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# Spain and Morocco

## Failure to protect the rights of migrants – Ceuta and Melilla one year on

### 1. Introduction

Amnesty International has serious concerns about the Spanish and Moroccan authorities' treatment of people attempting to cross the Spanish/Moroccan border clandestinely at Ceuta and Melilla. In the past two years, the organization has investigated alleged human rights violations affecting potential migrants and asylum-seekers in Ceuta and Melilla as well as in Andalucía and the Canary Islands.<sup>1</sup> These investigations have revealed abuses including unlawful expulsions, lack of due process and excessive use of force by the security forces.

Concerns have also been expressed that readmission agreements, such as the one signed by Spain and Morocco, may lead to people being returned to countries where they are at risk of serious human rights violations. This practice is known as *refoulement* (see chapter 3 below) and is prohibited under international refugee law.

In June 2005, Amnesty International published a report documenting the situation facing refugees, asylum-seekers and migrants entering Spain at its southern border.<sup>2</sup> This highlighted unlawful expulsions, particularly of asylum-seekers, and excessive use of force both to prevent migrants and asylum-seekers reaching Ceuta and Melilla and during expulsions across the fence into Morocco. These concerns were reconfirmed in October 2005 when Amnesty International delegates visited Ceuta and Melilla (Spain) and Nador, Oujda, Rabat and Tangiers (Morocco). The delegates investigated allegations of abuses committed by Spanish and Moroccan officials against asylum-seekers and migrants which had resulted in at least 13 deaths in August and September 2005. Amnesty International received disturbing reports of human rights violations against people trying to cross the border. These included:

- Use of excessive force by law enforcement officials;
- Collective expulsions;
- Immediate, unlawful expulsions;
- *Refoulement*.

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<sup>1</sup> See, for example the following Amnesty International documents, *El derecho de asilo en España: Una Carrera de Obstáculos*, pp43 and 44 ([http://www.es.amnesty.org/com/2001/com\\_28oct01.shtm](http://www.es.amnesty.org/com/2001/com_28oct01.shtm)); *Spain/Morocco: The authorities must be held accountable for the violation of migrants' rights* (AI Index: EUR 41/016/2005); *Spain/Morocco: EU pressure to "keep people out" contributing to serious abuse of migrants' rights* (AI Index: EUR 41/017/2005).

<sup>2</sup> Amnesty International, *Spain: The Southern Border -- The state turns its back on the human rights of refugees and migrants* (AI Index: EUR 41/008/2005).

After the fatal border incidents in 2005, the Spanish and Moroccan authorities began investigations into the deaths. At the time of writing, these investigations have produced no public results, nor are there guarantees that the promised investigations will be thorough, impartial and effective. Amnesty International is not aware of any disciplinary action taken in relation to the deaths and ill-treatment, nor of any precautionary measures adopted to prevent future abuses. Indeed, on 3 July 2006, three more deaths occurred near the fences Melilla as the victims were trying to enter Spain.<sup>3</sup>

The Spanish Minister of the Interior agreed at a meeting on 4 July 2006 to provide Amnesty International with updated information on the investigation into the circumstances of these fatalities. He also agreed to look into the legal status applied to people found in the area between the two border fences, and into the development of a protocol on the use of anti-riot material adapted to the specific needs of the area. He agreed in addition to consider recommendations for ensuring that the rules on the use of force by state officials are consistent with international laws and standards. However at the time of writing, Amnesty International had not received any information regarding clarification of the status of the space between the border fences nor is it aware of any changes to policies on the use of force. The Spanish Ombudsman, Enrique Múgica, has also called for guidelines to be developed and issued to the Spanish Civil Guard on the use of rubber bullets when dealing with migrants.<sup>4</sup>

Amnesty International is concerned about irregularities in the procedure used to expel people from Spain and Morocco. Many are expelled from the area between the two border fences, others are expelled from Spain to Morocco and some from Morocco to neighbouring North African countries. None of the migrants interviewed by Amnesty International had been informed of their rights, none had been able to speak with a lawyer when the expulsion order was issued and none knew the name of their lawyer or had any contact information for them. The transfer of deportees to Morocco was carried out without notifying the court and without proper judicial process.

The report of the October 2005 European Commission's Technical Mission to Morocco highlighted evidence that increased cooperation between the Spanish and Moroccan authorities and the introduction of increased surveillance of the Canary Island coasts had led to a 37 per cent decrease in migrants reaching the islands by boat in 2005.<sup>5</sup> The mission deduced that this could have been connected to the sudden increase in the number of migrants at the Ceuta and Melilla border points at around this time.

Amnesty International delegates visited Tenerife (Canary Islands) and in July 2006 the organisation issued a report identifying changes in the pattern of migration in the first half

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<sup>3</sup> Amnesty International, *Spain/Morocco: No impunity for killing* (AI Index: EUR 41/005/2006).

<sup>4</sup> "Múgica pide que se regulen los disparos con pelotas de goma en la valla de Melilla", *El Mundo*, 5 July 2006.

<sup>5</sup> *Visit to Ceuta and Melilla – Mission Report*, Technical mission to Morocco on illegal immigration, 7 October – 11 October 2005, Ref MEMO/05/380.

of the year.<sup>6</sup> Following the intensification of measures to discourage attempted border crossings at Ceuta and Melilla after October 2005, an increased number of migrants and asylum-seekers arrived in the Canary Islands by boat from Mauritania. The total number of people arriving by this route in March 2006 alone was 2,129; this was almost half the total number received in the Islands in the whole of 2005.<sup>7</sup> In response, the Spanish government reactivated the July 2003 readmission agreement with Mauritania to allow for the repatriation of those arriving in the Canary Islands illegally. It also entered a new cooperation agreement with Mauritania, providing equipment and training to Mauritanian border control forces.

Migration routes changed again following the implementation of these measures with increasing departures from Senegal – a journey of some 2,000km. During May 2006, 3,343 migrants and asylum-seekers arrived in Tenerife; most had travelled from Senegal.<sup>8</sup> By the middle of June 2006 over 10,000 people had arrived by boat in the Canary Islands. This unprecedented influx put enormous pressure on the region's reception and processing facilities. Amnesty International raised concerns about inadequate procedures for processing asylum applications; the lack of adequate legal assistance and interpreters; substandard detention conditions; and insufficient protection against *refoulement*.

Amnesty International is also concerned by the apparent lack of adequate legal safeguards in place in the border control operations carried out by Frontex. Frontex coordinates operational cooperation between European Union (EU) member states in the management of external borders. In August 2006, Frontex launched the Hera II mission in an attempt to stem the flow of migrants to the Canary Islands. The operation was due to last nine weeks and involved navy boats from Italy and Portugal in addition to Italian and Finnish military planes working alongside the Spanish authorities. Amnesty International is concerned that this operation may violate fundamental human rights by preventing individuals from seeking asylum and by contributing to *refoulement*.

Amnesty International is not opposed to governments controlling immigration. However, Migrants, asylum-seekers and refugees are entitled to full respect of their individual human rights. The tightening of border control measures in ways that contravene international human rights standards will not dissuade vulnerable people from attempting to cross frontiers but it can lead them to seek alternative routes which may prove more dangerous. These measures also transfer immigration control difficulties from one region to another, without resolving the underlying problems.

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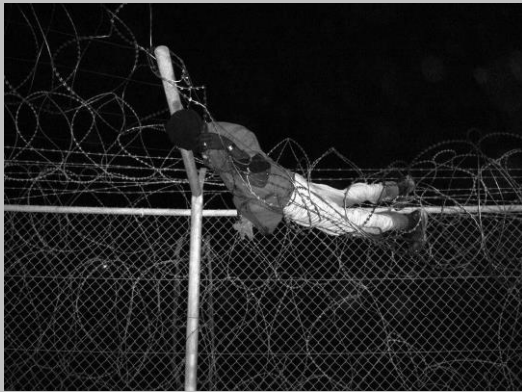
<sup>6</sup> *Los derechos de los extranjeros que llegan a las Islas Canarias siguen siendo vulnerados*, Resultados de la misión de investigación de Amnistía Internacional los días 14 al 16 de junio (7 July 2006).

<sup>7</sup> Data provided by the Canary Islands government, cited in the Amnesty International report of 7 July 2006.

<sup>8</sup> Data provided by the Canary Islands government, cited in the Amnesty International report of 7 July 2006.

In this report Amnesty International highlights serious human rights violations in and around the Spanish enclaves of Ceuta and Melilla. The report concludes with a series of recommendations to the Spanish and Moroccan governments, and to the EU that address the issue of accountability and the need to ensure respect for the rights of migrants, asylum-seekers and refugees throughout Spain and Morocco.

## 2. Deaths and injuries at the border



**A man caught in the razor wire of the border fence at Ceuta after attempting to cross to Spain on 29 September 2006**

© Private

The cities of Ceuta and Melilla are separated from Moroccan territory by two wire fences on Spanish territory. These are topped with coiled wire covered with blades, known as “razor” or “concertina” wire. The Spanish Civil Guard patrol the area between the two fences, a gap varying from approximately 2m to 5m wide. There are gates spaced quite closely together along the outer fence which can only be opened from the Spanish side.<sup>9</sup> The whole length of the fences is kept under constant surveillance by closed-circuit video cameras (CCTV), watchtowers, infra-red rays and fibre-optic thermal sensors controlled by the Spanish Civil Guard. In a communication to the Spanish government the Independent Association of the

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<sup>9</sup> It is not clear why the doors can only be opened from the Spanish side, but this allows unlawful, immediate expulsions to take place since they lead to open fields on the Moroccan side where there are no Moroccan border posts.

Civil Guard raised concerns regarding the so-called “three-dimensional fence”. The Association commented that: “It is made of wires and stakes and when the migrants fall from a six-metre height [they] are torn to pieces”<sup>10</sup>

Amnesty International has repeatedly expressed its concern about allegations of ill-treatment and excessive use of force by Spanish Civil Guards when confronting migrants attempting to climb over the fences into Ceuta and Melilla. Allegations have included the use of lethal firearms, the firing of heavy rubber bullets at very close range and severe beatings using rifle butts.

The rubber bullets used by the Spanish Civil Guard are made of solid rubber and are about the size of a tennis ball. They are usually shot from within the area between the two fences as they are too large to pass through the mesh of the fence. Law enforcement officials use these bullets either to prevent people from climbing the fences or to stop people who are already between the two fences from crossing the second fence. They generally shoot at people when they are on top of the fence with their face and upper body exposed, resulting in injuries to the temples, ears, eyes, the upper lip and neck. The distance between the gun and the person being targeted is generally less than a few metres.

On 15 September 2005, a man died from injuries reportedly received from a rubber bullet which hit him in the throat. He had been one of a group of approximately 30 people who had attempted to cross the border fences into Melilla at 5am that morning. An official account stated that the man was already badly injured when he reached the fence and had “serious difficulties in walking and breathing”. According to official sources, Spanish Civil Guards took him and another injured person to the hospital where he later died.<sup>11</sup> According to testimonies received by Amnesty International and reports by representatives of the local non-governmental organization (NGO) Pro Derechos de la Infancia (PRODEIN), and Médecins Sans Frontières (MSF), the man’s trachea had been severely damaged after being hit by a rubber bullet, causing his death. An investigation was initiated, but no results have yet been made public.

On 29 September 2005, at least four people died after being shot with live ammunition as they attempted to cross the fence from Morocco into Ceuta in an area known as Berrocal, near the frontier post of Tarajal. Dozens of others were injured during the incident and later treated in hospitals in both Ceuta and Tetouan (Morocco). In a discussion in parliament on 6 October 2005, the Spanish Minister of the Interior denied that the Spanish Civil Guard bore any responsibility for these deaths.

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<sup>10</sup> “Guardias civiles culpan al gobierno de las muertes en la valle de Melilla”, *El Mundo*, 13 July 2006.

<sup>11</sup> “... con dificultad para andar y para respirar” José Fernández Chacón, Government Delegate of Melilla, *Melilla Hoy*, 16 September 2005.



**Scene at the Spanish/Moroccan border after those pictured had attempted to cross the fence at Ceuta, 29 September 2005**  
**Picture published in *La Razon*, 29 September 2006**  
© Private

PN (name withheld) from the Democratic Republic of the Congo, was part of a group of approximately 500 people who attempted to cross the border between Morocco and Ceuta on 29 September 2005. As the first group of people tried to place makeshift ladders to climb the first fence, members of the Spanish Civil Guard on the other side of the fence shot rubber bullets at them to push them back off the fences. PN was shot in the right foot and immediately lost a toe. He later spent three weeks in hospital and underwent surgery to amputate another of his toes.

PN was advised by local NGOs not file a complaint in order to avoid reprisals. Although PN stated in hospital and in his asylum interview that he was wounded by a firearm, as far as Amnesty International is aware, no action has been taken by any authority to investigate the incident.



PN's injured foot. © AI 2005

According to eyewitness reports, on 29 September several hundred people tried to climb over the fence at Ceuta using makeshift ladders. Members of the Spanish Civil Guard began shooting into the air and firing tear gas. Members of the Moroccan security forces reportedly appeared around the same time and opened fire in the direction of the group arriving at the fence. Spanish officials stated that three migrants died on the Moroccan side. On 1 October 2005 Moroccan military sources insisted that the number of deaths was two rather than three<sup>12</sup>.

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<sup>12</sup> "Continúan detenciones de inmigrantes en bosques alejados de Ceuta" *EFE*, 1 October 2005.





Makeshift ladders abandoned near the border fence,  
2005. © AI

Andrés Carrera, the Secretary of the Ceuta branch of Spain's Police Trade Union (Syndicato Unificado de Policía) stated that "*Moroccan gendarmes intervened with opened fire . . . it is easy to find out the origin of the shots, since the ammunition used by the two countries is different, and the bullet holes in the walls of the Civil Guard headquarters weren't made by us.*"<sup>13</sup> In a meeting on 21 October 2005, a representative of the Moroccan Ministry of Justice told Amnesty International that any member of the Moroccan security forces found to have committed an offence would be brought to justice. He stated that autopsies had been carried out on the two bodies found on the Moroccan side on 29 September and the results were being studied by an examining magistrate in Tetouan (Morocco) charged with conducting a judicial investigation into the deaths. Samples of the bullets found in the bodies of the dead men had been sent to a police laboratory to determine the type of weapon used. However, witnesses apparently indicated to the magistrate that the shots fired had emanated from the Spanish Civil Guard and that the two bodies found on the Moroccan side had been shot while they were on Spanish territory, then carried through the border fence and deposited in Moroccan territory. At the time of writing, the Spanish authorities were not able to provide information about the progress of these cases. Similarly, the Moroccan authorities had not announced the results of their judicial investigations.

On the night of 5-6 October 2005 a group of 400 people tried to cross the fence between Morocco and Melilla in an area known as Rostrogordo in the province of Nador. Six people died and dozens were injured after Moroccan security forces intervened to stop people scaling the fence.

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<sup>13</sup> *The Spain Herald*, 3 October 2005,

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These further deaths were also discussed at the 21 October meeting mentioned above. The representative of the Moroccan Ministry of Justice told Amnesty International delegates that autopsies had been carried out on the six bodies and were being studied by an examining magistrate in Nador who was conducting a judicial investigation into the deaths. He added that the examining magistrate had visited the scene of the incident and interviewed witnesses being treated at a hospital in Nador. According to a subsequent report in the press, the internal Ministry of Justice investigation into the deaths found that four of the six men died as a result of being hit by “warning shots coming from the Moroccan security forces” while the other two “died following intensive bleeding resulting from multiple wounds”. The report concluded that “the violence which characterized these intense and unprecedented attacks... took the 15 members of the security forces who were on duty by surprise,” adding that “some [of the migrants] were armed with machetes, clubs or knives.”<sup>14</sup>

In October 2005, a Spanish television channel, Telecinco, broadcast a video of a member of the Spanish Civil Guard kicking someone who appeared to be of sub-Saharan origin on the ground between the two fences at the border with Melilla. The *Fiscalía de Málaga*, who are conducting the investigation, requested the footage from the authorities in Melilla and requested the identity of the Civil Guard officer responsible. Neither of these have been made available.

In a meeting with the Spanish General Office of the Public Prosecutor of the State on 24 February 2006, Amnesty International representatives asked about progress in the five investigations pending in the Courts of Instruction of Ceuta and Melilla concerning the events that took place on the border during September and October 2005. On 16 June 2006, Amnesty International wrote to the Spanish authorities again requesting information on the status of these cases. The written reply received from the Spanish authorities failed to indicate how the cases were progressing.

Three people died attempting to cross the border fence at Melilla in the zone between Farhana and Zoco on 3 July 2006. One of the men fell and died in the space between the two fences, and the other two fell from the first fence onto the Moroccan side. At least seven other migrants are believed to have been injured in this group attempt to cross the fence.<sup>15</sup> Three migrants successfully reached Spanish territory without injury and a fourth was gravely injured by a gunshot wound during the crossing and taken to the Hospital Comarcal by Spanish officials.

Witnesses interviewed by PRODEIN about this incident reported that Moroccan security forces began firing after the migrants had already begun climbing the first fence. Some also alleged that rocks were thrown. Residents on the Spanish side reported that the gunfire continued for a prolonged time (almost two hours). It is also reported that members of the Spanish Civil Guard fired rubber bullets into the air.

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<sup>14</sup> Reported by Maghreb Arabe Press (MAP), Morocco’s official news agency, on 24 October 2005

<sup>15</sup> “Two dead as migrants rush Spanish enclave of Melilla”, AFP, 3 July 2006.

The man who died between the two fences, who was believed to be of Nigerian origin, is thought to have died as a result of a gunshot wound.<sup>16</sup> An autopsy on his body was completed on 6 July<sup>17</sup> and the results will form part of the ongoing judicial investigation into the incident. Press reports citing hospital sources stated that the bullet used was the type used for hunting which fragments inside the body on impact. The injured man recovering in the Hospital Comarcal appeared to have been shot by a different type of bullet as no metal fragments were found in his body.<sup>18</sup>

The bodies of the two people who fell on the Moroccan side of the fence were removed by Moroccan authorities who reported that both deaths were the result of injuries caused by falling from the fence and not from bullet wounds. Moroccan officials have opened an inquiry into the deaths.

Court Number 3 in Melilla opened an investigation into the events. Amnesty International made enquiries into the progress of the case but was informed that no information on the cases was publicly available, including when the case was expected to be concluded. The Spanish Minister of the Interior agreed at a meeting on 4 July 2006 to provide Amnesty International with updated information on the investigation into the circumstances of these fatalities.

The Spanish Minister of the Interior, in a parliamentary session of control on 27 July 2006, stated that the Guardia Civil were not responsible for the gunshot wounds sustained by the victims.<sup>19</sup>

The lack of legal safeguards governing border control means that law enforcement officials responsible for controlling the borders at Ceuta and Melilla are currently not being held accountable for their actions. From evidence received by Amnesty International, it also seems that asylum-seekers are afraid of being expelled if they report ill-treatment and as a result many abuses go unreported, further exacerbating this climate of impunity.

Amnesty International is deeply concerned at:

- The excessive use of force by law enforcement officials resulting in the deaths of 13 people and hundreds of injuries;
- The use of rubber bullets by Spanish law enforcement officials which may cause serious injury when fired at close range, as is the situation at the border fence in Melilla, and which may also result in migrants attempting to climb the fence falling up to 6m to the ground;

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<sup>16</sup> “Marruecos disparó a los inmigrantes que saltaron la valla con munición de caza”, *El Mundo*, 6 July 2006.

<sup>17</sup> Diario de Sesiones del Congreso de los Diputados, 27 July 2006. VIII Legislatura. Num.636. p5.

<sup>18</sup> “Marruecos disparó a los inmigrantes que saltaron la valla con munición de caza”, *El Mundo*, 6 July 2006.

<sup>19</sup> Diario de Sesiones del Congreso de los Diputados, 27 July 2006. VIII Legislatura, Num.636, p6.

- The possible unnecessary physical dangers presented by the ‘razor’ wire fence;
- The lack of information on the progress of the five investigations into the deaths that occurred on Spanish territory in 2005;
- The lack of information on the progress of the investigations into the deaths that occurred on the Spanish side of the Moroccan/Spanish border on 3 July 2006;
- The lack of investigations into at least eight other deaths alleged to have occurred on Spanish territory;
- The apparently arbitrary treatment resulting from a lack of legal clarity regarding jurisdiction and responsibility for migrants in the area between the two fences and on the side of the fence which leads back to Morocco<sup>20</sup>;
- The lack of investigations into allegations of ill-treatment leading to injury;
- The lack of a clear condemnation by the Spanish government of the actions taken by the Moroccan border patrol on 3 July 2006 and the subsequent grant of 10.5 million euros to the Moroccan government to improve border controls without this being tied to any human rights measures;

### 3. Unlawful expulsions

Amnesty International is particularly concerned about unlawful expulsions (including collective expulsions), returns or *refoulement* of migrants and asylum-seekers from Spanish and Moroccan territory. Evidence gathered by Amnesty International delegates during a visit to the region in October 2005 as well as testimonies received from other NGOs, illustrate a disturbing pattern of breaches of national and international legal standards. As a consequence, large numbers of people, including asylum-seekers, have been forcibly returned from Spain to Morocco, or from Morocco to a third country, without being given an adequate opportunity to appeal against the decision to expel them. In addition, there are alarming reports that groups of migrants subject to expulsion proceedings were abandoned by the Moroccan authorities in desert regions.

#### Moroccan Refugee Law

Morocco has ratified the Refugee Convention and its 1967 Protocol. However, the authorities have neither adopted a refugee law nor established a procedure to deal with asylum-seekers and refugees. A short decree adopted in 1957, which regulates all issues relating to refugees and asylum-seekers, is still in force but not being implemented.<sup>21</sup> UNHCR has been represented in Morocco by an Honorary Representative since 1959 and has an office in Rabat,

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<sup>20</sup> Appearance of the Deputy Ombudsperson with the Ombudsperson before the *Comisión Mixta de Relaciones* to present information and reports regarding the situation at the Spanish/Moroccan borders, 22 November 2005 (212/000712), *Diario de Sesiones Cortes Generales* no. 50 de 22/11/05.

<sup>21</sup> Decree of 29 August 1957 fixing the rules of implementation of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951.

but there is no formal agreement between UNHCR and Morocco on the agency's presence. There are currently no mechanisms to identify and protect asylum-seekers and refugees at points of entry into Morocco.

### Spanish law on expulsions

Spanish legislation allows for two methods of expelling foreign nationals who enter the country through an unofficial border and do not have the appropriate documentation to remain in Spain: expulsion (*expulsión*) or accelerated return (*devolución*).<sup>22</sup> In both cases, Spanish law states that foreign nationals are entitled to legal assistance and an interpreter and, if they seek asylum, their expulsion should be suspended until a decision is reached concerning their application for asylum.

Accelerated return applies to foreign nationals intercepted at the moment of irregular entry into Spain through an unofficial border or in the immediate vicinity.<sup>23</sup> Those subject to accelerated return have the right to legal assistance (free of charge if they do not have the money to pay) and to an interpreter.<sup>24</sup> Accelerated return cannot lawfully take place if a request for asylum has been lodged. Accelerated return is also forbidden in the case of pregnant women if the pregnancy or the health of the mother may be at risk.<sup>25</sup>

The expulsion process applies to foreign nationals who are already on Spanish territory but do not have authorization to remain. Spanish law requires there to be a resolution stating the grounds for expulsion together with an indication of what appeals can be lodged, the body before which they should be presented and the deadline for their presentation. The existence of an expulsion order precludes further administrative proceedings, and provides information on the available effective judicial remedies.

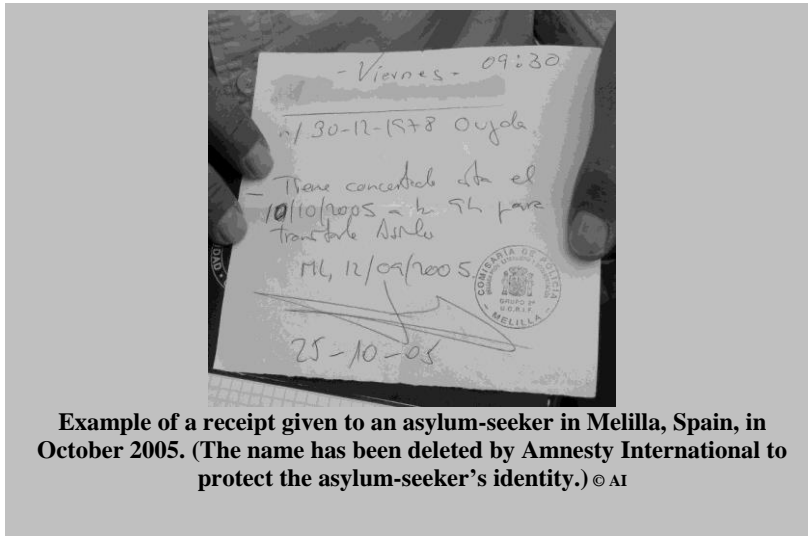
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<sup>22</sup> Statutory Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Statutory Law 8/2000 of 22 December 2000, 11/2003 of 29 September 2003 and 14/2003 of 20 November 2003 (*Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*).

<sup>23</sup> Article 157.2b of the regulations for foreigners ("*reglamento de extranjería*") approved by Royal Decree 2393/2004 of 30 December 2004.

<sup>24</sup> Article 157.3 amending the regulations governing implementation of the law on aliens further develops the provisions of Statutory Law Article 58.2.

<sup>25</sup> Article 58.3. Statutory Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Statutory Law 8/2000 of 22 December 2000, 11/2003 of 29 September 2003 and 14/2003 of 20 November 2003.



**Example of a receipt given to an asylum-seeker in Melilla, Spain, in October 2005. (The name has been deleted by Amnesty International to protect the asylum-seeker's identity.) © AI**

### The principle of *non-refoulement*

Both Spanish law and international refugee law forbid the *refoulement* of asylum-seekers. The principle of *non-refoulement* is a norm of customary international law. Both Morocco and Spain have ratified the 1951 Convention relating to the Status of Refugees (Refugee Convention) and are fully bound by its prohibition on *refoulement*. Article 33 of the Refugee Convention states:

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

The principle of *non-refoulement* is also reflected in Spain’s obligations under other human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); and the Charter of Fundamental Rights of the European Union.

The Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, stipulates that each

state party shall take all appropriate measures to carry out returns in an orderly manner and with due regard for the safety and dignity of the person.<sup>26</sup> It also reminds states of their obligations and responsibilities under international law, including international humanitarian law and international human rights law and, in particular, the Refugee Convention and the principle of *non-refoulement*.<sup>27</sup>

### Immediate expulsion from Spain

During their visit to Spain, Amnesty International delegates received reports from people who were brutally beaten by Spanish Civil Guards on the Spanish side of the border and then unlawfully expelled. The victims alleged that they did not receive any medical assistance and were instead expelled to the Moroccan side of the fence through service doors.

Immediate, unlawful expulsions are regularly carried out by the Spanish authorities and repeated requests by Amnesty International for this illegal practice to stop have been ignored. For example, on 28 December 2004, several NGOs and the United Nations High Commissioner for Refugees (UNHCR) protested at the unlawful expulsion of several people from sub-Saharan Africa who were at the Colegio San Antonio in Ceuta, including seven people who had submitted requests to formalize their asylum applications.

Witnesses told Amnesty International that, once they have crossed the fence, their first objective is to avoid the possibility of illegal expulsion without any procedure. To do this they must go to the police station and obtain a "receipt" which confirms they have reached Spanish territory and that either an asylum claim or expulsion procedure has been initiated. Once a receipt is obtained the person is protected from illegal expulsion and the process of accelerated return can not be applied. This receipt also allows them to access the Short Stay Immigration Centre (Centro de Estancia Temporal or CETI).

Amnesty International has expressed concern about unlawful expulsions from Spain for several years. Such expulsions breach Spanish law and are contrary to Spain's obligations under international refugee law. Some expulsions may violate the principle of *non-refoulement*. The failure to provide adequate medical assistance to those injured prior to expulsion is, in itself, a violation of the duty under international human rights law<sup>28</sup> to assist the injured.

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<sup>26</sup> Article 18.5

<sup>27</sup> Article 19.1.

<sup>28</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) relates to the right to the enjoyment of the highest attainable standard of physical and mental health. In relation to article 12, the Committee on Economic, Social and Cultural rights states that: "In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; ...." (General Comment 14). In addition, The Committee on the Elimination of Racial Discrimination (CERD) has concluded that states must: "Ensure that States parties respect the right of non-citizens to an adequate standard of

Amnesty International received reports from people who had been intercepted and then expelled while they were on their way to the local station of the National Police to obtain documents to prove that they had reached Spanish territory. Some reported that members of the Spanish Civil Guard had unlawfully expelled people who had already been to the police station and been given a date for completion of their asylum application.

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physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services; " (General Recommendation No.30: Discrimination Against Non Citizens, 01/10/2004)



MB (name withheld) from Côte d'Ivoire entered Melilla on 3 October 2005 in order to seek asylum in Spain. He crossed the first fence and was intercepted at the second by Spanish Civil Guards who pushed him off the fence. He lacerated his hand and lost a lot of blood. He lost consciousness and was taken to hospital by ambulance. He told Amnesty International that this was the third time that he had tried to cross the fence at Melilla. The first time he succeeded in crossing the two fences but Spanish Civil Guards expelled him through the fence without any form of proceedings. The second time, he also succeeded in reaching Spanish territory but Spanish Civil Guards assaulted him and returned him through the fence to Moroccan territory.

CM (name withheld) from Mali entered Melilla for the third time in October 2005. The first time he managed to reach the police station in Melilla where they gave him a receipt. He told Amnesty International that he was stopped by members of the Spanish Civil Guard on his way to the Short Stay Immigration Centre. They destroyed his receipt and took away his clothes, leaving him only with his underwear, before handing him over to the Moroccan police who assaulted him and took him to the Moroccan town of Oujda on the Algerian border. The second time he succeeded in crossing the two fences and was on his way to the police station when he was stopped by members of the Spanish Civil Guard. They assaulted him and confiscated all his clothes except for his shoes and took his diary containing phone numbers. He was handed to the Moroccan authorities who again took him to Oujda.

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In a letter sent to Amnesty International on 30 March 2005, the Office of the Government Representative in Ceuta admitted that some non-citizens had been subjected to immediate expulsion but said that “none of them had documents and they all showed signs of having crossed that day (dirtiness, clothing, etc)... None of the people placed at the disposal of the Moroccan authorities that day (under the agreement between the Kingdoms of Spain and Morocco) had documents and so it is impossible to confirm their identity.” Following their unlawful expulsion, three people were brought back to Spain from Morocco by the Spanish government.

### Collective expulsions from Spain

On 3 October 2005, as many as 350 people tried to cross the border from Morocco to the city of Melilla. Seventy-three of the 350 were expelled to Morocco under the accelerated return procedure. Amnesty International is deeply concerned about the procedural irregularities and consequent human rights violations to which the 73 people were subjected during this process. It should be stressed that since the expulsions the Spanish government has allowed eight people who had been expelled, including refugees from Côte d’Ivoire, to resettle in Spain; three were from the group of 73. Portugal has also accepted 12 refugees.<sup>29</sup>

Amnesty International had the opportunity to interview some of those expelled after they arrived in Tangiers (Morocco). They reported that at no point were the 73 people informed of their rights. While at the police station in Melilla<sup>30</sup> where they were hoping to obtain a receipt to allow them to stay at the Short Stay Immigration Centre, they were not given any information about which procedure was going to be used in their case nor were they told that they had the right to apply for asylum in Spain.

Only one lawyer from the Melilla Bar Association was present during this process.<sup>31</sup> At no point did she identify herself as a lawyer able to provide legal assistance for the detainees nor did she address any of them. In total, she spent less than three hours at the police station during which time she claimed to have provided legal assistance to 120 people – approximately one to two minutes per person – to initiate the formalities relating to the accelerated return procedure.<sup>32</sup> There is also no evidence among the papers documenting her actions that anyone requested an appeal against their accelerated return although there were many asylum-seekers among the 73. Four people from Côte d’Ivoire told Amnesty International that they had wanted to apply for asylum in Spain but were given no opportunity to do so. When they appeared before the judge at the Fifth Court of First Instance in Melilla

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<sup>29</sup> Information given to Amnesty International by UNHCR in December 2005.

<sup>30</sup> Appearance of the Deputy Ombudsperson with the Ombudsperson before the *Comisión Mixta de Relaciones* to present information and reports regarding the situation at the Spanish/Moroccan borders, 22 November 2005 (212/000712), *Diario de Sesiones Cortes Generales* no. 50 de 22/11/05.

<sup>31</sup> The Melilla Bar Association does not have duty solicitors who are specialists in immigration law.

<sup>32</sup> The lack of sufficient legal representation and advice was reported by the Comisión Española de Ayuda al Refugiado (CEAR) which brought a claim to the European Court of Human Rights to challenge the expulsion of the 73 people, CEAR press release *Resolución del Comité Ejecutivo de CEAR ante la expulsión de 73 migrantes desde la Ciudad Autónoma de Melilla*, 21 October 2005.

not one of the people interviewed by Amnesty International was able to identify the lawyer who had represented them at the hearing, nor did they know of any way of contacting her. The 73 people were, therefore, not provided with effective legal assistance as required by Spanish law.<sup>33</sup>

None of the people interviewed by Amnesty International reported seeing the court order for their internment and expulsion. They therefore had no opportunity to challenge the reasons for their return. Amnesty International delegates saw the documents authorized by the judge which ordered the internment of the 73 people in the El Matorral internment centre in Fuerteventura, in the Canary Islands.<sup>34</sup> However, on 7 October 2005, after arriving at Málaga Airport, instead of being taken to El Matorral, they were driven to the Spanish port of Algeciras and from there they were taken by ferry to the Moroccan city of Tangiers. It was not until 18 October 2005 that the judge lifted the order to intern them at El Matorral at the request of government officials, 11 days after the order had been overridden.

Most of those interviewed had bruises consistent with their accounts that they had been fired on with rubber bullets used by Spanish Civil Guards to prevent their entry into Spain. They also had injuries consistent with their accounts of falling from the fences and assaults by Spanish and Moroccan officials. Although the Spanish government claimed it had guarantees from the Moroccan government that the people expelled to Morocco would be treated properly, several migrants stated that they were beaten by the Moroccan police and their belongings were confiscated on arrival in Tangiers.<sup>35</sup> An independent forensic pathologist working with Amnesty International found that at least three people had broken bones which had not been treated. At the time of writing, there had been no investigation into the allegations of ill-treatment.

Amnesty International also obtained testimony concerning the inadequacy of the Moroccan reception facilities at the time of the delegates' visit in October 2005. According to people expelled to Morocco by the Spanish authorities, food was scarce and consisted mainly of a small piece of bread, pasta and water. Those expelled were housed in four rooms in a two-story building still under construction on the outskirts of Tangiers.

According to the Spanish government, the 73 people were expelled and returned to Morocco in October 2005 under the 1992 readmission agreement between Spain and

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<sup>33</sup> Article 22 of law (*Ley Organica*) 4/2000 and Article 157.3 of the regulations governing its implementation.

<sup>34</sup> The internment of non-citizens is a precautionary measure designed to ensure their presence while arranging their repatriation to their country of origin or a third country and has to be authorized by a judge. As pointed out by the first Deputy Ombudsperson in during his appearance with the Ombudsperson before the *Comisión Mixta de Relaciones* to present information and reports regarding the situation at the Spanish/Moroccan borders, 22 November 2005 (212/000712), *Diario de Sesiones Cortes Generales* no. 50 de 22/11/05: Once an internment order has been issued, those concerned are not deemed to be detained but interned, and from that point on they are under the jurisdiction of the judge.

<sup>35</sup> Statements published in *El País*, 8 October 2005.

Morocco.<sup>36</sup> The Moroccan officials interviewed by Amnesty International denied that this agreement had been applied in order to receive these people, and said that they had been accepted for “humanitarian” reasons.<sup>37</sup> Amnesty International is concerned that the disagreement between Morocco and Spain regarding the application of the readmission agreement in the case of these 73 people resulted in serious procedural failures which lead to human rights violations. Amnesty International urges the Spanish government and the EU to ensure that any cooperation, association or readmission agreements entered into with Morocco or other transit countries to Morocco comply with their international obligations concerning protection of refugees, asylum-seekers and migrant workers

Immediate and collective expulsions are unlawful because they are carried out without procedures to determine the lawfulness of return in each case or to identify asylum-seekers and examine their claims. Furthermore, the evidence obtained by Amnesty International suggests that such expulsions are accompanied by unlawful force which must be fully investigated through fair and transparent procedures. Those found responsible must be brought to justice and preventative measures taken to ensure such acts to do not recur.

Although Morocco is a party to the Refugee Convention, it cannot be considered a safe third country. Morocco has not enacted domestic asylum procedures and has on various occasions in the past few years expelled asylum-seekers from its territory without considering their asylum claims. On other occasions, groups of asylum-seekers have been arbitrarily detained by the Moroccan authorities and not given access to the UNHCR. Expulsion to Morocco therefore contravenes the principle of *non-refoulement*.

To date, no investigations into the allegations of mass expulsion of people from Spain to Morocco have been carried out by the Spanish authorities and those responsible have not been held to account. As a result, unlawful expulsions continue at points of entry, such as Ceuta and Melilla, without protection for refugees, asylum-seekers and migrants and with impunity for the Spanish officials responsible for such human rights abuses.

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<sup>36</sup> In a readmission agreement, each state party promises to readmit certain individuals at the request of another state party. The agreement almost always explicitly obliges each party to readmit its own nationals upon request. Typically it also requires the readmission of certain third country nationals who travelled through the requested state en route to the requesting state and then either entered or remained irregularly. See *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, UNHCR Legal And Protection Policy Research Series, Stephen H Legomsky and Charles F Nagel, UNCHR, February 2003.

<sup>37</sup> Amnesty International meeting with Moroccan officials at the Moroccan Ministry of Foreign Affairs in Rabat on 21 October 2005.

### Expulsion from the area between the two border fences

People between the fences and in the vicinity of border fences are in principle protected from summary or clandestine expulsion by Spanish domestic law.<sup>38</sup> However, their legal status has remained a matter of some confusion. On 22 November 2005, the first Deputy Ombudsperson complained that “the Spanish administration is incapable of deciding ...where our country’s legislation should begin to apply when the internationally-established boundaries have been crossed.”<sup>39</sup> The Ombudsperson’s 2005 annual report clearly established that Spanish law applies in the area.<sup>40</sup> However, the Spanish government has repeatedly suggested that the fences constitute the border and could not be considered Spanish territory. In December, the European Parliament Committee on Civil Liberties, Justice and Home Affairs asked the Spanish government to clarify the legal status of the territory between the two fences and reiterated the concern expressed by UNHCR and Amnesty International that migrants are not being given the opportunity to apply for asylum.<sup>41</sup>

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<sup>38</sup> Statutory Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Statutory Law 8/2000 of 22 December 2000, 11/2003 of 29 September 2003 and 14/2003 of 20 November 2003.

<sup>39</sup> Appearance of the Deputy Ombudsperson with the Ombudsperson before the *Comisión Mixta de Relaciones* to present information and reports regarding the situation at the Spanish/Moroccan borders, 22 November 2005 (212/000712), *Diario de Sesiones Cortes Generales* no. 50 de 22/11/05.

<sup>40</sup> Appearance of the Deputy Ombudsperson before the Chamber of Deputies on 22 November 2005, Ombudsman’s report, p447, para6.3.2, November 2005 ([www.defesordelpueblo.es](http://www.defesordelpueblo.es)).

<sup>41</sup> Report of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) delegation on its visit to Ceuta and Melilla. *Rapporteur* Eva Klamt, PV\597219ES.doc.



**The area between the border fences, 2005. © AI**



**Spanish soldiers patrol behind a gate in the fence at Melilla, Spain, 2005. © AI**

This lack of legal clarity has facilitated a number of human rights violations. When people are intercepted by Spanish Civil Guards in the area between the two border fences, they are often immediately unlawfully expelled through one of the gates in the fence closest to Moroccan territory. At no point do they have the opportunity to obtain legal advice nor are they given access to an interpreter as required by Spanish law. In many cases, people have been stopped by Spanish Civil Guards improperly using riot-control weapons or firing shots into the air. Testimonies obtained by Amnesty International describe how Spanish Civil Guards beat people with their rifle butts or shoot at them with rubber bullets from very close range before confiscating their clothes or shoes and handing them over to the Moroccan

security forces waiting on the other side. These actions contravene international standards and Spanish law.<sup>42</sup>



Migrants being removed by the Spanish authorities from the area between the two fences at Melilla, September 2005.  
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### Collective expulsions from Morocco to desert areas

Following the incidents at the border between Morocco and Ceuta on 29 September 2005 (see Chapter 2), Moroccan security forces rounded up hundreds of people they suspected of being irregular migrants and expelled them from Morocco.

The majority of those expelled were from countries in West and Central Africa. Some were arrested on the night of 29 September 2005. Others were arrested in the following days at makeshift camps in the forests of Belyounech (near the border at Ceuta) and Gourougou (near the border at Melilla). Dozens more were arrested in cities such as Casablanca, Fes, Rabat and Tetouan. Most were irregular migrants in Morocco who had not sought asylum. However, dozens of asylum-seekers and at least one person recognized as a refugee by UNHCR were also arrested.

Many of those arrested were taken to police stations in Oujda, north-eastern Morocco. There they were usually asked to provide their name, nationality and details of how and where they had entered Morocco. Some were reportedly not told that they were going to be expelled. Others were told, but were given no details of how this would be carried out or where they

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<sup>42</sup>These provisions are governed by Article 5.1.c of the Statutory Law of the Bodies and Forces of Security of the State (*Ley Orgánica 2/1986 de Fuerzas y Cuerpos de Seguridad*).

were going. To Amnesty International's knowledge, no one was given the right to appeal against the decision before an administrative court, to be assisted by a translator (if one was needed), to examine the elements on which the decision was taken, to have access to a lawyer or to contact the consulate of their country of origin, despite the fact that these rights are guaranteed by Moroccan law.<sup>43</sup>

Dozens of those arrested were people who had made asylum claims at the UNHCR office in Rabat. Five of them were able to speak to Amnesty International by mobile phone later in October 2005 while detained in Moroccan military bases. They said that when they were arrested, they had produced a UNHCR document confirming that they had claimed asylum, but were told by the security forces that this did not grant them any special protection. Some officers reportedly confiscated the document, saying either that it would be returned to them later or that it was of no use to them as it did not offer protection. Other officers reportedly tore up the document in front of them. In many cases, the officers explained that they had been given instructions from the competent authorities to take such actions. NGOs in Morocco told Amnesty International that they had received similar complaints.

AC (name withheld) from Côte d'Ivoire applied for asylum in 2005 at the UNHCR offices in Rabat where he was given a document confirming that he had claimed asylum. He was arrested by police officers in Rabat on 2 October 2005. At the local police station, he presented the UNHCR document. The police officer took the document and told him that it was of no use and had no value in Morocco. He witnessed police officers confiscating similar documents from other asylum-seekers from Côte d'Ivoire, the Democratic Republic of the Congo and Sierra Leone.

He was held in the police station overnight and then transferred to Oujda, where he was held in a police station for another night. On the evening of 5 October, he was taken by bus along a main road to a desert region south of Oujda, which he believes to have been near the town of Ain Chouater, and left there in the early morning of 6 October 2005. He and approximately 15 others were told by the Moroccan security forces who had transported them to walk towards Algeria. He was not given anything to eat or drink.

Having headed at first in the direction indicated by the Moroccan security forces, the group decided to try to return to Morocco. After sleeping for at least two nights in the desert, they reached a Moroccan village where local inhabitants gave them water and food.

AC was then rearrested by the Moroccan security forces and subsequently transferred to the military base of Nador. He was released in December 2005 after being recognized as a refugee by UNHCR.

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<sup>43</sup> Articles 23 and 24 of Law no. 02-03 Concerning the Entry and Residence of Foreigners in the Kingdom of Morocco, and Irregular Emigration and Immigration.



At police stations in Oujda, those arrested were divided into groups of between 40 and 80 people. Some told Amnesty International that their possessions, such as money and mobile telephones, were confiscated by members of the security forces. Between 1 and 5 October 2005, the different groups were then reportedly transported by security force personnel in buses and trucks along the main road south towards Errachidia via Bouarfa. It appears that in Boudnib some groups were taken off road through the *hamada* desert landscape<sup>44</sup> towards an area near the border with Algeria and then left there. Others were apparently taken along the single-lane road from Bouanane to the village of Ain Chouater<sup>45</sup> and then off road towards the border with Algeria where they were abandoned. It appears that dozens of others were left either in the same desert areas or near the Algerian border further to the south on around 9 and 10 October 2005.

Once in the desert, they were reportedly told by the security force personnel who had transported them there to walk across the border into Algeria and to head towards the nearest Algerian village, which was around 30km away.<sup>46</sup> Amnesty International managed to speak by mobile phone to several of those who had been abandoned in the desert while they were there and about a dozen more several days later after they had been rearrested and detained in military camps. Some said that they were given a bottle of water, a loaf of bread and several cans of sardines to help them survive. Others said that they were left without any food or water. Once abandoned, some said that they headed into Algeria before being stopped by Algerian military personnel, who told them to return to Morocco. Others decided to head in directions which they thought would lead them to the nearest Moroccan village in the hope of finding shelter and sustenance. Many said that they had become disoriented in the desert landscape and fell ill as a result of the heat, sun and lack of food and water. One man told Amnesty International that he witnessed one of his travelling companions die of exhaustion as his group walked through the desert back into Morocco.

NGOs, such as Friends and Families of the Victims of Clandestine Immigration (AFVIC), Cimade, the Moroccan Association of Human Rights, the Network of Associations of the North and SOS Racismo in Spain, managed to maintain contact via mobile phone with dozens more of those abandoned. AFVIC and Cimade told Amnesty International that on 8 October 2005 they interviewed several dozen of the 1,500 people who had managed to reach the villages of Ain Chouater and Boudnib after being abandoned in the desert.<sup>47</sup> MSF found a group of more than 500 people who had made their way to an area near the village of Ain

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<sup>44</sup> A *hamada* is a type of desert consisting of roughly level areas of bare rock which are completely exposed to the sun.

<sup>45</sup> The village is known as Ain Chouatar and road signs leading to it mark it as such. However, on many maps it is marked as El-Aouïna-Souatar.

<sup>46</sup> The border between Algeria and Morocco is not marked in any way in this region of the desert.

<sup>47</sup> AFVIC / Cimade, *Refoulements et expulsions massives de migrants et demandeurs d'asile: Récit d'une mission de l'AFVIC et de la Cimade*, 11 October 2005.

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Chouater on 6 October 2005. MSF reported that the group included pregnant women and minors who had been expelled, a clear violation of Moroccan law.<sup>48</sup>

Representatives of the Moroccan Ministry of the Interior informed Amnesty International in a meeting in Rabat on 21 October 2005 that, while it was true that around 50 people had indeed been expelled from Morocco in the region of Ain Chouater, the vast majority had been transported there by the Algerian authorities. The representatives explained that the Moroccan authorities had, in a humanitarian gesture, set up camps for the hundreds of migrants found in the area and given them food and water before transferring them elsewhere. Such statements differ markedly, however, from the reports received by Amnesty International from the people who alleged that they were abandoned in the desert.

Amnesty International believes that these expulsions to desert regions bordering Algeria constitute violations of international law. Deportees were left in an unsafe and undignified manner without adequate food, water, shelter, medical attention or means of transport. Jorge Bustamante, the UN Special Rapporteur on the human rights of migrants, expressed his concern about the expulsions and urged that they be stopped, stating that “collective deportations in these conditions endanger the right to life”.<sup>49</sup>

Amnesty International believes that by expelling at least one refugee and dozens of asylum-seekers to the frontiers with Algeria, the Moroccan authorities violated the principle of *non-refoulement*. Although Algeria has signed and ratified the Refugee Convention and its 1967 Protocol, it has neither adopted asylum legislation nor established a procedure to deal with asylum-seekers and refugees. Algeria also regularly carries out collective expulsions without due process of people it believes to have irregular status.

The collective expulsion of migrants also violates provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), which Morocco has ratified.<sup>50</sup> The term migrant worker is defined in the Convention as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” The definition is wide-ranging and would probably include almost all cases of migrants in Morocco.

Protection against collective or mass expulsion is also provided for under Article 13 of the International Covenant on Civil and Political Rights to which Morocco is a state party. Although Article 13 only refers specifically to aliens lawfully in the territory of a state, the

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<sup>48</sup> Article 29 of Law no. 02-03 Concerning the Entry and Residence of Foreigners in the Kingdom of Morocco, and Irregular Emigration and Immigration stipulates that pregnant women and minors may not be expelled under any circumstances.

<sup>49</sup> UN press release, *Rights expert expresses deep concern over situation of migrants in Morocco and Spanish enclaves, urges end to collective deportations*, 12 October 2005.

<sup>50</sup> See, in particular, Articles 22 and 23 of the Migrant Workers Convention.

Human Rights Committee has stated that “its purpose is clearly to prevent arbitrary expulsions” (General Comment 15).

### **Collective expulsions at the border with Algeria**

According to Moroccan Ministry of the Interior figures, more than 20,000 non-citizens suspected of being irregular migrants were arrested between January and November 2005 and thousands more have been arrested since.<sup>51</sup> The vast majority have subsequently been deported. Several thousand were deported by plane, some after initially having been abandoned in desert areas in October 2005. However, the majority were taken to the border region with Algeria near Oujda.

Rather than being expelled along the main road crossing at the border with Algeria, where the frontier is officially closed, deportees are left in uninhabited sand-covered areas several kilometres away, where the border is not marked, and told to head towards Algeria.

The security forces usually register the name and nationality of the person before deporting them. Some of those awaiting deportation are detained for one or two days until there is a large enough group to fill up the vehicle carrying them to the deportation point. According to Amnesty International’s information, those arrested are generally not given the right to appeal against the decision to deport them before an administrative court, to be assisted by a translator (if needed), to examine the grounds on which the decision was taken, to have access to a lawyer, or to contact the consulate of their country, despite the fact that these rights are guaranteed by Moroccan law.<sup>52</sup>

In recent years, Amnesty International has received reports that dozens of those arrested and expelled have been asylum-seekers. In some cases, UNHCR documents confirming that they were asylum-seekers were either confiscated or destroyed in front of them. In one incident on 17 September 2005, some 400 individuals suspected of being irregular migrants were arrested in Rabat and expelled at the border with Algeria near Oujda. There were reportedly some 40 asylum-seekers among them. Any case of destruction of UNHCR documents provided to asylum-seekers is likely to be a violation of the Migrant Workers Convention.<sup>53</sup>

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<sup>51</sup> The figures are given in a number of statements published by the Moroccan Ministry of the Interior. Many were relayed by MAP (Moroccan news agency) articles.

<sup>52</sup> Articles 23 and 24 of Law no. 02-03 Concerning the Entry and Residence of Foreigners in the Kingdom of Morocco, and Irregular Emigration and Immigration.

<sup>53</sup> Article 21 of the Migrant Workers Convention states: “It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt...”

Amnesty International delegates raised concerns about the expulsion of asylum-seekers from Morocco with the Moroccan authorities on 21 October 2005. The authorities replied that, although Morocco worked closely with UNHCR, it had not agreed to protect those whose asylum claims had only been registered but not yet examined by the UN agency. The Moroccan authorities explained that they feared that such a policy might encourage a greater number of migrants with unfounded claims to come to Morocco and apply for asylum, and hence pose a heavier burden on Morocco.

### **Collective expulsions from Morocco by air**

On around 8 October 2005, those who had been abandoned in the desert but managed to reach Moroccan villages were grouped together according to their nationality by the Moroccan authorities, in some cases in the presence of diplomats from the countries concerned, and then transferred to different destinations in Morocco. They were taken (some via temporary detention facilities) to the two military bases of Nador in north-eastern Morocco, and Guelmim in the south-west of the country. They were joined in the following days and weeks by hundreds of other people originating mainly from West and Central Africa who had been arrested in different parts of the country. Those at the base of Guelmim were also joined by hundreds of others who were apparently being taken towards destinations on either the Algerian or Mauritanian border when they were told that they would be redirected elsewhere. Some had been taken to Dakhla in Western Sahara, from where they were reportedly going to be expelled at the frontier with Mauritania until the Mauritanian authorities reportedly objected.<sup>54</sup>

Most of those detained in the military bases were later deported by plane, sometimes with the cooperation of diplomatic officials from their respective countries. Others were deported between 10 and 17 October 2005 without being detained in the military bases, although some had been held for a few days in temporary detention facilities after being abandoned in the desert and later rearrested by the Moroccan authorities. On 28 October 2005 the Ministry of the Interior reported that 3,349 nationals of sub-Saharan African countries had been deported on 22 flights sponsored by the Moroccan authorities and one sponsored by the International Organization for Migration. More than 100 others were deported in subsequent flights during November 2005.

To Amnesty International's knowledge, no one was given the right to appeal against the decision to deport them before an administrative court, to be assisted by a translator (if needed), to examine the elements on which the decision was taken, or to have access to a lawyer, despite the fact that these rights are guaranteed by Moroccan law.<sup>55</sup>

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<sup>54</sup> *Le Maroc renonce à expulser des émigrants par la Mauritanie (Morocco stops expelling migrants through Mauritania)*, AFP, 12 October 2005.

<sup>55</sup> Articles 23 and 24 of Law no. 02-03 Concerning the Entry and Residence of Foreigners in the Kingdom of Morocco, and Irregular Emigration and Immigration.

## 4. Asylum issues

### Inadequate information and advice in Spain

During 2005, only 216 asylum requests were made by those who entered Spain via Melilla compared to more than a thousand requests in Ceuta.<sup>56</sup>

Under Spanish asylum law, an asylum seeker has to personally present his asylum application to a competent government authority<sup>57</sup>. Amnesty International is concerned that at the time of its visit, asylum seekers in Melilla were not being given the opportunity to make personal representations to the competent authorities. There are also concerns that people seeking asylum, particularly in Melilla, were not being informed about their basic rights, were not allowed to register their presence on Spanish soil as asylum-seekers, and were not able to obtain appropriate legal assistance.

According to information provided by a local NGO, at the time of Amnesty International's visit, social workers from the Spanish Red Cross were conducting initial interviews once the person concerned had been admitted to the CETI. If the social worker believed asylum might be appropriate, the case would be referred to a lawyer at the CETI. If the CETI lawyer felt the case merited further assessment, they would send it to another NGO (Melilla Acoge) or to a lawyer from the *Comisión Española de Ayuda al Refugiado (CEAR)*<sup>58</sup>

The asylum application would then be passed on to the police after which it would be sent to the Asylum and Refugee Office in Madrid. Amnesty International is concerned that the lack of a formal asylum procedure means that migrants wishing to seek asylum were not receiving a fair access to the asylum procedure.

The Spanish government has an obligation to inform possible asylum-seekers of their right to apply for asylum. Amnesty International urges the Spanish authorities to ensure that all asylum-seekers and migrants receive appropriate information about their rights, especially their right to legal assistance, to an interpreter and to ask for asylum. Such information must be provided in an accessible form and in a language they understand.

Amnesty International has previously criticized the lack of effective legal assistance available to non-citizens who come to Spain through the southern border. In his report to parliament<sup>59</sup>, the Ombudsperson noted that at some points of entry only token legal assistance was available. At present, lawyers from the Melilla Bar Association do not help to identify or

<sup>56</sup> During 2005 there were a total of 5,254 asylum requests in Spain. Of these, 216 were received in Melilla (of which, according to UNHCR, 68 were received in November following the crisis) and 1,189 requests were received in Ceuta. *Asylum Bulletin N° 62* issued by the Asylum and Refugee Office.

<sup>57</sup> Article 4.1 of law 5/1984 (26 March 1984) amended by law 9/1994 (19 May 1994)

<sup>58</sup> CEAR is a Spanish organisation that gives assistance to people seeking asylum (<http://www.cear.es/>)

<sup>59</sup> Appearance of the Deputy Ombudsperson with the Ombudsperson before the *Comisión Mixta de Relaciones* to present information and reports regarding the situation at the Spanish/Moroccan borders, 22 November 2005 (212/000712), *Diario de Sesiones Cortes Generales* no. 50 de 22/11/05.

assist asylum-seekers; they only provide assistance in cases involving an expulsion order. Non-citizens facing expulsion or accelerated return have a right to detailed information about their legal status, to an effective defence and to protection from *refoulement*. Amnesty International urges the Melilla Bar Association to provide legal assistance to people who wish to apply for asylum and to provide lawyers with specialist training in international refugee and human rights law. UNHCR has already conducted such training for staff from NGOs working with asylum-seekers in Melilla and for duty solicitors. Amnesty International welcomes this initiative and urges all legal and paralegal representatives working with asylum-seekers and potential asylum-seekers to take up this training.

### **Detention of asylum-seekers in Morocco**

Amnesty International is concerned that during the last year the Moroccan authorities have detained migrants, asylum-seekers and refugees in military camps, without access to legal representation and without information on their rights or on when they will be released.

As described above, hundreds of people who had been abandoned in the desert in early October 2005 but managed to reach Moroccan villages were transferred to the two military bases of Nador, in north-eastern Morocco, and Guelmim, in the south-west of the country. They were joined in the following days and weeks by hundreds of other people, mainly from West and Central Africa who had been arrested in different parts of the country. Of particular concern to Amnesty International was the fact that, among the hundreds detained at the military bases there was at least one person who had been recognized as a refugee by the UNHCR office in Rabat and dozens of others who had made asylum claims.

During October 2005, while they were held at the bases, Amnesty International spoke to six of the asylum-seekers, as well as to four migrants with irregular status. All described a similar pattern of events. They said that they were registered on arrival by military personnel, who recorded their name, nationality and details of any identity document they were carrying and took their photographs and fingerprints. They were housed within the grounds of the military base in canvas tents, each with space for around seven people. They were provided with food and water. All were frustrated that they had been given no information about how long they would be held at the base. Some complained about the conditions in the camps, saying that the camp was not equipped with adequate medical or washing facilities. This appeared to be a particular problem for the several pregnant women and women with young children who were held in the bases. Two women told SOS Racismo that they had been sexually harassed by military personnel.<sup>60</sup>

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<sup>60</sup> Valoración demandantes de asilo del campamento de Guelmin sobre la atención de ACNUR Marruecos y las circunstancias de la misma, press statement by the Federación de Asociaciones de SOS Racismo en el Estado Español, 12 November 2005: <http://www.sosracisme.org/acciones/comunicat.php?doc=70&cat=0>.

UNHCR officials sent a team to Morocco on 11 October 2005 and asked to visit a total of 86 asylum-seekers being held in the base of Guelmim. UNHCR publicly called on Morocco to grant it access to these people on 19 October 2005. On 31 October, dozens of asylum-seekers and migrants held at the military base announced that they were beginning a hunger strike in protest at UNHCR's lack of access, among other things. Between 1 and 2 November 2005 UNHCR officials were given access to some 40 asylum-seekers held in the military base of Guelmim and they were able to conduct refugee status determination interviews with them in a nearby administrative building. Fourteen of them – mainly nationals of Côte d'Ivoire, the Democratic Republic of the Congo and Liberia – were recognized as refugees by UNHCR and released from the military base on 3 December 2005.<sup>61</sup> The person recognized as a refugee by a UNHCR office before being detained, had been released on 27 October 2005.

UNHCR was denied access to people of concern to them at the military base of Nador during October and November. These people were among those later taken to the border with Algeria near Oujda for expulsion at the end of November, despite the fact that the authorities were aware that they were seeking asylum or otherwise of concern to UNHCR.

Amnesty International is concerned that Morocco's detention of a refugee and dozens of asylum-seekers was arbitrary. In no case did the authorities demonstrate that detention was necessary on grounds prescribed by law or for one of the reasons specified by international standards. They also failed to bring them promptly before a judicial or similar authority to determine whether the detention of each individual was lawful.

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<sup>61</sup> UNHCR briefing notes on Morocco, October and November 2005.

## 5. Recommendations

### On expulsions

#### **Amnesty International calls on the Spanish and Moroccan governments to:**

- Immediately halt the summary expulsion of people to neighbouring countries.
- Immediately stop collective or mass expulsions.

### On excessive use of force and the use of firearms by law enforcement officials

#### **Amnesty International urges the Spanish and Moroccan governments to:**

- Adopt and implement rules and regulations on the use of force and firearms by law enforcement officials in accordance with the UN Code of Conduct for Law Enforcement Officials.
- Ensure that law enforcement officials receive proper training on standards and regulations limiting the use of firearms and force (including batons, sticks, and all their variants).
- Ensure that there is a prompt, thorough, independent investigation into any incident of death or injury caused by the use of force or firearms by law enforcement officials and that the results are made public. In the case of Spain, such investigations should be in accordance with the procedural obligations laid down by the European Court of Human Rights in recent judgments on violations of Article 2 of the European Convention on Human Rights.
- Ensure that those found guilty of arbitrary, excessive or abusive use of force and firearms are brought to justice.
- Ensure that victims and the families of the deceased have access to legal representation at all stages of the investigation, and have access to an independent process, including a judicial process as provided for by Principle 23 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Provide reparations, in the form of compensation, satisfaction and guarantees of non-repetition, for victims and for families of the deceased where unlawful conduct by officials caused or contributed to the death.
- Ensure that all security (CCTV) cameras situated on the fences in Ceuta and Melilla are systematically monitored and available for review by judicial authorities in order to detect possible human rights violations so that any person reasonably suspected of being responsible for such violations may be brought to justice in conformity with international and domestic law and standards. Such measures can also be used to



provide guarantees of protection to law enforcement officials from unfounded and malicious allegations.

**On the treatment of migrants and asylum-seekers**

**Amnesty International urges the Spanish and Moroccan governments to:**

- Reaffirm and fully respect the principle of *non-refoulement*
- Ensure that all people facing deportation are informed in a language they understand of their rights upon arrest, including the right to seek asylum.
- Ensure that access to free, independent and competent legal advice at all stages of the asylum process is made available, including the provision of trained and independent interpreters in order to enable the lawyer to communicate effectively with the asylum-seeker.
- Ensure written information on the asylum procedure is available in border police stations and detention centres in all languages commonly spoken by those seeking asylum
- Ensure that each decision to detain an asylum-seeker is implemented in accordance with and regularly reviewed in accordance with the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers.
- Ensure that police personnel serving in border regions receive thorough training in human rights standards, as well as in the principles and standards of refugee protection in order that they can adequately identify and refer people who are requesting asylum to the appropriate authorities.
- Respect the right of all migrants to challenge the lawfulness of their detention, including the right to appeal, and the right to compensation of those found to have been unlawfully detained.
- Ensure that any expulsion decision is assessed on an individual basis and is subject to due process.
- Ensure that no return or transfer is carried out before all judicial procedures have been exhausted.
- Ensure that any return is carried out in full respect of the individual's human rights and that it is done in safety and dignity.
- Ensure the adequacy of reception centres, in terms of space, privacy, basic sanitation facilities, gender sensitivities, food and water.
- Ensure access to appropriate medical care for all people who may need it.

- Ensure that deportations of those not in need of international protection are carried out in a safe, dignified and orderly manner, including the provision of adequate, food, water, medical attention and humane treatment.
- Ensure that deportees are able to elect the destination state, subject to the agreement of that state.

**In addition, Amnesty International urges the Spanish government to:**

- Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ratify Protocol 4 to the European Convention for the protection of Human Rights and fundamental freedoms, which prohibits the collective expulsion of aliens.

**Recommendations to the European Union**

- Ensure that current and future EU policy on migration and asylum fully respects the rights of migrants, asylum-seekers and refugees, and that these rights are effectively protected, including that:
  - Individuals in need of international protection within mixed migratory movements are identified and effectively protected;
  - Asylum-seekers have full access to fair and effective asylum procedures and that procedures that are inadequate and insufficient are not used to accelerate the return of asylum-seekers;
  - No asylum-seeker or refugee is removed to a country where effective protection is lacking;
  - Persons not in need of international protection are not arbitrarily or unnecessarily detained and are able to fully enjoy their rights while in EU territory;
  - There are no collective expulsions of irregular migrants and deportations of those not in need of international protection are carried out in a safe, dignified and orderly manner;
- Engage fully in developing a concrete strategy on root causes of migration.
- Ensure that investigations conducted by Spain, as an EU member state, into the excessive use of force or firearms by law enforcement officials, are prompt, thorough, independent and impartial and carried out in accordance with the procedural

obligations as laid down by the European Court of Human Rights in recent judgments on violations of Article 2 of the European Convention on Human Rights.

- Ensure that Spain, as an EU member state, institutes a code of conduct governing border patrol activities that provides for the immediate reporting of incidents where injury or death is caused by the use of excessive force and firearms by law enforcement officials.
- Ensure that any bilateral agreements with other states in the area of migration and/or asylum, including the draft readmission agreement with Morocco, is based on the full respect of the rights of asylum-seekers, refugees and migrants and that adequate standards of protection are enshrined in them.