



Members of the European Parliament
LIBE Committee

Brussels, 29 November 2005

Subject : Forthcoming EU mission to the Spanish enclaves of Ceuta and Melilla focussing on the situation of undocumented migrants and asylum seekers

Dear Madam, Dear Sir,

In view of the forthcoming mission to Ceuta and Melilla, the undersigned organisations would like to take the opportunity to draw your attention to our concerns regarding the human rights situation of migrants and asylum seekers in the aftermath of the tragic events which took place during the months of September and October. As you are aware, scores of people have been injured and at least 11 killed while trying to cross into the enclaves of Ceuta and Melilla when the law enforcement officials of Morocco and Spain confronted them.

We hope that the suggestions enclosed will provide helpful input to the points already addressed by the terms of reference of the mission. Our recommendations are based on the outcome of fact-findings missions carried out by some of the undersigned organisations, and which have already been made public.

As you will see in the recommendations below, the undersigned organisations ask the European Parliament to urge the Spanish government to stop immediately expulsions of citizens of sub-Saharan origin to Morocco given the substantial and repeated human rights violations detected in the Spanish enclaves (as well as in Morocco). Any measure aiming at curbing irregular migration must comply fully with international law standards, including the 1951 Geneva Convention, article 3 ECHR and article 4 of Protocol 4 of ECHR (an instrument which has not yet been ratified by Spain).

Given the gravity of the injuries suffered by people who tried to cross the fences, and the numbers of people affected, the parliamentary delegation should put pressure on the Spanish authorities in order for them to implement a protocol on the use of force for the law enforcement officials operating in the enclaves. The investigations on the aforementioned events should be prompt, independent and impartial and the results be made public.

In the light of the measures recently announced at EU and intergovernmental level, we wish to recall that the EU's desire to fight "illegal immigration" must not prejudice the right to seek asylum on EU territory, nor prevent Member States from fully respecting their obligations under international human rights and refugee law, and in particular the principle of non-refoulement

Thank you in advance for your interest and consideration.

Yours sincerely,

**Amnesty International
Association européenne des droits de l'homme
Jesuit Refugee Service – Europe
European Council for Refugees and Exiles (ECRE)**

Field visits and collection of information

- The delegation should seek further information about the implementation of the bilateral re-admission agreement concluded between Spain and Morocco and the further steps envisaged at intergovernmental and EU level in order to enhance migration management. Particular attention should be paid to the procedure and conditions of removal, the identification process, but also to the procedural safeguards available for the persons returned to Morocco (motivation, individual notification in a language that the person can understand, availability of legal advisers and right to an effective remedy before a tribunal). The way Spain ensures human treatment and respect for the dignity of persons returned to Morocco should be further investigated;
- The delegation should seek information about the intention of the Spanish government to ratify and implement Protocol 4 of the ECHR, which prohibits the collective expulsions of foreign nationals.
- The delegation should seek accurate information about Spanish authorities' plan to transfer undocumented Moroccan minors who entered Spain clandestinely to reception centres located in Morocco (Tanger, Tetouan), bearing in mind that the expulsion of unaccompanied minors is prohibited by international law. Particular attention should be paid to the identification process, but also to the conditions of the transfer; the status and functions of the reception centres. The delegation should also seek further details about the whereabouts of these unaccompanied minors after their stay in these centres.
- The delegation should seek information about the intention of Spanish authorities to establish and implement a specific protocol on the use of force by law enforcement officials operating in this area. The provisions of this protocol must be made public.
- The delegation should seek detailed information about the progress of the investigations conducted into the aforementioned events. It should seek assurances from the Spanish authorities that the investigations carried out are thorough, prompt, independent and impartial, and that the results are made public. The onus of proof, in conformity with international standards, must lie with the authorities of both countries and not with the victims, nor the non-governmental organisations working on their behalf.
- The delegation should investigate further whether migrants are properly informed of their right to seek asylum, whether they are given access to the refugee status determination procedure and whether their right of access to an interpreter and legal assistance are fully respected.

Outcome - Report and Further Steps

- The undersigned organisations recommend that the mission report includes a description of the needs and concrete co-operation measures which can be envisaged to guarantee that persons in need of international protection are identified and provided with effective protection in the Spanish enclaves. The findings of the mission should be made public.
- The outcome of the fact-finding mission should be transmitted to the Commission and the Council which should be urged to take it into account in their on-going discussions regarding partnership with Morocco. The European Parliament should host a public seminar bringing together representatives of the civil society, the Moroccan authorities and representatives of the European institutions.
- In order to ensure the sustainability of the work of the European Parliament on the issue of detention, the undersigned organisations recommend establishing a permanent working group on detention that would be responsible for ensuring the follow-up of the MEPs missions.
- Within the context of the forthcoming negotiations of the proposal for an EU directive on return, the undersigned organisations call on the committee to organise a public hearing on the issues of detention and expulsion.
