detainees could not visit the doctor and that nobody identified himself as a social worker during his time there.

M. K, from Sierra Leone, arrived in Fuerteventura in a small boat on the morning of 4 October 2003, along with 27 other people. One of them, a boy from Ghana, was very ill, but, according to M.K., the Civil Guard did not call for a doctor or give them anything warm to drink when they arrived at the barracks. They were then taken to El Matorral and had to wait on the patio. His clothes were still wet and he was very cold, and so he felt happy when the sun came out. Several people asked for the Ghanaian boy to be attended to as his condition had worsened. He was taken to hospital one hour later.

²⁵⁷ Articles 14-19 of the European Prison Rules.

²⁵⁸ North Africans are interned in a different unit to the Sub-Saharan.

²⁵⁹ AI interview with M.S, from the Côte d'Ivoire.

²⁶⁰ Interview with El Matorral detention centre staff during AI's visit in May 2004.

²⁶¹ The names of some people have been changed at their own request, for security reasons.

He stayed 36 days in the Centre until he was transferred to the mainland. He could not go out into the patio during the first 30 days. Then they let him use the patio and he was given a ball to play football. During the time he was at the Centre, he was not once visited by the doctor.²⁶²

Their long stay in crowded cells and without reasonable space to move about, forces detainees to remain inactive for most of their stay at the Centre. They also have the stress associated with the suffering experienced in their country or during their journey, and related to the situation in which they find themselves, a situation that affects their relations with other detainees and Centre staff. Some have complained about fights and ill-treatment by a member of the security forces working at the centre.²⁶³

Amnesty International would like to remind the Spanish authorities that they must guarantee all the human rights of detained foreign nationals, in addition to providing dignified detention facilities. Any restriction on the rights of detained foreign nationals in these non-prison centres should clearly be exceptional.

Women and people who are in quarantine for health reasons are accommodated in two very small cells next to each other, located next to the medical room. The women are put in a 20 square metre cell, crammed with bunks and with only one toilet and shower. Next to it is another smaller cell for men with communicable diseases. There does not seem to be any special measure to adequately isolate this cell from the others. This is contrary to the European Rules for Prisoners, which recommends segregation of detainees with communicable diseases. Its proximity to the women's cell is especially worrying given that pregnant women could spend a few days in the women's cell until they are transferred to Red Cross centres.

The authorities maintain that the women are allowed out for a few hours into the small patio to which the unit has access. Detainees who are ill are not permitted to leave the cell. In its September 2003 report, published after a visit to Spain, the United Nations Special Rapporteur for the human rights of migrants stated that some women they interviewed during their visit to the centre told him it was the first time they had been allowed out on to the patio, and that they generally stayed in their rooms.²⁶⁴

A third unit, next to the centre's main entrance, houses the offices and the room where the judges work and where identification procedures are carried out.²⁶⁵ The fourth unit

²⁶² AI interview in May 2004.

²⁶³ Interview with various migrants, May 2004. Written complaint by one immigrant.

²⁶⁴ Report presented by the Special Rapporteur, in accordance with Resolution 2003/46 of the Human Rights Commission. E/CN.4/2004/76/Add.2, p. 14.

²⁶⁵ AI interview with the Director of the El Matorral Centre during AI's visit in May 2004. See below for nationality identification procedures.

is used by a special team of the Las Palmas National Police, which comes to identify the nationality of migrants. It also contains a store used to keep clothes and hygiene articles that are given to internees on their arrival and the content of which was adequate. During its visit, the organisation was told that meals were prepared by a catering company. Amnesty International urges the centre's management to ensure that the religious creeds and food habits of detainees are respected.

The fifth unit, the emergency detention area, designed to respond to massive arrivals, includes two rooms, crammed full of bunk beds. The rooms have the capacity to accommodate between 260 and 290 people, respectively. This unit is usually closed. As with the other cells, there is only small entrance and the windows are barred. We found no evidence of adequate emergency evacuation procedures, although the organisation was informed that the rooms were "fireproof". However, detainees' clothes could burn easily if a fire was started and evacuation would be very complicated, given the characteristics of the cell. Despite their large capacity, the cells only have nine wash basins, nine toilets and five showers.²⁶⁶

The Ombudsman has asked all Immigrant Detention Centres to adopt safety measures, including the installation of smoke detectors and automatic doors.²⁶⁷

Amnesty International urges the authorities to follow and respect the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment and the European Prison Rules. It particularly urges the authorities to guarantee that detainees do not stay in closed cells in the interior of the building and that there are sufficient leisure and recreation areas for migrants. They should also provide a library, educational programmes, access to social services and appropriate places for the cultural and religious practices of internees. They should also establish adequate evacuation and fire prevention procedures.

National and international legislation specifically establishes a series of rights for people deprived of their liberty, including foreign nationals kept in detention centres. After its investigation, AI considers that the situation of detainees at El Matorral should be improved, especially with regard to:

The right to adequate medical assistance and health care

Principle 24 of the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment establishes that "a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and

²⁶⁶ AI visit to the El Matorral Centre in May 2004.

²⁶⁷ *Informe Annual del Defensor del Pueblo*, 2003 pps. 46-47.

treatment shall be provided free of charge.” Article 26 of the European Prison Rules expresses the same sentiments, in similar terms.

At El Matorral, medical attention was initially provided by a Red Cross doctor. In 2003, it began to be provided by doctors contracted by the authorities. They give medical assistance on a daily basis, during working hours. It seems that one of them speaks three languages and lived in Africa for a long time. There is a duty doctor at all other times. Amnesty International reminds the authorities that they should guarantee access to emergency health care at all times.

According to centre staff, migrants receive an initial medical check on arrival, to detect if they are suffering health problems. According to the centre’s medical service, 20% of migrants arrive with some illness, most being banal pathologies.²⁶⁸ Detainees are quarantined in a special cell if they have tuberculosis, scabies or chicken pox.

After arrival and during their stay at the centre, if anyone presents with symptoms of illness, they are sent to see the medical services. These services see between 30 and 40 patients per shift.²⁶⁹ However, it would seem that no health monitoring protocol for detainees is used. One of the doctors said that this is not possible because of the length of time spent by people at the centre – a maximum of 40 days. The doctors also admitted that they do not write reports for ill detainees who leave the centre and neither is information provided on how they can access the public health system.²⁷⁰

As indicated above, the cell for detainees with communicable diseases is next to the women’s cell and is not adequately isolated. After his visit to El Matorral, and other immigration detention centres, the United Nations Special Reporter on the human rights of migrants expressed concern, in her report, about the fact that no measures are taken to prevent the spread of communicable diseases and there is no monitoring of HIV and other diseases.²⁷¹

Amnesty International recommends that the Spanish authorities adopt the necessary measures to guarantee the adequate separation of ill people from other internees and therefore guarantee dignified conditions for all.

It also urges the centre authorities to provide detainees with adequate psychological support, especially those people who have had traumatic experiences in their country of origin, on their journey across the desert or in small boats, where they may have lost family and friends or suffered serious human rights violations.

²⁶⁸ Information provided to AI by MSF personnel during its visit in May 2004, after an interview with El Matorral medical personnel.

²⁶⁹ Ibid..

²⁷⁰ AI interview with one of the doctors in May 2004.

²⁷¹ Report after her visit to Spain in September 2003. E/CN.4/2004/76/Add.2, para. 45

The right to adequate and sufficient information for detainees and the right to interpreting assistance.

According to principle 13 of the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment²⁷², all people have the right to receive adequate information about their rights and how to exercise them, and about the reasons for their arrest (principles 11 and 12).

Spanish legislation establishes that when foreign nationals are detained, they have the right to be provided with information about their rights and duties during the time of their detention,²⁷³ in a language they understand adequately.

During its visit to El Matorral, Amnesty International was able to see the information sheets, in various languages, provided to detainees on their arrival. However, the information sheet in English contained serious linguistic errors that made it extremely difficult to understand. For example, it included the phrase “to be attended by appointed counsel if before flames lawyer”, which could be understood as “to be assisted by a duty lawyer if your lawyer is in flames”.²⁷⁴

Furthermore, during its visit to El Matorral, Amnesty International saw that the centre had no qualified interpreters, and that communication between detainees and centre authorities was conducted by certain detainees – known as “*chairmen*” – and not by qualified interpreters. A translator is contracted only on specific occasions.

The organisation recommends that the authorities improve the information provided to internees at the El Matorral Centre, and that qualified interpreters are used to guarantee that internees are provided with adequate information in a language they can understand.

The United Nations Special Rapporteur on the human rights of migrants expressed the same view when she noted, with concern that “detained immigrants suffer from a serious lack of information, legal assistance and translating and interpreting services.”²⁷⁵

Right to social assistance

The El Matorral Centre has employed a social worker since it opened. Initially, this was a Red Cross social worker, and for many months, this worker only had access to the centre on days that the Red Cross doctor saw patients there. Contact with

²⁷² Adopted by the General Assembly in Resolution 43/173, 9 December 1988

²⁷³ Article 20 of the Ministerial Order of 22 February 1999, published in the Official Gazette n°47 of 24 February 1999 and Article 62 bis of the Aliens Law 4/2000 as drafted in Law 14/2003.

²⁷⁴ El Matorral Centre leaflet on rights, in English, May 2004.

²⁷⁵ Report after her visit to Spain in September 2003. E/CN.4/2004/76/Add.2, para. 46.

detainees was therefore very limited. According to complaints, the social worker was under great pressure not to provide any guidance or information to detainees about their rights and asylum and expulsion procedures. The authorities themselves admitted that they had sometimes prohibited the social worker's access because the latter had exceeded their authority and distributed information leaflets with a non-medical content.²⁷⁶

Amnesty International would like to remind the Spanish authorities that international legislation recognizes the right of asylum-seekers and migrants to be provided with information and advice about their rights, asylum and expulsion procedures, reception facilities, and so on.

A social worker was later recruited by the authorities to work at the Centre. It seems that the social worker's basic task is to distribute clothes and articles of personal hygiene and not to provide information or distribute leaflets about the social services available to foreign nationals. The social worker had received no training on immigration or asylum and had no previous experience in this field or in socio-cultural mediation.²⁷⁷ Such training is essential for the optimum development of their role, especially with regard to the identification of refugees fleeing human rights violations.

Amnesty International recommends that the centre authorities ensure that detainees receive adequate social assistance by qualified staff, trained in asylum and immigration matters and socio-cultural mediation. The social worker plays an essential role in guaranteeing the right of foreign nationals to information, especially on the right to request asylum, legal assistance and contact with family and friends in Spain. The way things are organized in El Matorral, the social worker is the only person that can facilitate access to such information, given that migrant and asylum-seekers protection organizations are not allowed access to the centre. The social worker provides detainees with their one and only contact with the outside world.

The right to maintain contact with the outside world, especially with family, lawyers, and so on.

The United Nations Principles on the Treatment of Prisoners and the European Prison Rules recognize the right of detainees to communicate with the outside world, to get in touch with family and friends, and representatives of organizations, and to receive visits from these people as often as possible.²⁷⁸ According to Spanish legislation,

²⁷⁶ AI interview with Local NGO, May 2004.

²⁷⁷ Interview with the social worker during the visit to El Matorral Centre in May 2004.

²⁷⁸ United Nations Principle 19 and Article 43 of the European Prison Rules.

detained foreign nationals have the right to communicate with family, consular officials and other people, within the hours established by the centre.²⁷⁹

Mobile phones are confiscated from foreign nationals at El Matorral Centre, so they can only communicate with their family or lawyer by using one of the four public telephones in the main patio. These telephones operate using Spanish coins or telephone cards; foreign nationals change their money with centre staff, in order to be able to call. As mentioned above, detainees are only allowed on to the patio at certain times, although some witnesses say that recreation hours are not permitted every day. According to the authorities, mobile phones are confiscated for security reasons, although they did not specify what these reasons are or what danger was presented by detainees having mobile phones. The United Nations Principles on the Treatment of Prisoners state that the right to communicate with the outside world should only be limited by reasonable conditions and restrictions.²⁸⁰

Although the Ombudsman has not issued a statement about the El Matorral Centre, his annual reports have drawn attention to other centres where detainees are given no opportunity to receive telephone calls from outside, and he has questioned the fact that mobile phones are confiscated.²⁸¹ Moreover, he drew attention to the need to allow lawyers flexible hours to enter and has requested the adoption of security measures, including smoke detectors and automatic doors.²⁸²

For a long time, NGOs and the media have not been allowed access to the El Matorral Centre. And although MSF and Amnesty International were able to visit it in May 2004, regular access by migrant and refugee protection organizations, such as CEAR, continues to be prohibited.

Amnesty International urges the Spanish authorities to guarantee every person's right to communicate with the outside world, and provide resources for those who want to do so but do not have the money to use public telephones. It also urges the Spanish authorities to allow access to the centre by refugee and migrant protection organizations.

²⁷⁹ Art. 62. g, art. 62 bis, Law 8/2000, as drafted in Law 14/2003.

²⁸⁰ Principle 19 mentioned above.

²⁸¹ *Informe Anual del Defensor del Pueblo*, 2003, p. 482.

²⁸² *Informe Anual del Defensor del Pueblo*, 2003, p. 488

Reception facilities for immigrants and asylum-seekers in other detention centres in Lanzarote and Gran Canaria

The organisation is also concerned about reception facilities on the island of Lanzarote, where people who arrive by boat are taken to an airport hangar. In 2002, 162 boats arrived on the island, while 145 arrived in 2003 and 12 in 2004.²⁸³

The hangar has been fitted out as a detention centre – the room is formally known as the reject room – as people are kept there while they are waiting to be expelled. Foreign nationals remain isolated inside the hangar; have no opportunity to go out and no access to a public telephone. There is no social worker, and the Red Cross allowed is not allowed to attend to the detainees. It is restricted to providing personal hygiene kits via the centre authorities.²⁸⁴

The situation is different at the Barranco Seco Centre, on the island of Gran Canaria. The Centre is an old provincial prison that was converted into a detention centre for migrants, in 1988. It has the capacity to accommodate 168 detainees; 32 places are reserved for women.²⁸⁵ Unlike at the two centres described above, detainees can have visitors. Religious rites and food preferences are respected and there is a television room.²⁸⁶ The rooms are large, clean and hold four people. At least during visiting hours, the cell doors are open. It also has a family unit. According to witnesses, treatment is adequate and foreign nationals are provided with adequate information. The centre authorities provided the organisation with the information provided to detainees, which is available in several languages.²⁸⁷

However, during its visit, the organisation was told that the detention centre housed several people who had been accused of having committed a crime, and the judge had commuted their sentence to expulsion.²⁸⁸

Amnesty International welcomes the inclusion, in recent legislative reform (LO 14/2003 of 20 November), of a section on the rights of foreign nationals detained in detention centres, which recognizes that they have the following rights²⁸⁹: a) to be informed of their situation; b) to respect for their life, physical integrity and health, to not be subjected to degrading or ill-treatment, and to dignity and privacy; c) to facilitation of the exercise of their rights, as recognized by the legal code, without

²⁸³ Data from the Secretary of State for Immigration and Emigration.

²⁸⁴ Information provided to Amnesty International by an organisation on 22 March 2004.

²⁸⁵ AI interview with the Director of Barranco Seco, 20 May 2004.

²⁸⁶ Information also provided by the Director of the Barranco Seco.

²⁸⁷ Contains Centre hours,, an information bulletin on rights and duties and centre rules. We were informed that copies are available in Spanish, English, French and Arabic.

²⁸⁸ Art. 57. 7 of LO 4/2000, as drafted in Law 11/2003, the judge can commute the sentence to deportation for an alien who is being processed or charged through a judicial procedure.

²⁸⁹ LO 4/2000, as drafted in Law 14/2003. Art 62 bis and following articles.

limitations other than those derived from their situation of detention; d) to receive adequate medical and health assistance and be assisted by the centre's social welfare services; e) to communicate immediately to the person they nominate in Spain, their lawyer, and the consulate of the country of which they are nationals, that they have entered the centre; f) to be assisted by a lawyer; g) to communicate, during the hours established by the centre, with their family, consular officials of their country or other persons; h) to be assisted by an interpreter if they do not understand or speak Spanish, at no cost to themselves if they do not have the economic means; to keep their children with them, as long as the Attorney General's Office approves and that centre accommodation is suitable for families. We hope that this legislative reform indicates an improvement of the rights of people in the Immigrant Detention Centres.

However, with regard to the El Matorral Centre and the Lanzarote airport terminal, Amnesty International would like to express its concern at the lack of definition of the legal status of these centres. They are not legally described as Immigrant Detention Centres, and are therefore not subject to the legal standards that cover such centres and the rights of detainees. The organisation urges the Spanish government to define the legal nature of the centres where foreign nationals are detained and adequately guarantee the rights of detainees.

3.6. Expulsions and transfers to mainland Spain

In Fuerteventura, expulsion procedures are initiated at the same time as detention orders are issued by the judges. As mentioned above, legal assistance and the information provided to foreign nationals during these procedures are inadequate.

Amnesty International was able to verify, through the interviews held with NGO representatives, migrants and asylum-seekers, that most of them do not understand the consequences that procedures such as those for deportation or forced have for their future as migrants.

After foreign nationals have been detained in the El Matorral and other detention centres for 40 days²⁹⁰, the maximum time permitted by law, they are released if the authorities have not managed to arrange admission to the country of origin or another country. The same is true for people arriving from other African countries; they cannot be sent back. People arriving from countries with which Spain has readmission agreements are returned: Algeria, Guinea Bissau, Morocco, Mauritania and Nigeria. People, whose return is accepted by the authorities of that country, are also returned, for example, through their embassies in Spain. According to official sources, in recent

²⁹⁰ LO 4/2000, as drafted in Law 8/2000. Art. 62.

years, foreign nationals have been returned to Senegal, Ghana, Morocco and Nigeria.²⁹¹

Number of deportations and cases of forced return of foreign nationals from the Canary Islands

2002	2003	2004
5,248	4,826	2,631

Source: Department of Immigration and Migration

The Spanish authorities usually complete nationality determination procedures, as there are cases in which foreign nationals give a nationality different to their own, especially if they come from countries with which Spain has a readmission agreement or who usually accept the return of their nationals. According to the authorities, identification procedures are usually carried out by members of the *Brigada de Extranjeros*, Foreign Nationals Brigade, composed of embassy staff. In 2003, Nigeria and Senegal embassy staff carried out this function on several occasions. Identification is usually carried out through an “opaque” mirror along one side of an interview room, in the centre’s offices, apparently due to embassy staff fears of being recognized by detainees.

Amnesty International is concerned at the mechanisms used to determine nationality in the expulsion procedure because, as in Ceuta, significant mistakes have been made in Fuerteventura with regard to the determination of nationality. S.D. was a case in point:

S. D, member of the Mandinga ethnic group, had to leave Liberia because of the persecution suffered by his family by supporters of Charles Taylor. His parents, a sister and a brother were killed by Taylor’s troops; another brother has disappeared. After leaving Liberia, he spent some time in a refugee camp in Guinea, but when this camp was attacked, he had to leave it and begin his journey to the north until arriving in Spain.

In August 2002, he arrived on the island of Fuerteventura in a small boat. He was detained for 30 days and was later deported to Nigeria without being given an opportunity to request asylum. In Nigeria, S.D. was imprisoned in inhuman conditions until he finally convinced the Nigerian authorities that he was not Nigerian. The Nigerian authorities sent him back to Spain. In Madrid,

²⁹¹ Data obtained from the *Dirección General de la Policía, Subdirección General del Gabinete técnico*, General Police Department, Technical Unit General Section, 29 December 2004.

after receiving advice from a refugee aid organisation, he requested asylum; the Spanish authorities finally accepted his request for asylum, on humanitarian grounds.²⁹²

Amnesty International is extremely concerned about such cases as this, as they violate the principle of non-*refoulement*, especially in the case of people who tried to request asylum on Fuerteventura and were unable to do so because of the barriers they encountered there.²⁹³ The organisation urges the authorities to adopt the relevant guarantees to ensure that there is no repetition of mistaken identifications and that nobody is expelled to borders or territories where they may suffer human rights violations. As mentioned in the section of this report on Ceuta, the authorities should incorporate into the Law on Aliens a specific guarantee that expulsion or forced return procedures will examine whether a person might suffer human rights violations if returned, remembering that the principle of non-*refoulement* is the fundamental pillar of the international human rights system.

As in Ceuta and Melilla, if there is no readmission agreement with the country of origin, migrants who cannot be expelled are transferred to the mainland, once the legal maximum period of detention at the El Matorral Centre has expired. According to testimony gathered by the organisation, such people are transferred to the peninsula without being provided with any kind of information about their legal situation; they are all issued with an expulsion order that makes it impossible for them to regularize their situation in Spain and makes them very vulnerable to human rights abuses. Several organizations have denounced this situation, for example, Karibu²⁹⁴, which denounced the situation to which many people of African origin are condemned, in June 2004.

O.T. arrived on Fuerteventura, in a small boat, in August 2004, and was taken to the El Matorral Centre. Two days after his arrival, O.T. said that a lawyer and an interpreter went to the centre and met the group that had just arrived, including himself. According to his testimony, the lawyer did not speak, only the interpreter. He asked him what his nationality was, and afterwards, asked him to sign a book. He was then given a document, with no explanation of its content; the translator told him to always keep it with him and show it if he was detained by the police. The document was an expulsion order that stated

²⁹² AI interview with Mr. S.D.

²⁹³ See part 4 of section III.

²⁹⁴ AI interview with a representative of *Karibu, Amigos del Pueblo Africano*, Friends of the African People, October 2004.

his nationality was Liberian, even though he had told the authorities that he was from Sierra Leone.²⁹⁵

O.T. was later transferred to the mainland. He was taken to a police station in Madrid, given the address of the Red Cross, a map of the metro system and released. He could not speak Spanish and had no idea how to use the metro.

Amnesty International repeats its concern about the situation of migrants in Spain – especially those in an irregular situation – and about the reduction of their human rights by legislative reforms and immigration policies, in recent years. The administration should adopt a series of measures that guarantee these people access to all their rights, irrespective of their administrative situation. In particular, it should adopt measures that reduce the vulnerability of migrants to human rights abuses.

To finalise this section on the Canary Islands, we can say that, especially in Fuerteventura, where there is a massive influx of migrants (among whom there may be refugees), the organisation has detected significant irregularities in relation to migrants' rights: inadequate safety measures, the expulsion of foreign nationals, lack of an adequate procedure to identify asylum-seekers, inadequate reception conditions, lack of justification for detention, lack of legal assistance and interpretation, inadequate information, absence of an effective appeal system, and so on. These irregularities should be immediately rectified by the Spanish authorities, in the light of the recommendations made by the organisation below.

4. What happens to people who arrive in Spain on the coast of Andalusia

4.1. The journey to Andalusia...

The Andalusian coast is another place where migrants, mainly from North and Sub-Saharan Africa, enter Spain. At the Straits of Gibraltar, the Spanish and African coasts are separated by a distance of only 14 kilometres.

Although many of the concerns expressed in this report about Ceuta and the Canary Islands also apply to this point of entry, and unlike in Ceuta and Fuerteventura, many of those who enter the country along this coast and who are not intercepted by the security forces, continue their journey to other destinations, for example, Madrid, Valencia and Barcelona, where access to NGOs who help migrants and refugees is, in principle, easier. However, Amnesty International also found some irregularities in the protection of asylum-seekers and refugees and respect for migrants' rights at this point of entry.

²⁹⁵ AI interview with O.T. in February 2004.

4.2. Inadequate rescue facilities

As mentioned above, only 14 kilometres separate the coasts of Andalusia and Morocco. The closest point is near to the town of Tarifa, in Cadiz province. As the coasts are so near to each other, many people try to cross the Straits of Gibraltar to Spain in small boats. However, like the journey to the Canary Islands, this is risky and dangerous, although the journey is shorter. Human rights organizations have denounced the tragedy represented by the deaths in the Straits, and although it is difficult to calculate the number of people who have drowned, it is estimated that more than 4,000 may have lost their lives in this way during the last 12 years²⁹⁶

Immigrants detained in small boats on the Andalusian coast:

2002	2003	2004
6,549*	9,747	5,996

Source: Ministry of Labour and Social Affairs, *Data extracted from Ministry of the Interior statistics

As in the Canary Islands, in 2002, SIVE began operations on the Cadiz coast and gradually extended its activities to cover the Andalusian coast. This resulted in more intense traffic of small boats to more remote areas of Andalusia and to the Canary Islands.²⁹⁷

²⁹⁶ APDHA: *El Estrecho: la muerte de perfil. Los derechos humanos y la inmigración clandestina*, December 2003.

²⁹⁷ Ministry of Development press release, 9 December 2004.

Some foreign nationals arrive exhausted by the difficult conditions encountered on the journey. Tarifa, 2002. ©AP Photo.

According to Ministry of Development statistics, 6,576 people were rescued in 2004, including 1,234 rescued by the Tarifa Maritime Rescue Centre, which covers the coasts of Huelva, Cadiz and Malaga, and 3,080 people rescued by the Almeria Maritime Rescue Centre, which covers the coasts of Granada and Almeria.²⁹⁸

Human rights organizations²⁹⁹ have expressed their concern at how SIVE operations and increased controls in the Straits are causing foreign nationals, travelling in small boats, to attempt entry through more eastern provinces. This journey involves greater risks of shipwreck, because boats try to land in less accessible and more mountainous and isolated areas. Although rescue facilities are better than in the Canaries, Amnesty

²⁹⁸ Ibid..

²⁹⁹ APDH-A: *El Estrecho: La muerte de perfil. Los derechos humanos y la inmigración clandestina*. December 2003, p. 8

International has received complaints about worrying cases. One particularly serious case took place on 25 October 2003, only three miles off the coast of Cadiz:

A small boat, with about 50 people on board, was shipwrecked near the Puerto de Rota, Cadiz.³⁰⁰ The small boat was sighted at about seven o'clock in the evening by the ship *Focs Tenerife* in the middle of a heavy swell. Its captain informed the Cadiz Maritime Rescue and Safety Society and repeated his warning 10 minutes later. According to several sources, the tug *Sargazos* took almost one hour to leave port, when it was already dark, apparently because of the crew's refusal to leave without members of the National Police on board. At least 37 people died in the incident.

The Cadiz Prosecutor decided to open an investigation to verify whether there had been negligence in this case. The Ombudsman also gathered information about the possible lack of coordination among maritime rescue services. During the investigation, it was found that the Civil Guard's light patrol boats had been out of service for three months because of a lack of spare parts. Eighteen months after the tragedy, only the alleged owner of the boat had been sentenced. However, the judicial sentence left the door open to an administrative investigation to determine whether there was negligence in the delayed response to the call for help from the captain of the *Focs Tenerife* and whether it might have been possible to save more lives.³⁰¹ To date, Amnesty International is unaware of any investigation having been undertaken by the authorities to determine whether there was negligence in this case.

Some human rights organizations have claimed that the rescue operation was negligent and denounced the lack of an investigation by the authorities. These organizations also criticised the forced return of survivors to their country of origin, without an adequate investigation of the causes of the shipwreck being undertaken. They also criticised the way in which the Prosecutor shelved the investigation.³⁰²

Amnesty International would like to remind the authorities of their duty to rescue all people in danger of shipwreck at sea or on the coasts. As mentioned in the section on the Canary Islands, the organisation urges the government to ensure that measures to control immigration and intercept boats are fully compatible with the Spanish State's duty to rescue and protect the lives of intercepted people, and to establish procedures that are compatible with international human rights and maritime safety legislation. It also recommends that SIVE and the State security forces responsible for immigration

³⁰⁰ The exact number of people in the boat was not known.

³⁰¹ Decision of the Cadiz Provincial Court, Section 1^a, proc. 22/2004, 15 November 2004.

³⁰² Press release by the *Asociación Pro-Derechos Humanos de Andalucía*, Andalusia Human Rights Association, 22 October 2004.

control on the Andalusian coast are provided with adequate material and human resources for rescue operations.³⁰³

A group of Moroccan nationals live by the river, close to the strawberry fields where they are hoping to find work. Huelva, 2004. ©Daniel Loewe.

4.3. Inadequate reception facilities

According to information from the Ministry of Labour and Social Affairs, almost 6,000 people arrived by boat on the Andalusian coast in 2004. However, unlike in Ceuta, there are no Short-Stay Immigrant Centres along the coast near to the Straits. One of the areas of greatest influx of foreign nationals by boat is Cadiz province, where the town of Algeciras is located. However, there are no installations to receive or accommodate refugees and other migrants there, although the town has an Immigrants Detention Centre.

Migrants intercepted by the Civil Guard are initially taken to military barracks on the island of La Palmera, where they stay for a variable length of time – minutes, hours or all night – depending on the number of people who have arrived. The island of La Palmera is not officially considered to be either a detention or a reception centre for migrants. Although the Red Cross has access to this installation, the government

³⁰³ Article 98 of the United Nations Convention on the Law of the Sea requires each coastal State to establish a plan for adequate and effective rescue services.

refuses to allow CEAR lawyers access, as at the El Matorral Centre in Fuerteventura.³⁰⁴

The inadequacy of the installations to accommodate foreign nationals, who have not intercepted by the State security forces, drives them to live on the streets until they are able to undertake the trip north. The same happens to those who are intercepted but not expelled; they are also forced to spend some time living on the streets before gaining access to accommodation.³⁰⁵

Those detained by the police, and taken to the police station, claim they are handed a document without explanation from anyone. According to testimony, this document is an expulsion order. After this procedure, many are put on board buses to various destinations throughout Spain. Local NGOs and migrants and asylum-seekers interviewed by Amnesty International confirmed that they are not provided with any information about their rights, the expulsion order or accommodation at this time.

S.O., a Liberian national, fled the war in his country. After his father was killed, he decided that he would have to leave. When he arrived in Tarifa, in August 2003, he did not know what country he was in and he lived on the streets until he was soon detained by the Civil Guard. They took him to a police station, gave him food and water and put him in a cell with many other people. After asking for his name, age and nationality and taking a photograph of him, they took him, along with other people, to a police station in Algeciras, where he was given a document, but no explanation of what it was. They then put everybody on a bus to Madrid. S.O. wandered the streets of Madrid for more than a month until another African told him to go to the Red Cross.

In his 2003 report, the Ombudsman denounced how some town councils in the region pay for the transfer of “pockets” of migrants living on the streets to other towns. For example, in March 2003, the Huelva authorities, who did not have the facilities to deal with 59 migrants, decided to transfer them to Algeciras, where they left them on the streets of that town. Forty nine of them were later detained and taken to the Algeciras detention centre. The rest were not detained because the centre was full.³⁰⁶

The lack of adequate resources for the reception of migrants has been denounced by NGOs, such as Karibu, in Madrid, which is mainly dedicated to providing assistance

³⁰⁴ Interview with AI, 12 December 2004.

³⁰⁵ AI interview with local NGO, 12 December 2004. AI interviews with S.O., P.Y., P.T. and C.B., 11 December 2004.

³⁰⁶ See *Informe Anual del Defensor del Pueblo a las Cortes Generales, Año 2003*, Inmigración y Asuntos Exteriores, Asistencia Jurídica a Extranjeros, 6.8. *Investigación sobre la detención y traslado hasta Algeciras de inmigrantes en situación irregular a fin de incoarles expedientes de expulsión*, p. 524-527; 6.8.3 *Problemas de comunicación institucional*, p. 535-539.

and advice to Africans. This organisation has denounced the lack of information Africans receive and the lack of protection afforded to foreign nationals that enter the country. Karibu believes that, in Spain, “those that cannot be sent back are forgotten and ignored; the lack of assistance means that many women fall into networks of prostitution or have to beg.”³⁰⁷

As mentioned in the section on Ceuta, Amnesty International would like to remind the Spanish State of its duty to act with due diligence to prevent the trafficking of women and pursue those responsible, and also to protect victims and ensure the availability of and access to effective solutions.³⁰⁸

A.D. went with other migrants, by plane, from Lanzarote to Malaga airport. The Civil Guard was waiting for them and took them in vans to Algeciras. When they arrived in Algeciras, members of the Red Cross were waiting for them. Nobody spoke to him, they just gave him a coach ticket to Madrid. It was December and very cold. When he arrived in Madrid, he did not know where to go and decided to sleep in the bus station where he had arrived. He met an African boy there who told him he could go to Karibu.³⁰⁹

Once again, the organisation would like to express its concern about this situation. Most of the people who cannot be expelled from the country are released but are issued with an expulsion order, valid for between three and 10 years. This procedure makes it impossible for them to regularise their situation in Spain during this period. They do not have the right of residence, which makes them vulnerable to human rights violations and abuses.³¹⁰ Amnesty International reminds the Spanish government once again of its duty to guarantee adequate reception facilities for foreign nationals, and respect for the human rights of migrants living in Spain.

4.4. Violation of the right to adequate legal assistance and interpretation

After being kept for a few hours on the island of La Palmera, intercepted migrants and asylum-seekers are taken to National Police installations in Algeciras, where expulsion and forced return procedures are initiated. According to testimony gathered by the organisation, officials do not inform foreign nationals of the content of the procedures or of the implications of the documents which they are issued, or of their rights in the procedure. Some of the people interviewed by the organisation thought that the document they had been given at the police station was a “permit to remain in

³⁰⁷ Interview with representative of the NGO, Karibu, October 2004.

³⁰⁸ See Section II on Ceuta. 7.7 Inadequate protection for women victims of trafficking.

³⁰⁹ Interview with A.D, in June 2004.

³¹⁰ See Section II on Ceuta, 8.3 Transfers to the mainland.

Spain”, because they were released and put on buses to other destinations in the country after the procedure was completed.³¹¹ At this first interview in the police station, the presence of NGO representatives is not allowed, although a lawyer from the association pool of immigration lawyers is asked to be present during the procedure.

Despite the large number of foreign nationals arriving on the coast near Algeciras, there is no specific immigration legal team, and it falls to the members of the penal legal team (a total of eight lawyers) who are given the job of assisting recently arrived migrants who have been intercepted and detained by the Civil Guard.

As in Ceuta and the Canary Islands, legal assistance in Algeciras merely consists of a lawyer being present. In general, lawyers do not interview their clients and restrict themselves to “being present”, according to testimony gathered by the organisation. Foreign nationals are not provided with a way of contacting lawyers to discuss continuity of the proceedings.³¹² According to the lawyers themselves, the contribution of interpreters is inadequate and there have also been complaints that it is impossible to provide adequate assistance because of the speed at which the forced return procedure is conducted – especially in the case of Moroccans – with no communication with the client being possible.³¹³

In 2003, the Ombudsman denounced the poor quality of legal assistance provided to foreign nationals by the Algeciras association pool of immigration lawyers. According to the Andalusia administration,³¹⁴ in the second half of 2001, these lawyers conducted more than 5,466 proceedings related to immigration affairs. The Andalusia Administration itself recognizes that the content of these proceedings was weak and had limited legal basis. In many cases, the written documents presented were photocopies, and the only difference between them was the name of the foreign national. For example, the same document was presented 145 times and another, 120 times.³¹⁵

Two years later, the Andalusia authorities analysed the performance of the Association’s 108 lawyers. It made a detailed analysis of 2,820 cases dealt with in Algeciras during the first quarter. Deficiencies were again found with the legal arguments in the 1,048 written documents presented by 46 of the 108 lawyers, and

³¹¹ AI interviews with S.O, P.Y., P.T. and C.B., December 2004.

³¹² Ibid..

³¹³ Readmission Agreement between Spain and Morocco, signed on 13 February 1992, Official Gazette, 25 April 1992 and 30 May 1992.

³¹⁴ Report prepared by the Dirección General de Instituciones y Cooperación con la Justicia de la Junta de Andalucía, Andalusia Administration’s General Department of Institutions and Cooperation with the Judiciary.

³¹⁵ See *Informe Anual del Defensor del Pueblo a Las Cortes Generales*, 2003, p. 217-218.

with the timeliness of their presentation. The administration again denounced the improper and generalised use of standard forms, and the very brief and incoherent legal arguments used by lawyers; it was also proved that many of the appeals were presented by these lawyers after the relevant deadline had passed.³¹⁶

Furthermore, the Ombudsman also examined the payments made to lawyers. One lawyer presented 54 declarations or appeals, for which he received a total of € 3,245. The lawyer used the same form in all cases, writing the name of the client on each document with a ballpoint pen. Another lawyer presented 53 declarations or appeals, for which he received a total of € 3,185.30. He also used an identical form for all the documents and only cited one article of the law, without referring to any of the facts directly relating to the case of his client.³¹⁷

In the light of these facts, the Ombudsman made a series of recommendations, including that the Cadiz Lawyers' Association organise courses on refugees and human rights, that it give clear instructions on what constitutes adequate legal assistance, and that it begin appropriate disciplinary proceedings against the lawyers who had acted negligently.³¹⁸

Despite these complaints, the Cadiz Lawyers' Association adopted a defensive attitude to the Ombudsman's report, complaining that "it is not exactly rigorous".³¹⁹ The Ombudsman communicated this attitude to the General Council of Spanish Lawyers and the Council of Andalusia Lawyers' Associations.

During its visit to Algeciras, Amnesty International interviewed several people who continued to express their concern at the inadequate legal assistance provided to foreign nationals arriving in small boats, highlighting cases of procedures conducted with groups of people. Despite the Ombudsman's recommendations, training for lawyers on immigration and asylum issues remains very limited.³²⁰

In its most recent report, in 2004, the Ombudsman also noted inadequate action by the Almeria Lawyers' Association in the field of immigration: the association had contracted a private company to provide legal assistance to migrants, contravening Spanish rules about the provision of free legal assistance. The Ombudsman reminded the Association that the right of defence is of public interest and cannot be

³¹⁶ *Ibid.*, p 218

³¹⁷ *Ibid.*, p 220. Other lawyers did the same. One lawyer presented 72 cases, receiving € 4,327.

³¹⁸ *Ibid.*, p. 222.

³¹⁹ *Ibid.*, p. 223.

³²⁰ AI interview with local NGOs and a professor at the University of Law, Algeciras.

subcontracted to a private company. He therefore recommended that the association provide legal assistance directly.³²¹

As in Ceuta and the Canary Islands, Amnesty International considers it especially serious that there is a lack of effective assistance to foreign nationals arriving in these areas, and it is concerned that lawyers receive inadequate training on immigration and asylum issues. It therefore urges the Spanish authorities to guarantee to all foreign nationals arriving on the Andalusian coast their right to effective legal assistance (not merely the “legal presence” of a lawyer) and adequate interpreters.

The organisation also recommends that the Algeciras Association of Lawyers, and other associations of lawyers on the Andalusian coast that provide assistance to a large number of foreign nationals, with the support of the General Council of Lawyers, UNHCR and refugee protection organizations, should provide a specialised team of immigration lawyers with extensive and detailed training on legislation pertaining to foreign nationals, asylum and human rights.

4.5. Problems of access to asylum procedures

In Algeciras, as at other parts of the Andalusian coast, there are very few requests for asylum. Some NGOs think this is because Andalusia is considered by migrants to be a transit zone. However, according to testimony gathered by the organisation, some foreign nationals said that if they had not requested asylum when they arrived, it was because of the inadequate legal information, guidance and assistance they received.

³²¹ *Informe Anual del Defensor del Pueblo ante las Cortes Generales*, 2004, pages.1319, 1320 and 1321.

Number of asylum requests up to November 2004.

Province	Number of requests	Not admitted for processing
Cadiz	41	36
Malaga	21	13
Granada	1	0
Almería	4	4

Source: OAR

According to these same testimonies, many were informed of their rights, especially their right to request asylum, only later and often by their compatriots. Neither the Civil Guard, nor the police, nor other people with whom they had contact, informed them about their rights after their arrival on the Andalusian coast.

P.Y., a Liberian national, fled his country for political reasons. As a consequence of his political activities, his mother, father and six-year old son, were killed. He was captured and tortured before fleeing to Spain. He arrived in a boat on the coast, at Tarifa, on 30 August 2003. The Civil Guard and the Red Cross rescued him from the boat and took him to a place where he was kept for a few hours. He was then given a document to sign. Nobody explained the significance of this document. A woman from the Red Cross who was there, and who he thinks was his lawyer, told him that the document was not a problem and that it would help him. From the police station, he was taken, with others from sub-Saharan Africa, to a bus station, where he was put on a bus to Valencia. Nobody was waiting for him in Valencia. He lived on the streets for six months, until April 2004, when another Liberian told him he could request asylum. He made his request on 6 May 2004. On 10 June, his request was turned down. One of the causes for this decision was that he had entered the country in an irregular manner and had not requested asylum within the first month after his arrival.³²²

The Spanish authorities sometimes consider that the fact that a person has not requested asylum as soon as they arrive in Spain is sufficient reason to refuse an asylum request and consider it to be unfounded. However, Amnesty International considers that, in some of the cases included in this report, in both Andalusia and the Canary Islands, the authorities should take into account, in addition to the details provided by the person requesting asylum, the reasons why the request for asylum was not submitted on arrival, and ensure that any delay is not a consequence of the

³²² AI interview with P.Y in November 2004.

inadequate legal information and assistance provided. In cases like the previous one, where the right to information about the law and access to asylum procedures and the right to legal assistance and interpretation were violated, the organisation considers that the administration should not allege delay in the presentation of the asylum request as a reason for rejecting it.

To end this section on the Andalusian coast, the organisation also discovered important irregularities in relation to migrants' rights: inadequate rescue and reception facilities, the lack of effective legal advice to ensure the identification of possible asylum-seekers; deficient interpreting and information, lack of an effective appeal procedure, among other outstanding facts. As in Ceuta and the Canary Islands, these irregularities should be immediately rectified by the Spanish authorities, taking into account the recommendations made by the organisation below.

5. Conclusions and Recommendations

Amnesty International recognizes Spain's right to control immigration and the entry of foreign nationals into the country. However, it has been concerned for a long time that the immigration policies adopted by Spain and the European Union and promoted in other countries, for example, Morocco, prevent people escaping human rights violations from entering Spain, requesting asylum and obtaining protection.

The organisation's investigation of the situation of refugees, asylum-seekers and migrants who have entered Spain through its southern borders (Ceuta, Melilla, Canary Islands and Andalusia) in recent years, concluded that Spain is still not adequately identifying refugees escaping persecution and human rights violations. Nor is it providing appropriate guarantees for the rights of foreign nationals. Amnesty International has discovered serious causes for concern about the treatment of foreign nationals, both with regard to rescue at sea and reception on arrival. The organisation is also concerned at the absence of sufficient guarantees about the rights of foreign nationals to adequate information, legal assistance and interpretation, and access to fair and satisfactory asylum procedures that are able to quickly identify people and recognize people who are escaping from human rights violations as refugees. Another cause for concern are the limited guarantees offered by procedures for identifying nationality and, especially, procedures for expulsion, which do not always observe the principle of non-*refoulement* of people to countries where they may suffer human rights violations.

Amnesty International therefore believes that urgent measures should be adopted to enable States to guarantee the institution of asylum in Spain and the European Union, and ensure they comply with their international duty to protect refugees, respect the

human rights of migrants arriving on their territory or territories under their control. To this end, the organisation makes the following recommendations:

1. Amnesty International reminds the governments of Spain, other Member States of the European Union and Morocco that any immigration control measures they adopt must comply with their international commitments to human rights and refugees and must not prevent people who are fleeing persecution from requesting asylum and obtaining protection.

The organisation urges the Spanish government and the European Union to guarantee that their cooperation, association and readmission agreements with Morocco and other countries of transit respect their international duties to protect refugees. In particular, it should ensure that: people returned to other countries, or to another safe country, are treated in accordance with international standards; have effective protection against *refoulement* and have access to fair and satisfactory asylum procedures; and are provided with sufficient means of subsistence to maintain an adequate standard of living. Spain and the European Union should incorporate explicit guarantees in this regard into all their readmission, cooperation and association agreements with other countries.

Likewise, the Spanish government and the other Member States of the European Union should ensure that immigration control measures (for example, fines on transport companies, visas, immigration controls in other countries) incorporate adequate guarantees to ensure the protection of people who are fleeing persecution, in accordance with the principles enshrined in international standards on human rights and refugees.

Amnesty International also urges the Spanish government and the other Member States of the European Union to ensure that all aspects of the so-called “external dimension” of European Union asylum policies comply with international human rights and refugee standards and law.

The organisation is also extremely concerned at complaints about ill-treatment of foreign nationals by immigration officers, in both Morocco and Spain. Immigration controls should fully respect the human rights of foreign nationals and respect the inherent dignity of all people. All complaints should be promptly, exhaustively, impartially and effectively investigated and the complainants should receive protection from any kind of intimidation.

2. Amnesty International reminds the Spanish State of its international duty, as a coastal State to provide assistance and facilitate the rescue of all people in danger at sea, including allowing vessels at risk of sinking into its ports. This assistance should be provided irrespective of the nationality or circumstances of the people

in danger. Amnesty International also reminds the Spanish government that it must provide adequate search and rescue systems.

Immigration control measures (such as SIVE) and measures to intercept small boats should be fully compatible with international human rights and refugee legislation and contain the necessary safeguards to protect the lives and human rights of people. Anyone rescued at sea should be treated in a humanitarian way, with due respect for their human rights and dignity. They should be guaranteed rapid access to fair and satisfactory procedures to ensure the protection of refugees and asylum-seekers. For this to occur, the State security forces responsible for immigration control and SIVE should be provided with adequate material and human resources for rescue operations. In the case of the Canary Islands and Andalusia, improvements should continue to be introduced in first aid facilities for people who arrive in small boats after a difficult journey, especially to attend to the needs of the most vulnerable groups.

3. Amnesty International reminds the Spanish government of its duty to not send anyone back to a State where that person runs the risk of being the victim of serious human rights violations. Nor should it send anyone back to another country without ensuring that they will be treated in accordance with international standards and that they will be provided with effective protection against *refoulement*.

The organisation considers that the Spanish State has not always ensured that the absolute ban on *refoulement* has been respected, which jeopardises compliance with its international obligations, including the Geneva Convention, the European Human Rights Convention, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Spain is a signatory.

The organisation therefore urges the Spanish State to:

- 3.1. Put an immediate end to the clandestine expulsion of asylum-seekers and other foreign nationals at the border of Ceuta and Melilla with Morocco. These expulsions do not follow legally established procedures and are not the result of decisions taken in accordance with the law, and are therefore in flagrant violation of the principle of non-*refoulement* and international legislation to protect refugees. A detailed investigation of existing complaints should therefore be undertaken, the results of which should be made public and those responsible punished, to ensure that an end is put to such practices.
- 3.2. Incorporate human rights guarantees into immigration law to ensure that persons in need of international protection have access to fair and satisfactory asylum procedures, and are recognized as refugees, in accordance with international principles and law on refugees. Anyone subjected to expulsion or

forced return procedures should have the effective opportunity to appeal against expulsion to a country where they might run the risk of serious human rights violations, including torture, inhuman or degrading treatment.

- 3.3. Provide effective and adequate guarantees that anyone subjected to expulsion or forced return procedures has the right to information, legal assistance and interpreting as well as effective appeal procedures against expulsion and forced return. Amnesty International is especially concerned about the situation on Fuerteventura, where there are insufficient guarantees to ensure that anyone fleeing serious human rights violations is adequately identified and provided with access to asylum procedures.

The organisation reminds the Spanish authorities that detention of foreign nationals during expulsion procedures should clearly be exceptional and should comply with the law as set out in international human rights standards. Any decision to detain should be adopted after examination of each individual case, should consider whether detention is necessary and appropriate and should assess whether detention is proportionate to the objective pursued. Special care should be taken to ensure that such guarantees are observed on the island of Fuerteventura.

- 3.4. Fully comply with duties contracted by virtue of article 13 of the International Covenant on Civil and Political Rights, which guarantees due process in cases of expulsion of foreign nationals who are legally on the territory of a State, including cases where the legality of entry or permanence is being questioned.
- 3.5. Ratify, as soon as possible, Protocol 4 of the European Convention on Human Rights, which prohibits the collective expulsion of foreign nationals. The organisation also urges the Spanish government to implement Guideline 19 of the 20 Guidelines adopted by the Council of Europe for the repatriation of illegal immigrants and draft a protocol on the use of force and means of immobilisation, including the circumstances in which they can be used and associated risks.
- 3.6. Establish procedures that permit the adequate identification of the nationality of people subjected to expulsion and forced return procedures, in order to avoid identification errors that could place them at risk of human rights violations. Identification should be carried out by personnel who have received adequate training on nationality and linguistic issues and the circumstances of each case should be assessed individually.

- 3.7. Take special care when contacting the embassy of the country of origin, during expulsion and forced return procedures, if asylum-seekers have alleged persecution by the authorities in their country. Guarantee that their security, and that of their family, is not endangered, in cases of forced return.
- 4. Amnesty International reminds the Spanish government that, in accordance with the United Nations Convention on the Rights of the Child, the expulsion of unaccompanied minors to Morocco should consider the best interest of the minor. It should therefore verify, case by case, whether such a procedure is safe, whether it is possible for the minor to be reunited with their family, whether the family is able to provide adequate care, or in the absence of the family, the minor could be cared for by the Moroccan social services.**

The organisation urges the Spanish government to guarantee that all requests for asylum by unaccompanied minors are assessed in a fair and adequate way by trained staff and that takes into account the special circumstances of minors, their age, the form of persecution and gender issues.

The organisation is concerned that the 23 December 2003 Memorandum of Understanding between Morocco and Spain, on the repatriation of minors, continues in force. It urges the Spanish government to guarantee the amendment of this agreement so that it complies fully with its duty to protect and shelter minors, as set out in the United Nations Convention on the Rights of the Child.

- 5. Amnesty International urges the Spanish State to provide adequate guarantees that all asylum-seekers and migrants receive adequate information about their rights, especially their right to legal assistance, to request asylum, to appeal against a negative decision and associated administrative and judicial procedures.**

This report documents the extremely poor quality of legal, interpreting and translation services and of the information available to migrants arriving at its southern border.

Amnesty International therefore requests the Spanish authorities to guarantee that all asylum-seekers and migrants arriving in Ceuta, the Canary Islands and Andalusia, receive adequate information about their rights (including their right to request asylum and their right to appeal against a negative decision), legal situation, right to legal assistance and representation in expulsion and forced return procedures, including the right to appeal against any decision while detained pending the implementation of expulsion orders.

Such information should be provided in writing and in a language they understand adequately. Leaflets explaining the rights of asylum-seekers and migrants should be prepared in an accessible and understandable language, for people with little legal knowledge, and should be translated into various languages (French, English, Arabic). The authorities should also take into account that some foreign nationals may have problems reading or may have only a rudimentary knowledge of languages.

These leaflets should be available at all the main points of entry of foreign nationals, especially, Ceuta, Melilla, the Canary Islands and Andalusia. The authorities should ensure that all asylum-seekers and migrants receive these leaflets.

Likewise, they should guarantee asylum-seekers and migrants access to organizations that protect refugees and migrants so they may receive adequate advice, including legal advice from a lawyer. The Spanish government should respect the humanitarian and independent nature of these organizations and not seek to take any action that obstructs their provision of assistance and advice to asylum-seekers and refugees.

6. Amnesty International urges the Spanish State to establish adequate mechanisms to provide adequate legal assistance and interpretation to asylum-seekers and migrants on its territory and at its borders.

It is therefore important to:

6.1. Guarantee that the legal assistance offered to asylum-seekers and migrants on the southern border (and throughout Spain) does not merely consist of the presence of a lawyer. Lawyers must be able to communicate effectively with asylum-seekers and migrants and advise and inform them about their rights, during the asylum procedure, expulsion and forced return procedures, and during their detention. The organisation urges the government to provide the necessary resources and means for this to be achieved, and urges it to periodically evaluate (together with the lawyers' associations, the *Consejo General de la Abogacía*, General Lawyers' Council, the Ombudsman, UNHCR) the legal assistance provided, and adopt appropriate measures to improve it whenever necessary.

6.2. Guarantee that all lawyers providing legal assistance have extensive and detailed training on immigration law, asylum, human rights and cross cultural communication techniques. The role of the Lawyers' Associations (with the

support of the General Lawyers' Council, UNHCR and refugee protection organizations) is essential for this purpose.

- 6.3. Guarantee that lawyers have adequate access to interpreters and therefore ensure that communication takes place in a language that asylum-seekers and migrants can understand.
 - 6.4. The organisation requests all lawyers assisting foreign nationals to remember that they may be dealing with people who been tortured, seriously traumatised and have been victims of serious human rights violations. Lawyers have an essential role in providing foreign nationals seeking asylum with detailed information on their rights. They must therefore receive training on interview techniques and the human rights situation in the country of origin.
 - 6.5. Amnesty International recommends amendment of the 3 August 2000 Instruction on the Treatment of Stowaways in order to guarantee all stowaways the right to legal assistance. The organisation also recommends that transport companies carrying asylum-seekers should not be punished or be the subject of other measures.
- 7. Amnesty International urges the Spanish government to remove all barriers preventing refugees from requesting asylum and guarantee that asylum procedures are fair, transparent and ensure the identification and recognition of people in need of international protection.**

Although Spain formally guarantees the right to request asylum, this report shows that barriers continue to prevent refugees from requesting asylum in Spain. These barriers include:

- a. The lack of legal information or guidance for foreign nationals intercepted on the country's southern border, especially on their right to request asylum in Spain;
- b. The absence of any exhaustive investigation by the Spanish authorities, as to why people abandon their country in search of international protection;
- c. The lack of adequate training for immigration officers, which affects the way they interview asylum-seekers on the southern border;
- d. Significant delays in Ceuta between the time when asylum requests are made and the formalisation of such requests.

e. For all these reasons, Amnesty International urges the Spanish authorities to:

7.1. Guarantee that the State security force officers responsible for immigration control receive adequate training on international human rights legislation, the rights of refugees and interview techniques so they can adequately identify and refer people who are requesting asylum to the appropriate authorities.

7.2. Guarantee that all asylum-seekers are interviewed, in detail, by a qualified person, so that all aspects of their story and personal circumstances are recorded, given that the interview is often the only evidence on which the Spanish authorities base their decisions on asylum requests. It is extremely important that interviews are carried out in-depth, and give the applicant the opportunity to present their entire story.

Immigration and asylum officers who conduct such interviews must take into account that many asylum-seekers are in a very vulnerable situation, are in an unfamiliar environment and may have suffered very traumatic experiences. These officers must have access to adequate information about the human rights situation in the asylum-seekers' country of origin, and must take into account the specific needs of women and minors. They should therefore receive adequate and continuing training on interview techniques, socio-cultural mediation, cross cultural communication, human rights and so on, and must follow the guidelines set out in the UNHCR's Handbook on Procedures and Criteria for Determining Status.

7.3. Guarantee to respect all asylum-seekers' rights from the moment they request asylum, especially their rights with regard to protection from *refoulement*, and guarantee their social, economic and cultural rights.

7.4. Amnesty International reminds the Spanish government that asylum-seekers can only be detained in the circumstances provided for under international human rights law. Detention is inherently undesirable, as stated by the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers.

7.5. Amnesty International reminds the Spanish government that it must respect the time limits established during the admissibility stage of procedures (from the moment the request is made) and that any requests not processed within the established time limit should be treated as having been admitted.

7.6. Amnesty International considers it indispensable that detailed examination of asylum requests should not be made at the admissibility stage, as this diminishes the role of the full procedure and undermines the defence of asylum-seekers. In addition, the organisation considers it essential that decisions contain the detailed reasoning used to reach a decision and information on the right to appeal against the decision. It is not acceptable to use general and imprecise terms that do not provide information on the reasons for the refusal of requests.

7.7. Amnesty International requests the Spanish authorities to guarantee asylum-seekers the right to an effective appeal and the right to remain on the national territory during the appeal procedure, including judicial appeals. It therefore urges the government to amend the Asylum Law and guarantee suspensive effect in the case of judicial appeals, especially when accelerated procedures are used.

8. When transposing European asylum directives, Amnesty International urges the Spanish government to guarantee full recognition of and compliance with Spain's international duties to observe international human rights and refugee law.

In recent years, the organisation has often indicated its concern at the development of the European Union's European Common Asylum System. Amnesty International believes that harmonisation of the asylum policies of Member States has resulted in little more than a catalogue of national practices that, in some key aspects, do not comply with international refugee and human rights legislation. The organisation has also shown great concern at some aspects of the European Union directive on minimum standards for asylum procedures, which is likely to be approved this year.³²³

Although there have been important developments, especially in relation to the adoption of the European Directive for the Qualification of Protection Status,³²⁴ Amnesty International fears that this will be a "dead letter", in the light of the increasing difficulty experienced by refugees applying for asylum in Europe and the lack of appropriate safeguards in asylum procedures.

³²³ Proposal for a Council Directive on minimum standards on procedures in Member States for granting or withdrawing refugee status. COM/2002/0326 final

³²⁴ Directive 83/2004 of 29 April on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, published on 30 September 2004, in the Official Diary of the European Union. Transposition into national legislation must be completed before October 2006.

It is therefore essential that the transposition of both directives, which the Spanish government will do during the next two years, guarantees the following (in addition to the recommendations listed above):

- Specific recognition, as refugees, of people escaping persecution because of their gender or sexual orientation, in accordance with the provisions in the directive for qualification.
- The adoption of practical measures so that asylum procedures take into account the special problems faced by women or people fleeing persecution because of their sexual orientation when describing the experiences that have forced them to request asylum, following the examples of Canada, the United States and Sweden³²⁵ and UNHCR recommendations.³²⁶
- A focus on the protection of human rights, rather than exclusively on border controls.
- No attempt should be made to establish a list of “safe countries”, either of origin or other countries, with a view to limiting access to asylum procedures. No country can be considered safe without the individual assessment of each case.
- Minimum standards should reflect international human and refugees’ rights standards and principles.

9. Amnesty International reminds the Spanish government of its duty to act with due diligence to prevent, investigate, pursues and punish acts of violence against women. The applicability of these duties requires States to introduce measures to pursue traffickers, protect victims, ensure the availability of and access to effective remedies and take preventive action to analyse the reasons for trafficking.

The organisation urges the Spanish government to pay particular attention to the situation of women migrants, to identify whether they are victims of trafficking and to protect them in accordance with international human rights law. Such women should be considered victims and not offenders, and therefore should be

³²⁵ For example, Canada has published *Guidelines on Women Refugee Claimants Fearing Gender-Related persecution* and Sweden has published *Guidelines for investigation and evaluation of asylum cases in which persecution based on given sexual orientations* (www.migrationsverket.se/english.jsp).

³²⁶ HCR/GIP/02/01 Guidelines on international protection: gender-related persecution within the context of Article 1^a(2) of the 1951 Convention relating to the Status of Refugees.

guaranteed complete protection, including the opportunity to apply for asylum and obtain refugee status. The Spanish government should adopt the necessary measures to ensure that the investigation and pursuit of trafficking networks does not compromise its duty to protect and respect the rights of trafficked women and children.

Amnesty International recommends amendment of the Law on Aliens so that it specifically protects women victims of trafficking. It also urges the Spanish State to sign and ratify the European Convention against Trafficking in Human Beings.

10. Amnesty International reminds the Spanish government of its duty to guarantee adequate reception conditions for asylum-seekers.

Amnesty International recommends the adoption of appropriate measures to provide all asylum-seekers with access to means of subsistence so they can maintain an adequate standard of living that allows them to exercise their economic and social rights while they are asylum-seekers, especially in the towns of Ceuta and Melilla. The Spanish authorities should ensure that the principle of non-discrimination, enshrined in international human rights legislation, is respected at all times.

When transposing the European Directive on reception conditions, the Spanish government should guarantee asylum-seekers their economic and social rights and conditions for a dignified life, from the moment they request asylum.

The organisation urges an improvement in the conditions for foreign nationals in the Detention Centres, especially at the Matorral Centre, Fuerteventura. The Spanish government should ensure respect for all human rights and provide humanitarian treatment with due respect for their dignity. It should observe the United Nations Minimum Rules for the Treatment of Prisoners, the European Prison Rules and the Council of Europe's Twenty Guidelines for the Repatriation on forced return at all times. In particular, it should guarantee that:

Detainees are not kept all the time in closed cells and that there are sufficient leisure and recreation areas.

Adequate medical and sanitation facilities are provided and people with communicable diseases are separated from other detainees, guaranteeing them dignified treatment.

Detainees have access to libraries, educational programmes and social services as well as places appropriate for cultural and religious practices.

Information provided to detainees at the Matorral Centre is improved and qualified interpreters are available to ensure adequate communication with Centre staff. Detainees should receive adequate social assistance by qualified personnel, trained in asylum issues, immigration and socio-cultural mediation.

Detainees have real contact with the outside world, especially with their families, lawyers and NGOs that protect migrants and refugees.

Adequate fire escape and evacuation plans.

11. Amnesty International requests the Spanish government to take measures necessary to ensure the protection of the human rights of irregular migrants, especially women and unaccompanied minors.

Amnesty International considers that there remains a lot to be done to guarantee human rights to migrants living in Spain in an irregular situation, and that important legislative changes are necessary to provide adequate guarantees of their rights, especially the following³²⁷:

- The Spanish government should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and their Families.
- The Spanish government should review and amend the Law on Aliens, policies and procedures to eliminate all elements of discrimination and make them compatible with the duties of States, as set out in international human rights instruments. It should especially consider:
 - a. Specific recognition of the rights to equal employment conditions, social security rights, the rights of assembly, association, demonstration and strike; access to health for migrants and the right to education for their children.
 - b. Specific guarantee for the right to legal assistance for all foreign nationals, independently of their administrative situation, on the same terms as Spanish citizens, and especially for all procedures related to their migration situation and when they are victims of crime. The Constitutional Tribunal made the same point in its judgement of 23 May 2003.

³²⁷ For a more detailed analysis of the recommendations, see Amnesty International: “*España: somos todos iguales ante la ley?*”, pages 15-27.

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- c. The adoption of measures that limit the barriers encountered by irregular migrants in gaining access to education and health services. Amnesty International has expressed its concern at the measures contained in the recent reform of the Law on Aliens regarding municipal registers (restrictions on access, expiry of registration and, especially, access of the police to data on the register).³²⁸ As the United Nations Special Rapporteur on the human rights of migrants pointed out, such measures “could mean that illegal immigrants will not receive basic minimum services because of their fear of being identified”.³²⁹ The organisation considers that specific measures should be taken to guarantee all migrants access to all basic rights, independently of their administrative situation status in Spain.
 - The Spanish government should alleviate the “administrative invisibility” of irregular migrants. Amnesty International reminds the government that registration is the only way to know who lives in a particular municipality, and provide access to basic rights for all people (such as access to health care, emergency social services and so on), independently of their administrative situation. The government should specifically recognize the particular vulnerability of irregular migrants to human rights abuses, and therefore prepare and implement policies and action plans to prevent such abuses, especially:
 - a. The preparation of a State Plan to fight racism, as requested by 40,000 people, who signed a petition during Amnesty International’s “*Ponte en su piel*” campaign³³⁰. The organisation regrets that more than 15 months after the government approved the creation of a Council for Equal Treatment for all races and an Observatory of Struggle against Racism, both organisms have still not been created. Amnesty International therefore urges the government to immediately create and make operational both agencies.
 - b. The adoption of effective mechanisms to prosecute individuals, groups or entities who commit acts of violence, threaten or intimidate irregular migrant workers and their families.

³²⁸ Additional provision VII of the LO 14/2003 of 20 November, which amended Law 7/1985 of 2 April, regulating local procedures.

³²⁹ E/CN.4/2004/76/Add.2, paragraph 68.

³³⁰ Campaign launched by the AI Spain against race-related torture and ill-treatment by State agents, <http://www.es.amnesty.org/camps/ponteensupiel/>

6. Indicators

Indicators to evaluate a policy committed to human rights of refugees, asylum-seekers and migrants

Amnesty International would like to highlight the importance of the following points as indicators, signs of progress and compliance with international human rights standards on asylum and migrations:

- Spain ratifies the International Convention on the Protection of the Rights of All Migrant Workers and their Families, the Fourth Protocol of the European Human Rights Convention and the European Convention against the Trafficking of Human Beings.
- Spanish legislation includes a guarantee of non-*refoulement* in procedures for the expulsion of foreign nationals. It also incorporates in legislation, the specific recognition that persecution by gender, sexual orientation or by non-state agents is reason for granting refugee status.
- The Spanish government guarantees respect for its duties with international human rights legislation in the transposition of European asylum directives, especially (with regard to) the right of asylum-seekers to legal assistance, interpreters, the suspensive effect of judicial appeals and dignified reception facilities.
- Spain has implemented effective mechanisms to prevent the unlawful expulsion of migrants, asylum-seekers and refugees, especially in Ceuta, and introduced a protocol on the use of force in expulsion procedures.
- The Spanish government effectively guarantees the right of migrants and asylum-seekers to adequate information, effective legal assistance – not merely the presence of a lawyer – and interpreting, especially on the southern border of Spain. All people who request asylum have access to fair and transparent asylum procedures that ensure the protection of those fleeing human rights violations.
- Spain respects the Convention on the Rights of the Child, and guarantees protection for unaccompanied migrant minors – especially Moroccans – and does not expel anyone unless they have adequate assurance that they will be reunited with their family or protected by the social services of the country or origin.

- Reception facilities for migrants and asylum-seekers, especially in Ceuta, the Canary Islands and the Andalusian coast, are adequate and guarantee economic, social and cultural rights, respecting the principle of non-discrimination, at all times.
- Spain and the EU have created an impact monitoring mechanism to monitor the impact of migration controls that are leading third countries, including Morocco. This system ensures that protection is provided for people fleeing human rights violations and for the human rights of migrants. Spain includes, in all its readmission agreements with other countries, guarantees that all people returned to those countries receive effective protection against *refoulement* and access to fair and satisfactory asylum procedures.
- The Spanish Government has implemented a protocol of procedure to guarantee the rescue of all people who are in danger of shipwreck. The people rescued are treated with due respect and dignity.
- The Spanish state implements a National Plan to protect and provide reparations to victims of trafficking, ensuring the availability of and access to effective remedies, not exclusively linked to cooperation with the legal system.