



**“THEY BEAT HIM IN THE HEAD,
TO CHECK IF HE WAS DEAD”**

EVIDENCE OF CRIMES UNDER INTERNATIONAL LAW BY MOROCCO
AND SPAIN AT THE MELILLA BORDER

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Cover photo: Riot police officers cordon off the area after migrants arrive on Spanish soil and crossing the fences separating the Spanish enclave of Melilla from Morocco in Melilla, Spain, on June 24, 2022.
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GLOSSARY

WORD	DESCRIPTION
ASYLUM SEEKER	An asylum seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee
MIGRANTS	Migrants are people who move from one country to another, either temporarily or permanently, usually to find work, study or join family. Many migrants move for a combination of reasons.
REFOULEMENT	Forcible return of an individual to a country where they would be at risk of serious human rights violations (such as persecution or torture). It is prohibited by international law to return refugees and asylum seekers to the country they fled without appropriate evaluation of the risk of return– this is known as the principle of non-refoulement. Chain refoulement occurs when one country forcibly sends someone to another country that subsequently sends them to a third country where they risk serious harm; this is also prohibited under international law.
REFUGEES	Refugees are defined in the Convention Relating to the Status of Refugees as people who cannot return to their own country because they have a well-founded fear of human rights abuses or persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Their own government cannot or will not protect them and so they are forced to seek international protection.
SYSTEMIC RACISM	According to the United Nations High Commissioner for Human Rights, “systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.” (Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc: A/HRC/47/53, para: 9)
RACIAL DISCRIMINATION	According to the International Convention on the Elimination of All Forms of Racial Discrimination, is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or

WORD	DESCRIPTION
	exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
SUMMARY EXPULSIONS	Summary expulsion of a group of non-nationals without due process.

EXECUTIVE SUMMARY

On 24 June 2022, Moroccan and Spanish authorities used anti-riot equipment and less-lethal weapons such as tear gas, batons, rubber bullets and rubber balls to violently disperse a group of up to 2,000 Black people, largely from sub-Saharan Africa, seeking to cross from Morocco into the Spanish enclave of Melilla.¹ The methods used by Moroccan and Spanish authorities at the border crossing known as “Barrio Chino” contributed to the deaths of at least 37 people and to injuries to dozens more. Six months on and it is still unclear how many people may have died on 24 June. The fate and whereabouts of at least 77 people who tried to make the crossing that day remain unknown; their families have not heard from them since. The Moroccan authorities have refused to cooperate fully with those searching for the missing or help to return the dead to their loved ones for burial.

This report, based on research carried out by Amnesty International in Melilla and Morocco between June and October 2022, draws on interviews with survivors and eyewitnesses to the day’s events, relatives of people killed and missing, officials and healthcare workers, and with human rights NGO representatives, as well as on satellite imagery, video footage and official documentation. Communications with various Moroccan and Spanish authorities seeking clarification and information about what happened that day were almost entirely still pending responses at the time of publication.

MIGRANTS AND REFUGEES SUBJECTED TO VIOLENCE, BELONGINGS AND FOOD DESTROYED PRIOR TO THE 24 JUNE

Amnesty International has documented violations of human rights in the Ceuta and Melilla region on a number of previous occasions. The UN has also expressed concerns about the situation of migrants and refugees, and specifically Black people in this region for over a decade. The Spanish authorities have frequently asserted that official channels to apply for asylum are a realistic option for people seeking international protection. This claim has been shown to be unfounded, exposing the fact that avenues to seek asylum are in effect blocked at every turn, and that in reality, there is no meaningful possibility for people from sub-Saharan Africa to get access to Spanish officials to ask to be let in and seek asylum at the Beni Enzar border post, the only official international crossing point into Melilla.

The report shows that in the months and days prior to 24 June, refugees and migrants living in informal housing in and around Nador, the Moroccan region adjacent to Melilla, were subjected to increased attacks by the Moroccan security forces, many having their belongings burned and destroyed. One person interviewed by Amnesty International told how around three days before 24 June, Moroccan police and security forces raided the camp where they were staying with 24 other people, burned their belongings and threw tear gas bombs and stones. He shared how they spent the next two days without eating or drinking as the police and security forces had destroyed all their food. They then joined other groups on 24 June to walk to the border with Melilla to try to cross.

¹ Amnesty International notes that the perimeter fences surrounding each of the two cities of Melilla and Ceuta are internationally recognized as European Union (EU) land borders on the African continent and are therefore subject to EU law, including the EU Asylum Acquis – the system of rules protecting and regulating the right to asylum in EU member states. The organization is aware that there is a long-standing dispute between Spain and Morocco as to the sovereignty over the territories of Ceuta and Melilla.

CRIMES UNDER INTERNATIONAL LAW WERE COMMITTED BY MOROCCAN AND SPANISH SECURITY FORCES AGAINST BLACK PEOPLE ON 24 JUNE 2022

Moroccan authorities have asserted that the people who tried to cross that day were armed with sticks, machetes, stones and knives and attacked Moroccan security forces, injuring 140 and hospitalizing one. The Moroccan Ambassador also expressed the view that Moroccan law enforcement officials had demonstrated a “high level of control and professionalism.” However, the statements of witnesses and survivors, as well as other evidence reviewed, depict a scene of widespread use of unlawful force by Moroccan and Spanish security forces. Less lethal weapons were deployed by officials in ways contrary to the international standards that govern their use, and law enforcement officials continued to use them even after people were under police control and posed no threat to the officials or third parties.

The testimonies, videos and other information collected indicate that both Spanish and Moroccan police and border guards used batons, rubber bullets and rubber balls and conducted actions such as beating and kicking people who were already restrained or unresponsive due to injury, and repeatedly used tear gas against people who had no way of escape and were in a confined space.

In addition to using unlawful force, both Moroccan and Spanish police subsequently failed to ensure the provision of emergency medical care to people injured and in need of assistance. Indeed, injured people were left unattended in the full glare of the sun for up to eight hours without even basic first aid being provided. Medical attention to injured people was not prompt and in some cases denied entirely, causing pain and suffering that may have also heightened the risk of death. Medical staff in Morocco only began providing assistance to injured people nearly two hours after the end of the border authorities’ operation to suppress the crossing attempt, and authorities prioritized moving corpses and treating Moroccan security officials above treating injured migrants and refugees. These are all acts which may amount to breaches of the right to be free from torture and other ill-treatment, as well as the right to the highest attainable standard of health and the right to life.

One 17-year-old Sudanese boy reported being taken by Moroccan police to prison on the night of 24 June, before being forcibly taken away by bus. Other people reported being taken away in buses directly from the border and dispersed in locations around Morocco, up to over 1000km away from Nador, and being abandoned on the side of the road outside of towns, without any medical care for those injured or support in finding shelter.

The Spanish police did not permit the Red Cross to access the area and there was no public health response at the scene attending to injured people neither during the attempted border crossing and police operation, nor in their aftermath. Spanish authorities did not assist in any way the injured people who were left on the ground in Spanish territory after the police operation ended, violating their rights in multiple ways including their right to prompt and adequate health care and to be free from torture and other ill-treatment. The failure to provide emergency assistance not only manifested cruelty: it also placed Spain and Morocco in breach of their obligations to protect the right to life.

SUMMARY EXPULSIONS AND REFOULEMENT BY THE SPANISH GUARDIA CIVIL

The rights of migrants and refugees are protected by international law, regardless of how and why they arrive in a country. The principle of non-refoulement is a cornerstone of international human rights and refugee law and has become a rule under customary law. Substantially, it prohibits states from transferring or removing anyone to a place where the person would be at real risk of serious human rights violations- such as persecution, or torture and other cruel, inhuman, or degrading treatment or punishment. Procedurally, states have an obligation to assess the risks individuals would face if forcibly transferred to another jurisdiction and are also obliged to give individuals a real opportunity to challenge the transfer.

The actions of the Moroccan and Spanish authorities on 24 June showed a complete disregard for this obligation. Spanish police violated the ban on collective expulsions and committed refoulement by forcing people – according to the Spanish Ombudsperson at least 470 individuals – back into the hands of Moroccan security forces. One interviewee told Amnesty International that Spanish security officials forced injured people back across the border to Morocco even though they were “bleeding or with open wounds.”

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border and dispersed in locations around Morocco, up to over 1000km away from Nador, and being abandoned on the side of the road outside of towns, without any medical care for those injured or support in finding shelter.

ENFORCED DISAPPEARANCES

International standards also set out the authorities' obligation to provide information to the families of people killed, injured or held by the security forces at the earliest possible opportunity. However, the families and friends of at least 77 people who they believe to be missing since 24 June have not received any information about the fate and whereabouts of their loved ones since they were last seen in the custody of state authorities on that day. The Moroccan authorities have failed to investigate allegations of enforced disappearances and to take all appropriate measures to determine where these missing people are. Moreover, they have refused assistance to expert organisations conducting this important work on behalf of families searching for their loved ones. At least two NGOs in Morocco were prevented from visiting hospitals in the days following 24 June and were not permitted to look at the corpses of people to identify them in morgues. Human rights organization AMDH (Association Marocaine des Droits Humains) said that, while the authorities usually cooperate with them to look for disappeared people, they have not done so for those missing from 24 June.

LACK OF ACCOUNTABILITY

Torture, enforced disappearances and deaths which may be due to unlawful use of force constitute crimes under international law and must be urgently investigated. What is clear six months on is that transparency and accountability are profoundly lacking and that no single official, Moroccan or Spanish, has been brought to justice for the violations that led to the deaths, injuries and disappearance of so many people. At the time of writing, the Spanish and Moroccan authorities had yet to make public any findings from inquiries clarifying what happened on 24 June and what steps will be taken to prevent such human rights violations from recurring. Moroccan authorities have not responded to Amnesty International's requests for information about the status and mandate of any investigation into what happened. To this date the Minister of Interior in Spain has yet to provide all the official footage requested by the Prosecutor for her office to review. What has so far been shared contains time gaps that impede obtaining a clear understanding of the entire sequence of events. The lack of official information about what happened to people on 24 June and subsequently is deeply concerning and causing ongoing harm and distress to the families of people who have not been seen since that day, breaching their rights to truth, justice and reparation. Importantly, none of the investigations have as part of their mandate to analyse the role racism against Black and racialised people and the pre-existing concerns about their rights being at risk in this location played in the violations of their human rights occurring prior to, during and after 24 June.

Ultimately, the report shows how Spain's (and Europe's) harmful policies and their efforts to externalize the control of migration and containment of people outside Europe's borders have had lethal consequences in Melilla. Black people have been subjected to deadly violence, torture and other ill-treatment, abuse, refoulement, forcible transfer, enforced disappearances, amongst other egregious violations of their human rights at the hand of Moroccan and Spanish border guards. The relatives of those killed are also not treated with a shred of humanity as they are impeded rather than supported in the search for their loved ones. Finally, the lack of effective investigations into all allegations of crimes under international law and other serious human rights violations on 24 June not only breaches human rights obligations, but also manifests the lack of interest by the Spanish and Moroccan authorities in taking action to ensure no more people are killed and harmed at that border.

Amnesty International is deeply concerned at the treatment of migrants and refugees in the Ceuta-Melilla border region by both Spanish and Moroccan police and border officials and at the ongoing risk they face of serious violations of their human rights in that location. Considering the above, Amnesty International is making the following urgent recommendations:

KEY RECOMMENDATIONS TO THE MOROCCAN AND SPANISH AUTHORITIES:

1. Ensure that independent and impartial investigations are carried out into the deaths and injuries that occurred on 24 June in order to bring officials responsible for unlawful use of force, acts which may amount to torture and other ill-treatment, summary expulsions, refoulement, forcible transfer, and enforced disappearances, including where appropriate those with chain of command responsibility, to justice; and to help ensure non-repetition of the human rights violations and crimes under international law detailed in this report. Any inquiry into the events of 24 June should include a mandate to investigate concerns of racism and discrimination as part of the spectrum of potential human rights violations and breaches of international law occurring on 24 June 2022, and should cover the ongoing concerns about enforced disappearances since that day.
2. Initiate, independent and impartial investigations into the failure by the Moroccan and Spanish authorities to provide prompt and adequate medical assistance to the injured in order to hold those responsible to account and inform guidelines and regulations to prevent such violations from recurring.
3. Ensure that victims and their families have timely access to information about these investigations; and fulfil the obligation to investigate and establish the fate and whereabouts of their loved ones, as well as to justice and comprehensive reparation for the harm inflicted. Authorities must also cooperate with each other and with organisations conducting this important work to search for the missing and ensure the repatriation of the bodies of those killed in accordance with their families' wishes.
4. Collaborate with the EU to develop a human rights compliant approach to migration that puts the protection of migrants' and refugees' lives and rights at the centre and increases access to safe and legal pathways for refugees and migrants. Ensure that policies and practices protect, respect and fulfil the right to life of refugees and migrants and publicly reject cooperation arrangements, policies and practices that result in or tolerate the arbitrary deprivation of the lives of refugees and migrants.
5. Ensure that law enforcement officials continue to receive training on international standards and regulations on the use of force and firearms, including less lethal weapons, and on human rights standards regarding refugee protection and that monitoring systems are put in place to ensure compliance and the implementation of the reforms necessary to achieve this.
6. Comply with and implement UN treaty monitoring body recommendations regarding the protection of human rights of migrants and refugees, particularly of people from sub-Saharan Africa in Ceuta and Melilla, including those that relate to the need to ensure effective access by all people seeking protection to official procedures to make a claim for asylum, specifically removing existing barriers to people from sub-Saharan Africa.

RECOMMENDATIONS TO THE EUROPEAN UNION:

To the European Commission

- Review and condition the continuation of EU funding to Morocco on migration, asylum and border management to the compliance with and implementation of human rights obligations.
- Initiate a dialogue with Spain to assess systemic violations of the EU acquis in relation to access to asylum at the Spanish/Moroccan border, in particular focusing on the specific concerns regarding anti-Black racism.

To the European Parliament

- Urgently debate the events of 24 June 2022 at the Moroccan/Spanish border and remain seized of the case to contribute to accountability for any crimes under international law and other human rights violations and consider following up with a resolution

RECOMMENDATIONS TO THE AFRICAN UNION:

- Support the establishment of an international commission to conduct a thorough, independent and transparent process of systematic collection of evidence.
- Urge the Moroccan authorities to ratify without further delay the African Charter on Human and Peoples' Rights, the protocols thereto, and other African Union human rights treaties to which Morocco is not a party.
- As a follow-up to the statement of the Chairperson of the African Union Commission issued on 26 June, initiate dialogue with the Moroccan authorities to ensure a halt to the human rights violations including racist treatment against Black migrants and refugees at the Spanish Moroccan border.

RECOMMENDATIONS TO THE UNITED NATIONS:

- The UN, and member states engaging with it, use existing mechanisms, procedures, and create new ones where necessary, to investigate and ensure the protection and fulfilment of the rights of Black migrants and refugees and other people experiencing discrimination at border locations where there is increasing evidence that they are being subjected to, or at particular risk of being subjected to, crimes under international law, including killings and torture and other ill-treatment.

To the UN Special Procedures

- Continue to pay attention to the situation at the Spanish Moroccan border as well as engaging in dialogues with the respective authorities to ensure a halt to the human rights violations against migrants and refugees, including racist treatment of Black and other people subject to discrimination at that location.

1. METHODOLOGY

This report is based on research carried out by Amnesty International during a visit to Melilla between 22 and 26 July 2022 and through remote interviews with people in Morocco between 27 June and 27 August; on correspondence and other contacts with Moroccan and Spanish authorities; on interviews with UNHCR and various NGOs in Spain and Morocco; and on review and verification of available images and video footage, including satellite imagery, of the events of 24 June.

In total, Amnesty International spoke with 13 people who sought to enter Melilla on 24 June 2022 and reviewed video and vocal testimonies from an additional eight people. This includes nine survivors who made it across the border and into Melilla and 12 survivors who did not manage to cross the border on 24 June, as well as the families of five men missing since that day. Two lawyers representing refugees and migrants prosecuted in Morocco following the events of 24 June and two journalists were also interviewed. Amnesty International is grateful to each of them for generously sharing their experiences with its researchers. This report draws on their statements; they have given informed consent for use of their words and stories in this report. Some of their names have been withheld or changed in this report to protect their identity and security.

Amnesty International also reviewed eight police reports relating to the trials of 65 people who attempted the border crossing on 24 June, as well as reports by the Moroccan Human Rights Council (CNDH),² the Moroccan Association for Human Rights (AMDH),³ and the Sahrawi association for victims of grave human rights violations committed by the Moroccan state (ASVDH)⁴.

COMMUNICATIONS WITH MOROCCAN AUTHORITIES AND OTHER STAKEHOLDERS

On 29 June 2022, Amnesty International Spain wrote to the Moroccan Ambassador in Madrid expressing concern about the events of 24 June.⁵ The Ambassador replied on 30 June saying that the people attempting to cross (described in their letter as “attackers” and “assailants”) were armed with sticks, machetes, stones and knives and attacked Moroccan security forces, injuring 140 and hospitalizing one.⁶ The letter stated that in the view of the Moroccan Ambassador the Moroccan law enforcement officials had demonstrated a high level of control and professionalism and attributed blame for the “tragedy” on “violent trafficking networks” and asserted that Morocco would continue to fight trafficking and strengthen cooperation with partners to ensure regional security.⁷

² The CNDH reported 23 refugee and migrant deaths and injuries of 217, of which 140 security forces and 77 refugees and migrants. CNDH, *Incident tragique devant le point de passage entre Nador et Melilla Rapport préliminaire de la mission d'information mandatée par le Conseil national des droits de l'Homme*, 13 July 2022; [Rapport préliminaire-Mission d'information à Nador-Conclusions version française \(medias24.com\)](#): The Moroccan Human Rights Council (CNDH) was established in 2011 and the King of Morocco appoints its president and at least nine of its 27 members.

³ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, [amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf](#)

⁴ Statement by ASVDH (Association Sahraouie des Victimes des Violations Graves des Droits de l'Homme), 27 June 2022, not available online, on file with Amnesty International.

⁵ Amnesty International Spain, Letter to Moroccan Ambassador, Madrid, 29 June 2022, on file with Amnesty International.

⁶ Karima Benyaich, Moroccan Ambassador to Spain, Madrid, letter to Amnesty International Spain, 30 June 2022, on file with Amnesty International.

⁷ Karima Benyaich, Moroccan Ambassador to Spain, Madrid, letter to Amnesty International Spain, 30 June 2022, on file with Amnesty International.

On 24 August 2022, Amnesty International wrote to the Moroccan Inter-ministerial Delegation on Human Rights (DIDH), as well as the Ministry of Justice, the Ministry of the Interior and the CNDH requesting information, including which security units were stationed at the border on 24 June; what were their instructions about the circumstances in which they should use their riot control equipment; who was responsible for requesting emergency medical services to the border on 24 June; and what protocols are in place for investigating whether officers have used unnecessary or excessive force.⁸ None of these ministries responded.

Between 27 June and 8 September, Amnesty International conducted interviews with members of several Moroccan NGOs, including the Moroccan Human Rights Association (AMDH) and the Association to Help Migrants in Vulnerable Situations (AMSVO), as well as reviewing reports written by AMDH and the Sahrawi Association of Victims of Human Rights Abuses (AMSVH).⁹

COMMUNICATIONS WITH SPANISH AUTHORITIES AND OTHER STAKEHOLDERS

On 2 August 2022, Amnesty International Spain wrote to the Minister of Interior to seek information on the events of 24 June, including: whether and how many people were forcibly removed to Morocco without due process and without a prior individual assessment of possible risks to safety upon removal; whether there is a protocol allowing Moroccan officials to act on Spanish soil, in light of footage showing that they did on 24 June; what type of force and specific anti-riot equipment was used by Spanish officers on 24 June and whether there is a protocol to determine which equipment can be used and how and by whom the decision is taken; whether dogs are also used to detect and deter people from crossing; whether there is a protocol regarding medical assistance when anti-riot equipment is used; whether, following the events of 24 June, any measure was taken to preserve the area and evidence for investigation; whether an ambulance of the national health service had been used on 24 June; whether anybody was given medical assistance before removal to Morocco; and whether on 24 June Spanish border staff offered to assist Moroccan border staff with the provision of medical aid to those injured. As of 30 November, no reply was received.

In light of the announcement by both the Spanish General Attorney Office and the Ombudsperson that they were investigating the events, in August 2022 Amnesty International contacted both offices.

On 8 August 2022, Amnesty International Spain wrote to the Prosecutor of the Aliens Chamber at the Attorney General's office to seek information on the extent of her office's investigations, and specifically to seek her views on the jurisdiction of Spanish authorities over the area where the events of 24 June took place, including with reference to the alleged failure to assist people injured on Spanish soil. On the same day, the Attorney General acknowledged receipt of the letter but did not provide the information requested to date.

On 8 August 2022, Amnesty International Spain filed a complaint with the Ombudsperson regarding the events of 24 June. Under Article 54 of the Spanish Constitution, the Ombudsperson is tasked with protecting fundamental rights and freedoms and can supervise the activities of the administration. Because the Ombudsperson is carrying out its own investigation to gather information into the fulfilment of international and Spanish legislation by the Spanish authorities, the filing of a complaint ensures that information from that investigation is shared with complainants. On 14 October, the Ombudsperson Office published a press release advancing first conclusions. According to it, 470 people were expelled from Melilla without due process and safeguards.¹⁰ On 20 October, the Ombudsperson Office sent a communication to Amnesty International.¹¹ According to it, the Ombudsperson started an investigation immediately after 24 June, requesting information to the Government Delegate in Melilla, the Spanish Civil Guard and the President of the city of Melilla. On 19 July, the Ombudsperson himself and his team went to Melilla to gather testimonies from people affected and to meet and interview relevant authorities. The Ministry of Interior sent footage requested by the Ombudsperson Office on 20 September, that is, two months after it was requested. In the communication, and without a description of concerns and findings on that particular day, the

⁸ Amnesty International, Letter to the Moroccan Inter-ministerial Delegation on Human Rights (DIDH), the Ministry of Justice, the Ministry of the Interior, and the CNDH, Morocco, 24 August 2022, on file with Amnesty International.

⁹ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf; Statement by ASVDH (Association Sahraouie des Victimes des violations Graves des Droits de l'Homme), 27 June 2022, not available online, on file with Amnesty International.

¹⁰ *El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla*, 14 October 2022, defensordelpueblo.es/noticias/sucesos-melilla/. Available only in Spanish.

¹¹ Letter sent to the Spanish section. On file with Amnesty International.

Ombudsperson informed Amnesty International that he has addressed to the Ministry of Interior a number of recommendations to ensure its actions are aligned with domestic legislation and with human rights obligations; to promote the revision of protocols with the Moroccan security forces to comply with objective 23 of the Global Compact for Migration;¹² and to ensure that information on international protection is provided in cooperation with the Ministry of Inclusion and the European Union Agency for Asylum. The Ombudsperson also recalls the Ministry of Interior's legal obligation to comply with human rights standards in border management, such as the right to physical and moral integrity, the prohibition of torture and other ill-treatment, to ensure that its actions comply with obligations enshrined in the Organic Law 2/1996.¹³ The Ombudsperson also informed Amnesty International that his office's investigation into the events of 24 June is still open, awaiting for information from the Ministry of Foreign Affairs regarding the extent to which people are able to access and apply for asylum at Spanish embassies; and from the National Institute of Health Management regarding the protocols on the injury reports of people assisted by emergency personnel that day.

On 22 July 2022, the day Amnesty International researchers arrived in Melilla, the Secretary of State for Spanish Security of the Ministry of the Interior cancelled a meeting scheduled for 25 July between Amnesty International and the Head of the Border Unit of the National Police in Melilla, stating that due to the fact that an investigation into the 24 June events was ongoing, they did not consider that a meeting with Amnesty International would be appropriate. No alternative dates for a meeting were provided, despite Amnesty International's requests.

In Melilla, Amnesty International researchers held meetings with the Head of Cabinet of the Melilla Government Delegate; a member of the Spanish Civil Guard; the Red Cross Director of Social Intervention and Volunteering in Melilla; four representatives of the UN refugee agency (UNHCR); and members of local NGOs, including the director of the NGO Geum Doudou. Meetings were also held with the director of social work at the Centre for Temporary Accommodation of Migrants (CETI) in Melilla and a doctor working at the centre.

Although a meeting requested by Amnesty International with the Emergencies coordinator of the Melilla regional hospital was declined, the hospital provided a list of people who required hospital treatment after entering Melilla on 24 June.

¹² The Global Compact for Migration is an inter-governmentally negotiated and non-binding agreement covering all dimensions of international migration in a holistic approach. Adopted on 10 December 2018 at an Intergovernmental Conference in Marrakesh, Morocco. Objective 23: Strengthen international cooperation and global partnerships for safe, orderly and regular migration. https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

¹³ Art. 5 of Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad del Estado.

2. BACKGROUND

Amnesty International notes that the perimeter fences surrounding each of the two cities of Melilla and Ceuta are internationally recognized as European Union (EU) land borders on the African continent and are therefore subject to EU law, including the EU Asylum Acquis – the system of rules protecting and regulating the right to asylum in EU member states. The organization also is aware that there is a long-standing dispute between Spain and Morocco over sovereignty over the territories of Ceuta and Melilla.

Melilla has a physical land border of 11.2km with Morocco and has an international border crossing point at the Beni Enzar border post; this is the only recognized international crossing point. There are three other border crossings – Barrio Chino, Farhana and Mari-Guari – but these can only be used by local people officially resident in Morocco's Nador province and Melilla. For instance, Mari-Guari is a crossing point intended solely to allow Moroccan children studying in Melilla to enter the city. Barrio Chino, Farhana and Mari-Guari were closed as a response to the Covid-19 pandemic and remain closed. The Beni Enzar international border crossing, which was also closed during the pandemic, reopened in May 2022.

After Moroccan independence from France, Spain continued to claim sovereignty over Ceuta and Melilla – a claim which has been contested by Morocco – though the demarcation of Melilla's perimeter did not involve any kind of fence, meaning, there was freedom of movement between the territories. However, in 1971 Spain installed a military fence in Nador. In 1998, the Spanish authorities, following the trend of increasingly hostile and harmful policies across borders in Europe, took an increasingly militarised approach to the border which continues to this day by further fortifying this by constructing a double fence, to which in 2005, they added another one, in the area amid the double fences.

[Map of Melilla to be included]

Today, Melilla's land border is separated from Moroccan territory by these three fences that have been modified by Spain on several occasions. Two of them are around 6m high, while the one in between these is slightly shorter. There are also other fortifications along the border, including a deep ditch. The entire border is also monitored by a CCTV system (including infrared cameras) connected to the Control Centre of the Spanish Civil Guard Command.¹⁴

[Diagram – to be included]

Barrio Chino, closed since the Covid-19 pandemic began in 2020, is a pedestrian crossing that could be used only by locals, - mainly porters, men and women involved in the so called 'atypical trade - from 7 am to 10 pm. Available information indicates that the fences built by Spain and the border crossing posts are on Spanish territory. In July 2022, Amnesty International consulted several experts who, based on the information available at the National Centre for Geographical Information (CENIG), consider that the entire installation of the border crossing post at Barrio Chino is completely within the boundaries of Spanish territory.¹⁵

¹⁴ Instituto de Seguridad y Cultura: Ceuta y Melilla, frontera terrestre de España y de la Unión Europea en África, 3 diciembre 2020, p. 44

¹⁵ Amnesty International consulted a number of experts, including Miguel Sevilla-Callejo, coordinator of the group Mapeado Colaborativo/Geoinquietos Zaragoza. Other experts consulted were Pauline Gauffier and Iciar Maudelón Ladreo, a marine biologist and topographer respectively. Amnesty International also reviewed documentation available at the National Geographic Information Centre: Database of Administrative Division of Spain, aerial photos from PNOA (National Plan of aerial orthophotography) provided by IDEE (Spatial Data Infrastructure of Spain) and information from the cadaster of the Ministry of Finance. All review in August 2022.

From Morocco, access to the Barrio Chino structure is through a metal door which leads into a roofless space. This space is surrounded by a concrete wall about 2m high, topped with a 2m high barbed wire fence on the side facing towards Morocco, and by the three-fence system described above. Another metal door along the walls of this roofless space leads to a roofed space in which there is a small office for the border officials and two narrow corridors. One of these leads to a revolving door which in turn leads to Melilla.

In his report following a visit to Spain in March 2018, Ambassador Tomáš Boček, Special Representative of the Council of Europe Secretary General on migration and refugees, described the border: “Melilla is surrounded by a 12 km triple fence – the external and internal fences are six metres high and the middle one is a lower three-dimensional barrier which is a structure of steel cables tied to stakes. The fence is equipped with sensors to detect movements towards its external part. When such movements are detected, the Spanish Civil Guard notifies the Moroccan authorities, which in turn often prevent people in the Moroccan territory from jumping the fence.”¹⁶

In 1991, Morocco and Spain signed the Treaty of “friendship, good-neighbourliness and cooperation” which aimed to consolidate the converging interests of both countries.¹⁷ In 2019, the EU boosted support for Morocco through the 2013 EU-Morocco mobility partnership by increasing funding for various projects, including border management.¹⁸ Tensions have escalated between the two countries on occasion, for example in May 2021, when Spain allowed Brahim Ghali, leader of the Polisario Front (the main group seeking independence for Western Sahara), to enter the country for medical treatment. The Moroccan authorities retaliated by easing controls over migration from Morocco into Spain.¹⁹ Spain responded by collectively expelling at least 2,700 people to Morocco immediately after.

Moroccan-Spanish relations appeared to improve when, in March 2022, Spanish Prime Minister Pedro Sanchez declared that Spain accepted Morocco’s autonomy plan regarding Western Sahara.²⁰ In April 2022, Spain and Morocco renewed their bilateral relations, including cooperation on fighting “illegal immigration”,²¹ based on the 1991 Treaty.²² This included reinforcing border securitization policies in line with EU migration policies.

2.1 LONG-STANDING CONCERNS ABOUT VIOLATIONS OF RIGHTS OF PEOPLE FROM SUB-SAHARAN AFRICA AND DENIALS OF THEIR RIGHT TO SEEK ASYLUM

When outlining the context in Ceuta-Melilla, it is worth recalling from the outset the observation made in 2017 by the UN Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions that “countries around the world have designed policies based on deterrence, militarization and extraterritoriality which implicitly or explicitly may tolerate the risk of migrant deaths as part of an effective control of entry. Deterrence policies are punitive, including policies ranging from securing the more accessible border entry points - thereby purposefully funneling the migration flows into more hazardous terrain - to the imposition of strict detention and return policies.”²³

16 <https://www.statewatch.org/media/documents/news/2018/sep/coe-sr-migration-report-on-spain-mission-3-18.pdf>

3 September 2018, Information Documents SG/Inf(2018)25, Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018

17 United Nations, Treaty Series, ‘Spain and Morocco: Treaty of friendship, good-neighbourliness and cooperation’, Signed at Rabat on 4 July 1991, treaties.un.org/doc/Publication/UNTS/Volume%201717/volume-1717-I-29862-English.pdf

18 European Commission, ‘Migration and mobility partnership signed between the EU and Morocco’, 7 June 2013, ec.europa.eu/commission/presscorner/detail/en/IP_13_513; European Commission, ‘The EU is boosting its support to Morocco with new programmes worth €389 million’, 20 December 2019, ec.europa.eu/commission/presscorner/detail/en/IP_19_6810

19 Amnesty International, ‘Spain/Morocco: People being “used as pawns” as political games turn violent’, 19 May 2021, [amnesty.org/en/latest/press-release/2021/05/spainmorocco-people-being-used-as-pawns-as-political-games-turn-violent/](https://www.amnesty.org/en/latest/press-release/2021/05/spainmorocco-people-being-used-as-pawns-as-political-games-turn-violent/)

20 European Parliament, Parliamentary Question – E-001162/2022, ‘Spanish recognition of the Moroccan plan for autonomy for Western Sahara’, 21 March 2022, [europarl.europa.eu/doceo/document/E-9-2022-001162_EN.html](https://eur-parl.europa.eu/doceo/document/E-9-2022-001162_EN.html)

21 Statewatch, ‘Convention between the Kingdom of Spain and the Kingdom of Morocco on cooperation in the fight against crime’, 28 April 2022, statewatch.org/statewatch-database/convention-between-the-kingdom-of-spain-and-the-kingdom-of-morocco-on-cooperation-in-the-fight-against-crime/

22 United Nations, Treaty Series, ‘Spain and Morocco: Treaty of friendship, good-neighbourliness and cooperation’, Signed at Rabat on 4 July 1991, treaties.un.org/doc/Publication/UNTS/Volume%201717/volume-1717-I-29862-English.pdf

23 UN General Assembly, Unlawful death of refugees and migrants, 15 August 2017, A/72/335 at para 10

In 2005, at least 13 people died at the hands of Moroccan border guards and Spanish Civil Guard when hundreds of people tried to scale the razor wire fence along the border with Ceuta.²⁴ In 2006, Amnesty International reported on the dangerous wire fences “topped with coiled wire covered with blades, known as ‘razor’ or ‘concertina’ wire” which resulted in the deaths of many people attempting to cross the border.²⁵ In 2019, the Spanish Minister of the Interior finally ordered the removal of this widely criticized ‘razor’ wire, replacing it with motion-sensors and increased CCTV to monitor the border.²⁶

In February 2014, 15 people drowned on Tarajal Beach, which borders the Spanish enclave of Ceuta, when Spanish Civil Guard used riot equipment against them.²⁷ Two Amnesty International staff members were expelled from Morocco in 2015 when they went to research the human rights situation of migrants and refugees following these deaths.²⁸ In 2018, Amnesty International reported on large-scale raids and roundups by Moroccan police and security forces of migrants and refugees from sub-Saharan Africa.²⁹

In 2021, there was a sharp increase in illegal and collective expulsions by Spanish authorities after Morocco opened its borders and allowed the exit of refugees, migrants and its own nationals from the country to Spanish territory.³⁰ In May 2021, Amnesty International reported on abuses by both Spanish and Moroccan border guards against people at the Ceuta border who were being used as “pawns in a political game” between the two countries.³¹ A Facebook post by Morocco’s Minister for Human Rights indicated that the opening of the border was in “retaliation” for the medical treatment that a Polisario leader had received in Spain, suggesting the Moroccan authorities may have used asylum seekers and migrants as part of an international dispute.³²

More recently, according to the General Director of Interior Policy and the Asylum Office “Most of the 817 people who entered in through the fence in Melilla in a separate attempt by many people to cross the border in March 2022 were subsequently granted with subsidiary protection, 95 were recognized as refugees by the Spanish authorities, 94 were from Sudan and one was from Chad”.³³

International law recognizes everyone’s right to life, without discrimination, and the right to seek asylum. Moreover, the Refugee Convention establishes that asylum seekers should not be penalized for crossing borders irregularly to do so. Nevertheless, Spanish authorities’ efforts to externalize border control and enlist Morocco as a gatekeeper of its own borders, have resulted in violations of the rights of refugees and migrants, including the arbitrary deprivation of life. Yet, in complete disregard of their international obligations and rights of refugees and migrants, Spain and Morocco have continued and reinforced their cooperation on migration, for example with the renewal of their bilateral relations agreement in April 2022.³⁴ They have strengthened fences and border controls and used weapons and other equipment to stop border crossings, making it extremely difficult and dangerous to reach Spanish territory to seek asylum. As a result, many people have died while attempting to cross the border, including some at the hands of border guards. Furthermore, Spanish authorities have employed unlawful practices such as the collective expulsion of people without any due process, that have denied thousands of people, including children, of their right to have access to an individualized asylum procedure.³⁵ In numerous instances, as seen above, summary

24 Amnesty International, ‘Spain and Morocco: Failure to protect the rights of migrants - Ceuta and Melilla one year on’, October 2006 (Index: EUR 41/009/2006), <https://www.amnesty.org/en/documents/eur41/009/2006/en/>

25 Amnesty International, ‘Spain and Morocco: Failure to protect the rights of migrants – Ceuta and Melilla one year on’, October 2006 (Index: EUR 41/009/2006), <https://www.amnesty.org/en/documents/eur41/009/2006/en/>

26 Progressive Spain, “Razor wire at North African border fences to be removed”, 19 November 2019,

progressivespain.com/2019/11/19/razor-wire-at-north-african-border-fences-to-be-removed/; Sam Edwards, Rest of World, ‘The high-tech ‘makeover’ of Europe’s deadly border with Africa’, restofworld.org/2021/replacing-razor-wire-with-surveillance-technology-in-melilla/

27 Amnesty International, ‘Melilla: Never again’, 28 June 2022, [amnesty.org/en/latest/news/2022/06/melilla-never-again/](https://www.amnesty.org/en/latest/news/2022/06/melilla-never-again/)

28 Amnesty International, ‘Amnesty International staff members expelled from Morocco’, 15 June 2022, [amnesty.org/en/latest/news/2015/06/amnesty-international-staff-members-expelled-from-morocco/](https://www.amnesty.org/en/latest/news/2015/06/amnesty-international-staff-members-expelled-from-morocco/)

29 Amnesty International, ‘Morocco: Relentless crackdown on thousands of sub-Saharan migrants and refugees is unlawful’, 7 September 2018, [amnesty.org/en/latest/press-release/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/](https://www.amnesty.org/en/latest/press-release/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/)

30 Reuters, ‘Morocco failed to control its borders, says Spanish PM’, 25 May 2021, [reuters.com/world/morocco-failed-control-its-borders-says-spanish-pm-2021-05-25/](https://www.reuters.com/world/morocco-failed-control-its-borders-says-spanish-pm-2021-05-25/)

31 Amnesty International, ‘Spain/Morocco: People ‘being used as pawns’ as political games turn violent’, 19 May 2021, [=amnesty.org/en/latest/press-release/2021/05/spainmorocco-people-being-used-as-pawns-as-political-games-turn-violent/](https://www.amnesty.org/en/latest/press-release/2021/05/spainmorocco-people-being-used-as-pawns-as-political-games-turn-violent/)

32 Amnesty International, ‘Spain/Morocco: Migrants subjected to violence and used as “pawns” at Ceuta border’, 19 May 2021, [amnesty.org.uk/press-releases/spainmorocco-migrants-subjected-violence-and-used-pawns-ceuta-border](https://www.amnesty.org.uk/press-releases/spainmorocco-migrants-subjected-violence-and-used-pawns-ceuta-border)

33 Interview in person with the General Director of Interior Policy and the Asylum, 23 September 2022.

34 Declaración conjunta, ‘Nueva etapa del partenariado entre España y Marruecos’,

lamoncloa.gob.es/presidente/actividades/Documents/2022/070422-declaracion-conjunta-Espana-Marruecos.pdf (Spanish version).

35 AI Report: Fear and fences, Europe’s approach to keeping refugees at bay. AI Index: EUR 03/2544/2015 English. See also Spain/Morocco: a tragedy at the border.

expulsions in violation of the principle of non-refoulement from Spanish territory have also been carried out with unnecessary force and at times have been accompanied by acts which may amount to breaches of the prohibition of torture and other ill-treatment.

It is important to recognise that the context of risk and abuse that Black people endure in Ceuta and Melilla does not come in a vacuum and that violations stem from discrimination and racism. Multiple Special Rapporteurs on Torture have also identified that migrants and asylum seekers are at greater risk of torture. The UN Special Rapporteur on Torture has stated that the range of human rights violations to which migrants are subject to, including torture, is a result of “the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination rather than on protection, human rights and non-discrimination.”³⁶ As the United Nations High Commissioner for Human Rights has acknowledged: “Systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”³⁷

2.1.1 LACK OF SAFE AND REGULAR CHANNELS TO ENTER SPAIN AND OFFICIAL OPTIONS FOR CLAIMING ASYLUM CLOSED TO PEOPLE FROM SUB-SAHARAN AFRICA

The Spanish authorities have frequently asserted that official channels to apply for asylum are a realistic option for people seeking international protection.³⁸ This claim has been shown to be unfounded at the border between Morocco and the Spanish enclaves of Ceuta and Melilla, exposing the fact that avenues to enter Spain in a safe and regular manner to seek asylum are blocked at every turn.

In reality, there is no meaningful possibility for people from sub-Saharan Africa to get access to Spanish officials to ask to be let in and seek asylum at the Beni Enzar border post.³⁹ As already noted in 2018 by Tomáš Boček, Special Representative of the Secretary General on Migration and Refugees at the Council of Europe, there have been a number of reports about how the Moroccan authorities effectively prevent people from sub-Saharan Africa from approaching regular border crossing points, notably in Melilla, through discriminatory practices and racial profiling.⁴⁰ Consequently, without access to the Spanish territory, people from sub-Saharan Africa do not have access to the asylum procedure. He recommended that the Spanish authorities ensure that people in need of international protection can access Spanish territory safely so that they can submit their asylum claims.⁴¹

The Special Representative further noted that the absence of such safe and legal access to Spanish territory results in people having to resort to more dangerous routes – for example paying organized criminal

36 In considering migration-related torture and ill-treatment, the Special Rapporteur has also stated that specific laws, policies, and practices that expose migrants to torture or other ill-treatment are unlawful, regardless of who was directly responsible for the acts and including if the violations were carried out by private actors and the state failed to protect migrants

37 Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc: A/HRC/47/53, para. 9

38 ECtHR, 'N.D and N.T. v Spain', 8675/15 and 8697/15. Judgement 13.2.2020. Para. 115, hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-201353%22%7D

39 In September, Amnesty International researchers met with the director of the asylum office of the Ministry of Interior and asked information about data regarding asylum applications in Melilla. The director confirmed that there is no consistent way of accounting for asylum applications in Melilla and that there is no criteria to distinguish which asylum applications were made in Melilla Beni Enzar's office by people who accessed Melilla's territory through the border crossing and those who applied after climbing over the fence. This has allowed Spanish authorities, including in connection with the ND and NT v. Spain case before the European Court of Human Rights, to claim that the Beni Enzar's office is accessible to asylum seekers, even though to get there applicants need to jump over the fences.

40 Council of Europe, Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights, 'Applications No. 8675/15 and No. 8697/15, N.D. v. Spain and N.T. v. Spain', 22 March 2018, search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680796bfc, para 33.

41 Report 3/2018 on the fact-finding mission by Tomas Bocek, Special representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 (SG/Inf(2018)25), <https://www.ecoi.net/en/document/1443311.html>, section 4.1 At the land border

networks, hiding in cars or boarding unsafe rafts – to gain access to Melilla and Ceuta. This, in turn, exposes them to a range of further human rights violations, including human trafficking, violence and sexual abuse.⁴²

In addition, applying for asylum in Spanish embassies in third countries is not a real option for many people seeking protection. Although this is provided for in Article 38 of the Asylum Law,⁴³ the statistics published by the Asylum and Refugee Office indicate that the cases dealt with through this process are those involving family reunification for people already recognized as refugees in Spain.⁴⁴ On 14 October 2022 the Spanish Ombudsperson, in the context of his investigation into the events of 24 June, recommended to the Ministry of Foreign Affairs to adopt the necessary measures to guarantee that people in need of international protection can apply for an asylum visa at the Spanish embassy in Morocco.⁴⁵

2.1.2 LONGSTANDING CONCERNS ABOUT SUMMARY EXPULSIONS AND REFOULEMENT

Spanish law sets out procedures governing the return and expulsion of foreign nationals who enter Spanish territory irregularly.⁴⁶ These procedures recognize the right to legal assistance and interpretation, as well as the right to seek asylum, as required by international human rights law. However, for Ceuta and Melilla the Spanish authorities have adopted legislation that violates international human rights law.

In 2015, the law on foreign nationals was amended by Additional Provision No. 10 of the Public Security Act. This amendment established a “special regime for Ceuta and Melilla” which provides for the so-called “border rejection”. This provides a legal cover for the automatic and summary expulsions of refugees and migrants from Spanish territory by Spanish border officials, without due process, and without assessing the risks they would face if returned. It also deprives people of the opportunity to apply for asylum and to challenge their removal.⁴⁷ In passing this provision, Spain has shown a complete disregard for international law, which prohibits the collective expulsion of aliens and any return in violation of the principle of non-refoulement, which prohibits states to transfer anyone to countries where they may face serious human rights violations, such as the right to life and the prohibition of torture and other ill-treatment enshrined in Articles 2 and 3 of the European Convention on Human Rights and Articles 6 and 7 of the International Covenant on Civil and Political Rights, respectively, which cannot be overruled or derogated from even in times of emergency.⁴⁸

It is also worth noting that in his 2018 report - long before the events of 24 June 2022 – the Special Representative of the Secretary General on Migration and Refugees at the Council of Europe, did not only express concern about people from sub-Saharan Africa not having meaningful access to opportunities to claim asylum on an equal basis with other people, and therefore be more likely to have to turn to other, more risky means to cross, but the Special Representative also flagged a concern about the practice of refoulement by Spanish authorities. He stated: “The issue of migrants and refugees’ access to Melilla and Ceuta highlights the challenges to the principle of non-refoulement which is a keystone of international human rights law and essential to the obligations to which member states have committed themselves under Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on Human Rights

⁴² Report 3/2018 on the fact-finding mission by Tomas Bocek, Special representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 (SG/Inf(2018)25), <https://www.ecoi.net/en/document/1443311.html>

⁴³ Article 38 of the Law on Asylum establishes that in cases where a person who is not a national of the country where he/she is approaches the authorities of the Spanish diplomatic representation alleging a danger to their physical integrity, the respective Ambassadors may support their transfer to Spain in order to allow them to present their application in accordance with the established procedure.

⁴⁴ For example, the Spanish government announced that this procedure would be applied to enable the evacuation of Afghan nationals who collaborated with the Spanish authorities in need of protection and their families following the Taliban takeover in Afghanistan in 2021. Despite this, Ms Carmen López García, General Director of Interior Policy confirmed to Amnesty International that, with the exception of the evacuation of Afghan nationals, article 38 has not been applied because there has not been any regulation to further development of the specific procedure. Meeting held in Madrid, 23 September 2022.

⁴⁵ <https://www.defensordelpueblo.es/resoluciones/solicitud-de-asilo-en-espana-sin-tener-que-utilizar-vias-irregulares-de-entrada/>

⁴⁶ Art. 58 Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, 11 January 2000, and Art. 23 and art. 243 of RD 557/2011 por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, 20 April 2000.,

⁴⁷ Amnesty International, “Spain: Repeal law allowing people to be expelled without due process”, 25 September 2018, <https://www.amnesty.org/en/latest/news/2018/09/spain-repeal-law-allowing-people-to-be-expelled-without-due-process-2/>

⁴⁸ Article 13 of the International Covenant on Civil and Political Rights (ICCPR); article 33 of the 1951 Refugee Convention; Article 3 of the European Convention on Human Rights (ECHR) and article 4 of Protocol 4 and article 1 of Protocol 7 to the ECHR, ratified by Spain; Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Minimum Standards.

(ECHR). Foreigners who attempt to enter Melilla and Ceuta by jumping the fences along their land borders and are intercepted at and near the borders, are randomly returned to Morocco without being identified, having their needs assessed or being given the possibility to apply for asylum.”⁴⁹

2.1.3 UN EXPERT’S EXPRESS CONCERNS TO MOROCCO AND SPAIN ABOUT DISCRIMINATORY AND HARMFUL TREATMENT OF SUB-SAHARAN AFRICAN PEOPLE ON BORDER FOR OVER A DECADE

In May 2015, the Committee against Torture urged Spain to review the legislation to guarantee the principle of non-refoulement, and to ensure the individual assessment of each case and access to asylum procedures.⁵⁰ The UN Human Rights Committee in August 2015 expressed concern about Spanish authorities, and the Moroccan authorities acting on Spanish soil, violating the rights of people seeking to cross the border by subjecting them to summary returns at the borders of Ceuta and Melilla, and in particular criticised the legislation passed by the Spanish authorities which establishes a special regime for Ceuta and Melilla, authorizing the officials to conduct summary returns.⁵¹ The Committee requested Spain to review the Public Security Act and ensure that all persons seeking international protection have access to fair and personalised assessment procedures, to protection against refoulement without discrimination⁵² The Committee also noted the frequent reports of allegations of ill-treatment by Spanish and Moroccan security forces in the context of people being subjected to summary expulsions. The Committee urged Spain to take all appropriate measures to ensure that immigrants are not subjected to ill-treatment, and to ensure that foreign authorities do not commit human rights violations on Spanish territory. Further, the Committee recommended that police and border control were provided specific training on the use of force, and also that steps were taken to ensure any allegations of excessive use of force were investigated and perpetrators punished.⁵³

In August 2018, the Working group of Experts on People of African Descent urged the Spanish government to put an end to all forms of collective expulsions.⁵⁴ While the Working Group acknowledges the efforts made by Spain in the rescue operations at sea, the Working group expressed its concern for the different approach in Ceuta and Melilla that undermines the right to international protection for people of African descent.⁵⁵ The UN Committee on the Elimination of Racial Discrimination in 2010 expressed concern to Morocco specifically that “non-citizens without residency permits, particularly nationals of sub-Saharan countries, are the victims of racial discrimination and xenophobia.”⁵⁶ In 2016, the UN Human Rights Committee further urged Morocco to “put an end to collective arrests and refrain from participating in mass expulsions of migrants, including expulsions conducted in the vicinity of the autonomous Spanish cities of Ceuta and Melilla”, and to (e) put a stop to the excessive use of force by law enforcement officers by, inter alia, providing more training in that connection and introducing oversight mechanisms and means of ensuring greater accountability.”⁵⁷

On 26 June 2022, the Chairperson of the African Union Commission, Moussa Faki Mahamat expressed his “deep shock and concern at the violent and degrading treatment of African migrants attempting to cross an international border from Morocco into Spain” and called for an immediate investigation into the matter and reminded “all countries of their obligations under international law to treat all migrants with dignity and to

⁴⁹ See the Executive Summary, Report 3/2018 on the fact-finding mission by Tomas Bocek, Special representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 (SG/Inf(2018)25), <https://www.ecoi.net/en/document/1443311.html>

⁵⁰ The Committee against Torture: Concluding observations on the sixth periodic report of Spain (CAT/C/ESP/6), 29 May 2015, para. 13

⁵¹ HRC: Concluding Observations on the sixth periodic report of Spain. 14 August 2015, CCPR/C/ESP/CO/6, para. 18

⁵² HRC: Concluding Observations on the sixth periodic report of Spain. 14 August 2015, CCPR/C/ESP/CO/6, para. 18

⁵³ HRC: Concluding Observations on the sixth periodic report of Spain. 14 August 2015, CCPR/C/ESP/CO/6, para. 19

⁵⁴ HRC: Report of the Working Group of Experts on People of African Descent on its mission to Spain. (A/HRC/39/69/Add. 2) 14 August 2018, para 64.

⁵⁵ *Ibid*, para. 53

⁵⁶ OHCHR, 'Committee on the Elimination of Racial Discrimination concludes its seventy-seventh session'

27 August 2010, ohchr.org/en/press-releases/2010/08/committee-elimination-racial-discrimination-concludes-its-seventy-seventh-0, para. 14.

⁵⁷ OHCHR, Human Rights Committee, 'Concluding observations on the sixth periodic report of

Morocco', ohchr.org/en/documents/concluding-observations/ccprmarco6-concluding-observations-sixth-periodic-report-morocco, para. 36.

prioritise their safety and human rights, while refraining from the use of excessive force.”⁵⁸ On 18 July 2022, experts from the UN International Independent Expert Mechanism (IIEM) mandated to advance racial justice and equality in the context of law enforcement and the UN Working Group of Experts on people of African descent issued a statement calling for accountability for the deaths and events of 24 June,⁵⁹ also noting their previously expressed concerns specific to the situation in Ceuta and Melilla from 2018.⁶⁰ On 18 July 2022, the experts called on Spain and Morocco: “to take all necessary steps alongside the European Union and the African Union to ensure prompt accountability, reparations for victims and preventing recurrence of unlawful deaths in accordance with their obligations.” And further singled out people from Africa for specific focus when they expressed their wish: “to provide both governments with concrete recommendations to end this cycle of deadly encounters of Africans with law enforcement.”⁶¹

On 1 November 2022, the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, together with the Working Group of Experts on People of African Descent and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that there was “no concrete accountability months after dozens of migrants of African descent, including refugees and asylum seekers, died during violent encounters with border security forces in Melilla, Spain” and further observed that “the violence documented in videos of the scenes at Melilla’s gate tragically reveals the status quo of the European Union’s borders, namely racialised exclusion and deadly violence deployed to keep out people of African and Middle Eastern descent, and other non-white populations, irrespective of their rights under international refugee or international human rights law. The lack of meaningful accountability for the June 24 deaths and injuries makes it difficult to conclude otherwise.”

2.2 LEGAL FRAMEWORK IN MOROCCO OFFERS LITTLE PROTECTION TO REFUGEES AND MIGRANTS

The 2011 Moroccan Constitution guarantees the protection of the right to life and physical integrity of all persons, including citizens and foreigners.⁶² Morocco’s 2003 Law n°02-03 on the entry and stay of foreign nationals into Morocco, emigration and irregular immigration guarantees access to healthcare, education, the right to work and other human rights of asylum seekers, migrants and refugees. However, access to medical services for migrants and refugees is generally guaranteed for primary healthcare, but not for secondary and tertiary healthcare services and this law also prevents asylum seekers, refugees and migrants from working in Morocco if they do not have official legal status.⁶³

Morocco ratified the 1951 Refugee Convention and its 1967 Protocol, although it has not adopted national refugee legislation or asylum procedures consistent with international standards.⁶⁴ In the absence of a national asylum system, refugees do not enjoy effective protection in Morocco, despite UNHCR presence and activities. While the UNHCR registers people, determines their status, and provides some people with refugee certificates, this does not guarantee their protection when faced with police officers or border guards. UNHCR has been represented in Morocco by an Honorary Representative since 1959 and has an office in Rabat, but there is no formal agreement between UNHCR and Morocco on the agency’s presence.⁶⁵

In 2013, Morocco’s Council of Government introduced a National Strategy on Immigration and Asylum which issued its recommendations for a comprehensive migration policy in compliance with the country’s

⁵⁸ Statement made by Moussa Faki Mahamat, Chairperson of the African Union Commission, 26 June 2022 on Twitter. Accessible at: Moussa Faki Mahamat on Twitter: "1/2: I express my deep shock and concern at the violent and degrading treatment of African migrants attempting to cross an international border from #Morocco into #Spain, with the ensuing violence leading to the deaths of at least 23 people and injuries to many more." / Twitter

⁵⁹ OHCHR, UN experts call for accountability in Melilla tragedy, 18 July 2022, [ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy](https://www.ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy)

⁶⁰ Report of the Working Group of Experts on People of African Descent on its mission to Spain, A/HRC/39/69/Add.2, 14 August, 2018: G1824975.pdf (un.org)

⁶¹ OHCHR, UN experts call for accountability in Melilla tragedy, 18 July 2022, [ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy](https://www.ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy)

⁶² Morocco, Constitution, 29 July 2011, refworld.org/docid/3ae6b5454.html

⁶³ Migrants-Refugees, Country profiles: Morocco, <https://migrants-refugees.va/country-profile/morocco/>, Accessed 24 July 2022.

⁶⁴ UNHCR, ‘Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: Morocco’, November 2011, [ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/MA/UNHCR_UPR_MAR_S13_2012_UNHCR_E.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/MA/UNHCR_UPR_MAR_S13_2012_UNHCR_E.pdf)

⁶⁵ Amnesty International, ‘Spain and Morocco: Failure to protect the rights of migrants – Ceuta and Melilla one year on’, October 2006, [amnesty.org/en/wp-content/uploads/2021/08/eur410092006en.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/08/eur410092006en.pdf)

commitments under international human rights and refugee law.⁶⁶ However, as demonstrated by the concerns expressed by several UN expert committees and procedures, as well as the events of 24 June, these law reforms are not adequate to protect people against torture and other ill-treatment by Moroccan authorities.

2.3 ISAM'S AND ABDU'S EXPERIENCES AT THE BORDER PRIOR TO 24 JUNE 2022

Seven of the men interviewed in July 2022 in Melilla told Amnesty International that they had tried to enter Spain to seek international protection on previous occasions but were immediately expelled by members of the Civil Guard. Their account was consistent with those of others who in the past recounted their experiences to Amnesty International. They had never been given the opportunity to file an application for asylum and explain why they were fleeing and in need of protection. They had never been allowed to exercise their right to access a fair and effective individual asylum procedure.

For example, during interviews conducted by Amnesty International, Isam, a 22-year-old Sudanese man, said he had tried to enter Spain six times before 24 June 2022, and each time had been either caught while still trying to cross the fence or was deported back to Morocco without any formal procedure being followed.⁶⁷ Isam described how he and a group of friends walked for 22 days from Maghnia in Algeria until he reached Morocco:

“We were very hungry and cold at night. The first time we tried to cross the border [between Algeria and Morocco] was at the beginning of August 2021. We were caught by the Algerian security forces. I was imprisoned for two days. They beat me and took everything from me. I tried again to cross the border to Morocco at the end of August. When I arrived in Oujda, I went to the refugee office [UNHCR] to tell them about my situation, but they didn't listen to me and didn't give me the basics to survive. At the end of September [2021], I tried to reach Nador. The Moroccan security forces arrested me and imprisoned me. They stole everything, they took my phone, my shoes. There were a lot of people in that prison, about 70 people in one room. You had to take turns to lie down and sleep. We were all Africans. After 10 days there, they took me to the border with Mauritania. They left a group of us in the desert without shoes. [...] I tried to cross the fence six times, twice I managed to enter Spanish soil, but both times I was detected by the Civil Guard when I was already in the forest. The second time [in December 2021] I was already very close to the city, the Spanish police released some dogs that are very aggressive, they bite you if you don't follow the orders, when I tried to talk to the policemen, they told me not to say anything, to be quiet, they tied my hands behind my back and took me to the fence and a Moroccan policeman approached me. Then, the Moroccan police took my clothes, my shoes, they tell you that it is so that you learn, for you not to try it again”.

Isam explained that abuses by border officials at the fences are common:

“There are attempts at night that are not reported in the media; 24 June is not the first time that deaths have occurred.”

Isam also said that on 29 December 2021 there had been another attempt to enter Melilla, during which border officials used all kinds of riot equipment and he was arrested by the Moroccan security forces:

“They throw stones at you, they hit you with sticks and they also use sharp objects. Before you get to the fences, on the Moroccan side, there is a moat full of water. When you are at the top, they hit you with stones and sticks to make you fall in. If you fall, you can drown. Sometimes the Moroccan police even push us into the moat. There are people who disappear; they are never heard from again.”

Abdu, 20 and from Sudan, also tried to enter Spain through Melilla in August 2021. He told Amnesty International:

“Only one of us could make it, although four of us managed to enter, three counting myself were immediately expelled. The Spanish police used a spray, they tripped me so that I would fall, they caught me and handed me over to the Moroccan police who pushed me into the ditch, it wasn't full of water but it's very deep, I hurt my legs, my knees. You have to get out on your own, but it is very complicated, I had my hands tied behind my back, the Moroccan police tied my hands. I saw people lying in the ditch who were in a very bad state, maybe dead; the police pulled them out... the rest of us were taken to prison, I was in prison 6 months.”⁶⁸

⁶⁶ UNHCR, Global Compact on Refugees, "Morocco" page, Accessed 9 July 2022, globalcompactrefugees.org/gcr-action/countries/morocco

⁶⁷ Interview in person with Isam, 24 July 2022, Melilla.

⁶⁸ Interview in person with Abdu, 25 July 2022, Melilla.

3. ATTACKS AGAINST MIGRANTS ESCALATE IN MONTHS LEADING UP TO 24 JUNE 2022

Many people from sub-Saharan Africa seeking to enter Spain have been living together in informal camps in the forests in Nador, Morocco, for several years. Conditions in the camps are precarious and worsened in the wake of the Covid-19 pandemic and the subsequent border closures introduced to contain it.⁶⁹

According to the President of the AMSVO, Moroccan police and security forces routinely raid and burn the camps and arrest people when they venture out of the forests into nearby towns to buy food.⁷⁰ The non-governmental organisation AMDH has also documented how attacks by the Moroccan security forces on the forest camps, during which "migrants are hunted down and arrested, camps are destroyed and property is confiscated or burned, including stored food," increased between April and 24 June 2022.⁷¹ The organization recorded 31 attacks in the 84 days prior to 24 June – around the same number as the total number of attacks in the whole of 2021.⁷² The AMDH attributes the increased number of attacks in the forests to the normalization of relations between Morocco and Spain and to Morocco's renewed cooperation with Spain to reduce migration.⁷³ It also notes that while the camp raids caused injuries on both sides, in the majority of cases the injured members of the security forces were able to seek medical care in hospitals, while injured people on the move rarely sought medical attention for fear of being arrested.

"There were many injured [people] on both sides, among the members of security forces and among us. We asked for help, but the ambulances only assisted the police officers, not the migrants. We stopped some cars, asked for help for the most seriously wounded. The rest of us were afraid of being arrested. That day we decided we could not stay there anymore."

- Omer, 21-year-old, Sudan.⁷⁴

The AMDH documented the use of drones and the monitoring by security officials of people's movements in Lakhmis Akdim and Bekoya forests, around 20km from the Barrio Chino border with Melilla, and the daily

⁶⁹ Interview in person with Hassane Ammari, President of AMSVO, 4 July 2022, Tunis.

⁷⁰ Interview in person with Hassane Ammari, President of AMSVO, 4 July 2022, Tunis.

⁷¹ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, Page. 4, amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf

⁷² AMDH Nador, *La tragedie au poste frontalier de Barrio Chino: Un crime ignoble des politiques migratoires européennes espagnoles et marocaines*, 20 July 2022

⁷³ Convention between the Kingdom of Spain and the Kingdom of Morocco on cooperation in the fight against crime, 7 April 2022, Original: [BOE.es - BOE-A-2022-5595](https://boe.es/boe/A-2022-5595) *Convenio entre el Reino de España y el Reino de Marruecos sobre cooperación en materia de seguridad y de lucha contra la delincuencia, hecho en Rabat el 13 de febrero de 2019.*, Available in English: [Statewatch | Convention between the Kingdom of Spain and the Kingdom of Morocco on cooperation in the fight against crime](https://www.statewatch.org/news/2022/apr/13-convention-between-the-kingdom-of-spain-and-the-kingdom-of-morocco-on-cooperation-in-the-fight-against-crime/); Spain Ministry of Foreign Affairs, European Union and Cooperation, *Focus Africa 2023*, March 2021, [ENG RES EJECUTIVO FOCO AFRICA 2023.pdf](https://www.mec.es/IMG_RES_EJECUTIVO_FOCO_AFRICA_2023.pdf) ([exteriores.gob.es](https://www.mec.es/))

⁷⁴ Interview in person with Omer, 23 July 2022, Melilla.

attacks on camps in the 18 days before 24 June by members of the Moroccan gendarmerie, police, auxiliary forces and security agents. It also documented how, in the same period, the authorities made people's lives increasingly difficult by instructing local shop owners to not sell food to refugees and migrants and by cutting off the water supply from the fountain nearest to the forest of Bekoya.⁷⁵

Amnesty International spoke with 11 people, all young Black men from Sudan, who described incidents of police abuses in the camps in the lead-up to 24 June. All of them said that police raided the camps in the days before the attempted border crossing, destroyed their camps and took their food and water. At least one man said that the police threw stones and used tear-gas against them.

Abdessalam, a man in his early twenties from Sudan, shared how he had been living in the forests in Selouane, near Nador, since he arrived in Morocco with his brother and cousin in May 2021. He said that the Moroccan police and security forces had raided and destroyed the camps where he was staying at least eight times since the beginning of 2022. At midday, around three days before 24 June, Moroccan police and security forces raided the camp where they were staying with 24 other people, burned their belongings and threw tear gas bombs and stones. Abdessalam said that some of the migrants in the camp threw stones back at the officers in self-defence and that one of his friends lost three fingers when he tried to pick up a tear gas bomb to throw it back. He said that they spent the next two days without eating or drinking as the police and security forces had destroyed all their food. They then joined other groups on 24 June to walk to the border with Melilla.⁷⁶

Omer, a 21-year-old man who fled Sudan in June 2021, also described how around 300 police officers and members of the Moroccan military arrived at the camp where he was living near Selouane and fired rubber bullets at them and threw tear gas canisters.⁷⁷ When people responded by throwing stones, the security forces withdrew. However, many people were injured by the actions of the security forces.⁷⁸ Omer explained that after that incident, they "moved to another mountain, closer to Nador. A week later we were discovered by helicopters. The Moroccan police acted this time more violently than the first time, cornering us from all sides, reaching the area where we kept our food. Police officers destroyed everything we had. Once again, they used rubber bullets against us, also sticks, tear gas as well as acoustic bombs. At this second time we were also many, more than 1,000; we defend ourselves with what we had, mainly sticks and stones."⁷⁹

Omer also said that after that second attack, they were all convinced that any further action by the Moroccan security forces would be much more violent and when they had all regrouped, they decided it was time to try to cross into Spain. Abdu, a 20-year-old Sudanese man who left Sudan after being imprisoned at age 14 for more than a year after being in a public demonstration, also described how Moroccan security forces used knives against people in the raids at the forest.⁸⁰ On 24 August 2022, Amnesty International wrote to the Moroccan Inter-ministerial Delegation on Human Rights (DIDH), as well as the Ministry of Justice, the Ministry of the Interior and the CNDH to request information about the events of 24 June, including about the reason why Moroccan authorities raided camps in the forests near Nador in the days prior to 24 June, and the reason why the authorities used force during said raids. However, as of 30 November 2022 no response was received.⁸¹

The police abuses in the days leading up to 24 June, combined with the denial of access to food and water, caused many people living in the camps to go into the forests surrounding Nador. Experts working on the issue of human rights protection also expressed their concern about the attacks against people living in the informal camps leading up to 24 June and have underlined the connection between the persistent violations of their human rights leading up to that day and the attempt to cross the border. Hassane Ammari of the AMSVO told Amnesty International that there were three main factors which led to the border crossing

⁷⁵ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, pp.4-5, amdh.org.ma/img/upload/contents/fichiers/c00c39fdb276362432fee8f4636d1a7.pdf

⁷⁶ Interview by voice call with Abdessalam Mohamed Abdallah Ibrahim, 5 July 2022.

⁷⁷ Interview in person with Omer, 23 July 2022, Melilla.

⁷⁸ Interview in person with Omer, 23 July 2022, Melilla.

⁷⁹ Interview in person with Omer, 23 July 2022, Melilla.

⁸⁰ Interview in person with Abdu, 25 July 2022, Melilla.

⁸¹ Amnesty International, *Letter to the Moroccan Inter-ministerial Delegation on Human Rights (DIDH), the Ministry of Justice, the Ministry of the Interior, and the CNDH, Morocco*, 24 August 2022, Question 9: "According to the research report by Association Marocaine des Droits Humains, Moroccan authorities carried out violent raids on the camps of migrants in forests near Nador. The same report alleged that these raids increased in frequency between April and June 2022, recording 31 raids in the 84 days leading up to 24 June. Please can you explain the reason for such raids and the use of violence? Please can you tell us what is being done to hold perpetrators of these violent raids to account and to ensure that security forces use non-violent means to carry out their duties?", on file with Amnesty International. As of the date of publication no response has been received from the Moroccan authorities.

attempt on 24 June: the precarious situation for those in the camps for over two-years during which the Moroccan police surround them and routinely burn their belongings; the remoteness of their camps from cities and towns, as well as the distance from their homes and families, creating a feeling of having little to lose; and the arbitrary arrests of migrants when they do venture into towns and cities to buy food and water.⁸² The AMDH in their report titled *The Tragedy at the Barrio Chino Border Crossing* also describe how the intensity of the abuses committed by the Moroccan police reached such a height in the days leading up to the event, that many people felt they had no choice but to try and cross. They said that in the 18 days before 24 June, "attacks were almost daily in an attempt to dislodge the migrants".⁸³ The AMDH cite a particularly violent attack by the Moroccan police on 23 June, followed by a warning given to those in the camps to leave within 24 hours.⁸⁴

Muhammad, a 20-year-old Sudanese man, told Amnesty International that police officers also set fire to bushes in the camps on 23 June 2022.⁸⁵ The Moroccan authorities later blamed the fires on migrants and refugees, a claim that Muhammad refuted. He said he saw some of his friends passing out from the smoke and described a range of injuries inflicted on people by the police. He said no medical assistance was offered to them. In contrast, injured officials were given medical treatment by medical personnel who arrived at the scene. Adil, aged 23, who left Sudan when he was 17, said they no longer had anything to eat or drink because the second time they were attacked on 23 June, "the police burned everything and left us with nothing".⁸⁶

Testimonies from those attempting to cross the border on 24 June, as well as reports from other organisations who documented the various raids by Moroccan security forces in the days leading up to 24 June, indicate that there was a concerted, deliberate and violent attempt by Moroccan security forces, through the raids on informal camps in the forests, to make the living conditions in the camps at Nador dangerous and hostile, forcing them to move on.⁸⁷

⁸² Interview in person with Hassane Ammari, President of AMSVO, 4 July 2022, Tunis.

⁸³ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, page 4, amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf

⁸⁴ AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, page 5, amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf

⁸⁵ Interview in person with Muhammad, 23 July 2022, Melilla.

⁸⁶ Interview in person with Adil, 23 July 2022, Melilla.

⁸⁷ Interviews in person, 23 July 2022, Melilla; Interview by voice call with Abdessalam Mohamed Abdallah Ibrahim, 5 July 2022; Interview in person with Hassane Ammari, President of AMSVO, 4 July 2022, Tunis; AMDH, *The Tragedy at the Barrio Chino Border Crossing*, 20 July 2022, amdh.org.ma/img/upload/contents/fichiers/c00c39fdbe276362432fee8f4636d1a7.pdf

4. THE BORDER CROSSING ATTEMPT OF 24 JUNE 2022

“We realized that we were in a box, both the Moroccan and Spanish security forces were throwing everything at us, gas bombs, stones, rubber bullets, rubber balls. A rubber ball hit me in the shoulder and injured me. And above all there was a lot of gas. They were throwing some kind of balls with gas in them. We couldn’t see anything, and it was difficult to breathe.”

Zacharias, 22, from Chad, interviewed in Melilla on 24 July 2022

In the morning of Friday 24 June, between 1500 and 2000 refugees and migrants, mostly Sudanese, attempted to cross the border between Morocco and Melilla, according to estimates from AMDH and the Moroccan Human Rights Council (CNDH).⁸⁸ They walked in a group from the forests surrounding Nador towards the informal crossing point of Barrio Chino. According to AMDH, they did not encounter any attempt by the authorities to stop their advances towards the border, even as they passed directly in front of the auxiliary force barracks in Gourougou forests. When they arrived at Barrio Chino, they were met by over 100 Moroccan border forces armed with anti-riot gear.

When the group of up to 2,000 people on the move arrived at Barrio Chino, they attempted to open the main gate and subsequently to climb the fences. The response of the Moroccan and Spanish security forces, which lasted over two hours, resulted in dozens of people dying and many more being injured. Estimated numbers of deaths and injuries vary. The AMDH reported on the day 27 deaths and dozens of injuries. The association Help for Migrants in Vulnerable Situations (AMSVO) stated that at least 29 migrants and refugees died and a further 70 were injured. The national human rights commission in Morocco (CNDH) reported 23 people died and 217 were injured, including 140 members of the Moroccan security forces (it should be

⁸⁸ The Moroccan Human Rights Council (CNDH) was established in 2011 and the King of Morocco appoints its president and at least nine of its 27 members.

noted this is an official figure and that no information has been shared by Moroccan authorities regarding the gravity and cause of the injuries, or the extent to which the injuries were due to officers being affected by the tear gas fired by their own and Spanish security forces). The latest figure of people dying was put at 37, according to a joint statement by UN Special experts issued on 1 November 2022. In the absence of adequate, independent and thorough official investigations and information, it is currently impossible to determine the exact figures; the appalling loss of life and injuries are, however, incontrovertible.

Moroccan authorities initially suggested that several of the deaths were the result of people falling from the fence or suffocating as people panicked and stampeded.⁸⁹ However, Amnesty International collected testimonies from 19 individuals who attempted the border crossing on 24 June and who denied having seen anybody dying from falling. At least 6 survivors interviewed by Amnesty International in Melilla stated that the fences were too low to cause death from falling.⁹⁰ Hassane Ammari, President of AMSVO, stated that, according to some of the people he interviewed, refugees and migrants and police continued walking forwards on top of the broken part of the wall, trampling over people trapped beneath, which might have caused some of the deaths. Nevertheless, there is strong ground for concern that the deaths and injuries to such a large number of people were contributed to if not directly caused by the prolonged and excessive use of force, including tear gas and other anti-riot equipment, and by the subsequent failure to provide timely medical assistance to people injured by the Moroccan and Spanish police and other security officers.

4.1 VIOLATIONS OF THE RIGHT TO LIFE, UNLAWFUL USE OF FORCE, AND ACTS WHICH MAY AMOUNT TO TORTURE AND OTHER ILL-TREATMENT BY MOROCCAN SECURITY FORCES

According to eyewitness accounts, as the large group of refugees and migrants approached the Barrio Chino border crossing on 24 June, the Moroccan border forces responded by throwing stones and tear gas bombs at the group.⁹¹ Eyewitnesses stated that as people tried to escape the attack by the Moroccan border forces, there were stampedes at two points close to the border.⁹²

Six people who crossed to Melilla on 24 June 2022 told Amnesty International that the Moroccan border forces dispersed them resulting in their division into two groups. One group approached Barrio Chino facilities while people in the other group went towards the three-layered fences and tried to climb them.⁹³ Salih, a 27-year-old Sudanese man, said that they met no resistance on the way to Barrio Chino, as if the Moroccan border forces were already waiting for them there:

“It seemed that the Moroccan police gave us space to get there, then they cornered us. They divided us into two groups. Some of us could no longer move forward. They started to shoot at us with gas, threw acoustic bombs at us; it’s scary because it’s a very loud sound. Police also fired rubber bullets at us. Everyone tried to move where they could, it was chaos.”

Zacharias, 22 and from Chad, recalled that the group who approached the Barrio Chino structure broke a first gate through which they accessed the inside of the border crossing. At the same time, the other group tried to access by climbing the wall and the fence on the top.⁹⁴

The danger was compounded when people began falling from the top of the barriers they were climbing, either because of difficulty breathing due to tear gas, due to the force of being hit by stones, or to the pressure of trying to cross the border quickly and escape the attacks. Moroccan border forces continued to

⁸⁹ CNDH, ‘Incident tragique devant le point de passage entre Nador et Melilla Rapport préliminaire de la mission d’information mandatée par le Conseil national des droits de l’Homme’, 13 July 2022.

⁹⁰ Group Interview in person, 24 July 2022, Melilla.

⁹¹ Interviews in Melilla 23 and 24 July. See also AMDH Nador, ‘La tragedie au poste frontalier de Barrio Chino: Un crime ignoble des politiques migratoires européennes espagnoles et marocaines’, 20 July 2022

⁹² AMDH Nador, ‘La tragedie au poste frontalier de Barrio Chino: Un crime ignoble des politiques migratoires européennes espagnoles et marocaines’, 20 July 2022

⁹³ Group interview in person, 25 July 2022, Melilla; and interview in person, 24 July 2022, Melilla.

⁹⁴ Interview in person with Zacharias, 24 July 2022, Melilla.

fire tear gas at those attempting to climb the wall, and later chased them and hit them with sticks.⁹⁵ Later, the barbed wire part of the wall fell backwards, towards those climbing it, causing people to fall as can be seen in a video which was verified by Amnesty International's Evidence Lab.⁹⁶

Both Zacharias and Salih recounted that, while those who entered first were trying to break open a second metal door leading to another corridor giving access to Spanish territory using a type of plier, Moroccan police officers blocked the point where people had entered the enclosure.

6 people in a group interview with Amnesty International stated that at around 10.30am, the Moroccan security forces stopped throwing smoke bombs and hundreds of Moroccan agents started to beat people using batons, kicking them and throwing stones, including at those already on the ground and injured;⁹⁷ this was also confirmed by the AMDH.⁹⁸

Those who continued to climb the fences were specifically targeted with stones and beaten with batons on their backs and feet. This caused many people to fall, after which they were herded, using baton charges, into a concentrated area marked out by the authorities of about 200m².⁹⁹

Around 400 people were trapped in this 200m² area between the walls and the Moroccan forces.¹⁰⁰ Here, Moroccan police officers threw people on top of each other, whether alive, injured or dead. This can be seen in several videos verified by Amnesty International, which show people lying on the ground while Moroccan officers poke and hit them with their batons. In one video, a Moroccan officer is clearly seen kicking a person lying on the ground.¹⁰¹

Meanwhile, the Spanish police forces arrived at the fences and at Barrio Chino crossing point from the Spanish side, preventing people from entering Melilla. Abuobida, a 25-year-old Sudanese man who has been in Morocco for four years, described how Spanish and Moroccan forces caught him before he could make it over the final wall and forced him back to Morocco through a door in the wall. He said that Moroccan forces: "hit me on the head and the body. The police used tools; stones, knives, sticks, and they shot us with small guns with rubber bullets. They hit us on our heads with long wooden sticks and knives. They were hitting us with stones, and they would hit you with their hands." He described seeing Moroccan police beating people lying on the ground on the head "to see if he is dead or alive". He said: "If they want to kill you, they will kill you, if they want to break your hand, they will break your hand".¹⁰²

Abdessalam, a man in his early twenties from Sudan, said that he climbed over the first wall before it fell but that Moroccan officials caught him and took him back. He described watching the Moroccan police beating his brother and cousin to death as he was climbing over the wall. "They were trying to climb the wall, but the authorities had tear gas and stones. They [his brother and cousin] fell down on the Moroccan side and the police were hitting them with wooden sticks. They died because of the beating."¹⁰³

In a video testimony, a 23-year-old man from Sudan, who attempted the border crossing on 24 June but who did not make it into Spain, described what happened to a friend of his: "My friend who died, I saw him dying from afar, I saw the police hit him in the head. I haven't spoken to his family because I haven't found them yet".¹⁰⁴

⁹⁵ Interview by voice call with Omar Naji, director of the AMDH Nador, 27 June 2022.

⁹⁶ Video, [What happened at the Border of Melilla? The step by step of the tragedy | Spain | THE COUNTRY \(elpais.com\)](#)

⁹⁷ Group interview in person, 24 July 2022, Melilla.

⁹⁸ AMDH Nador, 'La tragedie au poste frontalier de Barrio Chino: Un crime ignoble des politiques migratoires europeennes espagnoles et marocaines', 20 July 2022.

⁹⁹ Group interview in person, 24 July 2022, Melilla.

¹⁰⁰ Interview in person with Hassane Ammari, AMSVO, 4 July 2022, Tunis.

¹⁰¹ Video from the Spanish public broadcasting, Published 25/06/2022, [rtve.es/play/videos/telediario-fin-de-semana/marruecos-cifra-en-18-los-migrantes-muertos-durante-el-intento-de-salto-masivo-en-melilla/6635226/](#)

¹⁰² Interview by voice call with Abuobida Yousef Adam, 1 July 2022.

¹⁰³ Interview by voice call with Abdessalam Mohamed Abdallah Ibrahim, 5 July 2022.

¹⁰⁴ Video testimony, recorded on 25 July 2022, received by Amnesty International on 29 July 2022.

4.1.1 BREACHES OF RIGHT TO LIFE, UNLAWFUL USE OF FORCE AND ACTS WHICH MAY AMOUNT TO TORTURE AND OTHER ILL-TREATMENT BY SPANISH SECURITY FORCES

The Spanish Civil Guard in Melilla is the Spanish authority tasked with providing security and oversight of the fence and border point. However, when many people attempt to cross the border together, as was the case on 24 June, reinforcements are deployed from the special units of the Civil Guard from other Spanish cities, Spanish National Police Riot Units (Unidades Antidisturbios de la Policía Nacional) and local civilian police units.¹⁰⁵ Publicly available footage seen by Amnesty International shows that officers from National Police Riot units were also deployed on 24 June.¹⁰⁶

On the basis of the research conducted, Amnesty International is concerned that on 24 June 2022 Spanish security forces in Melilla used force unlawfully, including at times with punitive intent or effect, and misused a range of less-lethal weapons at their disposal such as rubber balls fired in the direction of Barrio Chino's enclosure and at people on the fences, smoke canisters and tear gas.

In particular, Amnesty International is concerned that Spanish security officers repeatedly used pepper spray at close distance to prevent the entry into Melilla of people who were trapped and were being attacked by Moroccan and Spanish authorities inside the Barrio Chino's enclosure and that they also repeatedly shot tear gas in the direction of the enclosed space of Barrio Chino over a two hour period, where they knew or should have known that the gas would affect people who were trapped there with no possibility to escape.

Salih described what happened in the Barrio Chino's enclosure, which he said was like a labyrinth:

“The Spanish police sprayed us in the eyes while the Moroccan police threw stones at our heads. I don't know how, but some of us managed to climb up to the roof that covered part of the border post, to jump from there to the Melilla side.”¹⁰⁷

Omer also recalled that as some people were trying to open the second gate. On the other side of the corridor there were four or five Spanish police officers spraying an orange spray into their eyes, so they could not see anything.

Omer said that once they got through, the Spanish police were waiting for them: “There were initially about 1,000 of us trying to get through, but in the end there were very few of us. Many were lying on the ground; they had lost consciousness. Others did not want to continue and had turned around and fled. There were many injured people who could no longer continue.”

Omer managed to climb up onto the roof and then climb down the fence:

“When I was coming down, I was hit by a ball. It hit me in the thigh. I had to have stitches because it tore my skin. I fell to the ground, I tried to get up and at that moment another Spanish policeman hit me on the head with the back of his weapon. I had to have 12 stitches in hospital.”¹⁰⁸



Omer with a head wound caused by a blow with the butt of a weapon.

¹⁰⁵ Interview in person with a member of the Asociación Unificada de la Guardia Civil (AUGC), 22 July 2022, Melilla.

¹⁰⁶ El País, *La entrada de agentes marroquíes en Melilla despierta dudas legales entre los expertos*, 9 July 2022, elpais.com/espana/2022-07-09/la-entrada-de-agentes-marroquies-en-melilla-despierta-dudas-legales-entre-los-expertos.html

¹⁰⁷ Interview in person with Salih, 26 July 2022, Melilla.

¹⁰⁸ Interview in person with Omer, 24 July 2022, Melilla.

According to interviewees, around 300 people managed to cross the border post. The number is likely higher as the Ombudsperson has reported that at least 470 people were immediately returned by the Spanish border officials without any due procedure.¹⁰⁹ Some were able to escape into Melilla, away from the border fences heading to the Centre for Temporary Accommodation of Migrants (CETI); others were cornered by the Spanish security forces. Zacharias recalled that the beatings did not stop even after they were placed under the physical control of the Spanish officers. According to the Ombudsperson's report issued in November, 134 people who crossed that day remained in Spain and applied for international protection.¹¹⁰

Zacharias also recalled that "the Moroccan police entered the area between the fences. The Spanish and Moroccan police began to talk to each other, they [the Spanish police officers] opened the way for the Moroccans [officers] who entered the area where the Spaniards were."¹¹¹

The Chief of the Cabinet of the Government Delegate's Office in Melilla explained that when people jump the fence, the security force operation comes under the authority of the Ministry of the Interior, not of the Government's Delegate.¹¹² He also said he was confident that everything that was done was within the law and added that people attempting to enter Melilla had done so in an increasingly violent manner.

A Civil Guard official confirmed that on 24 June 2022 Spanish Civil Guard officers and national police present at the border used rubber balls, blank bullets and tear gas.¹¹³ He also said that officers at the border generally have access to hand-held irritant spray, although he did not specifically confirm this was used on that occasion. He also said that, following the death of 14 people trying to cross to Ceuta at the Tarajal beach in 2014, the use of rubber balls had been suspended.¹¹⁴ However, he added, the Spanish Ministry of the Interior had re-authorized the use of that type of weapon in response to what they consider an increase in violence during the latest attempted crossings¹¹⁵ The Civil Guard official regretted the lack of clear protocols on the type of action that officers could take to prevent people from jumping over the fence as such protocols would ensure officers had a clear legal framework in which to operate. He also confirmed that it was common practice for the Moroccan police to enter Spanish territory to remove people who crossed the border, although he did not know if this was part of any formal agreement.¹¹⁶

Amnesty International was told by 9 people present that day that Spanish officials continued to beat people even after they were in their control and posing no threat, including as they handed the individual over into the hands of Moroccan forces. The latter further endangered their physical integrity, breached the prohibition on collective expulsions and constituted refoulement under international law, with at least 470 people subjected to refoulement and forcibly returned into the hands of the Moroccan police where they were at risk of serious human rights violations.¹¹⁷ Testimonies from people who were subjected to abuse on 24 June, as well video footage available from that day also indicate that many of them were injured.

Furthermore, many of the injuries of the 57 people treated at the CETI and of the 11 people treated at the Melilla hospital appear to be consistent with the use of unlawful force by either Moroccan or Spanish officers. In some cases, as indicated by the testimony and footage collected, the abuse inflicted on many individuals may amount to torture and other ill-treatment inflicted by members of both Spanish and Moroccan officials.

In addition to the testimonies of survivors, there is considerable medical evidence of the abusive treatment meted out by Moroccan and Spanish officers on refugees and migrants trying to cross the fence. Of the 134

¹⁰⁹ El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla, 14 October 2022, defensordelpueblo.es/noticias/sucesos-melilla/. Available only in Spanish.

¹¹⁰ El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla, 14 October 2022, defensordelpueblo.es/noticias/sucesos-melilla/. Available only in Spanish.

¹¹¹ Interview in person with Zacharias, 25 July 2022, Melilla.

¹¹² Interview in person with the Chief of the Cabinet office of the Governments Delegate, 25 July 2022, Melilla.

¹¹³ The officer explained that Spanish forces use tear gas canisters with a red top, while Moroccan forces use canisters with a green top. He also added that the calibre of the blank bullets used by Spanish forces is 7.62

¹¹⁴ The judicial investigation was finally closed in June 2022 by the Supreme Court. At the time of writing there had been no investigations into the deaths (nine on the Moroccan side and five on the Spanish side), the 23 summary expulsions, or the excessive use of force by both the Moroccan police and the Civil Guard, who used rubber bullets and smoke canisters against the people trying to swim ashore.

¹¹⁵ Interview in person with a member of the Asociación Unificada de la Guardia Civil (AUGC), 22 July 2022, Melilla.

¹¹⁶ Interview in person with a member of the Asociación Unificada de la Guardia Civil (AUGC), 22 July 2022, Melilla

¹¹⁷ *El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla*, 14 October 2022, defensordelpueblo.es/noticias/sucesos-melilla/. Available only in Spanish.

people who arrived at the CETI, 57 needed medical assistance.¹¹⁸ The Red Cross representative stated that on 24 June they took nine people from the CETI to hospital. Two of those referred for hospital treatment had injuries caused by rubber bullets. The doctor at the CETI confirmed that many people were treated at the CETI for eye injuries caused by tear gas. On 8 August 2022, Amnesty International requested to the Spanish Minister of the Interior information on the protocols for medical assistance in the event of use of anti-riot equipment such as pepper spray and tear gas. At the time of closing this report, no response had been received.¹¹⁹ Amnesty International also notes that according to the testimonies it gathered, medical staff at the CETI and at the Red Cross in Melilla do not appear to have clear protocols to file any injury report that could serve as a basis for investigating the cause of the injuries treated.¹²⁰

The Melilla regional hospital confirmed that, following the 24 June incident at Barrio Chino, 11 people were treated at the hospital for various injuries, and one had to be transferred to a hospital in Malaga for surgery on a fractured jaw.¹²¹ Two young men who spoke to Amnesty International reported that they were injured on 24 June and went straight to the CETI as the only way to feel safe and ensure their physical well-being.

4.2 DENIAL OF EMERGENCY MEDICAL ASSISTANCE TO INJURED REFUGEES AND MIGRANTS

Survivors' testimonies described above, video footage verified by Amnesty International, and authorities and other officials' statements indicate that Moroccan and Spanish officials used force unlawfully, harming the people who were trying to cross the border both with the use of less-lethal weapons and by beating those who were trying to climb the fences. Moroccan and Spanish officers inflicted widespread beatings on injured people trapped in between the fences of the Barrio Chino border crossing.¹²² The AMDH report, based on testimonies of people present at the scene, describes a scene of carnage, with officers beating injured people lying on the ground struggling for breath and exhausted. The crush left people piled on top of each other, some of them already dead, and was intensified as officials violently pushed more people on top of those already lying on the ground.¹²³ The violent repression of the attempt to cross the border lasted for at least two hours, and for 10 hours afterwards both the Moroccan and Spanish authorities failed to provide adequate medical assistance to the wounded at Barrio Chino – a failure which may have contributed to avoidable loss of life. Furthermore, according to the testimonies and other available information, Spanish authorities failed to provide medical care to people who were visibly injured and who were being handed over to Moroccan officials without any due process, and Moroccan authorities continued to deny medical assistance to the injured and traumatized people who had not managed to cross into Melilla, as they were being removed from the border and forcibly sent on long bus journeys to other parts of Morocco. Such failures breach international obligations to provide emergency medical care, violate the right to health and life, and constitute torture or other cruel, inhuman or degrading treatment.

¹¹⁸ Interview in person with a doctor working at the CETI, 26 July 2022, Melilla.

¹¹⁹ Amnesty International letter to the Minister of Interior, 8 August 2022.

¹²⁰ Interview in person with the Red Cross Director of Social Intervention and Volunteering, 25 July 2022, Melilla; and interview in person with a doctor working at the CETI, 26 July 2022, Melilla.

¹²¹ In the correspondence with Amnesty International, the hospital emergencies coordinator listed the following injuries: 23-year-old patient. Wounds on toes and legs; Patient 22 years old. Wounded left leg and left hypogastric region. Patient 21 years old. Scalp injuries. Patient 21 years old. Wounded left leg. Patient of 20 years old. Post-traumatic oedema left eye. Patient 31 years old. Contusion infrarrotuliana region right knee. Patient of 24 years old. Bruised ankles and calcaneus injuries. Patient 20 years old. Injuries in anterior tibial region and left leg, contusion in anterior costal arch right hemithorax, contusion left shoulder. Patient 31 years old. Affectation of the internal tibial plateau edge. Patient aged 20 years. Non-displaced tibial plateau fracture and epicondyle fissure. Patient 26 years old. Right lower jaw vertical branch fracture, left elbow contusion, right knee contusion, leg injuries. INPATIENT That day only one patient was admitted to the Hospital Comarcal for fracture of the maxilla, who was referred to a referral hospital for maxillo-facial surgery.

¹²² Interviews over the phone and in person with 13 people present at the border crossing, between 29 June and 29 July 2022.

¹²³ AMDH Nador; *La tragedie au poste frontalier de Barrio Chino. Un crime ignoble des politiques migratoires europeennes espagnoles et marocaines*; 20 July 2022.

4.2.1 DENIAL OF TIMELY MEDICAL CARE AND OTHER ILL-TREATMENT BY MOROCCAN POLICE

The Moroccan authorities did not send ambulances to the scene until 11:30, around two and a half hours after the group arrived at Barrio Chino, and the four ambulances that arrived were engaged primarily in transferring the bodies of those who had died rather than dealing with those who were injured. It is worth noting that the period before the ambulances arrived may have been even longer, as noted in the Spanish Ombudsperson's report.¹²⁴ Later, more ambulances arrived, allowing more injured people to be transferred. The last ambulance left the scene at 21:00. During all that time, minimal medical assistance was provided to the injured at the scene, according to phone interviews and video testimonies of two people who attempted the border crossing, as well as second hand information from people interviewed in Melilla.¹²⁵

One 23-year-old Sudanese man gave a video statement to a journalist, which was reviewed by Amnesty International, in which he describes how Moroccan police officers captured and abused him as he tried to cross the border fences into Melilla with his friend, with whom he had travelled to Morocco from Libya.¹²⁶ He said that as he was crossing between the fences at Barrio Chino, Moroccan police were firing rubber bullets everywhere and they hit him with sticks, causing him to fall just before reaching the door in the final fence to Melilla. When he fell, one Moroccan police officer grabbed him by the right arm and hit him with a black wooden stick on his right hand until bones in his hand broke. Another police officer hit him repeatedly in the left knee with a wooden stick. The young man said that a police officer who he did not see fired a rubber bullet that hit him in his head and knocked him unconscious. Upon waking, he saw that Moroccan police had handcuffed him, and police were hitting people all around him with sticks. The authorities took him to Beni Mellal in a bus, a city over 600km from Nador, on one of the private buses that authorities are thought to have commissioned to transport people from the border to cities around Morocco on the night between 24 and 25 June.¹²⁷ He did not receive medical care on the spot, despite needing treatment for his broken hand, head shot wound and knee injury. "They took us to a place in Beni Mellal and then some police from the city called the ambulance and they took us to hospital".

Abuobida, a Sudanese man who was present at the border crossing attempt, described the lack of medical care provided on the Moroccan side: "I saw just 4 ambulances, but they were only looking for Moroccan people or police people. We were on the bus 10 or 12 hours all injured and we needed medical care. They left us on the road when we arrived in the cities and didn't help us get medical help".¹²⁸

4.2.2. DENIAL OF TIMELY MEDICAL CARE AND OTHER ILL-TREATMENT BY SPANISH POLICE

The border post at Barrio Chino is on Spanish territory and therefore under Spanish jurisdiction. However, at no time did the Spanish authorities make any effort to help and provide medical assistance to the wounded crammed into the facility. What is more, a testimony by Isam, a young man from Sudan, described Spanish authorities forcibly removing people from Spanish territory and transferring them to Moroccan security forces, not only without a due process to assess risks to their safety, but also despite the fact that they were in evident need of medical care.¹²⁹

The attempt to climb the fence and cross into Melilla and the violent response of the Moroccan and Spanish security forces lasted for at least 2 hours. People wounded as well as the bodies of those who died remained between the fences and inside the enclosure of Barrio Chino for a further 9 or 10 hours without any of the

¹²⁴ Ombudsperson, *Actuaciones y medidas de los Cuerpos y Fuerzas de Seguridad del Estado en Melilla*, 14 October 2022, defensordelpueblo.es/resoluciones/actuaciones-y-medidas-de-los-cuerpos-y-fuerzas-de-seguridad-del-estado-en-melilla/

¹²⁵ Interview by voice call with Abuobida Yousef Adam, 5 July 2022; Interview in person with Hassane Ammari, President of AMSVO, 4 July 2022, Tunis; the AMDH, *La tragedie au poste frontalier de Barrio Chino. Un crime ignoble des politiques migratoires europeennes espagnoles et marocaines*, 20 July 2022.

¹²⁶ Video testimony, recorded on 25 July 2022, received by Amnesty International on 29 July 2022.

¹²⁷ Interviews by voice call with Omar Radi, AMDH Nador, and Hassane Ammari, ASMVO, 7 September 2022.

¹²⁸ Interview by voice call with Abuobida, 5 July 2022.

¹²⁹ Interview in person with Isam, 24 July 2022, Melilla.

Spanish officials present providing assistance or taking any action to ensure medical personnel could arrive at the scene.

Spanish authorities appear to have failed to take any action to assist those who were injured on Spanish soil, in the Barrio Chino's enclosure and between the fences.

The Director of Social Intervention and Volunteering of the Spanish Red Cross in Melilla told Amnesty International that they were alerted to the incident by the Civil Guard early on. The Red Cross sent an ambulance to the Barrio Chino area with eight or nine volunteer medical personnel. However, they were not allowed close to the border and were therefore prevented from assisting people there. The Red Cross official interviewed by Amnesty International said: "The ambulance couldn't get closer to Barrio Chino, the Civil Guard had closed the road, therefore our ambulance had to wait at some distance. Medical staff couldn't see what was going on at the border".¹³⁰ During the whole time they were there, medical volunteers were not asked by the Spanish authorities to provide medical care to any of the refugees and migrants. They were only asked to give medical assistance to five Civil Guard officers: one for a bruising and four others for eye irritation due to exposure to tear gas.

The Red Cross official added that an ambulance from the 061 service (Emergency and health Emergencies Service) which apparently took one person to the hospital.¹³¹ Amnesty International also asked the Head of Cabinet of the Government Delegate in Melilla about the emergency medical care provided at the Barrio Chino border post, specifically if other emergency services to support Red Cross were deployed. He said he was not aware of any transfer from Barrio Chino to the hospital and admitted that some of the people who entered Melilla had difficulty breathing because of the tear gas and smoke, but that they were given assistance by the Spanish Civil Guard officers themselves.¹³² However, none of the survivors' interviewed by Amnesty International in Melilla mentioned being assisted by Spanish Civil Guard officers.

Those who managed to get to the centre for temporary accommodation for migrants (CETI) by themselves received medical care from the personnel at the centre and from the Red Cross staff there, where the Red Cross sent another ambulance to support the medical staff at the centre. Nine people were taken to the hospital for further medical examination and treatment.¹³³

In its preliminary report, the Moroccan National Human Rights Council (CNDH) reproached Spain for the reluctance or hesitation of the Spanish authorities in providing people with the help and medical assistance they needed as they were pushed and shoved in front of the turnstile gates. The CNDH considered that this may also have contributed to an increase in the number of injured and dead people.¹³⁴ The AMDH also noted in its report that the Spanish authorities did not provide any assistance to help the wounded at the border post of Barrio Chino.¹³⁵

The obligation to provide assistance to someone in need is set out in Spanish legislation. Article 195 of the Spanish Criminal Code provides for punishment for whoever does not assist a person who is in need of protection or in serious, manifest danger, when able to do so without risk to himself or third parties, and provides a penalty of a fine. The same penalties are applied to whoever, being unable to provide assistance, does not urgently call for outside help. Article 196 provides for an aggravating factor, in case the offence is committed by a professional who is obligated to provide such assistance, deny medical care or abandon the sanitary service. Likewise, article 11 of the Spanish Criminal Code provides for punishment for those, who despite their legal duty to act, failed to act to prevent the result or damage. Evidence gathered by Amnesty International and others indicates that this duty to provide assistance was ignored on 24 June 2022 by Spanish law enforcement personnel and other Spanish authorities in Melilla, causing pain, suffering and harm to people at the border that may amount to torture and other ill-treatment. Moreover, it may have possibly contributed to a number of deaths and the arbitrary deprivation of life of refugees and migrants. However, at the time of writing, the authorities have failed to launch credible investigations into these facts

¹³⁰ Interview in person with the Director of Social Intervention and Volunteering of the Spanish Red Cross, 25 July 2022, Melilla.

Interview in person with the Director of Social Intervention and Volunteering of the Spanish Red Cross, 25 July 2022, Melilla.

¹³² Interview in person with the Head of the Chief of the Cabinet of the Government Delegate in Melilla, 25 July 2022.

¹³³ Interview in person with the Director of Social Intervention and Volunteering of the Spanish Red Cross, Melilla, 25 July 2022

¹³⁴ CNDH, *Incident tragique devant le point de passage entre Nador et Melilla Rapport préliminaire de la mission d'information mandatée par le Conseil national des droits de l'Homme*, 13 July 2022

¹³⁵ AMDH Nador, *La tragedie au poste frontalier de Barrio Chino: Un crime ignoble des politiques migratoires européennes espagnoles et marocaines*, 20 July 2022.

and no one had been held to account for failing to provide urgent assistance and increasing the pain and suffering of those who were wounded.

4.2.2 COLLECTIVE EXPULSIONS, REFOULEMENT AND ILL-TREATMENT BY SPANISH POLICE

As stated above, according to the Spanish Ombudsperson, at least 470 people were summarily expelled and handed over to Moroccan authorities, in breach of the prohibition on collective expulsions and the principle of non-refoulement, both on procedural and substantive grounds.

The vast majority of people attempting to cross the border on 24 June were denied the opportunity to have their claim heard and assessed. Instead, Spanish security forces proceeded with the immediate expulsion of many of those who crossed the border at Barrio Chino. As Isam, a 22-year-old Sudanese man, described to Amnesty International, Spanish security forces forcefully sent injured people across to Moroccan police, “even bleeding or with open wounds, and the Moroccans don’t give any kind of assistance either.”¹³⁶

Zacharias, a 22-year-old man from Chad, said that on 24 June he was caught by Spanish police after he came down from the fence:

“An officer hit me on the head with a truncheon. My face was covered in blood. He tied my hands behind my back, lifted me by my shirt and passed me between the fences where a Moroccan policeman was waiting.”¹³⁷

According to Zacharias, the Moroccan police officer told him:

“Give me your phone, we are going to kill you all.”

He handed over his phone.

“They left me to one side. I think they thought I was not going to escape, there were lots of people there. I could see how Moroccan police officers beat people who were on the ground unconscious... I got away from him [the police officer] and started to run through the area between the fences, I managed to get out through where the Spanish policemen were. I pushed them, there were three of them. I started to run and I don’t even know how I did it. [Before reaching Morocco] I fled Chad and I have passed through eight countries. I asked for asylum in several African countries, but in none of them did I get protection. The 24th [of June] was the first time I tried to enter Spain. I am shocked by what I have seen. I thought Europe was something else, something different.”¹³⁸



Zacharias with a scar on his forehead which he said was the result of being beaten with a truncheon by a Spanish police officer

¹³⁶ Interview in person with Isam (real name withheld), 24 July 2022, Melilla.

¹³⁷ Interview in person with Zacharias, 24 July 2022, Melilla.

¹³⁸ Interview in person with Zacharias, 24 July 2022, Melilla.

5. AFTERMATH OF 24 JUNE

"Please help find my brother, my mother is really worried, she cannot sleep."¹³⁹

Following the violent incident at the border on 24 June, Moroccan and Spanish authorities have continued to commit human rights violations in the days and months afterwards, whose impacts are lived daily by the victims and their families. At least 64 people have been reported as missing by the AMDH and others, with no attempts made by either Moroccan or Spanish authorities to help determine their fate and whereabouts, and sometimes even denying access to important information to NGOs and families about the identity of corpses. Neither the Moroccan nor Spanish authorities have released the results of investigations into the causes of death of those reported dead, nor have they made steps to launch independent investigations into the use of force by border staff. Many of those who survived the incident and remained on Moroccan territory were forcibly transferred to remote areas on buses on the same day, some subjected to further beatings and abandoned by the side of the road. Some were arbitrarily detained before being transferred on buses. One interviewee said he was taken to Nador prison, along with many others who attempted the border crossing, before being taken on a bus and left in Beni Mellal on a bus journey that proved fatal to two of his companions¹⁴⁰ Meanwhile, many of those who managed to cross into Melilla were denied emergency medical care and some were refouled back into Morocco, in a denial of their rights to health. More than 60 individuals who attempted the border crossing have been subjected to seemingly unfair trials in Morocco on charges related to the events of 24 June and sentenced to prison terms ranging from two to three years.

5.1 FORCIBLE TRANSFERS AND ILL-TREATMENT, INCLUDING DENIAL OF EMERGENCY CARE

According to the AMDH, at around 16:00 on 24 June, around 500 people, including many injured, were taken on buses and forcibly transferred to other cities in Morocco, including Agadir, Casablanca and Beni Mellal.¹⁴¹ This account was confirmed by four testimonies, including that of Abuobida, who was one of many

¹³⁹ Interview by voice call with Ishmail, brother of Ahmed, 28 July 2022.

¹⁴⁰ Interview by voice call with a 17-year-old boy from Sudan, 15 September 2022.

¹⁴¹ the AMDH Nador, La tragedie au poste frontalier de Bario Chino: Un crime ignoble des politiques migratoires europeennes espagnoles et marocaines, 20 July 2022.

survivors taken on a 12-hour bus journey from Nador to Agadir on 24 June following the attempted border crossing. He said that there were around seven buses each carrying 35 people going from Nador to Agadir, with many of the passengers in need of medical attention.¹⁴² Abdessalam, another survivor, said that he was taken to a region near Marrakech where he spent several days asking local people for money until he had enough to take a bus to Casablanca.¹⁴³ Both men reported that the Moroccan police took all their belongings in Nador, including their phones, money and Abdessalam's asylum papers. Abuobida said that on arrival in Agadir, he and the other passengers from the bus were left by the side of the road without any support to get medical help.¹⁴⁴ One person whose video testimony Amnesty International reviewed, described how he tried to help injured people as no medical help was being provided.¹⁴⁵

Spokespersons from AMDH and AMSVO told Amnesty International that it is common practice for the Moroccan state to rent privately owned buses, often buses in poor condition, to carry out such dispersal operations from the borders. AMDH estimated that on 24 June there were 28 buses which took around 500 migrants and asylum seekers across the country. Police officers, gendarmes and members of the auxiliary forces often accompany the drivers on these bus journeys to direct them, as they are not told where they will be driving to before they begin the journey. Sometimes the drivers are instructed to drop the passengers off outside the cities, up to 5km from the nearest city.¹⁴⁶ The CNDH report also expressed concern about the insufficient access to emergency healthcare and assistance.¹⁴⁷

5.2 ENFORCED DISAPPEARANCES

Following the violent incident at the border on 24 June, local NGOs reported that 77 people have not been seen since then and that the Moroccan Ministries of Justice and the Interior have done nothing to help identify their fate and whereabouts and have in fact obstructed attempts by their families and local NGOs to locate the missing persons.¹⁴⁸ All these individuals were last seen in the custody of state officials, either put in buses to be transferred to cities across Morocco or otherwise being restrained at the border, and the authorities of both Morocco and Spain have refused to acknowledge the deprivation of liberty or have concealed the fate or whereabouts of these individuals.

Kori, a 17-year-old Sudanese boy, lost many friends on 24 June.¹⁴⁹ He said that on 24 June, after the event, he along with "all of the people captured by the police were taken by the Moroccan police to the prison, then after that in the prison they were being beaten by hammers in their head until they passed away. Others when they were beaten they also passed away". According to his testimony, some policemen shot people in the head directly with rubber bullets while in prison. After a few days, he said, the police "started removing people and taking them to the Algerian desert, about 200km from the city. Those who were badly injured were taken to hospital and others were distributed within cities in Morocco." He told Amnesty International, "I was kept in the prison for 2 days. Then they put me on a bus and left me in Beni Milal. On my way two of my colleagues died in the bus."¹⁵⁰

Under the International Convention for the Protection of All Persons from Enforced Disappearances, which has been ratified by Morocco and Spain, states have an obligation to ensure the participation of all those who have a legitimate interest in the search of disappeared persons and to provide them with all the information at their disposal.¹⁵¹ AMDH attempted to locate people who were reported missing by going to the

¹⁴² Interview by voice call with Abuobida Yousef Adam, 1 July 2022.

¹⁴³ Interview by voice call with Abdessalam Mohamed Abdallah Ibrahim, 5 July 2022.

¹⁴⁴ Interview by voice call with Abuobida Yousef Adam, 1 July 2022.

¹⁴⁵ Video testimony, recorded on 25 July 2022, reviewed by Amnesty International on 29 July 2022.

¹⁴⁶ Interviews by voice call with Hassane Ammari, AMSVO, and Omar Naji, AMDH, on 7 and 8 September, respectively.

¹⁴⁷ CNDH, *Preliminary report*, 'Incident tragique devant le point de passage entre Nador et Melilla: Rapport préliminaire de la mission d'information mandatée par le Conseil national des droits de l'Homme- Conclusions préliminaire', 13 July 2022; Le Monde with AFP, 'Drame dans l'enclave espagnole de Melilla au Maroc : nouveau bilan de 23 migrants morts', 25 June 2022, lemonde.fr/afrique/article/2022/06/25/drame-dans-l-enclave-espagnole-de-melilla-au-maroc-le-bilan-grimpe-a-vingt-trois-migrants-morts_6132053_3212.html

¹⁴⁸ Interview by voice call with Omar Naji, AMDH, 8 September 2022; *Algerie Presse Service*, 'Drame de Melilla: 73 migrants toujours portés disparus', 19 September 2022, aps.dz/monde/144922-drame-de-melilla-73-migrants-toujours-portes-disparus

¹⁴⁹ Interview by voice call with Kori (real name withheld), 15 September 2022.

¹⁵⁰ Interview by voice call with Kori (real name withheld), 15 September 2022.

¹⁵¹ Articles 18 and 24 of the International Convention for the Protection of all Persons from Enforced Disappearance, to which Morocco is a state party, obliges authorities to respect the right to participation of any person or organization with a legitimate interest in taking part in the

hospital and to the Nador court and getting authorisation by the judge to access the morgues, but the hospital did not let them enter. The hospital in Hassane, Nador, had also not registered the deaths, as is protocol. The AMDH was not able to determine the fate and whereabouts of 73 individuals who were present at the border on 24 June neither among those imprisoned, among people they were able to identify as bussed away from Nador, or among those who are known to have made it into Melilla.

The Moroccan authorities have also refused to publish the list of those deceased and to actively inform their families. The authorities have also made it practically impossible for other organizations such as the AMDH and ICRC to carry out their work in searching for missing people. The Moroccan authorities have failed to create a liaison office where the families of those missing and organisations such as the AMDH could look to check the names. More importantly, the authorities have not put in place a mechanism by which they could release information to local NGOs who could then inform the families of those whose fate and whereabouts are still unknown.

5.2.1 DENIAL OF THE RIGHT TO INFORMATION AND PARTICIPATION IN THE SEARCH OF THE MISSING

Members of a local organization who asked not to be named because of fear for their safety reported that, when they went to visit migrants and refugees in Nador hospitals on 25 June, hospital staff refused them entry and would not give them any information about the numbers of people they were treating or about the types of injuries sustained, telling them only that all their emergency departments were treating migrants from the 24 June events.¹⁵² A spokesperson from the organization said that there was clearly fear of reprisals among hospital staff of speaking openly about this and that each member of hospital staff referred them on to someone else.

The AMDH sent a letter to the Prosecutor General and the Ministry of the Interior on 27 July 2022, stating that 64 people from the attempted border crossing on 24 June were still missing.¹⁵³ Many people who had not heard from their family members or friends since the attempted border crossing had contacted the AMDH and four of the initial 68 feared missing had been located since then. The estimated number of missing people has since increased to 77.

Ishmail, the brother of Sudanese migrant Ahmed Babikar who was last seen at the border on 24 June, told Amnesty International that he last spoke with Ahmed on 4 June 2022, when he called to say that he had arrived in Morocco after travelling from Libya with their uncle.¹⁵⁴ Then, on 28 June, their uncle called Ishmail to tell him that he, Ahmed and their friend Nacer had all tried to cross into Melilla on 24 June but that, while he himself was now in Casablanca and Nacer in Melilla, they had no information about Ahmed and no one knew where he was, even if he was alive or dead. Ishmail said that he spoke to the AMDH but they have not been able to obtain any information about his brother, either in Melilla or anywhere in Morocco, and that the Moroccan police are not helping them look for him. He said that this lack of information is putting a great strain on the family:

“Please help find my brother, my mother is really worried, she cannot sleep.”¹⁵⁵

Jalal, the brother of Abdel Shakour Yehia, a 24-year-old Sudanese man, has not heard from his brother since 20 June at 15:00, when he called him from the mountains in north Morocco and told Jalal that he was preparing to cross the border into Melilla on 24 June with a large group. Jalal, who is in Sudan with the rest of his family, said that he learned of his brother’s disappearance when he saw photos of him circulating on Facebook by groups trying to find people who were missing after the 24 June Melilla crossing.¹⁵⁶ He

search for a missing person. The Convention obliges authorities to ensure interested parties have access to information on the action taken and on the progress and results of the search and the investigation makes every possible attempt to carry out recognition and family tracing, as well as investigating the cause of death. [ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced)

¹⁵² Interview by voice call with a member of the local organization (wishes to remain anonymous), 4 July 2022.

¹⁵³ AMDH Nador, Twitter post, 27 July 2022, twitter.com/NadorAmdh/status/1552340042873536512 : “Lettre du bureau central d’AMDH aux: Chef du Gouvernement, Ministre de l’Intérieur et la Présidente du CNDH pour faire toute la lumière sur les 64 migrants portés disparus.”

¹⁵⁴ Interview by voice call with Ishmail, brother of Ahmed, 28 July 2022.

¹⁵⁵ Interview by voice call with Ishmail, brother of Ahmed, 28 July 2022.

¹⁵⁶ Interview by voice call with Jalal, 28 July 2022.

contacted the AMDH in Nador but does not have any information about his brother's fate and whereabouts. He said: "If my brother was alive then he would have contacted us, so I think that he is disappeared".

Omar Naji, director of the AMDH in Nador, stated on 29 July that before 24 June the Moroccan authorities "had sometimes helped" them search for missing people. He said: "Before, when a family looked for someone from the family, we sent the photo, we go straight to the hospitals and the morgues and so they responded straight away. We could also go to the gendarmes to look for corpses, previously. But with the dossier of 24 June, we don't have any info, in the morgue they wouldn't let us look at the corpses, we showed him the photos and normally they should look and compare with our photos, but he refused to do that. They said it's the control of the police, because they say the police are doing an investigation".¹⁵⁷

Mohamed, the cousin of Mazen Haroun, a 23-year-old Sudanese man, has not heard from Mazen since 8 June 2022, when he told him in a phone call that he planned to cross the border to Spain along with other refugees and migrants.¹⁵⁸ After the events of 24 June, Mohamed received a call from France from someone saying they were a friend of Mazen and that they saw photos of him being shared on Facebook and reporting that he had died. Mohamed reached out to the people who were sharing photos of his cousin who confirmed that they were with Mazen on 24 June, but that they had lost track of him during the border crossing attempt. Mohamed spoke with someone who said he was laying on the ground next to Mazen when the authorities caught them, but that he didn't know if Mazen, as he lay next to him, was dead or if he had fainted. Mohamed, currently living in Libya, said that he has asked the AMDH about Mazen's fate and whereabouts. Mohamed has not lost hope to find him alive, "because I can see on the Facebook page of AMDH that some people previously reported missing- following 24 June- are now turning up alive, so I have hope!"

Kori, a 17-year-old man from Sudan, lost track of many friends he was with after attempting to cross into Melilla on 24 June. He said they were together on the mountain and as they went towards Barrio Chino but then,

"After the event, we never saw them again. We asked people who are in Melilla, but they are not there. We also asked the people in Algeria, but they didn't see them. Also, in Morocco, in the cities here, we asked, and no one saw them. Also, we have one group on social media that connects all of us, but everybody says they never heard of them again after the event. We don't have any idea where they are."¹⁵⁹

On 31 August, Nadir, brother of Abdellah Omar Abdellah, a Sudanese man who attempted the border crossing on 24 June, travelled from Norway, where he lives, to Morocco to try and find any information about his brother with the help of AMDH. The judge from the court of appeal gave them authorisation to see the corpses and so, on 31 August, Nadir and Omar Naji from AMDH went to the Hassani hospital in Nador, but the hospital refused to let them see the corpses, alleging that they would be decomposed and so difficult to identify, and that getting the bodies out of the morgue would be a big effort. The AMDH contested this, saying that they have previously been able to identify bodies three months after their death. The judicial police allowed Nadir to view photos of 23 bodies, but his brother was not among them. Omar Naji said that, in previous instances, when a refugee or migrant died, they were registered at the death service of hospitals before being taken to morgues, but this was not done with any of the 23 bodies at the morgue, all of which had been put in the mortuary without being registered. The death service at Hassani hospital told Nadir that this is because the death service "has no relation to the bodies of those who died on June 24," and that the death of refugees and migrants "would be under the responsibility of the security services". This contradicts the assertion of Dr Adil Shimi, member of the CNDH information commission on Nador-Melilla, on 13 July, that he had consulted the death register during their mission.¹⁶⁰

According to international law and standards, a police investigation should not hinder the identification of the deceased and the communication of the fate and whereabouts to their next of kin. Authorities are obliged under Article 5 of the International Convention for the Protection of all Persons from Enforced Disappearance, to which Morocco is a state party, to respect the right to participation of any person or

¹⁵⁷ Interview by voice call with Omar Naji, AMDH, 29 July 2022.

¹⁵⁸ Interview by voice call with Mohamed Salah El taieb Haroun, cousin of Mazen Haroun, 13 September 2022.

¹⁵⁹ Interview by voice call with Kori (real name withheld), 15 September 2022.

¹⁶⁰ Salaheddine Lemaizi, *Enass Media*, 'Drame de Nador-Melilla : Omerta autour des corps des migrants', 2 September 2022, enass.ma/2022/09/02/drame-de-nador-melilla-omerta-autour-des-corps-des-migrants/

organization with a legitimate interest in taking part in the search for a missing person. The Convention obliges authorities to ensure that interested parties have access to information on the actions taken, the progress made, and the results of the search, and that the investigation makes every possible attempt to carry out recognition and family tracing, as well as investigating the cause of death.¹⁶¹

However, far from facilitating efforts to establish the facts, the Moroccan authorities appear to have taken steps to obstruct initiatives to establish the fate and whereabouts of people who have not been seen or heard of since 24 June.

On 26 June, the AMDH circulated images of an estimated 16 to 21 purpose-built graves dug in the Sidi Salem cemetery on the outskirts of Nador, the next town from Melilla, thought to have been dug by the Moroccan authorities to enable people to be buried quickly before any autopsies or investigations into the causes of death had been carried out.¹⁶² Amnesty International was able to verify through satellite imagery that at the Sidi Salem cemetery there was new disturbed earth visible between 16 June and 27 June in an area of approximately 218m². Based on graves analysed by Amnesty International in the past, this area could hold approximately 30 individual graves. The AMDH has said that, following heavy criticism by the AMDH and other civil society organizations, the authorities abandoned the grave-digging project after completing 16 out of a planned 21 graves. However, the authorities increased their presence guarding the cemetery and forbade journalists from entering to confirm this.

The fate and whereabouts of the majority of the missing people have not been confirmed to date. The day after the attempted border crossing, on 25 June, the AMDH were able to access the Nador morgue, for the first and only time following this event, and found 15 bodies of people who appeared to have suffered injuries to their heads and faces, chest and feet. After publishing this information, police control of the morgue was ramped-up and they have since not permitted the AMDH to look at the bodies held in the morgue or to verify their identities.

Abdassalam told Amnesty international that he saw a white ambulance taking the bodies of his brother and cousin away from the border crossing on 24 June, but that he has no idea where their bodies are, nor whether they were buried or not.

Huwaida, the niece of Anwar, a 24-year-old Sudanese man, thought her uncle was missing after 24 June until she saw videos and photos of him posted online. "I saw him in a video laying on the ground and he looked dead. I also saw his photos, and he looked like a dead person. AMDH also confirmed to me that he's dead. After the 24 June event, I went on the page of AMDH and I saw many photos of migrants, including a photo of Anwar. I then contacted the page and they assured me he's dead".¹⁶³ Huwaida last spoke with her uncle on 24 May, when he told her that he was going to a forest and then planned to cross the border. " I used to call on his phone, but the phone stopped being operational after the incident. I have an uncle who lives in France who went to Spain to verify the news of the passing of Anwar, but the authorities in Spain didn't allow him to do anything. Now, we're almost sure that Anwar is dead. His family here knows."

¹⁶¹ United Nations, *International Convention for the Protection of All Persons from Enforced Disappearance*, Ratified by Morocco in 2007, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

¹⁶² AMDH Nador, Twitter post, 26 July 2022, twitter.com/NadorAmdh/status/1541028758840393728 : " Les craintes soulevées s'avéraient réelles: ce matin, les autorités de Nador préparent 21 tombes au cimetière de sidi Salem pour enterrer des migrants morts le vendredi. Sans enquête sans autopsie sans identification, les autorités cherchent à cacher le désastre. Un vrai scandale."; the AMDH Nador, Twitter post, 26 June 2022, twitter.com/NadorAmdh/status/1541149913479892993 : "16 tombes en total creusés jusqu'à présent pour enterrer les migrants morts. Les autorités vont- il les enterrer de nuit ou attendre à demain?"

¹⁶³ Interview by voice call with Huwaida, niece of Anwar, 13 September 2022.

5.3 CONCERNS THAT SOME PEOPLE WERE SUBSEQUENTLY SUBJECTED TO UNFAIR TRIALS

On 24 June, Moroccan police arrested 65 people for taking part in the attempted border crossing on 24 June and took them to the Selouane prison, around 15km from Nador. The police confiscated their phones and other possessions.¹⁶⁴ Four people, three of whom were minors under the age of 18, were subsequently released; 61 remain detained at the time of writing, having all been sentenced to between two and three-years in prison on charges related to the 24 June border crossing attempt, including "insult and violence towards agents of authority and order forces" (Articles 263 and 265 of the Penal Code), "rebellion" (Articles 300, 301 and 302 of the Penal Code), "destruction of public property" (Article 303bis of the Penal Code), "causing injury with bladed weapons" (Article 400 of the Penal Code), "facilitation and organization of irregular emigration and irregular entry" (Article 52 of Law 02-03), and "leaving the Moroccan territory in a clandestine manner" (Article 50 of Law 02-03).¹⁶⁵

Their defence lawyer expressed concerns about the respect of the defendants' right to a fair trial, including by not allowing them the chance to express themselves in their own words. Moreover, fair trial guarantees and safeguards against torture and other ill-treatment require that the prosecution prove its case without reliance on evidence obtained by torture or other ill-treatment, coercion or oppression, and judges must exclude all evidence obtained under coercion. While the lawyer who spoke to Amnesty International did not specifically say that the confessions were written under duress, he noted that all of the defendants' statements in their police reports were identical, suggesting that they had been copy and pasted and thus were not the true words of each defendant.

On 3 August, a lawyer presented additional accusations of damages on behalf of three members of the public forces and the DGSN (General direction of the national security). The lawyer who spoke to Amnesty International noted that the members of the DGSN, were unable to recognise the individuals who they accused, or even to differentiate between them. This is a breach of the right to the presumption of innocence.

On 29 September, 33 people were sentenced on appeal to three-years in prison for "insult and violence towards agents of authority and order forces", "rebellion", "destruction of public property", "carrying weapons in circumstances likely to undermine public order", "facilitation and organization of irregular emigration and irregular entry". They were acquitted of the offences of "armed gathering" and "causing injury with bladed weapons".¹⁶⁶ Fifteen of those accused were also charged with "leaving the Moroccan territory in a clandestine manner".¹⁶⁷

On 3 August, a judge in the Nador appeals court sentenced 13 people,¹⁶⁸ of which 12 are from Sudan and one is from Chad, to two and a half years of imprisonment and a fine of 10,000 Moroccan dirhams (around USD920) for "taking part in a criminal gang to facilitate emigration", "irregular entry and stay", "rebellion", "premediated violence towards public officials", "degradation of public property", and "armed gathering".¹⁶⁹

¹⁶⁴ Interview by voice call with an anonymous member of a local NGO who was present at the trials, 29 July 2022.

¹⁶⁵ Interview by email with a lawyer who wishes to remain anonymous, 23 August 2022.

¹⁶⁶ The Moroccan Penal Code Articles 263 and 265 refer to "insult and violence towards agents of authority and order forces". Articles 300, 301 and 302 refer to "rebellion". Article 303bis refers to "destruction of public property". Articles 303 and 303bis refer to "carrying weapons in circumstances likely to undermine public order". Article 400 refers to "causing injury with bladed weapons". Article 52 of Law 02-03 refers to "facilitation and organization of irregular emigration and irregular entry" and punishes anyone who organises or facilitates the entry or exit in and out of Morocco to 6 months to 3 years in prison and a fine of 50.000 à 500.000 dirhams. Article 20 of the Dahir n°1-58-377 related to public gatherings refers to "armed gathering".

¹⁶⁷ Article 50 of Law 02-03 refers to "leaving the Moroccan territory in a clandestine manner".

¹⁶⁸ Case [335/2610/2022], and case [337/2610/2022].

¹⁶⁹ Article 52 of Law 02-03 refers to "taking part in a criminal gang to facilitate emigration". Article 42 of law 02-03 refers to "irregular entry and stay and punishes every foreigner who penetrates or who attempts to penetrate the Moroccan territory in violation of Article 3 of Law 02-03 to a fine of 2.000 to 20.000 dirhams and imprisonment of one month to 6 months. Articles 300, 301 and 302 refer to "rebellion". Article 267 of the Penal Code refers to "premediated violence towards public officials". Article 303bis of the Penal Code refers to "degradation of public property". Article 20 of the Dahir n°1-58-377 related to public gatherings refers to "armed gathering". Article 267 of the Penal Code punishes anyone who commits violence towards a magistrate, public official, commandant or police agent in the exercise of their functions to imprisonment of three months to two years.

They also faced additional charges which the prosecution presented during the appeals trial of damages, on behalf of three members of the public forces and the Moroccan national police force, the DGSN . The 13 defendants were sentenced to make a joint payment of 35,000 Moroccan dirhams (around USD 3200) in damages to the three civil party complainants.

On 13 October, the Nador Appeals court sentenced fifteen more people to between two and three-years in prison for the same charges as the 13 people mentioned above, in addition to “illegal fire” and “sequestration”.¹⁷⁰ The court acquitted them of the charge of "armed assembly", and requalified the crime of "belonging to an organized criminal gang with a view to facilitating the irregular emigration of others" to "facilitating the irregular emigration of others".¹⁷¹

¹⁷⁰ “Illegal fire” (Article 581 of the Penal Code) and “sequestration” (Article 436 of the Penal Code). their lawyer explained that he appealed the two judgements and is awaiting the results of his appeal.

¹⁷¹ Interview by email with a lawyer who wishes to remain anonymous, 25 October 2022

6. LACK OF ACCOUNTABILITY

On 1 November 2022, the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, together with the Working Group of Experts on People of African Descent and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions issued a statement regarding the events of 24 June which began by saying: “It is alarming there is still no concrete accountability months after dozens of migrants of African descent, including refugees and asylum seekers, died during violent encounters with border security forces in Melilla, Spain”.

Amnesty International shares their profound concern at the complete absence of truth, justice and reparations to the victims and survivors of 24 June and their families. On the basis of the research conducted for this report, there are strong grounds to believe that both Moroccan and Spanish officials committed serious human rights violations on 24 June 2022 in and around the Barrio Chino border crossing as well as in the aftermath of this day. There is compelling evidence that they used unnecessary and excessive force, committed some acts which may amount to torture and other ill-treatment, including beatings even after the individual was restrained or in custody and the denial of medical care to people injured by state officials, which likely contributed to the at least 37 people dying and many others being injured. They also failed to ensure that people’s right to seek international protection was respected, instead committing refoulement by forcing people back into the hands of Moroccan officials where they were at real risk of serious human rights violations. Many people were forcibly transferred away from the border crossing, and many have been subjected to enforced disappearance as their fate and whereabouts continue to be unknown. To date, the authorities have failed to launch credible, independent and impartial investigations for these serious breaches of international human rights law and to bring all those suspected of criminal responsibility to justice in fair trials. Indeed, the authorities in both Spain and Morocco have failed to investigate what happened both in the days leading up to and on 24 June and have continued to violate the right to information, truth and justice for the families and friends of at least 77 individuals who have not seen or heard from their loved ones since they were last seen in the hands of Moroccan forces that day.

6.1 MOROCCO

On 27 June, the Moroccan Ministry of Foreign Affairs and the Ministry of the Interior hosted a meeting in Rabat with a group of ambassadors from African countries including Cameroon, Chad and Gabon, to discuss Moroccan migration policy. While there was general condemnation of the events of 24 June, the group of ambassadors expressed their solidarity with Morocco and willingness to cooperate on migration strategies. The Ambassador of Gabon, for example, said that he was “working with the Moroccan authorities to make

our citizens aware of the fact that Morocco is only protecting its territory and that illegal immigration cannot be encouraged.”¹⁷²

Following pressure from organizations such as the AMDH, the Moroccan authorities launched an investigation into the cause of death of people who died on 24 June or subsequently of their injuries.¹⁷³ The results of the investigation have yet to be published. During the investigation, no NGOs were permitted to enter to the morgues, preventing possible identification of missing persons and impeding the ability of families to access information about loved ones missing since that day.

To this date, no single Moroccan official has been sanctioned for their responsibility in the events of 24 June.

6.2 SPAIN

On 21 September, the Minister of the Interior appeared before the Plenary of the Congress of Deputies after the request of various parliamentary groups such as Grupo Parlamentario Plural, Grupo Parlamentario Republicano and Bildu. During his appearance, the Minister of the Interior regretted the migrants' deaths and revealed that the number of Civil Guards injured had increased to 55. Regrettably he did not have any consideration for the hundreds of migrants and refugees injured on both sides of the border. The Minister of the Interior not only justified the activity of both Spanish and Moroccan police forces, but failed to explain the performance of the Spanish police forces regarding the use of force or the deployment of less-lethal weapons. On the contrary, the Minister blamed the people attempting to cross themselves for the dramatic outcome of both deaths and hundreds of injuries. In response to questions from the different parliamentary groups, he said: “[...] in order to work on a given situation, it is essential to agree on words, terms and concepts to be used. I say this because any spectator who has followed many of your speeches might think that events we are debating have happened on national territory, might think that we have to lament loss of human lives on Spanish soil, even think that people who try to access our territory were forced to do so because they had no other choice. Three falsehoods, ladies and gentlemen, which I believe we must put in their proper terms.

Previously, on 25 June, Spanish prime minister Pedro Sanchez denounced the incident as a violent assault by “mafias” and human traffickers, expressed his support for the Civil Guard and police and thanked the Moroccan gendarmerie.¹⁷⁴ He later went back on his praise of the Moroccan police, saying that he had not seen the images of the Melilla tragedy when he issued his initial comments.¹⁷⁵

On 28 June, the Attorney General commanded the prosecutor of the Aliens Chamber to open an inquiry into the events of 24 June due to the elevated number of deaths and injured people at the border crossing of Barrio Chino.¹⁷⁶ On 7 July 2022, the prosecutor of the Aliens Chamber of the Attorney General's Office declined a meeting with Amnesty International due to the reserved nature of the enquiry. On 8 August 2022 Amnesty International addressed a letter to her with its preliminary findings after gathering testimonies in Melilla that suggested collective expulsions, ill-treatment and failure of the duty to provide assistance by the Spanish law enforcement officers. Up to 15 November 2022 there has been no response from the prosecutor. On 9 November 2022 the prosecutor would have formally requested to receive all official footage available as the one already sent by the Ministry of Interior to her office for revision, contains time gaps that prevent having a clear understanding of the entire sequence of events.¹⁷⁷

¹⁷² MAP News, 'African ambassadors welcome Morocco's migration policy: Express readiness to collaborate with Moroccan authorities', 27 June 2022, mapnews.ma/en/actualites/politics/african-ambassadors-welcome-morocco%E2%80%99s-migration-policy-express-readiness; Safaa Kasraoui, Morocco World News, 'Morocco's migration policy amid accusations', 27 June 2022, morocroworldnews.com/2022/06/349942/melilla-african-ambassadors-back-moroccos-migration-policy-amid-accusations

¹⁷³ CNDH, Preliminary report, 'Incident tragique devant le point de passage entre Nador et Melilla Rapport préliminaire de la mission d'information mandatée par le Conseil national des droits de l'Homme- Conclusions préliminaire', 13 July 2022, On file with Amnesty International.

¹⁷⁴ France 24, "Spain calls deadly migrant rush an 'attack' on its territory", 25 June 2022, france24.com/en/africa/20220625-18-migrants-die-in-mass-attempt-to-enter-spain-s-enclave-melilla-in-marocco; Camille Gijs, Politico, "Melilla migrant deaths fuel new Spanish coalition fissure", 27 June 2022, politico.eu/article/pedro-sanchez-melilla-migrant-deaths-fuels-spanish-coalition-fissure/

¹⁷⁵ Luanna Muniz, *Politica*, "Sanchez says he 'hadn't seen' Melilla images when he praised Moroccan police", 29 June 2022, politico.eu/article/sanchez-had-not-seen-images-melilla-praised-moroccan-police/

¹⁷⁶ Angeles Vázquez, *Politica*, "La fiscal general encarga a la responsable de Extranjería investigar las muertes de la valla de Melilla", 28 June 2022, epe.es/es/politica/20220628/fiscal-general-extranjeria-investigar-muertes-melilla-13955196

¹⁷⁷ "La Fiscalía pide más imágenes de la tragedia de Melilla e Interior asegura que todos los vídeos fueron entregados", 9 November 2022, rtve.es/noticias/20221109/fiscalia-pide-mas-imagenes-tragedia-melilla-interior-asegura-todos-videos-fueron-entregados/2408515.shtml

In July 2022, a team from the Ombudsperson's Office travelled to Melilla to carry out an investigation, following a written complaint from seven NGOs dated 27 June.¹⁷⁸ According to one of the NGOs that met with the Ombudsperson during his visit to Melilla, the Ombudsperson said he had requested footage from the cameras installed on the perimeter from the Ministry of the Interior immediately after he received the complaint.¹⁷⁹ On 8 August 2022, Amnesty International filed a complaint with the evidence collected during its mission to Melilla between 22-26 July 2022. On 19 September 2022, the Ombudsperson notified that the complaint had been admitted and that after having initiated the proceedings before the competent administrative organ, the Ombudsperson's position on the events would be notified.

On 14 October, the Ombudsperson published a press release with an advance of its conclusions on the investigation into the events on 24 June. Among other things, the investigation concluded that at least 470 people were expelled at the border without observing international and domestic legal obligations.

On 20 October, the Ombudsperson Office sent a communication to Amnesty International.¹⁸⁰ According to it, the Ombudsperson had requested information to the Government Delegate in Melilla, the Spanish Civil Guard and the President of the city of Melilla. He also requested some footage for review to the Ministry of Interior. Some of it was only received on 20 September, two months after it was initially requested, and the Ombudsperson is still expecting to receive the pending footage requested.

The Ombudsperson has addressed a number of recommendations to the Ministry of Interior to ensure its actions are aligned with domestic legislation and with Spain's international human rights obligations; to promote the revision of protocols with the Moroccan security forces to comply with objective 23 of the Global Compact for Migration -related to strengthening international cooperation and global partnerships for safe, orderly and regular migration; to ensure that information on international protection is provided in cooperation with the Ministry of Inclusion and the European Union Agency for Asylum. The Ombudsperson also has reminded the Ministry of Interior of the legal obligation to comply with human rights standards in border management, such as the right to physical and moral integrity, and not to be subject to any form of torture or other ill-treatment, and to ensure that its actions comply with obligations enshrined in the Organic Law 2/1996¹⁸¹ In the communication to Amnesty International, the Ombudsperson informed the organization that it is still awaiting information from the Ministry of Foreign Affairs regarding the extent to which people can apply for an asylum visa at Spanish embassies; from the National Institute of Health Management regarding the protocols on the injury reports of people assisted by emergency personnel that day.

Finally, the Ombudsperson also informed that both the testimony and the injuries report from one of the people his team interviewed at the CETI has been addressed to the public prosecutor for further enquiry. Should the Ombudsperson conclude that there have been human rights violations on 24 June 2022 in Melilla, he could file a request with prosecutors to open criminal investigations.

The Ombudsperson, in a report published and available at its webpage,¹⁸² regrets that there is an important lapse of time missing in the footage sent by the Secretary of State of the Ministry of Interior on 20 September, that also does not incorporate audio. According to this report, the Ministry of Interior explained to the Ombudsperson that the Spanish law enforcement officials "were not aware of, nor did observe directly, nor through the border perimeter, the risky situation to which these people were exposed". Also, when Civil Guard officials accessed to the enclosure of Barrio Chino, "no injured or dead people were found, because at that time the Moroccan security forces had neutralized the attempted entry by force, as well as cleared the access to the facilities on the Spanish side" The Ombudsperson questions the Ministry of Interior's version as the images captured by the drone and the cameras at the fences show the dangerous situation that emerged at the Barrio Chino crossing point, about which the agents who participated in the operation should have had constant information.

In a meeting with the Head of Cabinet of the Government Delegate, Amnesty International asked if any efforts had been made to immediately seal off the area around Barrio Chino to preserve the evidence for any subsequent investigation. He replied that no such steps were taken but that the area had not been cleared,

¹⁷⁸ Ombudsperson, "Ángel Gabilondo se reúne con el presidente de Melilla y con la delegada del gobierno", 27 July 2022, <https://www.defensordelpueblo.es/noticias/reunion-autoridades-melilla/>

¹⁷⁹ Meeting in person with a representative of the NGO Geum Doudou, 23 July 2022, Melilla.

¹⁸⁰ Letter from the Spanish Ombudsperson to Amnesty International Spain, 20 October 2022. On file with Amnesty International.

¹⁸¹ Art.5 of Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad del Estado.

¹⁸² <https://www.defensordelpueblo.es/resoluciones/actuaciones-y-medidas-de-los-cuerpos-y-fuerzas-de-seguridad-del-estado-en-melilla/>

so it was possible to find police riot equipment material for several days afterwards. In fact, journalists and other people who went to the site in the aftermath of 24 June were able to collect material such as cartridges and rubber balls that had been fired.

Amnesty International asked both the doctor at the CETI and the Red Cross representative whether there was any protocol in place to determine the cause of the injuries to the 57 people who required medical assistance. Both said that no report on the causes of injuries had been made following this or previous incidents to determine whether the injuries were due to use of force by the police or a fall from the fences.

7. INTERNATIONAL LAW AND STANDARDS

Both Morocco and Spain¹⁸³ are party to multiple international and regional treaties which require them to respect and protect the rights of all people, including migrants and refugees. In fact, all the various monitoring mechanisms which oversee state compliance with their legal obligations under the respective treaties have emphasised the specific duty to tackle racism and other forms of discrimination. People on the move, including migrants and refugees, and more specifically within this group Black people are particularly at risk of being subjected to abuse by both state officials and private actors because of the ways in which discrimination on different grounds operates together to produce a compounded or distinct disadvantage for them.

7.1 THE PROHIBITION ON RACIAL DISCRIMINATION IN MIGRATION

The principles of equality and non-discrimination run throughout international human rights law and standards and aim to achieve formal equality in law and in practice.¹⁸⁴ However, increasingly there is recognition in international human rights law and scholarship that immigration laws, policies and practices are far from race-neutral, even if they appear to be. In practice, in many parts of the world, non-white migrants are more at risk of discrimination and other human rights violations than white migrants, regardless of nationality.¹⁸⁵ As highlighted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in her 2018 report, all humans should be entitled to human rights and dignity. The reality, however, is that states through a series of technical requirements - such as passports, proof of immigration status or citizenship - precondition the full enjoyment of human rights.¹⁸⁶ According to the Special Rapporteur, these policies and laws which confer access to citizenship,

¹⁸³ Spain has ratified all the major international human right treaties with the exception of the International Convention on the Protection of the Rights of all Migrants Workers and Members of Their Families. See [ohchr.org/en/countries/spain](https://www.ohchr.org/en/countries/spain). At regional level, Spain ratified the European Convention on Human Rights in 1979. Morocco has ratified all the major international human rights treaties, including the International Convention on the Protection of the Rights of all Migrants Workers and Members of Their Families, which they ratified in 1993, but with one reservation: "The Government of the Kingdom of Morocco does not consider itself bound by article 92, paragraph 1 of this Convention which provides that any dispute between two or more States Parties concerning the interpretation or application of the present Convention shall, at the request of one of them, be submitted to arbitration. The Government of the Kingdom of Morocco considers that any such dispute may be submitted to arbitration only with the agreement of all the parties to the conflict." See https://www.unhcr.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-13&chapter=4&clang=_en#EndDec

¹⁸⁴ Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 25 April 2018, UN Doc. A/HRC/38/52, para.18.

¹⁸⁵ Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para. 30.

¹⁸⁶ Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para. 7 states: "Under international human rights law and principles, all human beings are entitled to fundamental human rights on account of their inherent dignity. The preamble to the Universal Declaration of Human Rights begins with the proclamation that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the

nationality and immigration status are often race-neutral in theory, but in practice result in racialized exclusion.¹⁸⁷

Racial discrimination is explicitly prohibited in the context of deportations. The Committee on the Elimination of Racial Discrimination has indicated that states must ensure that: (1) domestic legislation concerning deportations does not discriminate in purpose or in practice among non-citizens based on race, colour or nationality, and that non-citizens have equal access to effective remedies, including the ability to challenge expulsion orders, and equal access to effective remedies, (2) non-citizens are not subject to collective expulsions without taking into account the personal circumstances of each individual, (3) non-citizens are not returned to a country where they risk torture or other ill-treatment and (4) that non-citizens, especially long-term residents, are not expelled if it would interfere with their right to a family life.¹⁸⁸

It is perhaps worth recalling that the UN Committee against Torture, the UN Human Rights Committee, the UN Committee on the Elimination of Racial Discrimination, the UN Working group of Experts on People of African Descent have all raised specific and consistent concerns with both the Moroccan and Spanish authorities about the safety of Black people in the region of Ceuta-Melilla, and their human rights including their right to life, to be free from torture and other ill-treatment, forcible transfers and discrimination for over a decade.¹⁸⁹ Additionally, the European Court of Human Rights has set down in a number of cases that whilst states can take steps, including using force, to prevent unauthorized entry at borders, there are limitations. States are not free to employ practices or use force in ways that violate human rights, including the right to life and freedom from torture and other ill-treatment.

7.2 RIGHT TO LIFE

In 2017 the UN Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions underlined that whilst states are entitled to exercise jurisdiction over their borders, they must do so on the basis of their human rights obligations, including their obligations with regard to the right to life of refugees and migrants. In the same report the Special Rapporteur noted that “every human being, including

foundation of freedom, justice and peace in the world. In reality, however, for all human beings, their capacity to enjoy full human rights depends on their citizenship, nationality or immigration status. Everywhere, States require passports, identification cards and other forms of proof of citizenship in order for residents to enjoy access to health care, education, financial services and to maintain formal employment. In short, citizenship, nationality and immigration status remain preconditions for full enjoyment of human rights for people everywhere.” Also see: Tendayi Achiume, “Racial Borders”, 110 *Georgetown Law Journal* 445 (2022), UCLA School of Law, Public Law Research Paper No. 21-33, May 2022, papers.ssrn.com/sol3/papers.cfm?abstract_id=3962563

¹⁸⁷ Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para.14. “At the same time, the Special Rapporteur aims in the present report to highlight and condemn facially race-neutral policies or rhetoric that nonetheless result in racialized exclusion. This is because States regularly engage in racial discrimination in access to citizenship, nationality or immigration status through policies and rhetoric that make no reference to race, ethnicity or national origin, and that are wrongly presumed to apply equally to all.”

¹⁸⁸ UN Committee on the Elimination of Racial Discrimination, General recommendation No. 30 on discrimination against non-citizens, Sixtyfifth session (2005), para. 25-28: “25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies; 26. Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account; 27. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment; 28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.”

¹⁸⁹ HRC: Report of the Special Rapporteur on minority issues, (A/HRC/43/47/Add.1), 9 March 2020; Working Group of Experts on People of African Descent in the 2018 report on its mission to Spain (A/HRC/39/69/Add.2); ESC: Concluding Observations on the sixth periodic report of Spain (E/c.12/ESP/CO/6), 25 April 2018, para. 40 and 41; CRC: Concluding Observations on the combined fifth and sixth periodic reports of Spain, (CRC/C/ESP/CO/5-6), 5 March 2018, para 42,43, 44; ICCPR: Concluding Observations on the sixth periodic report of Spain, (CCPR/C/ESP/CO/6), 14 August 2015, para 18, 19; CEDAW: Concluding Observations on the combined seventh and eighth periodic reports of Spain, (CEDAW/C/ESP/CO/7-8), 29 July 2015, para 36.

those without formal authorization to cross a border, is entitled to the right to life - the most fundamental human right and the basis for all other rights - and entitled to protection.”¹⁹⁰

7.3 INTERNATIONAL STANDARDS ON THE USE OF FORCE

International standards on the use of force mandate all law enforcement officials, including those responsible for border control, to employ force only when it is necessary and proportionate to a legitimate aim. This means that any sort of force deployed needs to be the least intrusive means of achieving their lawful purposes, and when force is required, they must minimize harm and damage. Law enforcement officials should aim to resort to non-violent means first, and only resort to force when these are not available or are unlikely to be effective only to the extent they are necessary to achieve the objective and to minimize harm and injury.¹⁹¹

When dispersing crowds, force should be avoided and any force used should be directed only against a specific individual or group engaged in or threatening violence.¹⁹² If the use of force is absolutely necessary, the principles of necessity and proportionality must be adhered to because law enforcement objectives are not supposed to be achieved at all costs. When a person is passively resisting but not acting violently, using force that is likely to cause any more than negligible injury would be disproportionate.¹⁹³ Even when police are facing violent individuals, putting the life of such individuals at risk is only permissible if the life of another person is at stake.

States have an obligation to prevent arbitrary deprivations of life by their law enforcement officials, including by adopting appropriate legislation controlling the use of force, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize risk, mandatory reporting, review and investigations of lethal incidents, and the supplying of forces responsible for crowd control with less-lethal weapons and protective equipment.¹⁹⁴

Less-lethal weapons, equipment and techniques have an important role to play in law enforcement as they can decrease the risk of death or injury inherent in police use of force and firearms. Much of this equipment can have a legitimate use in law enforcement if used correctly and in line with international standards for law enforcement. When used responsibly by well-trained and fully accountable law enforcement officials, less-lethal weapons can help prevent and minimize deaths, injuries and harm while also protecting the police and state officials. Yet such equipment can have unintended, dangerous and even lethal effects if not used in compliance with human rights standards and is also prone to abuse. In order to protect life and prevent human rights abuses, there are specific standards on the use of specific less-lethal weapons to which state officials must adhere.

7.3.1 BATONS

Batons are a type of hand-held kinetic impact weapon (also known as ‘striking weapons’). They are usually made of rubber, plastic, wood, or metal, and can range in size from approximately 20 centimetres to two metres in length.¹⁹⁵ As a rule, batons and other striking weapons may be used only as weapons of self-defence or defence of another person. As for any use of force, law enforcement officials must respect the principles of legality, legitimate aim, necessity, proportionality, non-discrimination and accountability when using striking weapons. Batons can therefore be lawfully used against individuals who are either “inflicting or threatening to inflict injury on a law enforcement official or a member of the public”.

When using batons, law enforcement officials must issue a clear warning preceding its use. Baton strikes must only be targeted against a violent individual’s major muscle mass, such as arms or legs, and must avoid the head, neck, spine, throat or groin area. Overhead strikes are inherently dangerous and must be

¹⁹⁰ UN General Assembly, Unlawful death of refugees and migrants, 15 August 2017, A/72/335 at para 3

¹⁹¹ Code of Conduct for Law Enforcement Officials, Art. 3;

¹⁹² UN General Comment 37 on the right of peaceful assembly, para. 86

¹⁹³ UN General Comment 37 on the right of peaceful assembly, para. 86

¹⁹⁴ UN General Comment 36 on article 6: right to life, para. 13

¹⁹⁵ Amnesty International, [Blunt force: Investigating the misuse of police batons and related equipment](#)

avoided. Moreover, the authorities must prohibit the use of batons and other striking weapons for stabbing, poking or as a chokehold. Batons must never be used to disperse a public assembly, and repeated baton strikes are likely to be excessive.

7.3.2 TEAR GAS

The term “tear gas” describes a range of chemical irritants (CS) contained in canisters launched and dispersed at a distance at groups of individuals usually to disperse crowds. Chemical irritants are designed to temporarily deter or disable an individual by producing sensory irritation. They are commonly defined as locally acting chemical agents that rapidly produce disabling physical effects through sensory irritation of the eyes and upper respiratory tract. These effects usually disappear within a short time following the termination of exposure.¹⁹⁶

The purpose of tear gas is usually to disperse a crowd when there is widespread violence. But tear gas has unpredictable effects by nature, with high plausibility of affecting bystanders and other individuals who are not resorting to violence nor pose any direct threat. Exposure to tear gas causes temporary breathing difficulties and tightening of the chest, nausea and irritation of eyes and skin – lasting 10- 20 minutes in most cases. The consequences could be lethal when canisters are directly targeted at individuals or launched in confined spaces.¹⁹⁷

As for any other use of force, the principle of necessity requires law enforcement officials first to attempt non-violent means. Therefore, they must warn that they will use chemical irritants if their order is not complied with and allow sufficient time for people to obey the order. This requirement is inherent to the principle of necessity and the duty to minimize harm. If a person might already stop violent actions due to a warning, then there is no need to resort to the actual use of a weapon.

Law enforcement officials should also take a range of precautions when resorting to the use of chemical irritants. Chemical irritants are only supposed to cause irritation and must be therefore used in such a way as to avoid any injuries resulting from physical impact. Chemical irritant projectiles – hand-held or launched by a device at a distance – must not be fired directly at individuals, at a low angle or in confined spaces where exit is hindered.¹⁹⁸ Law enforcement officials must always apply the lowest level of toxicity of irritants possible to attain intended objectives. Weapons such as chemical irritants should never be used punitively.¹⁹⁹

7.3.3 KINETIC IMPACT PROJECTILES

Kinetic impact projectiles, including rubber bullets and balls, are a less-lethal alternative to live ammunition used by law enforcement officials to tackle violent individuals.²⁰⁰ Some types of projectiles are also highly inaccurate. Skip-firing projectiles, which are projectiles that have been aimed at the ground in order for them to bounce, can also cause a risk of serious injury due to their inaccuracy.²⁰¹ Risks specific to kinetic impact projectiles include skull fracture and brain injury, blindness or even death, if aimed at the face, head or torso of a person.²⁰²

¹⁹⁶ Amnesty International, *Tear Gas: An Investigation*, [Tear Gas: An Investigation — Amnesty International](#)

¹⁹⁷ UN Guidance on Less-Lethal Weapons, para. 7.3, [OHCHR | United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#)

¹⁹⁸ Amnesty International, para. 7.4.2, [Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials - Amnesty International](#)

¹⁹⁹ UN General Comment 37, para. 87 and UN Guidance on Less-Lethal Weapons, para. 7.3, [OHCHR | United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#)

²⁰⁰ UN Guidance on Less-Lethal Weapons, para. 7.5, [OHCHR | United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#)

²⁰¹ Amnesty International, [Guidelines on Basic Principles](#), para. 7.4.2 a), [Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials - Amnesty International](#); and UN Guidance on Less-Lethal Weapons, para. 7.5, [OHCHR | United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#)

²⁰² Amnesty International, [Guidelines on Basic Principles](#), para. 7.4.2 a)

The use of kinetic impact projectiles must be strictly limited to situations of violent disorder posing a risk of harm to persons, where the projectiles are used in order to contain and stop the violence and only when less extreme means are insufficient to achieve this objective.

Kinetic impact projectiles should only be used to target persons who are engaging in violence and with the aim of striking the lower abdomen or legs of a violent individual.²⁰³ Law enforcement officials must never aim rubber bullets or other kinetic impact projectiles at the head, upper body or groin areas, and must not be intentionally rebounded off the ground before striking the target. Clear warnings must be given before firing them and medical care must be promptly made available to anyone injured by such projectiles.

Devices that fire multiple projectiles are inaccurate, cannot be targeted only to an individual engaged in violence and cause unwarranted injury, and therefore have no legitimate law enforcement use and must be prohibited.

7.4 TORTURE AND OTHER ILL-TREATMENT

Under international human rights law, the intentional infliction of severe pain or suffering by a government official for any reason based on discrimination of any kind is recognized as torture. Torture is banned without exception under the Convention Against Torture, and the International Covenant on Civil and Political Rights (ICCPR) treaties to which both Spain and Morocco are party.

The prohibition against torture is considered a jus cogens norm, from which no derogation is permitted.²⁰⁴ To meet the definition of torture, an act must be: (1) intentional (2) carried out or accepted by a government official (3) inflict severe pain or suffering, including physical or psychological and (4) carried out for one of an exhaustive set of reasons,²⁰⁵ which include any reason that is based on discrimination of any kind – including xenophobia or migration status and racial discrimination. To meet the definition, the relevant conduct need not have a discriminatory “purpose” only a discriminatory “nexus.”²⁰⁶ The Committee against Torture has stated that “discrimination of any kind can create a climate in which torture and other ill-treatment of the ‘other’ group subjected to intolerance and discriminatory treatment can more easily be accepted.”²⁰⁷ Multiple Special Rapporteurs on Torture have also identified that migrants, refugees and asylum seekers are at greater risk of torture. The UN Special Rapporteur on Torture has stated that the range of human rights violations to which migrants and refugees are subject to, including torture, is a result of “the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination rather than on protection, human rights and non-discrimination.”²⁰⁸

In considering migration-related torture and other ill-treatment, the Special Rapporteur on Torture has also stated that specific laws, policies, and practices that expose migrants and refugees to torture or other ill-

²⁰³ Amnesty International, Guidelines on Basic Principles, para. 7.4.2 a) and UN Guidance on Less-Lethal Weapons, para. 7.5, [OHCHR | United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#)

²⁰⁴ International Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Judgment of 20 July 2012, section 99, UN General Assembly resolution 66/150, third preambular paragraph; Prosecutor v Furundzija (IT-95-17/1), ICTY, (1998) section 153-157

²⁰⁵ The exhaustive set of reasons provided by Article 1 of the UN Convention Against Torture are the infliction of severe pain or suffering “for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”

²⁰⁶ According to the UN Special Rapporteur on Torture, “In order for discriminatory measures to amount to torture, it is sufficient that they intentionally inflict severe pain or suffering “for reasons related to discrimination of any kind.” It is therefore not required that the relevant conduct have a discriminatory “purpose”, but only a discriminatory “nexus.” (A/63/175, para. 48). See: UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, A/HRC/43/49; para. 36.

²⁰⁷ Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, 26 February 2001, UN Doc. A/CONF.189/PC.2/17, p. 2.

²⁰⁸ Special Rapporteur on Torture, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 23 November 2018, Un Doc. A/HRC/37/50, para. 66.

treatment are unlawful, regardless of who was directly responsible for the acts and including if the violations were carried out by private actors and the state failed to protect migrants.²⁰⁹

7.5 RIGHT TO HEALTH AND DENIAL OF EMERGENCY HEALTHCARE AS A BREACH OF THE RIGHT TO FREEDOM FROM TORTURE ILL-TREATMENT AND RIGHT TO LIFE

The right to health extends to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers, and victims of international trafficking, regardless of legal status and documentation. Governments must ensure that all persons have access to the minimum, essential levels of the right to health and that there is no discrimination in access to healthcare.

The right to health is closely related to and dependent upon the realization of other human rights, including the prohibition against torture.²¹⁰ It includes the “provision of equal and timely access to basic preventive, curative, rehabilitative health services ...[and] appropriate treatment of ... injuries and disabilities”.²¹¹ Health facilities, goods and services must be accessible to all, without discrimination on any of the prohibited grounds.²¹² The Committee on Economic, Social and Cultural Rights has affirmed that Covenant rights, including the right to health, “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons ... regardless of legal status and documentation”.²¹³ “Race and colour” and national or social origin are also prohibited grounds.²¹⁴ The UN Human Rights Committee has also noted the intersections between the right to health and the right to life, saying “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity [including] measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care ...” and the “bolstering of effective emergency health services”.²¹⁵

7.6 THE PROHIBITION OF COLLECTIVE EXPULSIONS, THE PRINCIPLE OF NON-REFOULEMENT AND THE RIGHT TO SEEK ASYLUM

Collective expulsions are prohibited under international law. States must conduct an individualized assessment prior to any expulsion.²¹⁶ Protection against collective or mass expulsion is also provided for under Article 13 of the International Covenant on Civil and Political Rights to which Spain and Morocco are state parties. 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, which

²⁰⁹ UN Special Rapporteur on Torture, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 23 November 2018, UN Doc. A/HRC/37/50, para. 67. “Migration laws, policies and practices that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture or ill-treatment, or that knowingly or deliberately prevent them from exercising ancillary rights designed to protect them against such abuse, are conclusively unlawful and give rise to State responsibility for the ensuing harm, regardless of the direct attributability of the relevant acts of torture or ill-treatment. Moreover, whenever States fail to exercise due diligence to protect migrants from violations by private actors, to punish perpetrators or to provide remedies, they are acquiescent or complicit in torture or ill-treatment.”

²¹⁰ CESCR General Comment 14, para 3

²¹¹ CESCR General Comment 14, para 17

²¹² CESCR General Comment 14, para 12

²¹³ CESCR General Comment 20, para 30

²¹⁴ CESCR General Comment 20

²¹⁵ HRC, General Comment 36, para 26

²¹⁶ While Article 13 refers to aliens lawfully in the territory of a state, the Human Rights Committee has interpreted that article 13 of the ICCPR “would not be satisfied with laws or decisions providing for collective or mass expulsions.” General Comment No. 15 (1986), para.10.

Morocco has ratified.²¹⁷ At the regional level, summary expulsions, conducted without due process, breach Article 3 of the European Convention on Human Rights (ECHR), and Article 4 of Protocol 4 and Article 1 of Protocol 7 to the ECHR, ratified by Spain. They are also in violation of EU legislation, such as the Asylum Procedures Directive,²¹⁸ as well as Articles 18 (Right to asylum), 19 (Protection in the event of removal, expulsion or extradition), and 47 (Right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union.

The principle of non-refoulement is a customary principle of international law that prohibits states from transferring or removing anyone, in any manner whatsoever, directly or indirectly, to a place where the person would be at risk of persecution²¹⁹ or serious human rights violations, such as torture.²²⁰ Procedurally, states have an obligation to assess the risks individuals would face if forcibly transferred to another jurisdiction, and are also obliged to give individuals a real opportunity to challenge the transfer.

Under international and EU law, Spain must ensure access to territory to those seeking international protection and provide them access to fair and effective asylum procedures.²²¹ In an authoritative advisory opinion on state obligations under refugee law, the UN Refugee Agency (UNHCR) held that: “States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures.”²²²

In an explanation of non-refoulement obligations under the Convention against Torture (CAT), the UN Committee Against Torture stated that States should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of non-refoulement, including (1) individual examination of each case; (2) ensuring that each person is fully informed of the reasons why they might be deported and of their rights to appeal such decision; (3) providing access of the person concerned to a lawyer, to free legal aid when necessary, and access to representatives of relevant international organizations of protection; (4) the development of an administrative or judicial procedure concerning the person in question in a language that he/she understands, or with the assistance of interpreters and translators; (5) the right of appeal by the person concerned against a deportation order to an independent administrative and/or judicial body within a reasonable period of time; (6) an effective training of all officials who deal with persons under procedures of deportation in order to avoid decisions contrary to the principle of non-refoulement.²²³

Similarly, forcibly transferring people to a place where they are at risk of serious human rights violations or abuses constitutes a clear violation of their rights to liberty and to freedom of movement, amongst other rights, and also amounts to refoulement, which is prohibited under international law.

7.7 ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

In 2017 the UN Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions underlined that “Procedurally, whether committed by the State or by private actors, States must

²¹⁷ Article 13 refers to aliens lawfully in the territory of a state, the Human Rights Committee has interpreted that article 13 of the ICCPR “would not be satisfied with laws or decisions providing for collective or mass expulsions.” General Comment No. 15 (1986), para.10.

²¹⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

²¹⁹ The principle of non-refoulement is grounded in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The 1951 Refugee Convention defines the prohibition on refoulement in Article 33(1), which states that no “Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group, or political opinion.” The Protocol extends the Convention’s protections to all refugees irrespective of the location or date of their displacement and requires its 146 States Parties (among them Spain and Morocco) to abide by the Convention regardless of whether they are separately party to it.

²²⁰ The principle of non-refoulement has also been reinforced by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), with no exceptions whatsoever. Article 3(1) of CAT states that “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3 (2) states that “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

²²¹ Article 14 of the 1948 Universal Declaration of Human Rights; 1951 Geneva Convention and its 1967 Protocol; article 22 of the Convention on the Rights of the Child; article 18 of the EU Charter of Fundamental Rights; Asylum Procedures Directive; Qualification Directive (2011/95/EU)

²²² UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, at para. 7, unhcr.org/4d9486929.pdf

²²³ Committee Against Torture (CAT), General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22; UN Doc. CAT/C/GC/4, para.18

investigate all deaths thoroughly, independently and effectively, provide redress or reparations and ensure that no person acts with impunity. Failure to investigate is in and of itself a violation of the right to life.”²²⁴ Accountability plays a critical role in preventing impunity and abuses of law that cause severe impacts on persons’ human rights and helps to ensure future human-rights-compliant policing. Law enforcement officials who are responsible for unlawful use of force must be subject to investigation, prosecution and, if convicted, punishment.²²⁵ Exceptional circumstances, such as a state of emergency, cannot be used to justify breaching the criteria for the use of force.²²⁶ To ensure an effective accountability system, four areas must be addressed: criminal investigation of law enforcement officials with command responsibility taken into account, disciplinary investigation to take necessary corrective measures, effective remedy to victims of unlawful use of force, and a review of the institutional functioning.²²⁷ According to international law and standards, domestic law must not grant law enforcement officials unrestricted powers and discretion to resort to force.²²⁸ A culture of accountability should be developed and promoted among authorities during the management of protests. For example, responsible officials should always display visible identification and present a warrant when apprehending individuals.²²⁹ Effective remedies and reparation must be provided for victims of unlawful use of force, including compensation, rehabilitation, restitution, satisfaction and guarantee of non-repetition.²³⁰

The Minnesota Protocol on the Investigation of Potentially Unlawful Death establishes the international legal standards for the prevention of unlawful deaths and the investigation of potentially unlawful deaths. The Minnesota Protocol states that “Persons whose rights have been violated have the right to a full and effective remedy. Family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms.”²³¹ Importantly, the Minnesota Protocol underlines that “Satisfaction includes government verification of the facts and public disclosure of the truth, an accurate accounting for of the legal violations, sanctions against those responsible for the violations, and the search for the disappeared and for the bodies of those killed.”²³² Finally, the principles emphasise that: “States also have a duty to cooperate internationally in investigations of potentially unlawful death, in particular when it concerns an alleged international crime such as extrajudicial execution.”²³³ In potential cases of enforced disappearance, under the International Convention for the Protection of All Persons from Enforced Disappearance families have the right, at a minimum, to information about the authorities responsible for the disappearance and deprivation of liberty, the dates and place of the disappearance, and any transfers, and the victim’s whereabouts. The Minnesota Protocol states that “Determining the final whereabouts of the disappeared person is fundamental to easing the anguish and suffering of family members caused by the uncertainty as to the fate of their disappeared relative. A violation is ongoing as long as the fate or whereabouts of the disappeared is not determined.”²³⁴

²²⁴ UN General Assembly, Unlawful death of refugees and migrants, 15 August 2017, *A/72/335* at para 18

²²⁵ Amnesty International, *Guidelines on Basic Principles*, guideline no. 3. See also General Comment 37, paras. 78 and 90 and UN Basic Principles, para. 7

²²⁶ UN Basic Principles, para. 8

²²⁷ Amnesty International, *Guidelines on Basic Principles*, p. 65 – 76

²²⁸ General Comment 37, para. 79

²²⁹ Amnesty International, *Guidelines on Basic Principles*, section 3.1

²³⁰ Amnesty International, *Guidelines on Basic Principles*, p. 65, General Comment 37, para. 90, and UN Guidance on Less-Lethal Weapons, para. 3.12. See also UN Basic Principles and UN General Assembly, Resolution on the guidelines on the Right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, UN Doc. A/RES/60/147

²³¹ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, at para 10

²³² The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, at para 10

²³³ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, at para 9

²³⁴ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, at para 12

8. CONCLUSIONS AND RECOMMENDATIONS

Moroccan and Spanish authorities used anti-riot equipment and less-lethal weapons such as tear gas, batons, rubber bullets and rubber balls to violently disperse a group of up to 2,000 Black people, largely from sub-Saharan Africa, seeking to cross the border into Melilla on 24 June 2022. The methods used by Moroccan and Spanish authorities contributed to the deaths of at least 37 people and to injuries to dozens more. Six months on and it is still unclear how many people may have died on 24 June and subsequent to the events of that day. The results of investigations by the Moroccan authorities have not been made public and Spanish authorities have failed to launch investigations into allegations of human rights violations at the hands of Spanish officials. Some of the actions by Spanish and Moroccan officials, including beating people who were already restrained or unresponsive due to injury, denying emergency medical assistance to those injured, repeated use of tear gas against people who have no way of escape and are in a confined space, may amount to breaches of the right to be free from torture and other ill-treatment, as well as the right to the highest attainable standard of health.

Spanish police violated the ban on collective expulsions and committed refoulement by forcing people – according to the Spanish Ombudsperson at least 470 individuals – back into the hands of Moroccan security forces.²³⁵ The Spanish border officials breached international, regional and national laws by denying people an opportunity to challenge the expulsion and their right to a fair and effective procedure to have their application for asylum considered.

Both Moroccan and Spanish police failed to ensure the provision of emergency medical care to people injured and in need of assistance. Medical attention to injured people was not prompt and in some cases denied entirely, causing pain and suffering that may have also heightened the risk of death. Medical staff in Morocco only began providing assistance to injured people nearly two hours later, and authorities prioritized moving corpses and treating Moroccan security officials above treating injured migrants and refugees. The Spanish police did not permit the Red Cross to access the area and there was no public health response at the scene attending to injured people neither during the attempted border crossing and police operation, nor in their aftermath. Spanish authorities did not assist in any way the injured people who were left on the ground in Spanish territory after the police operation ended, violating their rights in multiple ways including their right to adequate health care and to be free from torture and other ill-treatment. The failure to provide emergency assistance not only manifested shocking cruelty, it also placed Spain in breach of its obligations to protect the right to life.

Hundreds of people including some children, many of them injured and immobile, were held at the border by the Moroccan police on 24 June. One 17-year-old Sudanese boy reported being taken by Moroccan police to prison on the night of 24 June, before being forcibly taken away in buses.²³⁶ Others report being taken away in buses directly from the border and dispersed in locations around Morocco, up to over 1000km

²³⁵ See: El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla, 14/10/2022 at <https://www.defensordelpueblo.es/noticias/sucesos-melilla/> . Available only in Spanish.

²³⁶ Interview by voice call with anonymous 17-year-old male from Sudan, 15 September 2022.

away from Nador, and being abandoned on the side of the road outside of towns, without any medical care or support in finding a safe place to stay.

The families and friends of at least 77 people have reported them to the AMDH as missing after 24 June.²³⁷ They have not been able to obtain any information about their fate and whereabouts since they were last seen in the custody of state authorities on that day. The Moroccan authorities have failed to investigate allegations of enforced disappearances and to take all appropriate measures to determine the fate and whereabouts of those who have been reported as missing. Moreover, they have refused assistance to expert organisations conducting this important work on behalf of families searching for their loved ones. At least two NGOs in Morocco were prevented from visiting hospitals in the days following 24 June and, although the AMDH were permitted to visit the Nador morgue once on 25 June, they were not permitted to look at the corpses of people to identify them. Authorities increased their presence guarding a cemetery where they had been digging graves also around this time and obstructed anyone from entering to confirm what was happening there.

At the time of writing, investigations by the authorities had yet to make public their findings clarifying what happened on 24 June and what steps will be taken to prevent such human rights violations from recurring. Transparency and accountability are profoundly lacking. What is clear is that no single official, Moroccan or Spanish, has been brought to justice for the violations that led to the deaths and injuries of so many Black people and official information about what happened to people on 24 June and beyond is also deeply concerning and causing ongoing harm and distress to the families of people who have not been seen since that day, breaching their rights to truth, justice and reparation. None of the investigations have as part of their mandate to analyse the role racism against Black people and the pre-existing concerns about their rights being at risk in this location played in the violations of their human rights occurring prior to, during and after 24 June.²³⁸ Without investigating with this as a component of any inquiry, the authorities' responses to provide adequate reparations to victims and survivors, as well as to provide for guarantees of non-repetition, will fall short of what is needed to ensure the rights of people from sub-Saharan Africa are respected, protected and fulfilled in Ceuta and Melilla.

Ultimately, Spain's (and Europe's) harmful policies and their efforts to externalize migration have had lethal consequences. Black people have been subjected to deadly violence, torture and other ill-treatment, abuse, refoulement, forcible transfer, enforced disappearances, amongst other egregious violations of their human rights at the hand of Moroccan and Spanish border guards. The relatives of those killed are also not treated with a shred of humanity as they are impeded rather than supported in the search for their loved ones. Six months on and we do not even yet know precisely how many people lost their lives that day and the fate and whereabouts of at least 77 others is still unknown. Finally, the lack of effective investigations into all allegations of crimes under international law and other serious human rights violations on 24 June not only breaches human rights obligations, but also manifests the lack of interest by the Spanish and Moroccan authorities in taking action to ensure no more people are killed and harmed at that border.

Amnesty International is deeply concerned at the treatment of Black people in the Ceuta-Melilla border region by both Spanish and Moroccan police and border officials and the ongoing risk they face of serious violations of their human rights in that location. Consistent concerns expressed by UN treaty monitoring bodies, international and regional special experts about Black people being at risk of discrimination, abuse and are persistently denied an accessible procedure to have their asylum claim considered, all continue to go unaddressed. This is appalling. Considering the above, Amnesty International is making the following urgent recommendations:

²³⁷ AMDH Nador, Facebook post, 30 June 2022, [facebook.com/AmdhNador/photos/3241741279371458](https://www.facebook.com/AmdhNador/photos/3241741279371458) :

فيما يلي اللاعبة الثانية المعتقلين المتابعين أمام محكمة الاستئناف لجلسة يوم 13 يوليوز مع صك المتابعة المرجو من العائلات الاتصال بنا على الخاص. كل التضامن

²³⁸ CNDH, [Les Événements Tragiques Entre Nador et Melilla : Le Conseil National Des Droits De L'homme Met En Place Une Commission D'information](https://www.cndh.org.ma/fr/communiqués/les-evenements-tragiques-entre-nador-et-melilla-le-conseil-national-des-droits-de-l'homme), [cndh.org.ma/fr/communiqués/les-evenements-tragiques-entre-nador-et-melilla-le-conseil-national-des-droits-de-l'homme](https://www.cndh.org.ma/fr/communiqués/les-evenements-tragiques-entre-nador-et-melilla-le-conseil-national-des-droits-de-l'homme)

RECOMMENDATIONS TO THE MOROCCAN AUTHORITIES

TO THE PRIME MINISTER

- Ensure that all ministries and authorities cooperate fully, promptly and transparently with those tasked with investigating the breaches of human rights occurring on 24 June, be they national bodies or international organisations.
- Recognize, publicly, the seriousness of the human rights violations and crimes under international law committed during 24 June and in its aftermath
- Ensure that all ministries and authorities comply with their obligations to cooperate fully, promptly and transparently with those searching for people missing since 24 June, including civil society organizations and families searching for their loved ones. All relevant authorities must promptly disclose all the information at their disposal about the individuals that remain unaccounted for, including if they are in their custody or any other information about their fate and whereabouts, and provide timely access to relatives, their representatives and civil society organizations to morgues, prisons and hospitals where they may obtain further information.
- Issue a standing invitation to all UN Special Procedures and accept, without further delay the visit request of the UN Special Rapporteur on the human rights of migrants, pending since 2019. Take all appropriate measures to ensure that the Special Procedures can conduct visits without restrictions on scope or duration and ensure they are allowed to meet with victims, human rights defenders and civil society organizations without hindrance or risk of acts of intimidation or reprisals.
- Take steps to ensure the submission of overdue reports under the ICCPR and UNCAT.
- Comply with and implement UN treaty monitoring body recommendations regarding the protection of human rights, particularly of Black people in Morocco.
- Take steps to address racist and xenophobic attitudes and behaviour towards Black migrants and refugees, or stigmatization based on race, colour, descent or national origin, as required by international law, for example, by implementing public anti-discrimination campaigns.
- Work with Spain and the EU institutions to build a protection system for refugees and develop a human rights compliant approach to migration that puts the protection of migrants' and refugees' lives and rights at the centre. In particular:
 - Ensure that policies and practices protect, respect and fulfil the right to life of refugees and migrants.
 - Set up a national asylum system and respect the principle of non-refoulement at all times.
 - Put an end to the arbitrary arrest and detention of refugees.
 - Put an end to collective expulsions and ensure that any expulsion decision is assessed on an individual basis and is subject to due process.
 - Refrain from harassing and conducting discriminatory raids against refugees and migrants and ensure they can enjoy their economic and social rights.

TO THE PARLIAMENT

- Amend legislation to ensure that irregular entry into and exit from the territory are not criminal offences.

TO THE MINISTRY OF INTERIOR

- Take all appropriate measures to ensure that all security forces comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including with regards to less-lethal weapons such as tear gas and rubber bullets.
- Issue immediate orders to all security forces that they must not use any force unnecessarily and excessively and send a clear message that abuses in the way force is used will not be tolerated.
- Ensure that security forces exercise maximum restraint in the use of force, which should only be used in a progressive, proportionate and differentiated manner, in line with relevant international standards. The authorities must take into account the well-documented heightened risk for racially motivated violence and discrimination faced by Black migrants and refugees. The authorities must also ensure clearly and emphatically that potentially lethal weapons are never used punitively or as a deterrent, but

are resorted to only in exceptional circumstances to address a clear and imminent threat to the life or physical integrity of third people or law enforcement officials.

- Ensure that law enforcement officials continue to receive comprehensive and human rights compliant training on standards and regulations limiting the use of force and firearms, including batons, sticks, tear gas and rubber bullets, and monitor the implementation of training for police personnel in border regions.
- Ensure that all border-control operations are carried out in full compliance with international human rights obligations, including with respect to the right to life, freedom from torture and other ill-treatment, right to liberty and security, right to non-discrimination and the principle of non-refoulement.
- Immediately end the practice of forcible transfers of people, and refrain from forcibly transferring refugees and migrants to the border.
- Implement the Recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its 2014 visit to Spain on treatment of irregular migrants intercepted in the enclave of Melilla along the border with Morocco.
- Implement the European Commission on Racism and Intolerance's General Policy Recommendations on Combating Racism and Racial Discrimination in Policing (No.11) and on Safeguarding Irregularly Present Migrants from Discrimination (No.16).

TO THE MINISTRY OF JUSTICE

- Ensure that prompt, thorough, independent and impartial investigations are carried out into all allegations of crimes under international law and other serious human rights violations, including deaths, injuries, unlawful use of force, torture and other ill-treatment including the denial of emergency healthcare, forcible transfers, collective expulsions and enforced disappearances, that occurred on 24 June and in its aftermath and ensure that all those responsible, including those in command, are brought to justice in fair trials.
- Ensure that survivors, victims and their families have timely access to information about these investigations and have effective means to access adequate reparations, including compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Ensure that victims and the families of the victims have access to information and to justice, including legal advice and representation at all stages of the legal proceeding, 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.
- Ensure effective access to justice for all refugees and migrants without discrimination, including because of their migration status, so that irregular migrants are able to seek remedies for violations of their human rights without fear of detention or deportation.
- Provide adequate reparations, including compensation, rehabilitation, satisfaction and guarantees of non-repetition, for all survivors, victims and their families who suffered as a result of state actions during 24 June.

TO THE MINISTRY OF HEALTH

- Take immediate steps to ensure the right to prompt and adequate emergency healthcare is respected, protected and fulfilled, including for those who are non-citizens such as refugees and migrants.

RECOMMENDATIONS TO THE SPANISH AUTHORITIES

TO THE PRIME MINISTER

- Ensure that the human rights violations and crimes under international law committed on 24 June are thoroughly, impartially and independently investigated, including concerns of racism and discrimination to inform a review of laws, policies, and practices to ensure that all those responsible are brought to justice in fair trials and avoid that these violations are repeated in the future.
- Ensure that all ministries and authorities cooperate fully, promptly and transparently with those tasked with investigating the breaches of human rights occurring on 24 June, be they national bodies or international organisations.
- Ensure that all ministries and authorities comply with their obligations to cooperate fully, promptly and transparently with those searching for people missing since 24 June, including civil society organizations and families searching for their loved ones. All relevant authorities must promptly disclose all the information at their disposal about the individuals that remain unaccounted for, including if they are in their custody or have any other information about their fate and whereabouts, and provide timely access to relatives, their representatives and civil society organizations to morgues, prisons and hospitals where they may obtain further information
- Collaborate with the EU to develop a human rights compliant approach to migration that puts the protection of migrants' and refugees' lives and rights at the centre and increases access to safe and legal pathways for refugees and migrants. Ensure that policies and practices protect, respect and fulfil the right to life of refugees and migrants and publicly reject cooperation arrangements, policies and practices that result in or tolerate the arbitrary deprivation of the lives of refugees and migrants.
- Invite the UN Special Rapporteur on the human rights of migrants to visit Spain.
- Comply with and implement UN Treaty Body recommendations as well as the recommendations of the Council of Europe Commissioner for Human Rights, regarding the protection of human rights, particularly of Black people and other people subject to discrimination in Ceuta and Melilla, including those that relate to the need to ensure effective and safe access by all people seeking protection to official border posts to apply for asylum, cooperating with Moroccan authorities to specifically removing existing barriers for people from sub-Saharan Africa.

TO THE ATTORNEY GENERAL

- Carry out thorough, independent and impartial criminal investigations into the deaths and injuries that occurred on 24 June in order to bring all those responsible for unlawful use of force, torture and other ill-treatment, collective expulsions and refoulement, enforced disappearances, and failure to provide prompt medical assistance to the injured, including where appropriate those with chain of command responsibility, to justice in fair trials and help ensure non-repetition of the human rights violations detailed in this report.
- Ensure that victims and their families have timely access to information about these investigations and have effective means to access adequate reparations, including compensation, rehabilitation, satisfaction and guarantees of non-repetition.

TO THE MINISTER OF INTERIOR

- Review the police operation of 24 June to establish whether police officers complied with laws and protocols on the use of force, whether safeguards were put in place to prevent injuries and respond to medical emergencies in the course of the operation and whether assistance was provided to people in need as required by national criminal law, with a view to identify misconduct and hold those responsible to account; and to identify whether laws and protocols are in line with international laws and standards on the use of force.
- Cooperate fully and openly with the investigation of the attorney general's office and of the ombudsperson's office into the events of 24 June

- Undertake a full and thorough review of operating procedures in relation to border control, to ensure the protection of the human rights of migrants, asylum-seekers and refugees, as required by international law.
- Ensure that protocols, instructions and training of law enforcement officials are compliant with international law and standards on the use of force, the prohibition of torture and other ill-treatment, the prohibition of refoulement and discrimination and other relevant standards.
- With regard to the use of force in particular, ensure that the security forces exercise maximum restraint in the use of force, which should only be used in a progressive, proportionate and differentiated manner, in line with relevant international standards. The authorities must also ensure clearly and emphatically that potentially lethal weapons are never used punitively or as a deterrent but resorted to only in exceptional circumstances to address a clear and imminent threat to the life or physical integrity of third persons or law enforcement officials.
- Ensure that law enforcement officials continue to receive training on international standards and regulations on the use of force and firearms, including less-lethal weapons and on human rights standards regarding refugee protection and migrants' rights and that monitoring systems are put in place to ensure compliance and the implementation of the reforms necessary to achieve this
- Ensure there is a review of the policies on the use of tear gas and other less-lethal weapons to ensure that their use is subject to strict human rights safeguards and that they are never used in confined spaces.
- Take immediate steps to ensure the right to prompt and adequate emergency healthcare is respected, protected and fulfilled, without discrimination, including for those who are non-citizens such as refugees and migrants.
- Investigate the concerns about Black people facing particular obstacles to accessing a procedure in order to claim international protection. Ensure that persons in need of international protection have access to Spanish territory, in Melilla and Ceuta or elsewhere and their human rights, including to an accessible and adequate procedure, are fulfilled.
- Use data to drive and assess responses to systemic racism and collect and make public comprehensive data disaggregated by race or ethnic origin, with strict safeguards and in accordance with international human rights law, aiming at analysing the effect of laws and policies on Black migrants and asylum seekers. In doing so, ensure effective and meaningful participation and/or representation of civil society - particularly Black migrants, asylum seekers and refugees, including women and youth, and their organizations.
- Stop the practice of summarily expelling people to Morocco and ensure action to comply with all the guarantees required by international and EU law and standards, including with regards to the principle of non-refoulement.

TO THE MINISTER OF INTERIOR AND TO PARLIAMENT

- Repeal legislation legalizing "border rejections" in Ceuta and Melilla and ensure legislation prohibits refoulement and collective expulsions from Spain to Morocco.

TO THE MINISTER OF INTERIOR AND THE MINISTER OF FOREIGN AFFAIRS

- Make all cooperation agreements and arrangements between the Spanish and Moroccan police/border guards public and subjected to parliamentary scrutiny to examine whether they comply with the legal obligations to respect, protect and fulfil human rights.

RECOMMENDATIONS TO THE EUROPEAN UNION

TO THE EUROPEAN COMMISSION

- Review and condition the continuation of EU funding to Morocco on migration, asylum and border management to the compliance with and implementation of human rights obligations.
- Initiate a dialogue with Spain to assess systemic violations of the EU acquis in relation to access to asylum at the Spanish/Moroccan border in particular focusing on the specific concerns regarding anti-Black racism.

TO THE EUROPEAN PARLIAMENT

- Urgently debate the events of 24 June 2022 at the Moroccan/Spanish border and remain seized of the case to contribute to accountability for any crimes under international law and other human rights violations (follow up with resolution)

RECOMMENDATIONS TO COUNCIL OF EUROPE BODIES:

TO THE COMMISSIONER FOR HUMAN RIGHTS

- Consider future efforts to highlight the racist nature of certain border control practices, including third party interventions and Rule 9 submissions to the Committee of Ministers on relevant judgments of the European Court of Human Rights.

TO THE EUROPEAN COMMISSION ON RACISM AND INTOLERANCE

- Examine the intersection of racism and border control practices throughout the Council of Europe member states in both its country and thematic work and issue specific guidance to states.

TO THE COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

- Consider an ad-hoc visit to Spain, to assess the treatment of people on the move or detained people in Melilla and assess the implementation of the recommendations formulated by the CPT in its report on the 2014 visit. In this and other country visits, consistently identify and bring to the authorities' attention findings of racist behaviour as a form of ill-treatment of people on the move or detained persons.

RECOMMENDATIONS TO THE AFRICAN UNION

- Support the establishment of an international Commission to conduct a thorough, independent and transparent process of systematic collection of evidence.
- Urge the Moroccan authorities to ratify without further delay the African Charter on Human and Peoples' Rights, the protocols thereto, and other African Union human rights treaties to which Morocco is not a party.
- As a follow-up to the statement of the Chairperson of the African Union Commission issued on 26 June, initiate dialogue with the Moroccan authorities to ensure a halt to the human rights violations against Black people at the Spanish Moroccan border.

RECOMMENDATIONS TO THE UNITED NATIONS

- The UN, and member states engaging with it, use existing mechanisms, procedures, and create new ones where necessary, to investigate and ensure the protection and fulfilment of the rights of Black people and other people subject to discrimination at border locations where there is

increasing evidence that they are being subjected to, or at particular risk of being subjected to, crimes under international law, including killings and torture and other ill-treatment.

TO THE UN SPECIAL PROCEDURES

- Continue to pay attention to the situation at the Spanish Moroccan border as well as engaging in dialogues with the respective authorities to ensure a halt to the human rights violations against Black people and other people subject to discrimination at that location.

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info@amnesty.org



+44 (0)20 7413 5500

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“THEY BEAT HIM IN THE HEAD, TO CHECK IF HE WAS DEAD”

CRIMES UNDER INTERNATIONAL LAW COMMITTED BY SPAIN AND MOROCCO AT THE MELILLA BORDER

On 24 June 2022, the deadliest incident ever recorded at the Melilla border between Morocco and Spain left at least 37 Black people dead and 77 more missing.

The victims, refugees and migrants from sub-Saharan Africa seeking safety, were met with prolonged and unlawful use of force by Moroccan and Spanish security forces.

This report details how this violence, along with a failure to provide timely medical assistance, contributed to - if not directly caused - their deaths and injuries.

At this border, people have been subjected to discrimination, violence - which may amount to torture and other ill-treatment, abuse, refoulement, forcible transfer, enforced disappearances, amongst other human rights violations, at the hands of Moroccan and Spanish security forces.

To date, neither Morocco nor Spain have conducted independent and impartial investigations and no one has been brought to justice. Relatives of the victims are being impeded, not supported, in the search for their loved ones. This breaches human rights obligations, shows a disregard for the victims and their families and leaves open the possibility that such abuses could be committed again.

The killings, torture and disappearances documented in this report are a consequence of Europe's lethal policy of fortification.