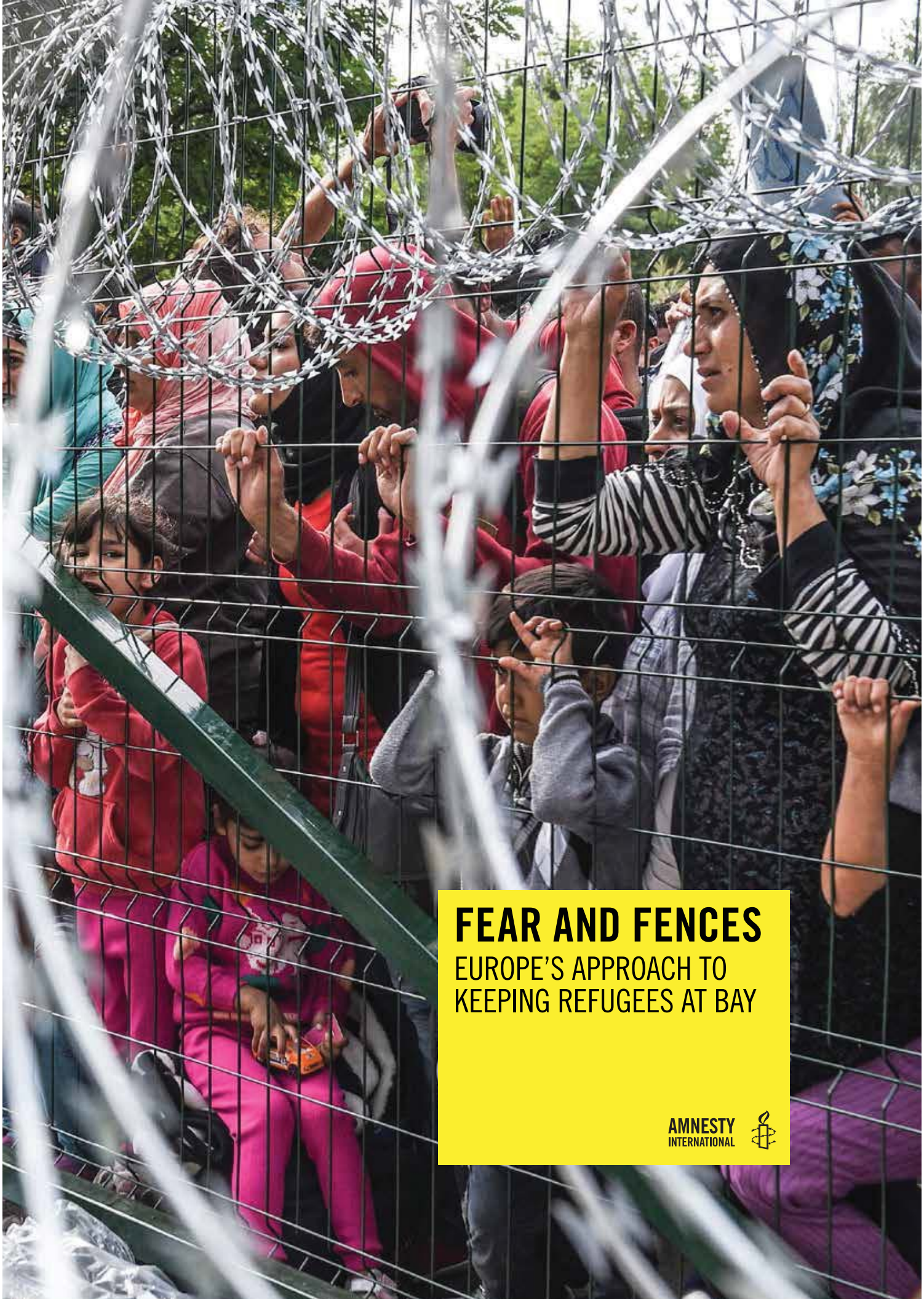

FEAR AND FENCES

EUROPE'S APPROACH TO KEEPING REFUGEES AT BAY

AMNESTY INTERNATIONAL

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Cover photo: Refugees and migrants demand they be allowed to cross the border with Hungary near the village of Horgos, Serbia, on 15 September 2015. © REUTERS/Marko Djurica

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CONTENTS

GLOSSARY....5

EXECUTIVE SUMMARY: PROGRESSIVE CLOSURE OF SAFE ENTRY INTO EUROPE....7

METHODOLOGY....11

PUSHED AROUND AT THE BORDERS OF SPAIN....13

SPANISH MEASURES TO PREVENT IRREGULAR ARRIVALS TO SOUTHERN SPAIN....13

ENCLAVES AS THE SYMBOL OF 'FORTRESS EUROPE': THE CONSTRUCTION OF BORDER FENCES....16

THE EXTERNALISATION OF SPANISH BORDER CONTROLS: COOPERATION WITH THIRD COUNTRIES....19

TRAPPED IN THE ENCLAVES....22

RISING PRESSURE ON THE SPANISH ENCLAVES....24

THE TREATMENT OF REFUGEES AND MIGRANTS ON THE MOROCCAN SIDE OF THE FENCE....26

RAIDS AND ARBITRARY DETENTION FOLLOWING THE COMPLETION OF THE EXCEPTIONAL REGULARIZATION PROCESS ON 9 FEBRUARY 2015....28

PUSH-BACKS IN PLAIN SIGHT: SUMMARY EXPULSIONS FROM SPAIN TO MOROCCO 30

SPANISH LAW ON THE RETURN AND EXPULSION OF FOREIGNERS....36

AMENDMENT TO ORGANIC LAW 4/2000: A NEW BORDER REGIME FOR CEUTA AND MELILLA....38

ACCESS TO ASYLUM AT BORDER CROSSINGS....40

UNNECESSARY OR EXCESSIVE USE OF FORCE BY SPANISH CIVIL GUARDS....40

MOROCCO'S INVOLVEMENT IN SPAIN'S SUMMARY EXPULSIONS....44

OBSTACLES TO ACCESSING INTERNATIONAL PROTECTION IN MOROCCO....47

A JOURNEY OF HOPE SHADOWED BY FEAR: EASTERN MEDITERRANEAN ROUTE TO EUROPE....49

NEW DEAL, NO DIFFERENCE: The EU-Turkey action plan to prevent arrivals to the EU . 53

COLLECTIVE EXPULSIONS TO TURKEY FROM THE EUROPEAN UNION 56

PUSH-BACKS FROM GREECE TO TURKEY AT LAND AND SEA..... 57

PUSH-BACKS FROM BULGARIA TO TURKEY..... 66

REFUGEES UNWELCOME: HUNGARY'S EFFORTS TO KEEP REFUGEES OUT..... 71

LEGISLATIVE CHANGES IN HUNGARY TO EXTERNALIZE RESPONSIBILITY TOWARDS ASYLUM-SEEKERS: COLLECTIVE EXPULSIONS TO "SAFE COUNTRIES" 77

HUMAN RIGHTS OBLIGATIONS RELATED TO PUSH-BACKS..... 81

NEED FOR MORE SAFE AND LEGAL ROUTES FOR REFUGEES 85

CONCLUSION AND RECOMMENDATIONS..... 89

Recommendations..... 89

ANNEX..... 93

GLOSSARY

A **refugee** is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. **Asylum procedures** are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them **international protection** as a substitute for the protection of their country of origin. This report uses the term **refugees** to refer to those who have fled persecution or conflict, regardless of whether they have been recognized as such.

An **asylum-seeker** is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal grant of asylum. This report therefore uses the term refugee to refer to those who have fled persecution or conflict, regardless of whether they have been officially recognized as refugees.

A **migrant** is a person who moves from one country to another to live and usually to work, either temporarily or permanently, or to be reunited with family members. **Regular migrants** are foreign nationals who, under domestic law, are entitled to stay in the country.

Irregular migrants are foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules. They are also called "undocumented migrants". The term "irregular" refers only to a person's entry or stay.

Refoulement is the forcible return of an individual to a country where they would be at risk of serious human rights violations (the terms "persecution" and "serious harm" are alternatively used). Individuals in this situation are entitled to international protection; it is prohibited by international law to return refugees and asylum-seekers to the country they fled – this is known as the principle of ***non-refoulement.*** The principle also applies to other people who risk serious human rights violations such as torture and the death penalty, but do not meet the legal definition of a refugee. ***Indirect refoulement*** occurs when one country forcibly sends them to another country that subsequently sends them to a third country where they risk serious harm; this is also prohibited under international law.

Push-backs happen when people are pushed back to the country they are trying to leave – or in some cases into the high seas – shortly after they cross the border, without an opportunity to challenge their forced return. Push-backs usually involve a group of people (migrants or refugees). The deportation of a group of people without looking at each case individually is a **collective expulsion** and is prohibited under international law.

There is no international agreement on what constitutes **effective protection**, which arises in the context of assessing whether an asylum-seeker may be returned to a country other than the country of origin. Effective protection requires the delivery of legal, physical and social protection, firmly grounded in international human rights standards. While effective protection requires that the asylum-seeker would have access to effective asylum procedures in the country of return and not be at risk of *refoulement,* the ability to have access to and

enjoy fundamental economic, social and cultural rights is also a fundamental component of effective protection. Assessment of effective protection necessitates an individual assessment of each case.[1]

Migrants and refugees have the right to an **effective remedy** for violations of their rights under international refugee and human rights law. States must investigate serious allegations of human rights violations such as push-backs, ill-treatment and excessive use of force in a prompt, effective and independent manner to ensure reparation for victims of such violations, including access to justice and truth and a guarantee of non-repetition.[2]

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[1] Amnesty International, *Amnesty International's concerns at the 55th Session of the Executive Committee of the United Nations High Commissioner for Refugees* (AI Index: IOR41/031/2004), available at: https://www.amnesty.org/download/Documents/96000/ior410312004en.pdf (accessed 18 September 2015) and *UN* High Commissioner for Refugees (UNHCR), *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers* (*Lisbon Expert Roundtable, 9–10 December 2002*), February 2003, available at: www.refworld.org/docid/3fe9981e4.html (accessed 1 September 2015).

[2] Basic Principles and 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 adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx (accessed 20 September 2015).

EXECUTIVE SUMMARY: PROGRESSIVE CLOSURE OF SAFE ENTRY INTO EUROPE

"Let's not pretend that what the EU and its member states are doing is working. Migration is here to stay. Building fences, using tear gas and other forms of violence against migrants and asylum-seekers, detention, withholding access to basics such as shelter, food or water and using threatening language or hateful speech will not stop migrants from coming or trying to come to Europe."[3]

François Crépeau, UN Special Rapporteur on the human rights of migrants

"We are witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing

[3] United Nations Office of the High Commissioner for Human Rights, *Migrant crisis: "Let's not pretend Europe's response is working" – UN rights expert warns,* 25 August 2015, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=16344 (accessed 20 September 2015).

anything seen before."[4]

António Guterres, UN High Commissioner for Refugees

The world is experiencing the worst refugee crisis since World War II. Nearly 60 million people are forcefully displaced around the world due to conflict, violence and persecution. Over 19 million of them are refugees outside their home countries,[5] of whom 86% are hosted by developing countries, and 25% in the least developed ones.[6]

Rather than being prepared to receive a small fraction of world's refugees in a dignified manner, however, this report shows how the leaders of the European Union (EU) have sought to prevent their entry into the richest political bloc in the world, by erecting fences at land borders, deploying ever-increasing numbers of border guards, spending on surveillance technology and seeking to enlist neighbouring countries already hosting large numbers of refugees as gatekeepers.

The result of the Fortress Europe approach is twofold. Firstly, these measures have failed to achieve their misguided aims: The number of irregular arrivals into the EU reached 500,000 in September compared to 280,000 in the whole of 2014.[7] While these include people fleeing poverty, the majority of men, women and children arriving were refugees fleeing violence and widespread human rights violations in Syria, Afghanistan, Eritrea, Iraq, Somalia, and Sudan.[8]

Secondly, by ignoring the strength of the push factors and the growing need to provide international protection, and by focusing on trying to keep refugees out, European countries simply push people from one route to another, and in most cases to more dangerous ones. Of all the irregular arrivals in 2015, almost 90% came by sea.[9] This resulted in 3,500 people dying at sea in 2014while trying to reach the EU and almost 3,000 having died as of September 2015, despite laudable measures to increase search and rescue capacity at sea

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[4] UNHCR, *Global Trends 2014*, 18 June 2015, available at: http://unhcr.org/556725e69.html (accessed 14 September 2015) (UNHCR, *Global Trends 2014,* 18 June 2015).

[5] Figures provided in this paragraph are from UNHCR, *Global Trends 2014,* 18 June 2015.

[6] UNHCR, *Global Trends 2014*, 18 June 2015.

[7] Frontex (news), *More than 500 000 migrants detected at EU external borders so far this year*, 14 September 2015, available at: http://frontex.europa.eu/news/more-than-500-000-migrants-detected-at-eu-external-borders-so-far-this-year-fGa82v (accessed 20 September 2015).

[8] UNHCR website on emergency response in Mediterranean states that of the 533,824 people, who had arrived in Europe by sea in 2015, 85% are from the world's top-10 refugee producing countries. Available at: http://data.unhcr.org/mediterranean/regional.php (accessed 5 October 2015).

[9] UNHCR website on emergency response in Mediterranean states that 449,421 people have arrived in Europe by sea as of 21 September 2015. Available at: http://data.unhcr.org/mediterranean/regional.php (accessed 5 October 2015).

during summertime.[10] No matter how big the search and rescue effort in the Mediterranean, as long as refugees do not have any alternatives to reach safety than the sea, they will continue to die off Europe's shores.

States have the prerogative to control their borders. However, this must be done in compliance with their international human rights obligations. Border control measures employed should, in particular, not prevent refugees from reaching safety and being able to claim asylum. The emphasis of European leaders on preventing irregular migration, has built up visible and invisible walls around the EU. Although signatories to the 1951 Refugee Convention, EU member states appear to be doing everything in their power to prevent any engagement with refugees, trying to avoid any responsibility towards the world's refugees, by ensuring they do not come under their jurisdiction.

The majority of the entries into the EU take place at official border crossing points at land, sea and airports, where people are subject to checks verifying if they fulfill the necessary requirements (travel documents, visa, and other) to enter the territory. Any person in need of international protection has to be identified when they reach the border. In theory, they can submit a request for protection at border crossings, and an asylum seeker cannot be rejected at the border.[11] The obligations of EU member states towards asylum seekers at border crossings are clear, although there are instances where EU member states have attempted to avoid their obligations arguing limited jurisdiction around borders, such as through the use of "transit zones."

Arriving regularly through the border crossing of an EU state of choice is, however, not possible for many in need of international protection. Many refugees lack necessary travel documents such as passports or visas, either because they were forced to flee without proper documentation, or because obtaining them from a persecuting state would be impossible or extremely dangerous. At the land borders, an asylum-seeker first has to exit the neighbouring third country by passing through its border crossings in order to reach the official border crossing of the EU member state. However, asylum-seekers are often stopped at the first border crossing (that of the third country) for not having necessary documentation either to enter the neighbouring EU member state or to be present in or exit the third country in question. As a result, only a few refugees can actually reach the border crossing of the EU state they wish to travel to and submit an asylum application.

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[10] UNHCR website on emergency response in Mediterranean provides number of deaths at sea as 2,964 as of 21 September 2015. Available at: http://data.unhcr.org/mediterranean/regional.php (accessed 5 October 2015).

[11] '"Any expression of fear of suffering serious harm if returned to the country of origin constitutes an application for international protection (Article 2 (b) of the Asylum Procedures Directive (2013/32/EU) and Schengen handbook). In order to comply with the principle of non-*refoulement* set forth in the Charter of Fundamental Rights and restated in Article 3 of the Schengen Borders Code, persons in need of international protection need to be identified when they reach the border'." See FRA, *Fundamental Rights at land Land Borders: findings Findings from selected European Union border crossing points* (2014).

This means that refugees have to either obtain false or fake documents, hide in vehicles to pass through border crossings, or attempt to cross the land borders from areas which are not official border crossings. However, the EU external borders that are not official border crossings are progressively being closed off either by fences, increased patrolling and technological surveillance, or cooperation with third countries, whereby they are requested to stop irregular departures to the neighbouring EU member state.

Based on research Amnesty International conducted since 2013 on the main routes used by refugees to reach the EU, this report demonstrates how EU countries' attempts to prevent irregular arrivals simply force refugees to more clandestine -- and as a result mostly more dangerous -- routes. The comparably easier routes being closed off forces refugees to take more difficult and dangerous journeys to reach safety in Europe; either over wide, fast-flowing rivers, or longer sea journeys. The need to take complex and demanding journeys also makes refugees and migrants more and more dependent on smugglers. This puts them at the mercy of criminals, to whom they must pay high fees, which could have been used for integration purposes once in Europe.

This report describes some of the border management measures employed by Spain, Greece, Bulgaria, and Hungary. The statistics of irregular arrivals provided throughout the report show that while some of these measures have contributed to closing off of easier routes that refugees can take into the EU, they have failed to decrease the overall number of arrivals; for the simple reason that as long as they think their lives will be significantly better in the EU than the countries they are escaping from, refugees will continue coming. Instead, these measures have contributed to shifts in the routes towards Europe, forcing refugees to take ever-more dangerous journeys in order to find effective international protection.

The report also describes push-back practices usually accompanied by ill-treatment or excessive use of force, employed by the Greek national police, Greek coast guard, Bulgarian border guards at these countries' borders with Turkey, and by Spanish civil guards at the country's borders with Morocco.

Amnesty International's research shows that push-backs are not anomalous to any one border but have become an intrinsic feature of any EU external border located on major migration routes as the construction of fences along them. In the face of numerous reports by NGOs, including Amnesty International, of push-backs from these borders, the European Commission, is failing to take effective action, despite the fact that push-backs breach the EU Charter of Fundamental Rights and inconsistent with the Schengen Borders Code and EU asylum procedures and return directives. At the same time, other EU member states appear satisfied as long as the frontline member states prevent arrivals of refugees and migrants, without questioning their means to do so.

In the face of the global refugee crisis, European leaders have to face up to their obligations to provide protection to a fairer share of the world's refugees. Amnesty International calls on EU member states and the EU institutions to substantially increase the safe and legal routes available to refugees so that they are not forced into clandestine and dangerous journeys.

METHODOLOGY

The sections concerning Spain and Spain's borders with Morocco in this report draw on six visits to Spain in September, October, December 2014, and February, June and July 2015 during which authorities, migrants, asylum-seekers and refugees, non-governmental and inter-governmental organizations, journalists and lawyers were interviewed.

Amnesty International met with representatives from the Spanish Ministry of Interior, the Ministry of Foreign Affairs, and the Ministry of Employment and Social Security, and interviewed lawyers, NGOs, journalists, the UN High Commissioner for Refugees, migrants, asylum-seekers and refugees during visits to Madrid in September and December 2014, and July 2015.

During visits to Ceuta and Melilla, the Spanish enclaves, in October 2014 and February 2015, Amnesty International spoke to government delegates, officials from the Civil Guards Commands, National Police Headquarters in the enclaves as well as the national police at the official border crossings of Tarajal (in Ceuta) and of Beni Anzar (in Melilla). Amnesty International also met the minors' prosecutor in Melilla, the director and the deputy director of the Centre for Temporary Accommodation of Migrants (CETI) in Ceuta and Melilla respectively, and spoke to representatives of civil society, bar associations, the UNHCR, migrants, asylum-seekers and refugees. Amnesty International delegates also met with the chief prosecutor and aliens' prosecutor for the region of Malaga covering Melilla and visited a Red Cross shelter for migrants and asylum-seekers in Algeciras, a port city in southern Spain.

Amnesty International collected information on the situation of migrants, asylum-seekers and refugees in Morocco through desk research and phone interviews with NGOs, representatives of the UNHCR and the EU Delegation to Morocco and migrants, asylum-seekers and refugees in Morocco. Fact-finding visits in Morocco were not possible for the purpose of this research as Moroccan authorities returned from the border an Amnesty International delegation visiting the country in October. Authorities have since then continuously made the organization's research activities in the country conditional on meetings that were never granted. Finally, in June 2015, Moroccan authorities detained and expelled two staff members of Amnesty International visiting Morocco for this research on their third day in the country.

A total of 74 migrants, asylum-seekers and refugees were interviewed in the course of the research into the situation at Spain's borders with Morocco. Eighteen of the interviewees were women. Two Cameroonians were interviewed on the phone while in detention in Morocco. The majority of interviewees were from Syria (29), followed by Guinea (14), Cameroon (10), Mali (5), Nigeria (4), Algeria (2), Morocco (2), Sierra Leone (2), Burkina Faso (1), Ivory Coast (1), a Palestinian refugee from Syria (1), Somalia (1), Tunisia (1) and Western Sahara (1).

The majority of interviews in the enclaves Ceuta and Melilla were carried out with men, reflecting in part the gender imbalance amongst refugees and migrants arriving in the

Spanish enclaves,[12] but also the reluctance of some women to be interviewed. Among the 59 interviews held with asylum-seekers, refugees and migrants in the enclaves twelve were with women.

Information shared on other borders and countries in the report draw from both new and existing research that Amnesty International carried out in Turkey, Greece, Bulgaria, Macedonia, Serbia and Hungary. To update Amnesty International's research on the treatment of migrants and refugees at the Greek and Bulgarian borders with Turkey, an eight-day fact-finding visit took place in Turkey on 11-19 May 2015. This involved visiting the Kirklareli province bordering Bulgaria, and the Edirne province bordering Bulgaria and Greece, and a four-day stay in Istanbul to interview refugees and migrants,[13] who had attempted to cross over to Greece and Bulgaria. Delegates also went to Ankara to meet with the representatives of the Turkish Coastguard Command.

Amnesty International would like to thank all those who assisted with the research and preparation of this report, including all the individuals who spoke with the organization in Spain, Morocco, Greece, Bulgaria, Turkey, Macedonia, Serbia and Hungary, and especially the migrants, asylum-seekers and refugees who were so generous with their time and testimonies. The names of most individuals have been withheld or changed to protect their identity.

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[12] The number of women arriving in the Spanish enclaves had traditionally been much smaller than the number of men arriving there. Even though the number of women in the enclaves rose with the arrival of Syrians and Palestinians escaping from the conflict in Syria, there were still only 474 women and girls amongst the 1,263 people staying in Melilla on 15 June 2015, 422 of them Syrians and Palestinians according to data provided to Amnesty International by the management of the CETI in Melilla. On the other hand, among the 597 residents in the CETI in Ceuta on 6 February 2015, there were only 28 women with only two Syrians among them (Data obtained during the interview with the director of the CETI in Ceuta on 6 February 2015). Based on interviews with Syrian and Palestinian refugees in Ceuta and Melilla in February 2015, this was largely a result of those escaping from the Syria conflict having begun to choose Melilla over Ceuta due to longer waiting times in Ceuta to be transferred to the mainland Spain compared to the waiting time in Melilla.

[13] Details of interviewees are provided in relevant sections on Greece and Bulgaria.

PUSHED AROUND AT THE BORDERS OF SPAIN

SPANISH MEASURES TO PREVENT IRREGULAR ARRIVALS TO SOUTHERN SPAIN

Although currently not the main source of irregular migrants in Spain – as the majority of those in an irregular situation in Spain arrive there regularly and then fall into irregularity by overstaying their visas or their right to stay in Spain for other reasons[14] – the Spanish Government has been committed to preventing irregular arrivals through its southern borders since the early 1990s. The routes to the southern borders of Spain include both sea journeys from Morocco to southern coasts of Spain – mainly Tarifa – and from Morocco, Mauritania or Senegal to the Canary Islands. They also include the only land route from Africa to Europe, from Morocco to the two Spanish enclaves in North Africa, Ceuta and Melilla. Migrants and refugees also enter the enclaves by sea either swimming or on small inflatable boats.[15]

The only land routes into Spain from Africa – the enclaves, Ceuta and Melilla – were first fenced off in the 1990s. In January 1998, the Spanish Government announced Plan Sur (Plan South), to combat "illegal migration" and human trafficking, specifically targeting smugglers and traffickers in Andalucia, Ceuta, Melilla and Murcia. The operation had a budget of 250 million pesetas (approximately 1.5 million euros) and had strengthening border controls as the main objective.[16]

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[14] See for example, policy brief from July 2009 of the European Commission funded research project "Irregular Migration in Spain" implemented by Hellenic Foundation for European and Foreign Policy (ELIAMEP) available at: http://irregular-migration.net/fileadmin/irregular-migration/dateien/4.Background_Information/4.2.Policy_Briefs_EN/Spain_PolicyBrief_Clandestino_Nov09_2.pdf (accessed 19 September 2015).

[15] Currently almost all irregular departures to Spain are from Morocco. Refugees and migrants, who travel to Spain through Morocco, arrive there either traveling from Senegal through Mauritania or enter via Algeria by traveling through Mali or Niger. While it is mostly Senegalese who take the first route along the coast, the second route is preferred by Ivorian or Congolese migrants and refugees. Separate from these two routes, Syrians who come to Morocco to continue on to Spain, have mostly been flying to Algeria benefiting from its visa-free regime for Syrians, to then cross the Algeria-Morocco border irregularly. However, it is now more difficult for Syrians to use this route because Algeria began to impose visa requirements for Syrians in December 2014. Source: "Migration Trends across the Mediterranean: connecting the dots" prepared by Altai Consulting for the MENA regional office of International Organization for Migration, June 2015: www.altaiconsulting.com/docs/migration/Altai_Migration_trends_accross_the_Mediterranean.pdf (accessed 14 September 2015). Information here also draws from Amnesty International's interviews with migrants and refugees as well as non-governmental organizations in Spain and in Morocco.

[16] El Pais, La policía destina cien agentes al Plan Sur contra las redes de ilegales, 16 January 1998,

This was followed by the development of a high tech surveillance system, called the Integrated System of External Surveillance, *Sistema Integrado de Vigilancia Exterior* (SIVE), which began operating in the Strait of Gibraltar in 2002.17 The system involves both stationary and mobile video and infrared cameras and radars monitoring the southern coast of Spain.[18] Once a boat enters into the coverage of the SIVE radars, the command unit in Algeciras is alerted. Cameras can then show close up images of the boat, which helps determine the number of people aboard. It is estimated that developing the system cost Spain around 300 million euros.[19] The installation of SIVE contributed to a shift of the migratory route from the shorter Strait of Gibraltar journey to the longer one towards the Canary Islands. The number of arrivals in the Canary Islands more than doubled that year; from 4,105 irregular arrivals in 2001 to 9,875 in 2002.[20] Consequently, SIVE was expanded to cover the Canary Islands, and later also the eastern coast of Spain (Valencia and Alicante) and the Balearic Islands.[21] Between 2007 and 2010, Spain made the largest expenditure under the External Borders Fund of the European Union, with over 120 million euros. Over 44 million euros of this was spent on SIVE.[22] According to the European Commission, "this

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available at: elpais.com/diario/1998/01/16/espana/884905224_850215.html (accessed 14 September 2015) and ABC Hemeroteca, *Cotino anuncia que más de cien policías lucharán contra la inmigración*, 16 January 1998, available at: hemeroteca.abc.es/nav/Navigate.exe/hemeroteca/madrid/abc/1998/01/16/076.html (accessed 14 September 2015).

[17] Presentation by the Director of the Security Systems Division of Indra Company, J. M. Pérez Pujazón, *SIVE a Pioneer Maritime Border Surveillance System: What is Beyond?*, March 2009, available at: ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=5127 (accessed 14 September 2015).

[18] Presentation of Indra Company, *Maritime Surveillance Systems,* available at: www.indracompany.com/sites/default/files/mss.pdf (accessed 14 September 2015) and Presentation by the Director of the Security Systems Division of Indra Company, J. M. Pérez Pujazón, *SIVE a Pioneer Maritime Border Surveillance System: What is Beyond?*, March 2009, available at: ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=5127 (accessed 14 September 2015).

[19] Deutsche Welle, *Spain's Border Surveillance System Remains Controversial*, 29 October 2007, available at: www.dw.com/en/spains-border-surveillance-system-remains-controversial/a-2835465 (accessed 14 September 2015).

[20] Spanish Ministry of Interior, available at: http://www.interior.gob.es/documents/10180/3066430/Balance+2014+de+la+lucha+contra+la+inmigración+irregular/4a33ce71-3834-44fc-9fbf-7983ace6cec4 (accessed 14 September 2015).

[21] ABC.es, *El Gobierno amplía finalmente el SIVE a Alicante y Valencia para prevenir la inmigración ilegal,* 7 july 2007, available at: www.abc.es/hemeroteca/historico-07-07-2007/abc/valencia/el-gobierno-amplia-finalmente-el-sive-a-alicante-y-valencia-para-prevenir-la-inmigracion-ilegal_1634121831624.html (accessed 14 September 2015) and El Mundo, *Los radares sive "blindarán" el sudeste del archipiélago a finales de octubre*, 25 September 2009, available at: www.elmundo.es/elmundo/2009/09/25/baleares/1253888411.html (accessed 14 September 2015).

[22] European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Ex-post Evaluation of the External Borders Fund for the period 2007-2010 (report submitted in accordance with Article*

enabled Spain to intercept 5,279 irregular migrants and improve the security of its maritime border, reducing irregular migration to the Canary Islands by 17.5%" in that period".[23]

The expansion of SIVE to the area around the Canary Islands, contributed to a shift in the migratory route from the Canary Islands towards the Spanish enclaves of Ceuta and Melilla. After a technical mission to Ceuta and Melilla in October 2005, the European Commission reported that irregular arrivals to the Spanish coasts including the Canary Islands had decreased by 37% in the first eight months of 2005 compared to the same period in 2004 "due to increased co-operation between Spanish and Moroccan authorities as well as the application of the S.I.V.E. (surveillance) System".[24] While this did not mean a large increase in irregular arrivals in the enclaves in 2005 compared to the previous year,[25] the shift in the route was apparent by the increased attempts to jump the fences surrounding the enclaves by large groups of migrants and refugees involving over 600 people at a time. The Commission report from October 2005 concluded that "the sudden high influx towards the land borders of Ceuta and Melilla could therefore be seen partly as a result of a displacement effect".[26] During a three-week period in 2005, between 1,500 and 2,000 people entered the enclaves irregularly,[27] during which 13 people lost their lives and many more were seriously injured.[28]

Following the increased pressure on the land borders, Spain increased the number of personnel guarding them and reinforced the fences surrounding the enclaves by increasing their height to six metres and introducing razor wires, among other measures.[29] Almost 40

52(3)(c) of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007), 23 April 2014, available at: ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/schengen/docs/com_2014_235_f1_report_from_commission_en.pdf (accessed 14 September 2015) ("European Commission, *External Borders Fund Report*").

[23] European Commission, *External Borders Fund Report*, 23 April 2014.

[24] European Commission, *Visit to Ceuta and Melilla – Mission Report Technical Mission to Morocco on Illegal Immigration 7th October-11th October 2005*, 19 October 2005, available at: europa.eu/rapid/press-release_MEMO-05-380_en.htm?locale=en (accessed 14 September 2015) ("European Commission, *Visit to Ceuta and Melilla – Mission Report*").

[25] The increase was 1,373; from 4,193 in 2004 to 5,566 in 2005.

[26] European Commission, *Visit to Ceuta and Melilla – Mission Report*, 19 October 2005.

[27] 20 Minutos, *Ya han entrado en Melilla 3.500 inmigrantes, casi 1.000 más que en todo el año anterior*, 27 October 2014, available at: www.20minutos.es/noticia/2273960/0/inmigrantes-melilla-ceuta/valla-saltos/ceti-cie/ (accessed 14 September 2015) and Europa Press, *Cerca de 2.000 inmigrantes han entrado en Melilla saltando la valla este año*, 22 October 2014, available at: www.europapress.es/epsocial/inmigracion-00329/noticia-cerca-2000-inmigrantes-entrado-melilla-saltando-valla-ano-doble-2013-20141022182722.html (accessed 14 September 2015).

[28] Amnesty International, *Spain and Morocco: Failure to protect the rights of migrants – Ceuta and Melilla one year on* (Index: EUR 41/001/2006) 30 October 2006, available at: www.amnesty.org/download/Documents/76000/eur410012006en.pdf (accessed 14 September 2015) ("*Ceuta and Melilla one year on*").

[29] European Commission, *Visit to Ceuta and Melilla – Mission Report*, 19 October 2005.

million euros was spent on repairing and reinforcing the fences in 2005 alone.[30] Coinciding with reinforcement of the control of land borders leading to Ceuta and Melilla in 2005, there was, once again, a significant rise in arrivals in the Canary Islands from Senegal and Mauritania in 2006, reaching 31,678. However, this route is virtually closed now largely a result of proactive measures taken by Spain and the EU to curb irregular arrivals on this route. These included increased maritime surveillance through Frontex co-ordinated joint operation HERA and the Spanish surveillance system SIVE. Bi-lateral co-operation agreements Spain had signed with Mauritania and Senegal, as well as agreements signed with origin countries to facilitate the return of migrants also contributed to the drop in the number of arrivals in the Canary Islands to 12,478 in 2007 and to 296 arrivals by 2014.[31]

ENCLAVES AS THE SYMBOL OF 'FORTRESS EUROPE': THE CONSTRUCTION OF BORDER FENCES

The fences surrounding the only European territories on mainland Africa – the Spanish enclaves – were first put up in the 1990s[32] with the aim of stopping irregular migration and drug trafficking. They have continuously been reinforced since then,[33] notably in 2005 after large groups of sub-Saharan Africans tried to jump the fences, resulting in 13 deaths and many more being seriously injured.[34] Over 31 million euros were spent on increasing the height of the fences surrounding Melilla and installing surveillance systems. Similar works on the fence in Ceuta in 2005 cost almost 8 million euros., the highest annual expenditure in the last ten years.[35]

According to the government's response to a parliamentary question on 8 September 2014, the expenditure on the installation and upkeep of the fences from 2005 to 2013 inclusively

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[30] Government Respon se to Parliamentary Question, 8 September 2014, File no. 146881 ("File no. 146881").

[31] Spanish Ministry of Interior, available at: http://www.interior.gob.es/documents/10180/3066430/Balance+2014+de+la+lucha+contra+la+inmigración+irregular/4a33ce71-3834-44fc-9fbf-7983ace6cec4 (accessed 14 September 2015).

[32] Stefan Alscher, *Knocking at the Doors of "Fortress Europe": Migration and Border Control in Southern Spain and Eastern Poland*, November 2005, available at: http://www.stefan-alscher.de/resources/wrkg126.pdf (accessed 14 September 2015).

[33] The first major reinforcement in Ceuta was carried out in 1995 with 48 million euros spent and in 1998 in Melilla with 12 million euros expenditure. Jaume Castan Pinos, *Building Fortress Europe? Schengen and the cases of Ceuta and Melilla,* 2009, available at: http://www.qub.ac.uk/research-centres/CentreforInternationalBordersResearch/Publications/WorkingPapers/CIBRWorkingPapers/Filetoupload,174398,en.pdf (accessed 19 September 2015).

[34] Amnesty International, *Ceuta and Melilla one year on*, 30 October 2006.

[35] Government Response to Parliamentary Question, 8 September 2014, File no. 146881 ("Government Response, File no. 146881").

amounted to 47,927,961.76 euros for Melilla and 24,669,835.90 euros for Ceuta, which equates to 22,086.34 euros spent daily since 2005, excluding any expenditure for Civil Guards, the Spanish security force responsible for the security of the Spanish borders outside the official border crossing points.[36]

Amnesty International was refused information on the capacity of the civil guard commands in Melilla and Ceuta in their work to prevent entries into the enclaves over the fences surrounding them or by sea on the basis that such details are secret for security reasons.[37] However, El Mundo reported on 31 March 2015 that the 12km land border and 8km of sea border around Melilla, including the operation of helicopters, is patrolled by 270 civil guard officers based in Melilla who are supported by another 200 civil guard officers from the Reserve and Security Unit brought to Melilla from mainland Spain.[38]

Both fences cover the entirety of the land border between the Spanish enclaves and Morocco, and extend into the sea. They are erected within the Spanish territory. The three-layered fence system separating Melilla from the neighbouring Moroccan city Nador is 10.5km long. The outer layers, meaning the first fence on the Moroccan side and the third fence on the Spanish side, are 6m in height.[39] The second fence in the middle is 3m high. There is a trap system (sirga tridimensional) between the first fence on the Moroccan side and the second fence in the middle. As early as 2006, the Independent Association of the Civil Guards raised serious concerns over the capability of this system to cause injuries to people who might fell on from the fences.[40] The surveillance at the border is reinforced through movement detectors, optical and sound sensors, control towers placed at regular intervals, flood lights, road lights, and surveillance cameras. In May 2014, Spain also installed an anti-climbing mesh on the upper part of the outer fence on the Moroccan side. The holes in the mesh are so small that fingers cannot fit in, making it almost impossible to get a grip on the fence.[41]

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[36] Government Response, File no. 146881. According to the response, yearly expenses for the fence in Melilla from 2005 to 2013 were 31,817,778.00, 2,862,070.05, 3,455,519.18, 2,823,112.41, 1,291,087.62, 1,339,914.85, 1,085,984.89, 1,915,646.32 and 1,336,848.44 euros.

[37] Interviews with representatives of the civil guard commands in Melilla (8 October 2014) and Ceuta (22 October 2014).

[38] *El Mundo, La Asamblea de Melilla arropa a los agentes fronterizos premiándoles con dos placas al Mérito Social*, 31 March 2015, available at: www.elmundo.es/espana/2015/03/31/551ab65ee2704e0a198b456b.html (accessed 14 September 2015).

[39] Details on the fences and the border surveillances system in Melilla and Ceuta are based on observations and interviews with representatives of the Civil Guard Command in Melilla on 8 October 2014 and in Ceuta on 22 October 2014. Also see the graphics available on El Diario: www.eldiario.es/desalambre/Grafico-valla-Melilla_0_198780906.html (accessed 14 September 2015) and Terra: noticias.terra.es/espana/interior-confirma-la-prohibicion-de-usar-pelotas-de-goma-en-ceuta-y-melilla,43857f1c4cf54410VgnCLD2000000ec6eb0aRCRD.html (accessed 14 September 2015).

[40] "Guardias civiles culpan al gobierno de las muertes en la valla de Melilla", El Mundo, 13 July 2006.

[41] ABC.es, *Así es la malla antitrepa de Melilla que tiene un 99,13% de «eficacia»*, 24 July 2014, available at: www.abc.es/espana/20140723/abci-malla-anti-trepa-eficacia-201407221637.html

As a result migrants and refugees trying to cross the fence system in Melilla began using hooks to pull themselves up the first fence.[42] Nonetheless, according to Frontex, this "upgrading" of the fence resulted in a shift towards the sea routes in the second half of 2014.[43]

The 8.2 kilometre fence system in Ceuta involves two 6m high fences 2m to 4m apart. There are lights, movement sensors, thermal cameras, mobile cameras and stationary cameras on the fence.

In both locations, Civil Guards patrol the fences 24 hours a day. There are also static posts of Civil Guards at regular intervals. The surveillance at the fences is further reinforced by helicopters, which provide information on the number and location of migrants and refugees during attempts to jump fences. This information is also shared with the Moroccan authorities to enable them to stop migrants and refugees before they reach the fences.[44]

Fences in Ceuta and Melilla both had razor wiring on the outer layers either on top or on the bottom, which has caused serious injuries to refugees and migrants trying to jump over them.[45] The fences in Ceuta still have razor wiring at certain locations, for example near the Tarajal border crossing, where the majority of crossing attempts take place. In Melilla, authorities told Amnesty International that all the razor wires were removed in May 2014 to allow workers to put up an anti-climb mesh. However, some razor wiring was visible at the foot of the outer fence on the Moroccan side during Amnesty International's visit in October 2014.

In May 2014, Morocco also began the construction of a fence in Nador, the city neighbouring Melilla.[46] This fence is expected to be around 2m high with a 3m deep trench and barbed

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(accessed 14 September 2015).

[42] Interviews with migrants and refugees, who had crossed the fence in Melilla, as well as representatives of the Civil Guard Commands in Melilla.

[43] Frontex, *Annual Risk Analysis – 2015*, April 2015, available at: frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf (accessed 14 September 2015).

[44] Interviews with representatives of the Civil Guard Commands in Melilla and Ceuta in October 2014.

[45] See for example Doctors without Borders (MSF), *Violence, Vulnerability and Migration: Trapped at the Gates of Europe*, March 2013, available at: www.doctorswithoutborders.org/sites/usa/files/Trapped_at_the_Gates_of_Europe.pdf (accessed 14 September 2015) and El Pais, "Tardaron doce horas en coserme las heridas después de saltar la verja," 1 December 2013, available at: politica.elpais.com/politica/2013/11/30/actualidad/1385831570_290011.html (accessed 14 September 2015).

[46] Yabiladi.com, *L'Espagne remercie le Maroc pour la construction de la nouvelle clôture frontalière à Melilla*, 16 July 2014, available at: www.yabiladi.com/articles/details/27760/l-espagne-remercie-maroc-pour-construction.html (accessed 14 September 2015).

wiring at its foot. The fence, surrounding the Spanish one around Melilla, is at least partially finished as of October 2015.[47] In a letter sent to the Moroccan authorities on 19 May 2015, Amnesty International requested information on the reasoning, the dimensions and the cost of this fence being constructed in Nador.[48] The organization did not receive a response to this and other information requests while this report was going to print in October 2015.

The continued use of razor wiring on sections of the border fences in Melilla and Ceuta, and the barbed wiring on the Moroccan fence surrounding Melilla, presents unnecessary physical dangers. In line with General Provision 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Spain and Morocco should seek to avoid the application of means capable of causing injury.

THE EXTERNALISATION OF SPANISH BORDER CONTROLS: COOPERATION WITH THIRD COUNTRIES

Co-operation with neighboring countries and countries of origin has been an important part of Spain's strategy to stop "irregular migration" through its southern borders. Readmission agreements, allowing the return of third country nationals, were signed with Morocco in 1992, with Algeria in 2002, and with Guinea-Bissau and Mauritania in 2003.[49] Spain also signed a co-operation agreement with Mauritania in 2006, which facilitates joint patrolling of the Mauritanian coast.[50] These were followed by framework agreements on migration co-operation signed with Gambia and Guinea in 2006, and with Cape Verde in 2007. Less formal co-operation arrangements were signed with Ghana in 2005, with Senegal in 2006 and with Mali in 2007 in the form of memoranda of understanding.[51]

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[47] RTBF.be, *Melilla: la construction d'une barrière "anti-immigrés" confirmée*, 10 May 2014, available at: http://www.rtbf.be/info/monde/detail_maroc-immigration-une-barriere-en-cours-de-construction-pres-de-melilla?id=8266165 (accessed 5 October 2015). A photograph of the Moroccan fence around Melilla is available here: http://emi-cfd.com/echanges-partenariats/?p=4875.

[48] Amnesty International's letter and questions sent to the Interministerial Delegation for Human Rights on 19 May 2015 (TG MDE 29/2015.037).

[49] University of Granada, *Los acuerdos bilaterales suscritos por España en materia migratoria con países del continente africano: especial consideración de la readmission de inmigrantes en situación irregular*, available at: www.ugr.es/~redce/REDCE10/articulos/04MAsuncionAsinCabrera.htm (accessed 14 September 2015).

[50] Mauritania: "nobody wants to have anything to do with us": arrests and collective expulsions of migrants denied entry into Europe, 1 July 2008, available at: www.amnesty.eu/static/documents/2008/Mauritania-AFR_38_001_2008.pdf (accessed 14 September 2015).

[51] University of Granada, *Los acuerdos bilaterales suscritos por España en materia migratoria con países del continente africano: especial consideración de la readmission de inmigrantes en situación irregular*, available at: www.ugr.es/~redce/REDCE10/articulos/04MAsuncionAsinCabrera.htm (accessed 14 September 2015).

The first Frontex joint operation for patrolling the route from West Africa towards the Canary Islands began on 11 August 2006. The operation, called HERA II, had a budget of 3.2 million euros for a four-month period. During this period, "3,887 illegal immigrants on 57 cayucos (small fishing boats) were intercepted close to the African coast and diverted" according to Frontex's annual report for 2006 without any information on where these people were diverted to or whether they had international protection needs.[52] HERA operations including patrolling of West African coasts as well as support for screening migrants (interviews to identify country of origin to facilitate return) have been continuously renewed since then and included participation by Senegal and Mauritania as well as a large number of EU member states.[53]

Similarly, the Seahorse Atlantico project run by the Spanish Civil Guards in co-operation with Morocco, Mauritania, Senegal, and Cape Verde involved joint-patrols, trainings on maritime security, exchange of liaison officers, and other information and experience sharing forums, and have helped decrease irregular migration towards the Canary Islands.[54] This was followed by the development of an information-sharing network under project "Seahorse Network" between Spain, Portugal, Morocco, Mauritania, Senegal and Cape Verde. The Seahorse Co-operation Centres project was then extended to include Gambia and Guinea-Bissau for information exchange.[55] Spain also set up a national co-ordination centre in December 2013 as part of the EUROSUR system.[56]

As the majority of irregular arrivals to Spain depart from Morocco, Spain has sought to enlist its neighbour as a gatekeeper against migrants and refugees. The readmission agreement signed in 1992 allows Spain to return to Morocco not only Moroccans but also third-country nationals who had travelled through Morocco.[57] The agreement fails to include a number of

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[52] Mauritania: "nobody wants to have anything to do with us": arrests and collective expulsions of migrants denied entry into Europe, 1 July 2008, available at: www.amnesty.eu/static/documents/2008/Mauritania-AFR_38_001_2008.pdf (accessed 14 September 2015).

[53] Frontex (news), *Longest Frontex coordinated operation – Hera, the Canary Islands*, 19 December 2006, available at: frontex.europa.eu/news/longest-frontex-coordinated-operation-hera-the-canary-islands-WpQlsc (accessed 14 September 2015).

[54] IMP-MED website (presentation by the Spanish Civil Guard), *Seahorse Projects: present and future,* available at: www.imp-med.eu/En/image.php?id=125 (accessed 14 September 2015).

[55] Official website of the Spanish Civil Guard (press release), *Nuevo marco de colaboración entre países del Mediterráneo para luchar contra la inmigración irregular,* 19 September 2013, available at: www.guardiacivil.es/es/prensa/noticias/4582.html (accessed 14 September 2015).

[56] European Commission, *Eurosur infographic,* available at: ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/eurosur/eurosur_en.pdf (accessed 14 September 2015).

[57] Acuerdo entre el Reino de España y el Reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente (Agreement between the Kingdom of Spain and the Kingdom of Morocco on the movement of persons , transit and readmission of foreigners who have entered illegally), signed in Madrid in 1992 (entered into force on 21 October 2012), www.boe.es/buscar/doc.php?id=BOE-A-1992-8976#analisis (accessed 14 September 2015).

substantive and procedural safeguards foreseen by international law in case of transfer of a person from the jurisdiction of a state.

Most notably, the exceptions to the obligation of readmission in Article 3 of the Agreement do not reflect the principle of non-refoulement. The obligation of the requested state to ensure that the foreigners readmitted are sent as soon as possible to their state of origin or the state where they started their journey, unless they are entitled to remain in its territory (Article 5 of the Agreement) can result in breaches of the principle of non-refoulement.[58] Article 8 of the Agreement allows Spain and Morocco to deny transit for expulsion through their territories when the foreigner "faces the risk of suffering ill-treatment" in the state of final destination. However, the article fails both to impose such a denial as a legal obligation and to mention the risk of persecution or other serious human rights violations as grounds to deny the transfer. Under Article 9, the Agreement does not affect "the obligations for the readmission of third country nationals resulting from the application of the provisions of other bilateral or multilateral Agreements". However, this very narrow formulation is not sufficient to ensure that the agreement is interpreted and implemented in compliance with international human rights standards, such as the principle of non-refoulement. It should be, however, noted that the representatives from the National Police in Ceuta and Melilla told Amnesty International that this agreement is not being respected by Morocco who are declining to accept any returnees from the enclaves under this agreement.[59]

Spain signed another readmission agreement with Morocco in 2007, this time to facilitate the return of Moroccan unaccompanied children. AECID, the Spanish Agency for International Co-operation for Development, had provided 2.7 million euros for the establishment of a minors' support system in Nador and Beni Mellal, Morocco.[60]

In response to a parliamentary question on Spain's co-operation with Morocco, the Spanish Government listed in January 2015 exchange of liaison officers; centres for police co-operation in Algeciras (Spain) and Tangiers (Morocco) for information exchange; a joint team for analysis of irregular migration; and joint maritime patrols of Civil Guards and Moroccan Royal Gendarmerie among the co-operation measures with Morocco in the field of migration.[61]

Spain has not acted alone in its efforts to enlist Morocco as a gatekeeper. The European External Action Service lists migration issues as one of the main focus areas of EU's co-operation with Morocco, and the EU has been trying to sign a readmission agreement with the country since the entry into force of the EU-Morocco Association Agreement in 2000. The

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[58] Article 5 of the agreement states: "The requested State shall ensure that the foreigners readmitted are sent as soon as possible to their State of origin or the State where they started their journey, to the extent that they are not entitled to remain in the territory of the requested State."

[59] Interviews in Ceuta and Melilla in October 2015.

[60] AECID, *La Cooperation Espagnole au Maroc: rapport annuel 2005-2006,* 6 September 2007, available at: www.aecid.ma/IMG/pdf_rapport_annuel_2005_2006.pdf (accessed 14 September 2015).

[61] Government Response to Parliamentary Question, 16 January 2015, file no. 174909.

EU-Mobility Partnership signed on 7 June 2013 centres around four main topics: improved organization of legal migration; effective combating of irregular migration; maximizing the positive effect of migration on development; and the promotion of and respect for refugees' rights. Morocco had also received funding from the EU for migration management and combating "illegal" migration, most notably a 67.6 million euros grant under the MEDA programme for a project titled "management of borders" for the period from 2003 to 2010.[62]

TRAPPED IN THE ENCLAVES

Asylum-seekers who are admitted to the asylum procedure in Spain receive an asylum-seeker identity card (red card), which allows them to freely travel within the country. However, asylum-seekers in Melilla and Ceuta are not allowed to leave the enclaves with their asylum-seeker identity cards, effectively facing another border before mainland Europe.

Rather, with few exceptions, all asylum-seekers in Ceuta have to wait for the end of the asylum procedure to be able to leave the enclaves, which may last for months or even years. Although the situation in Melilla was similar to Ceuta until recently, Amnesty International was informed in July 2015 that there are now more regular transfers of asylum-seekers to mainland Spain from Melilla.[63] However, asylum-seekers in both enclaves still cannot travel to mainland Spain freely and have to wait for an order from the national police headquarters in Madrid to be able to leave the enclaves.

In June 2015, the director of the Centre for the Temporary Stay of Migrants (Centros de Estancia Temporal de Inmigrantes, CETI) in Melilla informed Amnesty International that the current waiting period in Melilla for asylum-seekers is on average two or three months. However, during the visit in June 2015, Amnesty International met asylum-seekers who had been in Melilla for up to seven months.

Restrictions on asylum-seekers' freedom of movement breaches Spain's national laws and has been declared unlawful in a number of judgments by courts in Spain.[64] These restrictions

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[62] European Commission (press release), *The Commission gives budgetary support to reinforce the Morocco's new strategy for combating illegal immigration,* 23 August 2006, available at: europa.eu/rapid/press-release_IP-06-1121_en.htm (accessed 14 September 2015). Total funds provided to Morocco under the MEDA programme between 2000 and 2006 was 917.4 million euros. European External Action Service, *Mediterranean Neighbourhood Countries : Commitments and Payments,* 15 January 2007, available at: eeas.europa.eu/euromed/docs/meda_figures_en.pdf (accessed 14 September 2015).

[63] Interviews with the management of the CETI in Melilla in June 2015, the Spanish Commission for Refugees (CEAR) in July 2015 and UNHCR staff based in Melilla in July 2015.

[64] See for example, decision by the Superior Court in Andalucía (TSJA) of 25 October 2010 (Rec 398/2010), available at: www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=5921753&links=%22398/2010%22&optimize=20110414&publicinterface=true (accessed 14 September 2015); decision by the STJA of 28 October 2010 (Rec 437/2010), available at: www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=5876365&link

also violate Spain's international human rights obligations. Article 12 of the International Covenant on Civil and Political Rights, for example, stipulates that everyone residing legally within a state has the right to choose his/her place of residence and has the right to move around freely. Asylum-seekers admitted to the asylum procedure in Melilla and Ceuta are clearly legally present in Spain.

In addition to being in breach of Spain's international human rights obligations and national law, the restriction on the freedom of movement of asylum-seekers in Ceuta and Melilla, means long-term subjection to inadequate reception conditions, particularly in Melilla, largely as a result of the overcrowding in accommodation centres.[65] Many Syrians Amnesty International talked to in Melilla in October 2014 stated that the long wait in sub-standard conditions along with lack of information on when they would be transferred to mainland Spain, negatively impacted their psychological well-being already fragile as a result of traumatic experiences in the country fled.

The inadequate conditions and the prospect of having to endure them for several months caused some who might have international protection needs not to seek asylum in the enclaves. In Ceuta, for example, Amnesty International was informed in October 2014 that a group of asylum-seekers from Mali had withdrawn their asylum applications after realizing that others from Mali who had not applied for asylum were being transferred to mainland Spain, whereas those who have applied for asylum were told that they would have to wait for the result of their application, which could take months or years. Amnesty International also met a 33-year-old Syrian woman in Ceuta in October 2014, whose 15-year-old son was living in Madrid with his grandfather and was granted refugee status in Spain. However, the Syrian woman was refused a visa to travel from Lebanon to Spain to reunite with her son and had been in Ceuta since late June 2014, alone with her four-year-old daughter, unnecessarily

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s=%22437/2010%22&optimize=20110310&publicinterface=true (accessed 14 September 2015), and decision by the STJA of 21 December 2010 (Rec 554/2010), available at: www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=5949919&links=refugiados%20Y%20asilo%20Y%20libertad%20de%20circulaci%F3n&optimize=20110505&publicinterface=true (accessed 14 September 2015).

[65] During its visits in October 2014, an Amnesty International delegation determined that the reception services provided to asylum-seekers in both enclaves fall short of international standards. At the time, although the conditions in the Centre for the Temporary Accommodation of Migrants (CETI) in Ceuta were observed to be better than in the centre in Melilla, overcrowding had posed a serious problem in both enclaves. In subsequent visits to Ceuta in February 2015 and in Melilla in June 2015, Amnesty International observed improvements in conditions, in particular in the CETI in Ceuta due to the reduction of the number of residents to 597 (capacity of the CETI was 512). However, in June 2015, the conditions in the CETI in Melilla continued to fall short of international standards. During Amnesty International's initial visit in October, the CETI in Melilla was hosting 1,156 individuals, more than double its original capacity of 480. This number fluctuated around 1,300 at the time of writing in 2015, and was 1,263 on 15 June 2015. In both enclaves, the number of staff, in particular interpreters and psychologists, available for the residents of CETIs was inadequate.

separated from her son for four months.[66]

RISING PRESSURE ON THE SPANISH ENCLAVES

Despite all the effort and expense that Spain has invested in strengthening its borders, irregular arrivals to Spain's southern borders increased by 60% in 2014 after almost annual reductions since the peak in 2006. The total number of irregular entries to Spain in 2014 was 12,549, with Syrians being the most numerous nationality with 3,305.[67] The number of irregular entries for the first six months of 2015 was 6,803 with 4,936 of them through the enclaves.[68]

The journey into the only EU territories in North Africa – the Spanish enclaves – became the main migration route from North Africa in to Spain for irregularly travelling refugees and migrants in 2013. 60% of the irregular arrivals were to the Spanish enclaves Ceuta (1,666)[69] and Melilla (5,819).[70] The majority of the recorded irregular arrivals to the enclaves were by Syrian refugees with false documents through the official border crossing points.

Spanish law allows Moroccans residing in the provinces of Nador or Tetuan, which neighbour Melilla and Ceuta, to enter the enclaves without obtaining a visa.[71] Therefore, Syrians and to a lesser extent Algerians and Moroccans, "rent" identity documents of Moroccan residents of Nador or Tetuan to enter Melilla and Ceuta respectively.[72] Using these documents, they then pose as Moroccans and walk or drive into the enclaves through the official border crossing points. However, this option is not available to all. Firstly, the cost of "renting" such a document ranges between 500 and 2,000 euros according to interviews Amnesty International has had with Syrian refugees in the enclaves. Additionally, this option is not available for sub-Saharan Africans, whose physical appearance often differs from most Moroccans. As such, sub-Saharan Africans largely enter Ceuta by boat and Melilla by jumping

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[66] Interview at the CETI of Ceuta on 22 October 2014.

[67] Government Response to Parliamentary Question, 8 April 2015, File no. 189481.

[68] 2015 figures are from an interview Gil Arias Fernández, Deputy Executive Director of Frontex, gave to Spanish radio Cadena Ser, available here: http://cadenaser.com/ser/2015/07/30/internacional/1438278656_598166.html.

[69] The majority of arrivals to Ceuta were not by land but by boat.

[70] Government Response to Parliamentary Question, 8 April 2015, File no. 189481. Whereas Algerians (459) followed by Guineans (433), Syrians (196) and Malians (141) were the largest groups arriving in Ceuta, Syrians were by far the largest group arriving in Melilla in 2014 with 3,094 arrivals, followed by Malians (693), Cameroonians (651) and Guineans (335). 94% of all Syrians irregularly arriving in Spain came to the country through Melilla.

[71] This is also provided for by Spain's declaration to the Agreement on the Accession of the Kingdom of Spain to the Convention Implementing the Schengen Agreement of 14 June 1985, available at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42000A0922(04) (accessed 14 September 2015).

[72] Identity documents are typically returned to agents once entry to an enclave has been secured.

over the fence surrounding it. A small number of refugees and migrants succeed in hiding in vehicles passing through the official border crossings or swimming around the fences.

Irregular arrivals in Ceuta and Melilla in 2014:[73]

Entry modes	Ceuta	Melilla	Total
False Documents	482	2,861	3,343
Boat arrivals	766	236	1,002
Fence	53	2,069	2,122
Vehicles	164	79	243
Other	201	574	775
Total	1,666	5,819	7,485

Data collected by the Moroccan Association for Human Rights (AMDH) concerning the attempts of sub-Saharan Africans to enter Melilla, largely matches statistics by the Spanish Government in terms of the number of individuals who had entered this enclave in 2014 by crossing the fence. AMDH told Amnesty International that there were 60 attempts to irregularly enter Melilla involving 17,618 sub-Saharan Africans in 2014, four of them by sea involving 675 individuals. 2,249 people succeeded in their attempt. However, the number of entries in the second half of 2014 fell to 354 from 1,895 in the first six months of 2014. AMDH also recorded 4,182 sub-Saharan Africans were arrested by Moroccan authorities at the fences of Melilla in 2014.

In 2015, however, the entries over the fence have significantly decreased. According to the information provided by the national police in Melilla, the monthly entries over the fence were 201, 119, 45, 27, and 22 for the first five months of 2015.[74] The drop is largely attributed to the evacuation of camps used by sub-Saharan migrants and refugees in the province of Nador by Moroccan authorities and their displacement towards the south of the country.[75]

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[73] Government Response to Parliamentary Question, 8 April 2015, File no. 189481.

[74] Interview with representatives of the national police in Melilla, 15 June 2015.

[75] Interview with representatives of the national police in Melilla, 15 June 2015 and phone interviews with civil society organizations in Morocco.

THE TREATMENT OF REFUGEES AND MIGRANTS ON THE MOROCCAN SIDE OF THE FENCE

Many of the refugees and migrants who plan to cross over to Spain congregate in cities neighbouring the Spanish enclaves. In the east, sub-Saharan migrants and refugees live in the forest and hilly areas in and around Nador and Oujda, while Syrians mostly stay in hotels. Gourougou Mountain outside Nador is one of the main locations, where sub-Saharan refugees and migrants, mostly men and boys, stay before trying to cross over the fence to Melilla.

In recent years, there have been numerous reports of violent raids by the Moroccan police, Royal Gendarmerie and the Auxiliary Forces on the makeshift camps in Nador and Oujda.[76] Interviews Amnesty International had with nineteen individuals of sub-Saharan origin, who had stayed in Mount Gourougou before their entry into Spain indicate that the raids on the camps in Mount Gourougou took place at least once a week, usually following large scale attempts to cross the fence to Melilla.[77] Non-governmental organizations, refugees and migrants state that the tents they have set up in the camps are set on fire and rendered unusable during the raids, their belongings including documents are confiscated and burnt or ripped apart, their money and valuables including mobile phones are taken and those apprehended are bussed to larger cities away from the border such as Rabat, Marrakesh and Fes.[78]

Migrants and refugees apprehended in the course of such raids used to be taken to the desert area between Morocco (Oujda) and Algeria (Maghnia) and expelled to Algeria without any formal procedure.[79] This practice was reportedly stopped in September 2013 after the

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[76] The Jesuit Refugee Service (JRS), *Lives in Transit: Experiences of migrants living in Morocco and Algeria,* December 2012, available at: https://www.jrs.net/assets/Publications/File/JRSEuropeLivesInTransitionDec20121.pdf, Medecines sans Frontier (MSF), *Trapped at the Gates of Europe*, March 2013, available at: http://www.doctorswithoutborders.org/sites/usa/files/Trapped_at_the_Gates_of_Europe.pdf and Human Rights Watch, *Abused and Expelled: Ill-treatment of Sub-Saharan African Migrants in Morocco*, February 2014, available at: http://www.hrw.org/sites/default/files/reports/morocco0214_ForUpload.pdf (accessed 12 September 2015).

[77] Interviews were conducted in Ceuta, Melilla and Madrid in October and December 2014 and in February 2015. Interviewees were from Cameroon, Guinea, Mali, Nigeria and Sierra Leone. Some had entered Spain by jumping over the fence in Melilla, others came by boat either to Ceuta or southern coast of Spain. They all stayed in Mount Gourougou for periods ranging from one month up to three years, between 2011 and 2015.

[78] Interviews with migrants and refugees, who had camped in Mount Gourougou, in Spain in October and December 2014 and February 2015 and with representatives of an organization working with migrants in Morocco in October 2014.

[79] See for example, the Jesuit Refugee Service (JRS), *Lives in Transit: Experiences of migrants living in Morocco and Algeria,* December 2012; Medecines sans Frontier (MSF), *Trapped at the Gates of Europe*, March 2013 and Human Rights Watch, *Abused and Expelled: Ill-treatment of Sub-Saharan African Migrants in Morocco*, February 2014. Also see CNDH, *Foreigner and Human Rights in Morocco for a*

announcement of Morocco's new migration and asylum policy based on the recommendations of the National Human Rights Council.

In Tangiers, near Ceuta, migrants and refugees mostly live in urban neighborhoods, such as Boukhalef neighbourhood. In August 2014, Amnesty International received reports of violence against migrants in Boukhalef by local Moroccan residents. One of the eyewitnesses told Amnesty International that the attacks took place in front of police officers, who failed to intervene to protect the migrants and refugees.[80]

There were further reports of attacks by local Moroccan residents on 29 August, during which Charles Paul Alphonse Ndour, a 26-year-old migrant from Senegal, was killed and at least another migrant was seriously injured.[81] A number of foreign nationals were arrested and deported following these events. Local migrant rights groups report that, among those who were deported, there were witnesses to the killing of Charles Paul Alphonse Ndour on 29 August.[82]

Such incidents were not confined to this period. After a visit in September 2012, the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment reported a rise in "severe beatings, sexual violence, and other forms of ill-treatment" against undocumented migrants and urged the authorities to investigate and prevent such "violence against sub-Saharan migrants".[83]

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radically new asylum and migration policy: Executive Summary, September 2013, available at: cndh.ma/sites/default/files/foreigners_and_human_rights-_conclusions_and_recommendations_0.pdf (accessed 14 September 2015).

[80] El Mundo, "*Assault of migrant women and Spanish activist*," 16 August 2014, available at: www.elmundo.es/espana/2014/08/17/53efd08222601d772d8b457e.html (accessed 14 September 2015) and Fair Reporters, *Maroc: meurtrière chasse aux migrants à Tanger*, 18 September 2014, available at: fairreporters.wordpress.com/2014/09/18/maroc-meurtriere-chasse-aux-migrants-a-tanger/ (accessed 14 September 2015).

[81] Le 360, *Un mort et un blessé grave dans des incidents à Tanger,* 30 August 2014, available at: le360.ma/fr/societe/un-mort-et-un-blesse-grave-dans-des-incidents-a-tanger-20677 (accessed 14 September 2015).

[82] GADEM, "L'Etat marocain face au meurtre de Charles Ndour: expulsion de victimes et témoins! Des expulsions illégales viennent ternir le premier anniversaire du changement de politique migratoire," 5 September 2014, available at: www.gadem-asso.org/L-Etat-marocain-face-au-meurtre-de (accessed 14 September 2015).

[83] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Addendum, Mission to Morocco, 30 April 2013.

RAIDS AND ARBITRARY DETENTION FOLLOWING THE COMPLETION OF THE EXCEPTIONAL REGULARIZATION PROCESS ON 9 FEBRUARY 2015

Following the recommendations by the National Human Rights Council (CNDH) on 9 September 2013[84] and their endorsement by King Mohammed VI, the Moroccan Government announced that it would elaborate and implement a new asylum and migration policy in compliance with the country's international obligations.[85] One important aspect of the country's new approach to migration has been the implementation of a one-time exceptional regularization process for irregular migrants, which started on 1 January 2014 and lasted until the end of 2014. Among 27,332 migrants from 116 countries, who applied to the Ministry of Interior for regularization, 17,916 were accepted, the majority being Senegalese (6,600) followed by Syrians (5,250).[86] However, non-governmental organizations raised concerns over the strict criteria and evidentiary requirements for regularization, the insufficient training of the staff of the Office for Foreigner taking the applications, and the lack of consistent information on the appeals procedure.[87]

Following the announcement by the Ministry of Interior on 9 February 2015 that this exceptional regularization process for irregular migrants was completed, Moroccan security forces began raiding migrant camps in the north of the country, mainly near the city of Nador neighbouring Melilla. Over 1,000 migrants were detained within the first two days of the raids without an individual assessment of the necessity and proportionality of the deprivation of liberty.

An initial large-scale raid took place early in the morning of 10 February 2015 in the camps located in Mount Gourougou outside the city of Nador, neighbouring the Spanish enclave of Melilla. Non-governmental organizations reported that around 1,200 people were arrested and bussed to at least 18 cities in the southern half of the country where they were detained.[88] There were children, asylum-seekers registered with the UNHCR, and migrants

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[84] CNDH, September 2013, *Foreigner and Human Rights in Morocco for a radically new asylum and migration policy: Executive Summary*, available at: cndh.ma/sites/default/files/foreigners_and_human_rights-_conclusions_and_recommendations_0.pdf (accessed 14 September 2015).

[85] RFI, *Le Maroc annonce une nouvelle politique migratoire*, 12 September 2013, available at: www.rfi.fr/afrique/20130912-maroc-immigration-refugies-mohammed-vi (accessed 14 September 2015).

[86] L'Economiste, *Immigrés clandestins Après la régularisation, l'intégration*, 11 February 2015, available at: www.leconomiste.com/article/966512-immigres-clandestinsapres-la-regularisation-l-integration#sthash (accessed 14 September 2015).

[87] FIDH and GADEM, *Maroc : entre rafles et régularisations, bilan d'une politique migratoire indécise*, 30 March 2015, available at: www.gadem-asso.org/Rapport-FIDH-et-GADEM-Maroc-entre (accessed 14 September 2015).

[88] CCSM and GADEM, *Note d'information conjointe CCSM – GADEM sur les déplacements et les détentions arbitraires de migrants au Maroc à la suite des rafles du 10 février 2015*, 19 February 2015, available at www.gadem-asso.org/IMG/pdf/20150219_-_NoteCCSM_GADEM_detention_migrants-VF.pdf

with residence permits amongst the arrested and detained.[89] Detainees included 11 migrants who were injured while trying to avoid being caught by the Moroccan authorities in the course of the raid who were arrested after their treatment in a hospital in Nador.[90] Media and non-governmental organizations also reported that some migrants have claimed that they have faced violence or other abuse, and that their belongings were burnt as alleged in previous raids.[91]

A second large-scale raid took place on Wednesday 11 February on other camps around Nador (Selouane and Zeghanghane), where a large number of women and children were living. According to interviews with representatives from migrant rights groups and non-governmental organizations, women and children were released after their photos and fingerprints were taken, but men were bussed to other cities in the south and detained.[92]

Both reports by non-governmental organizations and phone interviews Amnesty International had with detainees indicate that they were held in unofficial buildings; there was no individual assessment of the necessity and the proportionality of the detention, and detainees were not provided with written decisions to deprive them of their liberty, including reasons for their detention.[93]

Under international law, a deprivation of liberty is only lawful if it is in accordance with a procedure prescribed by law. Any detention related to immigration control is permissible only on limited grounds, such as prevention of unauthorized entry into or effecting removal from the country.[94] Even when the use of detention fulfils these requirements, international standards constrain the resort to detention for immigration control purposes by requiring its compliance with the principles of necessity and proportionality. This means, for example,

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(accessed 14 September 2015) (CCSM and GADEM, *Note d'information conjointe*, 19 February 2015).

[89] AMDH, *L'AMDH dénonce les violences et les arrestations des migrants*, 16 February 2015, available at: http://www.amdh.org.ma/fr/communiques/amdh-solidaire-migrants-17-2-15 (accessed 14 September 2015) ("AMDH, 16 February 2015"). UNHCR Morocco, in an email to Amnesty International, confirmed that they have identified 14 asylum-seekers either through direct contact or through NGOs.

[90] Phone interview with an AMDH representative, 13 February 2015. Also see AMDH, 16 February 2015.

[91] AMDH, 16 February 2015, and CCSM and GADEM, *Note d'information conjointe*, 19 February 2015. Also see, The Guardian, "*Morocco destroys migrant camps near border with Spanish enclave*", 11 February 2015, available at: www.theguardian.com/world/2015/feb/11/morocco-destroys-migrant-camps-melilla-spain-border (accessed 14 September 2015).

[92] Phone interviews with AMDH and GADEM on 13 and 16 February 2015.

[93] AMDH, 16 February 2015, CCSM and GADEM, *Note d'information conjointe*, 19 February 2015, and EMHRN and FIDH, *Rafles de Migrants au Maroc*, 19 February 2015, available at: www.fidh.org/La-Federation-internationale-des-ligues-des-droits-de-l-homme/maghreb-moyen-orient/maroc/17016-rafles-de-migrants-au-maroc (accessed 14 September 2015). Amnesty International talked on the phone with two detainees, who were arrested from camps in Nador province on 10 and 11 February.

[94] See, for example, Articles 3 and 9 of the Universal Declaration of Human Rights; and Article 9 of the International Covenant on Civil and Political Rights.

that in each individual case detention will only be justified if less restrictive measures have been considered and found to be insufficient with respect to the legitimate objectives that the state seeks to pursue.[95]

Asylum-seekers – who are presumed to be eligible for international protection unless and until proven otherwise following a full, fair and effective asylum determination procedure – should in particular not be detained, either administratively or under any immigration powers, because of their inherent vulnerability. Detention of asylum-seekers should only be a measure of last resort, after other non-custodial alternatives have proven or been deemed insufficient in relation to the individual.[96]

These incidents of detention also violated Morocco's national law, which requires that detainees be provided with written decisions stating the reasons for their detention[97] and guarantees certain rights while in detention, including access to interpreters, lawyers and medical assistance.[98] Additionally, migrants were held over 24 hours without a court order as proscribed by Moroccan legislation on migration.[99]

PUSH-BACKS IN PLAIN SIGHT: SUMMARY EXPULSIONS FROM SPAIN TO MOROCCO

There is an abundance of evidence concerning summary expulsions from Spanish enclaves to Morocco in the form of testimonies collected by Amnesty International and other non-governmental organizations, as well as media reports and video footage. What distinguishes Spanish push-backs from push-backs Amnesty International had previously reported on from Bulgaria and Greece[100] is the fact that the Spanish Government is not attempting to hide

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[95] See relevant UN Human Rights Committee jurisprudence on Article 9 of the International Covenant on Civil and Political Rights (ICCPR); *A v Australia*, Communication No. 560/1993; *C v Australia*, Communication No. 900/1999.

[96] UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, No. 44 (XXXVII) –1986, para. (b), available at: www.unhcr.org/refworld/docid/3ae68c43c0.html (accessed 14 September 2015).

[97] Loi n° 02-03 relative à l'entrée et du séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières (Law No. 02-03 on the entry and stay of foreigners in the Kingdom of Morocco, emigration and irregular immigration), Article 34. (Law No. 02-03)

[98] Law No. 02-03, Article 36.

[99] Law No. 02-03, Article 35.

[100] See for example, Amnesty International publications: *Frontier Europe: Human Rights Abuses on Greece's Border with Turkey* (Index: EUR 25/008/2013) available at www.amnesty.org/en/documents/EUR25/008/2013/en/ (accessed 14 September 2015); *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/ (accessed 14 September 2015); and *The Human Cost of Fortress Europe: Human Rights Violations Against Migrants and Refugees at Europe's Borders* (Index: EUR 05/001/2014) available at www.amnesty.eu/content/assets/Reports/EUR_050012014__Fortress_Europe_complete_web_EN.pdf (accessed 14 September 2015).

them, but instead tries to convince the world that they are lawful and are not in breach of Spain's national law or international obligations.

After an incident on 6 February 2014 involving the summary return of 23 individuals who had swum to the shores of Ceuta, the Spanish Minister of the Interior claimed that it was legal to deport the 23 because they had not yet crossed the Spanish border, which he stated was the human border made by the Civil Guard officers.[101] Such statements demonstrate that the Spanish authorities are willing to redefine where Spanish territory begins on a case-by-case basis in an attempt to avoid their international obligations. The government of Spain has repeatedly asserted, for example, that the area between the triple-fence in Melilla's border with Morocco is not Spanish territory, in order to justify ongoing summary returns from this enclave to Morocco despite an affirmation by a Spanish court that the areas between the fences are indeed Spanish territory.[102] In any case, regardless of where push-backs occur, Spain is responsible as long as it exerts any effective control over individuals through the actions of Spanish Civil Guard officers.

Amnesty International talked to fourteen men and one woman, who had attempted to cross the fence from Morocco into Melilla at least once between 2012 and 2014. Nine of them explained they were apprehended by the Spanish Civil Guards either within the Spanish border fences in Melilla[103] or right after passing them, and immediately returned to Morocco without any identification or a chance to seek asylum at least once. They were not provided with a chance to explain their individual circumstances or challenge their return. Some of the interviewees told Amnesty International that their hands were tied with handcuffs of white rope and they were directly handed over to Moroccan Auxiliary Forces. Six of the interviewees, who were not pushed back themselves, explained they have seen others being pushed back. Amnesty International was also told that some of the interviewees were subsequently beaten up by those Forces.[104]

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[101] The recording of the speech is available at: www.congreso.es/portal/page/portal/Congreso/Congreso/CongresoTV/HistEmisionFecha?_piref73_2824053_73_2140072_2140072.next_page=/wc/accesoEmisionDiferido&fechaSeleccionada=2014/02/13&cambioLegislatura=10 (accessed 20 June 2014).

[102] El Faro, *El entrevallado no es España, según Interior, para justificar la presencia de 'mejanis' allí,* 19 September 2014, available at: elfarodigital.es/melilla/politica/151492-el-entrevallado-no-es-espana-segun-interior-para-justificar-la-presencia-de-mejanis-alli.html# (accessed 14 September 2015) and El Diario, *Imputado el coronel jefe de la Guardia Civil de Melilla por permitir las devoluciones en caliente,* 15 September 2014, available at: www.eldiario.es/desalambre/Imputado-Guardia-Civil-Melilla-devoluciones_0_303070030.html (accessed 14 September 2015).

[103] In order to differentiate the three-layered fence structure put up by Spain within the territory of Melilla from the new fence structure put up by the Moroccan state in the Moroccan territory, the former will be referred to as the Spanish fences.

[104] Interviews were carried out in Melilla, Ceuta and Madrid in October and December 2014 and February 2015. Interviewees were from Cameroon, Guinea, Mali, and Sierra Leone. All, but two of the interviewees, had tried to jump over the fence into Melilla at least twice and some for five or more times. Majority of the push-backs had taken place in 2014 and last one in August 2014. Two of the

On occasion, Moroccan Auxiliary Forces are even granted entry to the territory between the Spanish border fences to then take migrants and refugees apprehended back to Morocco. One such incident concerned an unaccompanied child from Mali whom Amnesty International interviewed in Madrid in December 2014.[105] Some of the details in his testimony, including the presence of Moroccan Auxiliary Forces between the fences on 24 February 2014, are also confirmed by media reports.[106]

I was born in Mali on 3 October 1998 and have two sisters and a brother. I had to leave Mali after my mother got sick and died. After spending some time in Algeria, I went to Morocco, to Gourougou. It was the end of November 2013. I hoped I could have a better life in Europe.

I tried to jump the fence into Melilla many times, but reached it only twice. All the other times, we were stopped by Alit [Moroccan Auxiliary Forces]. First time I reached the fence, it was 22 or 24 February, I think… I am not sure about the exact date. I was in a large group, around 700 of us. Majority from Mali. There were some Guineans among us but not many. Also a few others… It was early in the morning. I managed to jump over the two fences, but was caught at the third fence by the Guardia [Spanish civil guards]. I was climbing up the third fence, but the Guardia hit us with batons, all over the body. It was very painful. Then I saw Alit in the fence, next to me. They beat us as well. Very badly… I was very weak that day. I gave up. I climbed back down because I was scared to fall off the fence and get injured. So, I descended slowly while I was being beaten. Alit then held me tight and took me back to Morocco. They asked the Guardia to open the doors in the fences, so we walked back to Morocco. I saw seven or eight others brought back by Alit like me. After coming back to Morocco, Alit continued to beat us, very badly. Then the police chief arrived and told them to stop. I had lots of pain, but wasn't seriously injured. I saw others with their heads bleeding. The police took those amongst the not severely injured to the police station in Nador. I was there for about four hours. They gave clothes and shoes to those of us who lost them. They also gave us some food. But then they took us to Rabat and left us there. I had nothing on me, so I had to stay in the bus station until I could go back to Gourougou.

The operational co-operation between Spain and Morocco during push-back operations was also documented on 28 March 2014[107] and 18 June 2014[108] through video footage

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interviewees shared push-back experiences from 2012.

[105] Interview by Amnesty International on 16 December 2014 in Madrid (Interview #47).

[106] El Mundo reports the attempt of entry in the morning of 24 February 2014 and the entry of Moroccan officers into the area between the three fences in Melilla: www.elmundo.es/espana/2014/02/24/530b07e8ca47419f388b456d.html (accessed 14 September 2015). Also see El Pais: politica.elpais.com/politica/2014/02/24/actualidad/1393232097_129060.html (accessed 14 September 2015).

[107] Video footage can be found here: www.eldiario.es/desalambre/VIDEO-ONG-marroquies-territorio-inmigrantes_0_244625538.html (accessed 14 September 2015).

[108] Video footage by Prodein, 18 June 2014: vimeo.com/98687161 (accessed 14 September 2015) and a newspaper interview with the representative of Prodein:

published by Prodein, a migrants' rights group in Melilla. Both pieces of footage show the presence of Moroccan Auxiliary Forces. The first footage shows handcuffed individuals being returned to Morocco through the doors in the fence by the Moroccan Auxiliary Forces, an incident that appears to have been carried out without a formal identification and return procedure. The second footage recorded on 18 June 2014 shows officers from the Moroccan Auxiliary Forces within the Spanish fences, pulling down migrants off the fence and returning them back to Morocco. It appears as if neither Moroccan nor Spanish authorities are carrying out a formal return procedure. The footage additionally shows a Moroccan officer severely beating up a foreign national between the fences with a long wooden stick, who is on the ground and appears to pose no threat. The Spanish government's response to questions tabled concerning the incident by a parliamentarian confirms that Moroccan security forces entered the three-layered fence area in Melilla when necessitated by the co-operation "against irregular migration" between the two countries.[109]

Some interviewees told Amnesty International that they had even passed all three fences separating Melilla from Nador, but still were returned without any procedure. One of these incidents, which took place on 1 May 2014, was recounted to Amnesty International by three men from Cameroon, Sierra Leone and Guinea.[110] The Guinean explained that he had passed all three Spanish fences in Melilla when he was apprehended by the Spanish Civil Guards and handed back to Moroccan authorities by being taken back to Morocco through the doors within the fences. He told Amnesty International that he was not given a chance to identify himself to the Spanish authorities or explain why he came to Melilla. He said he wanted to seek asylum in Spain. Two others interviewed separately had said that they have seen migrants who had passed the Spanish fences between Nador and Melilla being returned to Morocco by the Spanish Civil Guards through the doors within the fence. These testimonies are reinforced by the allegations levelled by a migrant who lodged a criminal complaint against the head of the Civil Guard Command in Melilla, alleging he was returned to Morocco from Melilla on 1 May 2014 and handed over to the Moroccan authorities without any formal procedure or a chance to seek asylum or appeal his return.[111] Video footage published by Prodein, which was recorded at the Spanish fences in Melilla on 1 May 2014, also shows Spanish Civil Guards handing over migrants to officers from the Moroccan Auxiliary Forces by taking them back towards Morocco through the doors in the Spanish fences.[112]

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politica.elpais.com/politica/2014/06/20/actualidad/1403249154_546020.html (accessed 14 September 2015).

[109] See the question tabled by the member of the parliament Jon Iñaritu García on 20 June 2014 and the government's response dated 11 September 2014 (File no. 147180).

[110] Interviews by Amnesty International on 7 October 2014, 10 October 2014 and 2 February 2015 (Interviews #1, #7 and #50).

[111] See for example www.diagonalperiodico.net/global/26068-belletti-se-querella-contra-la-guardia-civil-melilla-por-devolverlo-ilegalmente (accessed 14 September 2015) (English: www.x-pressed.org/?xpd_article=spain-belletti-files-a-lawsuit-against-the-civil-guard-for-illegally-returning-him-to-morocco (accessed 14 September 2015)).

[112] Video footage by Prodein, 1 May 2014: vimeo.com/93511041 (accessed 14 September 2015).

QUESTIONABLE RETURNS FROM SPANISH ISLETS

On 16 April 2014, seven individuals, who had arrived on the Congreso island within the Chafarinas island group on 15 April 2014, were returned back to Morocco by Spanish authorities. A statement published by the Government Delegation of the Autonomous City of Melilla on the same day confirmed their return "after a formal return procedure" (devolución).[113]

Amnesty International interviewed one of the young men returned to Morocco from the Chafarinas on 16 April 2014.[114] According to his testimony, all seven on the island had communicated their wish to seek asylum and said they are refugees to the military personnel, the police officers and the lawyer, who visited the island during their approximately 30-hour stay on Spanish soil. At no point were they told that they would be returned to Morocco or given a chance to appeal their return.

Amnesty International also talked to a Spanish lawyer, Ms Patricia Fernández Vicens who had communicated with the seven during their stay on Chafarinas after receiving their assistance request for submitting asylum applications through a migrant rights group representative in Morocco. After talking to them on the phone and confirming their wish to seek asylum in Spain, Ms Fernández Vicens faxed a letter to the Office for Asylum and Refuge under the Ministry of the Interior as well as the Representative of the UN High Commissioner for Refugees (UNHCR) in Madrid providing details on the nationality and date of birth of the individuals on Chafarinas and their wish to seek asylum.[115]

A similar incident had taken place on 3 June 2014 according to media and statements by non-governmental organizations.[116] Thirteen persons from sub-Saharan Africa, including at least two children, were reportedly returned to Morocco from the Spanish Perejil island near

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[113] See for example, *El Gobierno entrega a Marruecos a los siete inmigrantes de Chafarinas,* 16 April 2014, available at: http://www.elmundo.es/espana/2014/04/16/534eb7cf22601d10728b457e.html. See also question by the member of the parliament Jon Iñaritu García on 30 April 2014 (133059) and the government's response date 23 June 2014 (142316).

[114] Interview (Interview #72) by Amnesty International on 27 July 2015 (nationality of the interviewee and the place of the interview is withheld as per his wishes).

[115] Interviews and email exchanges with lawyer Patricia Fernández Vicens who had faxed the Office for Asylum and Refuge on 15 April 2014 at noon (a copy of the letter and the fax receipt confirmation is available here: www.publico.es/politica/siete-chafarinas-pidieron-asilo-expulsados.html (accessed 14 September 2015)). She then faxed and called the government delegation in Melilla in order to prevent a summary return of the asylum-seekers. This information is also confirmed in a statement by the UNHCR representation in Madrid: acnur.es/noticias/noticias-de-espana/1676-acnur-preocupado-por-la-devolucion-de-personas-en-posible-necesidad-de-proteccion-desde-chafarinas (accessed 14 September 2015).

[116] See question tabled by the member of the parliament Jon Iñaritu García on 6 June 2014 and the government's response dated 28 July 2014 (File no. 146917) as well as the news articles available here: politica.elpais.com/politica/2014/06/03/actualidad/1401791765_688046.html (accessed 14 September 2015) and here: cadenaser.com/ser/2014/06/03/sociedad/1401761607_850215.html (accessed 14 September 2015).

Ceuta by Moroccan authorities (reportedly gendarmerie), who were alerted of the presence of the migrants on the island and allowed to disembark there by the Spanish authorities (Civil Guards). News articles allege that the Moroccan authorities removed the 13 from the island by force, while officers from the Spanish Civil Guards watched.[117]

The Moroccan Association for Human Rights (AMDH) recorded that 324 sub-Saharan Africans were summarily expelled from Spain to Morocco and handed over to the Moroccan authorities after crossing one, two or all of the Spanish fences surrounding Melilla in 2014.[118]

As the environment around Ceuta allows migrants approaching the fences to be easily spotted by either Moroccan or Spanish authorities, the majority of arrivals in Ceuta are by boat. As a result there are not many push-backs reported from the fences surrounding Ceuta. Amnesty International did not also receive any allegations of push-backs at sea near Ceuta during the course of the research for this report. Non-governmental organizations, as well as migrants and refugees, have told Amnesty International that boats intercepted by Civil Guards at sea near Ceuta are usually provided with assistance and brought to Ceuta.[119] However, in Melilla, representatives from the Civil Guard Command have told Amnesty International that the waters around Melilla are not within the Spanish search and rescue zone, and therefore for any boat they intercept, they inform the Moroccan authorities for the individuals to be picked up and returned to Morocco.[120] They have said that no one intercepted is allowed to disembark in Melilla.

One widely reported incident of a push-back at sea Amnesty International previously reported on took place on 6 February 2014.[121] At least 14 migrants swimming from Morocco drowned in waters off Ceuta after the Spanish Civil Guards fired rubber projectiles and tear gas in their direction in an attempt to prevent their entry to Spain. On the same day, 23 people who had survived the swim across and reached the Spanish beach were immediately returned to

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[117] News articles available here: politica.elpais.com/politica/2014/06/03/actualidad/1401791765_688046.html (accessed 14 September 2015) and here: cadenaser.com/ser/2014/06/03/sociedad/1401761607_850215.html (accessed 14 September 2015).

[118] Phone interview with a representative from AMDH on 21 February 2015.

[119] Interviews in October 2014 and February 2015 with migrants and refugees, who arrived in Ceuta by boat and interview with representatives of the Red Cross in Ceuta on 24 October 2014.

[120] Interview with representatives from the Civil Guard Command in Melilla on 8 October 2014.

[121] Related Amnesty International press releases: *Spain: Accountability urged for 'appalling' migrant deaths in Ceuta*, 14 February 2014, available at: https://www.amnesty.org/en/latest/news/2014/02/spain-accountability-urged-appalling-migrant-deaths-ceuta/ (accessed 20 September 2015) and *España: La tragedia de los migrantes de Ceuta, lamentable menosprecio hacia la vida humana*, 6 February 2015, available at: www.es.amnesty.org/noticias/noticias/articulo/la-tragedia-de-los-migrantes-de-ceuta-lamentable-menosprecio-hacia-la-vida-humana/ (accessed 14 September 2015). Also see Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations Against Migrants and Refugees at Europe's Borders* (Index: EUR 05/001/2014).

Morocco, apparently without access to any formal procedure.

Another summary expulsion from Ceuta took place on 3 February 2015. A Cameroonian man Amnesty International interviewed explained that he swam around the fence in Ceuta and crossed the border into Spain on 3 February 2015.[122] He said that his friends, on the other hand, climbed the fence and entered Spain by climbing back down into the Spanish side of the fence. However, they were apprehended by the Spanish Civil Guards upon their descent into Ceuta and returned to Morocco through a door in the fence and handed over to the Moroccan authorities. His testimony is confirmed by local media news, which stated that the Spanish Civil Guard officers returned six migrants of sub-Saharan origin, one by one, back to Morocco through the fence separating Ceuta from Tetouan.[123]

SPANISH LAW ON THE RETURN AND EXPULSION OF FOREIGNERS

The Law on the rights and liberties of foreigners and their social integration in Spain (Organic Law 4/2000) describes three procedures concerning the transfer of a foreign national to the jurisdiction of another state: refusal of entry (*denegación de entrada*), return at the border following an irregular entry (*devolución*) and expulsion (*expulsión*).[124] The law states that the foreigner is entitled to legal assistance in administrative procedures, which may lead to any one of these outcomes, as well as in all proceedings relating to international protection. The law also provides for the assistance of an interpreter in these procedures.[125]

However, expulsions from Ceuta and Melilla described above appear to have been realized summarily, without any guarantees foreseen by international and EU law. As a result they are in breach of international conventions, including

- Article 13 of the International Covenant for 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.

They are also in violation of EU legislation, such as

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[122] Interview by Amnesty International on 6 February 2015 (Interview #64).

[123] See for example, El Faro, *De la valla... a la entrega a Marruecos,* 4 February 2015, available at: elfarodigital.es/ceuta/sucesos/158564-de-la-valla-a-la-entrega-a-marruecos.html# (accessed 14 September 2015) and El Faro, *Entregados a Marruecos los seis inmigrantes que se subieron a la valla en Benzú,* 4 February 2015, available at: elfarodigital.es/ceuta/sucesos/158486-cien-inmigrantes-intentan-entrar-a-traves-del-espigon-de-benzu.html (accessed 14 September 2015).

[124] Articles 58 and 60 of Organic Law 4/2000.

[125] Article 22.2 of Organic Law 4/2000.

- the Schengen Borders Code,[126]

- the Asylum Procedures Directive[127], 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.

Spanish authorities Amnesty International met in Madrid, Ceuta and Melilla have repeatedly argued that the irregular migratory flows into Spain, especially the enclaves, did not include people in need of international protection until the Syrians have began arriving in late 2013. They have claimed that all others coming from Morocco or Algeria or from countries in the sub-Saharan Africa are economic migrants. This assumption ignores the fact that refugees are not always fleeing wide-spread violence or pervasive human rights violations. There are millions of refuges world-wide, who have fled individual persecution in their home countries because of their specific characteristics such as their race, religion, political opinion, gender identity or sexual orientation among others., For this reason, everyone, regardless of their country of origin, should have access to individualized asylum procedures in which they can demonstrate their particular protection needs.

Because there are no identification procedures, at times children are also subject to these practices, as described above. This is also a clear breach of Spain's obligations under the Convention on the Rights of the Child, which obliges states to give primary consideration to the best interest of the child in all actions concerning children.[128] Summary expulsions are also in breach of Spanish domestic legislation.[129]

Despite the readmission agreement of 1992 between the two countries, the Moroccan government does not, as a rule, permit the return of non-nationals into its territory from the

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[126] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders.

[127] Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).

[128] Convention on the Rights of the Child, Article 3(1). For more details on the relevance of the Convention on the Rights of the Child and other related human rights instruments, see section titled "Human Rights Obligations in relation to Push-Backs" on page 57.

[129] See Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their integration (sobre derechos y libertades de los extranjeros en España y su integración) (Articles 22.2 guaranteeing legal assistance and access to interpreters and 57.6 prohibiting refoulement) and RD 557/2011, of 20 April 2011, Regulation of the Organic Law 4/2000 (in particular Article 23.2) which states that "the Security Forces of the State responsible for guarding coasts and borders that have intercepted foreigners seeking to enter Spain illegally will transfer as soon as possible to the corresponding station of the National Police, so they can proceed with their identification and, where appropriate, to return."

enclaves through formal channels (though there is plenty of evidence, as described above, of the Moroccan authorities accepting those expelled summarily in the course of border control operations).[130] Even if some of these expulsions to Morocco could have possibly been carried out under the agreement between Spain and Morocco on the readmission of third-country nationals,[131] this agreement itself fails to include a number of substantive and procedural safeguards foreseen by international law in case of transfer of a person from the jurisdiction of a state (for more details on this readmission agreement, see section "The externalisation of Spanish border controls: cooperation with third countries" on page 15).

AMENDMENT TO ORGANIC LAW 4/2000: A NEW BORDER REGIME FOR CEUTA AND MELILLA

A final voting of the Law on Public Security at the Spanish Congress on 26 March 2015 amended Spain's immigration law (Organic Law 4/2000) and introduced a new administrative act of "border rejections" (*el rechazo*) specific for Ceuta and Melilla in addition to the three provisions already in the law. The amendments stipulate that "foreigners detected on the boundary line of the territorial demarcation of Ceuta and Melilla attempting to overcome the border containment elements in order to irregularly cross the border, may be rejected in order to prevent their illegal entry into Spain".[132]

Although the amendment includes a paragraph stating that "the rejection will be carried out in compliance with international human rights and international protection norms", it fails to detail a procedure or describe how the human rights of migrants, asylum-seekers and refugees trying to cross the border will be upheld during "border rejections". For example, Spanish law lists procedural safeguards, including legal aid and access to interpretation, for related procedures already present in Spanish law, namely the refusal of entry (*denegación de entrada),* return at the border following an irregular entry (*devolución*) and expulsion (*expulsión*). However, such safeguards are not provided for this new act of "border rejections" (*el rechazo*) introduced with the amendment.

A protocol on "integrated action in Ceuta and Melilla perimeters"[133] was announced by the

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[130] Interviews with representatives of the national police in Ceuta and Melilla in October 2014. This is allegedly because Morocco considers the enclaves to be occupied by Spain. As Amnesty International was not granted meetings with Moroccan authorities, this could not be confirmed through Moroccan officials.

[131] Acuerdo entre el Reino de España y el Reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente, signed in Madrid in 1992 (Agreement between the Kingdom of Spain and the Kingdom of Morocco on the movement of persons , transit and readmission of foreigners who have entered illegally) (entered into force on 21 October 2012), www.boe.es/buscar/doc.php?id=BOE-A-1992-8976#analisis (accessed 14 September 2015).

[132] First paragraph of the tenth additional provision introduced by the first final provision of the Organic Law 4/2015 of 30 March on Public Security ("BOE" 31 March). Effective: 1 April 2015.

[133] The announcement of this protocol is available at the Ministry of the Interior website: www.interior.gob.es/es/web/interior/noticias/detalle/-

Ministry of the Interior on 22 October 2014 to become effective once the above mentioned amendments to Spain's immigration law introducing "border rejection" were adopted. However this protocol also fails to list any human rights safeguards except a provision concerning access to healthcare for those injured. The amendment's failure to clearly describe what "border rejections" would entail, as well as lack of safeguards, raise serious concerns that the amendment will simply legalize the unlawful push-back practices already carried out by the Civil Guards at Spain's land borders with Morocco. These concerns are further exacerbated by the justification provided in the proposed amendment to the Organic Law 4/2000 for the immediate entry into force of the provision concerning "border rejections",[134] which states that this provision does not necessitate a transition period as it "merely gives greater clarity to the already existing legal regime governing the performance of the State Security Forces at border perimeters".[135]

In May 2015, the Committee against Torture urged Spain to review the new legislation to guarantee the principle of *non-refoulement*, and ensure the individual assessment of each case and access to asylum procedures.[136] It noted that the new amendment serves simply to give a "legal cover" for summary returns that take place in the cities of Ceuta and Melilla.[137] Similarly, the United Nations Human Rights Committee recommended that Spain review the law introducing the "border rejections" in Ceuta and Melilla with a view to "ensure that all persons seeking international protection have access to fair procedures for individualized assessment and protection against *refoulement* without discrimination, and access to an independent mechanism with authority to suspend negative decisions".[138]

/journal_content/56_INSTANCE_1YSSI3xiWuPH/10180/2687323/?redirect=http%3A%2F%2Fwww.interior.gob.es%2Fes%2Fweb%2Finterior%2Fprensa%2Fnoticias%3Fp_p_id%3D101_INSTANCE_GHU8Ap6ztgsg%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1%26_101_INSTANCE_GHU8Ap6ztgsg_advancedSearch%3Dfalse%26_101_INSTANCE_GHU8Ap6ztgsg_keywords%3D%26_101_INSTANCE_GHU8Ap6ztgsg_delta%3D10%26p_r_p_564233524_resetCur%3Dfalse%26_101_INSTANCE_GHU8Ap6ztgsg_cur%3D59%26_101_INSTANCE_GHU8Ap6ztgsg_andOperator%3Dtrue (accessed 14 September 2015).

[134] See p. 145 of the Official Gazette of the Parliament, Senate, 13 February 2015.

[135] Original in Spanish: Se establece, con carácter general, un período de «vacatio legis» suficiente para que se produzca el adecuado tránsito desde la regulación actual a la nueva; no obstante, se dispone la inmediata entrada en vigor del régimen aplicable a los rechazos en frontera en Ceuta y Melilla, que se limita a dar mayor claridad al régimen jurídico ya vigente que rige la actuación de las Fuerzas y Cuerpos de Seguridad del Estado en los perímetros fronterizos.

[136] The Committee against Torture, Concluding observations on the sixth periodic report of Spain (CAT/C/ESP/6), advanced unedited version adopted at its 1,328th meeting (CAT/C/SR.1328) held on 15 May 2015, para. 13, available at (Spanish): tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ESP/CAT_C_ESP_CO_6_20489_S.pdf (accessed 14 September 2015) ("Committee against Torture, Concluding observations, 15 May 2015").

[137] Committee against Torture, *Concluding observations*, 15 May 2015.

[138] The Human Rights Committee, Concluding observations on the sixth periodic report of Spain

In order to ensure that the new regime of "border rejections" introduced for Ceuta and Melilla does not result in violations of Spain's human rights obligations, there is an urgent need to precisely regulate how "border rejections" will be carried out including all relevant safeguards to prevent *refoulement* and collective expulsions from Spain to Morocco.

ACCESS TO ASYLUM AT BORDER CROSSINGS

The entry into force of the new regime for Ceuta and Melilla came days after the Minister of the Interior officially opened asylum offices at official border crossings in these enclaves (Tarajal border crossing in Ceuta and Beni Enzar border crossing in Melilla).[139] According to the new law, asylum applications of those in need of international protection will be taken at these border posts. However, as also noted by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, after his visit to Melilla in January 2015, these asylum offices are not accessible to sub-Saharan Africans without travel documents as they are unable to exit Morocco to reach the Spanish border crossing points. This means that they would need to continue taking the risk of jumping the fences surrounding the enclaves or taking a boat to get into Spain. As such, the establishment of these offices, although positive, does not provide a safeguard for the right to seek asylum in case of "border rejections".

From October 2014 until 16 June 2015, police officers at the Beni Enzar border crossing between Melilla and Nador (Morocco) have taken the asylum applications of over 3300 individuals, all escaping from the conflict in Syria. According to the Chief of the Border Police in Melilla, no applications were received from individuals coming from sub-Saharan countries during this period.[140]

UNNECESSARY OR EXCESSIVE USE OF FORCE BY SPANISH CIVIL GUARDS

Amnesty International has received multiple reports of the excessive use of force by Spanish civil guards while trying to stop migrants and refugees from accessing the territory of the state or while returning them from Ceuta and Melilla to Morocco. Many of the refugees and

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(CCPR/C/ESP/6) adopted at its meeting (CCPR/C/ SR.3192) held on 20 July 2015, para. 18, available at (Spanish): tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ESP/CO/6&Lang=En (accessed 14 September 2015).

[139] Ministry of Interior (press release), *Jorge Fernández Díaz subraya que la apertura de las Oficinas de Protección Internacional reafirma el compromiso de España con la defensa de los derechos humanos,* 16 March 2015, available at: www.interior.gob.es/es/web/interior//noticias/detalle/-/journal_content/56_INSTANCE_1YSSI3xiWuPH/10180/3547574/?redirect=http%3A%2F%2Fwww.interior.gob.es%2Fes%2Fweb%2Finterior%2Fportada%3Bjsessionid%3DD9FA9161373788BCDF6F3553F320E480%3Fp_p_id%3D101_INSTANCE_OFA3ASFpQmdf%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D4 (accessed 14 September 2015).

[140] Interview with the Chief of the Border Police in Melilla, 16 June 2015.

migrants Amnesty International interviewed and who had attempted to jump the fence into Melilla told Amnesty International that the civil guards hit them with batons, targeting their joints, which caused severe pain. Some also said that they were pulled down the fences, in a way that risked them falling and injuring themselves.

A number of videos published by Prodein, a migrants' rights group in Melilla, which show unnecessary use of force by Civil Guards against migrants attempting to cross the fences in Melilla. One video from 13 August 2014 shows Civil Guard officers walking at least 11 handcuffed migrants from the Spanish side of the fences separating Melilla and Nador, towards the Moroccan side through the doors within the fences.[141] Another video published by Human Rights Watch of the same incident shows uniformed officers who appear to be Spanish Civil Guard officers beating migrants within the fence in Melilla.[142] Applications lodged at the European Court of Human Rights by a Malian and Ivorian on 12 February 2015 include similar allegations concerning summary expulsions on 13 August 2014.[143]

Footage recorded by Prodein of summary expulsions from Melilla on 15 October 2014 shows Civil Guard officers beating a migrant with their batons as he climbs down from the fence separating Melilla from Morocco. The video then shows the officers carrying the man, who appears unconscious, through a gate in the fence back towards Morocco.[144] A second video of the incident shows another man, who appears to be unconscious, being carried by Civil Guard officers through the fence towards Morocco.[145]

In particular, Amnesty International considers that Spanish law enforcement officers employed unnecessary and excessive force in violation of international human rights law on 6 February 2014, when at least 14 people died while swimming from the Moroccan side of the Tarajal beach to the Spanish side in Ceuta. Civil Guards used force and anti-riot equipment such as rubber bullets, blanks and fumigants against unarmed migrants, asylum-seekers and refugees.[146] The opposition parties, Spanish Socialist Workers Party (PSOE) and Plural Left (Izquierda Plural), proposed to establish a Parliamentary Committee to investigate the incident but the proposal was voted down by the ruling Popular Party on 4 March 2014. A

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[141] Video footage by Prodein, 13 August 2014: vimeo.com/103407413 (accessed 14 September 2015).

[142] Video footage published by HRW, 13 August 2014: www.youtube.com/watch?v=kpRJLsu_Nqo (accessed 14 September 2015).

[143] *N.D. and N.T. v Spain* (nos 8675/15 and 8697/15) available at: hudoc.echr.coe.int/eng?i=001-156743 (French) (accessed 14 September 2015).

[144] Video footage by Prodein, 15 October 2014: vimeo.com/109091397 (accessed 14 September 2015).

[145] Video footage by Prodein, 15 October 2014: vimeo.com/109010316 (accessed 14 September 2015).

[146] For more détails, see above and Amnesty International, *España: La tragedia de los migrantes de Ceuta, lamentable menosprecio hacia la vida humana*, 6 February 2015, available at: www.es.amnesty.org/noticias/noticias/articulo/la-tragedia-de-los-migrantes-de-ceuta-lamentable-menosprecio-hacia-la-vida-humana/ (accessed 14 September 2015).

judicial investigation into the deaths of five individuals whose bodies were found within Spanish territory (sea and coast off Ceuta) was initiated after an appeal by NGOs on 10 February 2014. The investigation also looked into the appropriateness of the force used by the civil guards as well as the return of 23 individuals back to Morocco without a formal procedure, who managed to swim to Ceuta.

In October 2015, the investigating court no. 6 of Ceuta dismissed charges regarding the return of the 23 individuals and ordered a stay of proceedings relating to the deaths.[147] In the Court's view, the push-backs[148] to Morocco were a practice permitted and enforced by the Ministry of Interior based on an operational interpretation of the border, which later received "legal coverage" with the amendments to the Organic Law 4/2000[149] and, hence, the push-backs could not be deemed as malfeasance by the civil guards involved. With regards to the deaths, the Court ruled that it could not be ascertained whether the deaths took place in Spanish or Moroccan waters and whether they have occurred during the 6 February incident or not as the bodies were found several days after the incident. The decision also stated that there is no evidence that the civil guards used anti-riot equipment inadequately especially in the absence of any rules regarding their use in water and concluded that the use of force by the civil guards could not be regarded excessive or reckless as they were carried out in accordance with the Organic Law 2/1986 on Security Forces.[150]

Amnesty International is concerned that the investigation carried out wasn't prompt or thorough. Vital information, including the identities of the officers who participated in the operation, was only collected by the investigating judge months after the events, after non-governmental organizations challenged her failure to do so in court. Civil guard cameras operating that day were reportedly not recording images and when NGO lawyers requested that the operator of a mobile camera was called to court to testify, the investigating judge rejected the request on the basis that the testimony of the operator was not necessary as his testimony provided in the report submitted to the court by the civil guard command in Ceuta was sufficient.[151] NGO lawyers also submitted an expert report to the court, which argued that the autopsies carried out on the five bodies recovered in Spain included flaws such as protocols for the study of deaths by drowning not being followed in three cases and the absence of chemical toxicology tests in all. The expert report suggested that toxicology tests are necessary in such deaths to determine whether drugs, alcohol, gases or other substances

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[147] Court decision is on file with Amnesty International (Juzgado de Instrucción n. 6 Ceuta. Procedimiento abreviado 0000123/2014).

[148] The court decision refers to these summary expulsions to Morocco as "hot returns" (devoluciones en caliente), a term used in Spain for push-backs.

[149] See section titled "Amendment to Organic Law 4/2000: A New Border Regime for Ceuta and Melilla" for more details.

[150] Organic Law 2/1986 (Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad) is available at: https://boe.es/buscar/act.php?id=BOE-A-1986-6859.

[151] Interview with a lawyer from the Spanish NGO, Coordinadora de Barrios y Fundacion La Merced Migraciones, on 29 October 2015.

were present and if they have played any role in the death or not.[152]

The protocol on "integrated action in Ceuta and Melilla perimeters",[153] mentioned above, allows the use of force and riot control weapons by law enforcement agents when rejecting individuals at the border when necessary and proportionate. Even if the use of force is necessary in order to achieve a particular law enforcement purpose, such as controlling the border, international standards require that the authorities exercise restraint in using it and it must be proportionate to the purpose for which it is used. The law enforcement purpose must not be pursued at any cost. If achieving the law enforcement purpose requires a level of force inflicting harm, which outweighs the beneficial effect, the authorities must accept that the purpose may not be achieved, and that people enter the territory.

Amnesty International is not aware of any investigation initiated by the Spanish government, the Government's Delegate Office in Ceuta or Melilla or the Prosecutor's Office on allegations of summary expulsions and excessive use of force by the Civil Guards, other than the criminal investigation surrounding the deaths of five individuals off the coast of Ceuta on 6 February 2014 discussed above, and two others: an investigation initiated as a result of a criminal complaint lodged by a migrant alleging he was returned to Morocco from Melilla on 1 May 2014 and handed over to the Moroccan authorities without any formal procedure, access to asylum procedures or a chance to challenge his return,[154] and a preliminary investigation initiated as a result of complaints by NGOs concerning incidents at the fence surrounding Melilla on 18 June 2014, 13 August 2014 and 15 October.

With regards to the incidents of 18 June, 13 August and 15 October 2014 in Melilla, section seven of the appeal court in Malaga issued a judgement in April 2015 concluding that the Colonel, who commanded the operations, has no criminal liability concerning the returns from Melilla to Morocco, although they were not in compliance with "the legal system" at the time (which has later changed as a result of amendments discussed above under section titled "Amendment to Organic Law 4/2000: A New Border Regime for Ceuta and Melilla").

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[152] The expert report prepared by Dr Luis F. Callado of the University of Basque Country is on file with Amnesty International.

[153] The protocol is available at Ministry of Interior website: www.interior.gob.es/es/web/interior/noticias/detalle/-/journal_content/56_INSTANCE_1YSSI3xiWuPH/10180/2687323/?redirect=http%3A%2F%2Fwww.interior.gob.es%2Fes%2Fweb%2Finterior%2Fprensa%2Fnoticias%3Fp_p_id%3D101_INSTANCE_GHU8Ap6ztgsg%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1%26_101_INSTANCE_GHU8Ap6ztgsg_advancedSearch%3Dfalse%26_101_INSTANCE_GHU8Ap6ztgsg_keywords%3D%26_101_INSTANCE_GHU8Ap6ztgsg_delta%3D10%26p_r_p_564233524_resetCur%3Dfalse%26_101_INSTANCE_GHU8Ap6ztgsg_cur%3D59%26_101_INSTANCE_GHU8Ap6ztgsg_andOperator%3Dtrue (accessed 14 September 2015).

[154] See for example www.diagonalperiodico.net/global/26068-belletti-se-querella-contra-la-guardia-civil-melilla-por-devolverlo-ilegalmente (accessed 14 September 2015) (English: www.x-pressed.org/?xpd_article=spain-belletti-files-a-lawsuit-against-the-civil-guard-for-illegally-returning-him-to-morocco (accessed 14 September 2015)).

The judgement said that there is no malfeasance as per the Spanish Criminal Code, which requires arbitrariness in the actions carried out or ordered, as the acts carried out on the said dates were part of state's immigration policy and practice for many years and as such, the Colonel was not acting arbitrarily although the orders were unlawful at the time.[155] The investigating court no. 2 of Melilla later issued a judgement in August 2015 on the question whether civil guards involved in the operations on the said dates have incurred any criminal liability concerning use of force against third country nationals, who have crossed the border fence into Melilla and who have allegedly incurred injuries. The judgement ordered a provisional dismissal of charges on the basis that necessary evidence cannot be collected in terms of forensic evidence on injuries allegedly sustained and testimonies of third country nationals injured as a result of their "immediate delivery to Moroccan authorities."[156]

In the absence of impartial, thorough and prompt investigations into allegations of summary expulsions and excessive use of force during border control operations, Amnesty International is concerned that such abuses will continue.

MOROCCO'S INVOLVEMENT IN SPAIN'S SUMMARY EXPULSIONS

Morocco's efforts to curb irregular migration towards Spain are frequently praised by the Spanish authorities.[157] The ongoing co-operation between Spain and Morocco on border and migration control and the summary return of third country nationals from Spain to Morocco, however, raise serious concerns in light of the continuous reports of human rights violations by Moroccan authorities against migrants, asylum-seekers and refugees in the country, in particular near the Spanish enclaves.

Moroccan authorities' involvement in summary expulsions from Spain, such as those listed above involving the Moroccan Auxiliary Forces, Gendarmerie or the Moroccan Royal Navy are well documented. However, there is no agreement or protocol between the two countries that sets out the parameters of this involvement at the borders of Ceuta and Melilla.[158]

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[155] Court decision is on file with Amnesty International (Audiencia Provincial de Málaga, secc. 7 de Melilla Auto n 83/15. Procedimiento abreviado 0000866/2014).

[156] Court decision is on file with Amnesty International (Juzgado de Instrucción n. 2 Melilla. Procedimiento abreviado 0000866 /2014).

[157] See for example, *España y Marruecos ratifican hoy su colaboración ante el yihadismo y la inmigración*, 5 June 2015, available at: http://www.efe.com/efe/espana/politica/espana-marruecos-ratifican-hoy-colaboracion-ante-yihadismo-inmigracion/10002-2631407 (accessed 14 September 2015) or "España y Marruecos reiteran su colaboración contra la inmigración ilegal," 28 August 2014, available at: http://www.lasexta.com/noticias/sociedad/espana-marruecos-reiteran-colaboracion-inmigracion-ilegal_2014082800167.html (accessed 14 September 2015).

[158] Amnesty International requested information on all migration related cooperation agreements and protocols with Morocco concerning the management of the borders of Ceuta and Melilla during meetings with representatives from the Civil Guard Commands in Ceuta and Melilla in October 2014. Representatives from the Ministry of Interior had told Amnesty International in September 2014 that the

There are serious allegations of excessive or unnecessary use of force by Moroccan security officers supported by evidence in the form of video footage against migrants during operations aimed at preventing their irregular entry into Melilla over the border fence or into Ceuta by boat. Allegations also include instances where excessive force was used on Spanish territory within the Spanish border fences or upon migrants' summary expulsion from Melilla to Morocco under the gaze of the Spanish Civil Guards.[159]

All of the fifteen migrants and refugees Amnesty International has talked to and who had attempted to cross the Spanish border fences surrounding Melilla, have said that they have either faced or witnessed violence by members of the Moroccan Auxiliary Forces, which involved being beaten with wooden sticks, being kicked, thrown rocks at including when they were positioned high on fences, and being pulled them down from the fences with hooks when they had attempted to climb over the fence around Melilla.[160] Some told Amnesty International that they witnessed fellow migrants being seriously injured as a result of this violence. Three have said that they were punched and kicked when apprehended by the Royal Gendarmerie or the police near the sea in Fnideq before they got on a boat to Ceuta or mainland Spain.[161]

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cooperation agreements with Morocco are public but that the related protocols are operational and there is no requirement for them to be public. The representatives from the Civil Guards Command in Melilla told Amnesty International that there are regular meetings with their Moroccan counterparts, where they agree on operational cooperation concerning border issues and sign documents to that effect. However, they said that these are confidential as they include information on measures to combat organized crime. Representatives from the Civil Guard Command in Ceuta said that there is no operational protocol with Morocco. In response to an e-mail request from Amnesty International on the details of the migration related cooperation with Morocco and the agreements and protocols between the countries in this area, the Spanish Ministry of Foreign Affaires wrote to Amnesty International that the questions should be relayed to the Spanish Ministry of Interior (e-mail exchange on 9 July 2015). The same questions were then sent to the Spanish Ministry of Interior on 27 July 2015. Amnesty International did not receive a written response to this request to date but a representative of the Ministry of Interior contacted the organization by phone and said simply that all cooperation agreements with Morocco are made public (August 2015).

[159] Some of these allegations are listed above under the section titled "PUSH-BACKS IN PLAIN SIGHT: Summary expulsions from Spain to Morocco." These include two incidents at the Spanish border fences between Melilla and Nador; one on 24 February 2014 and the other on 18 June 2014. Another allegation concerns the apprehension of migrants on Perejil Island on 3 June 2014.

[160] Interviews with fifteen refugees and migrants, who had attempted to jump the fence surrounding Melilla at least once. Interviews were held in Ceuta and Melilla in October 2014, in Madrid in December 2014, and in Melilla in February 2015.

[161] Interviews with fourteen refugees and migrants in Ceuta in October 2014 and in February 2015.

RESTRICTIONS BY MOROCCAN AUTHORITIES ON INDEPENDENT RESEARCH BY AMNESTY INTERNATIONAL

Since September 2014, the Moroccan Government has restricted Amnesty International's ability to carry out research on the treatment of asylum-seekers, refugees and migrants in the north of the country near the Spanish enclaves and the border with Algeria. These restrictions have limited the organization's ability to independently verify some of the allegations raised in this report by other non-governmental organizations and the people who have suffered them. Morocco's unwillingness to allow independent research and monitoring in this area inevitably raises concerns that the government has something to hide. Spain and the EU should be extremely cautious about entering into agreements around returns and border cooperation with countries that are not open to independent scrutiny of their treatment of migrants and refugees.

On 12 October 2014, Moroccan authorities denied entry to an Amnesty International delegation planning to document the situation of migrants and refugees in the north of the country and at the borders with the Spanish enclaves of Ceuta and Melilla, despite the organisation's prior notification of its intention to carry out this research. A second fact-finding visit scheduled to begin on 9 November, which authorities were informed of more than two weeks in advance, was cancelled by the organization after the Moroccan authorities made its entry conditional on prior meetings in Rabat to agree on the parameters of the visit. Those conditions amounted to restrictions.

Since then Amnesty International has been seeking to meet with the Interior Minister to address issues related to the organization's access to the country for research purposes, but to no avail. As a result, the research on the treatment of asylum-seekers, refugees and migrants was delayed for over six months, until assurances that the organization could visit the country without being required to obtain prior authorization was received at a meeting with Moroccan officials on 18 May 2015.

Despite having informed authorities of their planned visit, and having received written and verbal assurances of unlimited access to the country for fact-finding visits, two Amnesty International staff members were expelled from the country on 11 June 2015. They had arrived in Morocco on 8 June 2015 for a fact-finding visit to investigate the situation of migrants and refugees at Morocco's northern borders with Spain. Three days later they were arrested and questioned at police stations in Rabat and Oujda, respectively, and asked about the people whom they intended to meet, before they were put on flights to London and Paris.

Spain is directly responsible for any violence migrants and refugees face when Spanish authorities summarily return them to Morocco. Amnesty International also considers that Spain risks being liable for the excessive use of force faced by migrants at the hands of Moroccan security forces when Spanish authorities help their Moroccan counterparts to apprehend migrants, who then exert violence upon them, as this would qualify as aiding and assisting.[162] During interviews with representatives from the Civil Guard Commands in Melilla and Ceuta, Amnesty International was told that the Spanish authorities inform their Moroccan

[162] Draft Articles on Responsibility of States for Internationally Wrongful Acts, in the Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001), Articles 16 and 17, available at: www1.umn.edu/humanrts/instree/WrongfulActs.html (accessed 15 September 2015).

counterparts when they spot migrants approaching the Spanish fences, so that they can apprehend the migrants before they enter Spain.[163] Additionally, there are reports – including some documented on video – that Spanish Civil Guards let Moroccan Auxiliary Forces into the Spanish border fences so that they can apprehend and take back migrants to Morocco.[164] Spain is implicated in any human rights violations, including use of excessive and unnecessary force by Moroccan security forces, if they take place on Spanish soil in the presence of Spanish authorities or with the assistance of Spanish authorities.

OBSTACLES TO ACCESSING INTERNATIONAL PROTECTION IN MOROCCO

The gravity of summary expulsions from Spain to Morocco is further exacerbated by the lack of effective protection in Morocco for refugees, despite recent progress after the announcement of the new asylum and migration policy in September 2013, including the establishment of an inter-ministerial Ad Hoc Committee to review and recognize people of concern to the UNHCR. All applications reviewed by the Ad Hoc Committee up until October 2015[165] were those whose refugee status had been recognized by the UNHCR before the end of 2014 as the government decided to have applications after 2014 reviewed once the new law on asylum is adopted.[166] However, almost two years after the announcement of the new policy, there is still no asylum law made public for consultation let alone adopted. Additionally, as this report was going to print in October, the Ad Hoc Committee had still not issued any decisions for Syrian applicants of international protection, because the Moroccan Government had not yet determined the status Syrian refugees will receive in Morocco.[167]

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[163] Interviews with the representatives of the Civil Guard Command in Melilla on 8 October 2014 and in Ceuta on 22 October 2014.

[164] See for example, El Mundo reports the attempt of entry in the morning of 24 February 2014 and the entry of Moroccan officers into the area between the three fences in Melilla: www.elmundo.es/espana/2014/02/24/530b07e8ca47419f388b456d.html (accessed 14 September 2015). Also see El Pais: politica.elpais.com/politica/2014/02/24/actualidad/1393232097_129060.html (accessed 14 September 2015) and www.eldiario.es/desalambre/VIDEO-ONG-marroquies-territorio-inmigrantes_0_244625538.html (accessed 14 September 2015); and: vimeo.com/98687161 (accessed 14 September 2015) and a newspaper interview with the representative of Prodein: politica.elpais.com/politica/2014/06/20/actualidad/1403249154_546020.html (accessed 14 September 2015).

[165] On 13 October 2015, Amnesty International received information from UNHCR Rabat that the Ad Hoc Committee decided at the end of September to interview all UNHCR-recognized refugees regardless of their registration date with the UNHCR. However, at the time this report was going to print, the organization was unable to confirm whether anyone who has registered with the UNHCR in 2015 has been recognized by the Committee.

[166] Interview with representatives from the National Council for Human Rights, 9 June 2015, Rabat. Also see Morocco Update: Regularisation of Refugees, 1 April 2015. Phone interview with UNHCR Morocco press officer on 22 August 2014. UNHCR, "Morocco Update: Regularisation of Refugees by National Authorities," August 2015 (on file with Amnesty International).

[167] Interviews with civil society representatives in Rabat on 9 and 10 June 2015 and phone interview

Without refugee and residence cards, they are not able to officially rent houses, legally work and access some basic services, such as basic healthcare, except emergency medical assistance.[168]

Amnesty International urges both countries to investigate allegations of excessive use of force against migrants and refugees during border operations and ensure these incidents are not repeated. Spain should suspend any co-operation with Morocco on migration control that assists Moroccan security forces to apprehend migrants in the North of the country in light of the human rights violations outlined above. Morocco should not accept migrants and refugees being returned to Morocco from Spain without following a formal procedure in line with both countries' human rights obligations. The organization also calls on the Spanish authorities to stop any return of third country nationals to Morocco until Morocco has demonstrated its respect for the human rights of migrants, refugees and asylum-seekers, in particular until the country sets up a national asylum system that ensures effective protection to asylum-seekers and refugees. This would include the suspension of the agreement with Morocco on the readmission of third-country nationals, which lacks necessary human rights safeguards as summarized above.

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with UNHCR Morocco on 17 September 2015. Also see, UNHCR, 1 April 2015, Morocco Factsheet, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/4c907df39_1.pdf (accessed 14 September 2015) and UNHCR, *Morocco Factsheet September* 2015 shared with Amnesty International by UNHCR Morocco. Also see UNHCR, *Morocco Update: information note on Syrians applying for asylum in Morocco,* September 2015, available at: http://ma.one.un.org/content/dam/unct/morocco/docs/UNCT-MA-Information%20Note%20on%20Syrians%20Applying%20for%20Asylum%20Morocco-%20September%202015.pdf

[168] Interviews with non-governmental organizations assisting asylum-seekers, refugees and migrants in Morocco. Also see, UNHCR, "Q&R: Premiers pas vers une nouvelle politique d'asile au Maroc," 8 October 2013, available at: www.unhcr.fr/52540fb06.html (accessed 14 September 2015).

A JOURNEY OF HOPE SHADOWED BY FEAR: EASTERN MEDITERRANEAN ROUTE TO EUROPE

The route from Turkey into the European Union (EU) has long been used by many refugees and migrants from Asia, the Middle East, and the Horn of Africa as well as North and sub-Saharan Africa. It encompasses the land routes from the North West of Turkey to Greece and Bulgaria, and the sea route from the Aegean coast of Turkey to the Greek islands.

Up until 2010, the majority of migrants and refugees sought to reach Greece by crossing the Aegean Sea in small boats. That year the main route shifted to Greece's land border with Turkey in the Evros region, which for the most part runs along the River Evros. This was partly because of increased surveillance at sea by Greek coastguards supported by Frontex – the European Border Agency[169] – and partly because the Greek government had removed the anti-personnel mines along the land border, making it less dangerous for migrants to cross on foot from Turkey.[170]

In mid-August 2012, however, Greece launched Operation Aspida (Shield) to stop migrants entering irregularly across the Evros border by deploying more than 1,800 additional police officers[171] and constructing a 10.5km fence along the northern section of this land border, where most of the crossings were taking place. According to Frontex these developments have had such an impact that less than ten irregular migrants a week were detected crossing this border at the end of October 2012, down from 2,000 in the first week of August 2012.[172]

With heightened security at the land border, more and more refugees and migrants began taking the more dangerous sea route to the Greek islands. According to the Greek police, the number of migrants apprehended crossing the land border irregularly dropped from 15,877 in the first five months of 2012 to 336 in the same period in 2013; apprehensions on the

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[169] Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[170] Landmine & Cluster Munition Monitor reports that "in 2009, Greece completed clearance of antipersonnel mines in the 57 mined areas it laid along the border with Turkey". Available at: http://archives.the-monitor.org/index.php/cp/display/region_profiles/theme/1004 (accessed 20 September 2015).

[171] European Commission, *Commission reports on EU free movement*, 3 June 2013, available at: europa.eu/rapid/press-release_IP-13-496_en.htm (accessed 15 September 2015).

[172] Frontex, *Annual Risk Analysis 2013*, April 2013, p. 20, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2013.pdf (accessed 15 September 2015).

Greek islands or in the Aegean rose from 169 in 2012 to 3,265 in 2013 for the same period.[173] There were 1,109 irregular entries from Turkey by land in the whole of 2013, while the sea arrivals reached 11,447. Those taking the sea route from Turkey to Greece continued to rise in 2014, when 43,518 refugees and migrants arrived on the Greek islands. There were only 1,903 irregular entries from Turkey to Greece across the land border between the two countries in 2104.[174] As of 5 October 2015, UNHCR reports that 416,245 individuals arrived on the Greek islands in 2015, 97% of them from the top ten refugee-producing countries and 70% of them fleeing Syria.[175]

On 25 September 2015, a UNHCR spokesperson listed the principle factors behind the increase in the number of Syrian refugees travelling to Europe as: the loss of hope that the crisis in Syria will end; depletion of savings as a result of four years in exile coupled with the lack of legal employment opportunities in some of the countries neighbouring Syria; limited access to education in Jordan, Egypt, Lebanon and Iraq; difficulties obtaining legal residency in Lebanon and Jordan, feeling unsafe in Iraq and "chronic funding shortages" for the humanitarian aid programmes in countries neighbouring Syria where majority of Syrian refugees lived as.[176]

But the shift in irregular migration routes was not only towards the Greek islands. After the land route to Greece was almost completely sealed, many migrants and refugees trying to reach the EU were also diverted to the land border between Bulgaria and Turkey. The numbers of refugees and migrants apprehended at Bulgaria's border with Turkey increased sharply in July 2013. The total number of people crossing the border irregularly was about 1,700 in 2012.[177] In 2013, this rose to 11,158.[178]

While the Bulgarian authorities struggled to respond adequately to the needs of the large number of refugees crossing their border,[179] they lost no time in taking measures to enhance

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[173] Relevant statistics are available on the website of the Greek Police: www.astynomia.gr/images/stories//2013/statistics13/stat_allod/etsynora.JPG (accessed 15 September 2015).

[174] 2013 and 2014 statistics are available on the website of the Greek Police: http://www.astynomia.gr/images/stories//2014/statistics14/allod2014/statistics_all_2014_et.JPG (accessed 15 September 2015).

[175] UNHCR website on emergency response in Mediterranean, available at: http://data.unhcr.org/mediterranean/country.php?id=83 (accessed 5 October 2015).

[176] UNHCR spokesperson Adrian Edwards, *Seven factors behind movement of Syrian refugees to Europe*, at press briefing at the Palais des Nations in Geneva on 25 September 2015, available at: http://www.unhcr.org/560523f26.html.

[177] Daily Report from the Ministry of Interior of the Republic of Bulgaria, 2 January 2014.

[178] Daily Report from the Ministry of Interior of the Republic of Bulgaria, 26 March 2014.

[179] Amnesty International, *Suspension of returns of asylum-seekers to Bulgaria must continue* (Index EUR 15/002/2014), available at: https://www.amnesty.org/en/documents/eur15/002/2014/en/ (accessed 20 September 2015) and *Refugees and migrants at risk in Bulgaria* (Index EUR 15/003/2013),

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Above: Refugees and migrants try to reach the Greek island of Lesvos after crossing the Aegean Sea from Turkey, on 30 September 2015.

Increased security at Greece and Bulgaria's land borders with Turkey left many refugees with no other choice than to take the dangerous sea route to the Greek islands. According to the International Organization for Migration, 246 people lost their lives or went missing between January and September 2015 while trying to cross the Aegean Sea.

Right: Refugees and migrants walk on a highway near Edirne, Turkey, on 19 September 2015.

Hundreds of refugees began to gather in the town of Edirne in September 2015. They demanded a passage to the EU across the land border between Turkey and Greece, instead of having to pay smugglers to cross the Aegean Sea at considerable risk.

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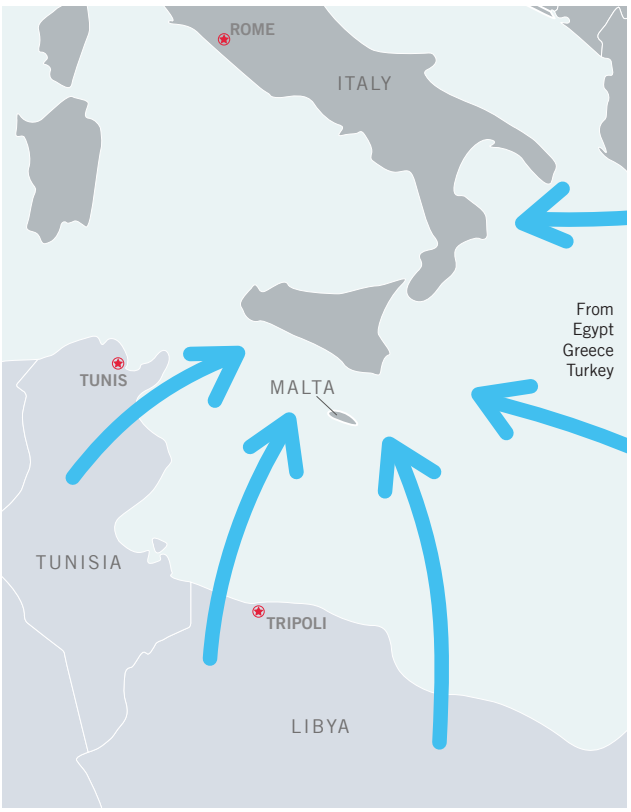
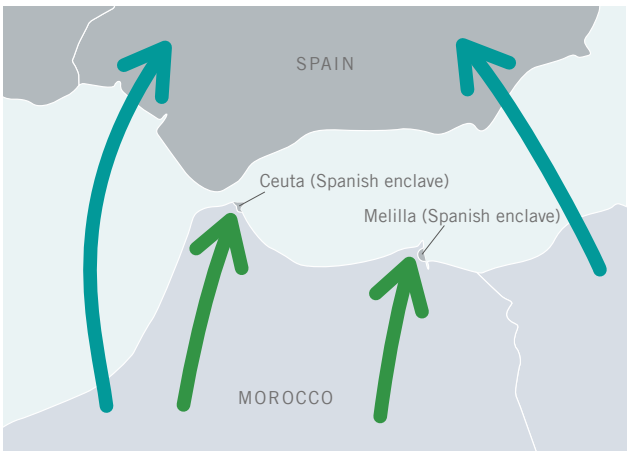
ROUTES FOR REFUGEES AND MI



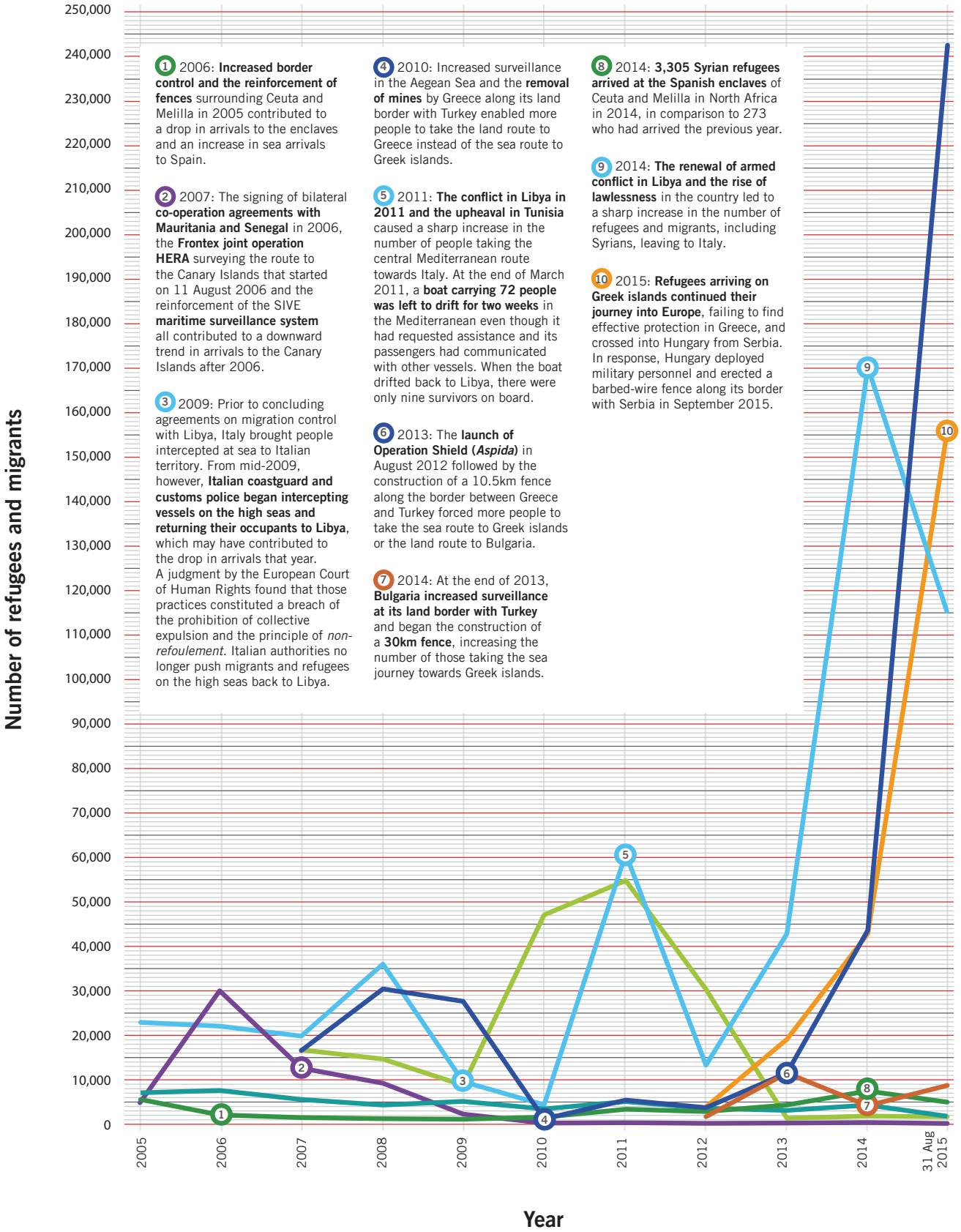
KEY (MAPS AND GRAPH)

- Greece: Sea route to Greek islands (from Turkey)
- Italy: Sea route (from Tunisia, Libya, Egypt, Greece and Turkey)
- Spain: Sea route to the southern coast of Spain (from North Africa)
- Spain: Sea route to the Canary Islands (from Western Africa)
- Spain: Land and sea routes to Ceuta and Melilla (from Morocco)
- Greece: Land route (from Turkey)
- Hungary: Land route (from Serbia)
- Bulgaria: Land route (from Turkey)
- EU countries
- Non-EU countries
- Border fence



GRANTS TRAVELLING TO EUROPE

NUMBER OF MIGRANTS AND REFUGEES AT MAIN ENTRY POINTS 2005-2015



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Left: Refugees behind a fence at the Hungarian border with Serbia, near the Serbian town of Horgos, on 16 September 2015.

On 15 September, the Hungarian government completed the construction of a fence on the border with Serbia and made it an offence to enter Hungary through it. Following the effective sealing off of the border with Serbia, refugees and migrants started entering Hungary through the border with Croatia.

Below: A Spanish civil guard pulls an African migrant or refugee from the border fence separating Melilla, the Spanish enclave, from Morocco, on 15 October 2014.

A video from 15 October 2014 shows civil guards beating a migrant with batons as he climbs down the Melilla fence. The video then shows officers carrying the man, who appears unconscious, through a gate in the fence back towards Morocco.

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the policing of the border, for example by deploying 1,572 additional police officers and 141 off-road patrol vehicles,[180] and starting the construction of a 30km fence in January 2014. Three Frontex joint operations were being carried out in Bulgaria in 2013, Poseidon Land, Focal Points 2013 – land, and Focal Points 2013 – sea, where 216 experts and 30 translators from other member states took part.[181]

Following the adoption of these measures, the number of people irregularly entering Bulgaria from Turkey dropped dramatically. Almost 8,000 migrants entered Bulgaria irregularly over the Turkish border between September and November 2013.[182] The numbers crossing between 1 January and 26 March 2014 had fallen to just 302.[183] This is particularly worrying given that almost 60% of all those who entered Bulgaria irregularly in 2013 were Syrians fleeing conflict and widespread human rights abuses.[184] In the same period Bulgaria received 5.65 million euros of emergency funding from the EU to improve its reception services and asylum procedures. However, by the time some improvements in these areas had been achieved only a few asylum-seekers had succeeded in entering Bulgaria to use the improved facilities.[185]

In 2015, Bulgaria continued with its efforts to close the land border with Turkey. Work had begun to extend the border fence by 130km by the end of 2015 to cover the whole of its border with Turkey.[186] One hundred additional police officers were to be hired to enhance the border security units as per an announcement by the Head of the Police Directorate in April 2015.[187] Also an agreement for the establishment of a tri-partite police and customs co-

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available at: https://www.amnesty.org/en/documents/eur15/003/2013/en/ (accessed 20 September 2015).

[180] European Commission, Commission Staff Working Document (SWD(2014) 165 final), 22 May 2014 (accessed 15 September 2015).

[181] Ministry of Interior of Republic of Bulgaria (news), *The Executive Director of Frontex: The key factor for the normalization of the situation on the Bulgarian-Turkish border is the sequence of activity of the Bulgarian authorities under the direction of the Ministry of Interior,* 7 March 2014, available at: press.mvr.bg/en/News/news140307_02.htm (accessed 15 September 2015).

[182] Daily Report from the Ministry of Interior of the Republic of Bulgaria, 26 March 2014.

[183] Daily Report from the Ministry of Interior of the Republic of Bulgaria, 26 March 2014.

[184] Daily Report from the Ministry of Interior of the Republic of Bulgaria, 2 January 2014.

[185] See Amnesty International briefing, Suspension of Returns of Asylum Seekers to Bulgaria Must Continue (31 March 2014) (accessed 15 September 2015).

[186] Novinite, *Fence along Bulgaria-Turkey border to be completed by end 2015, IntMin Bachvarova says*, 5 April 2015, available at: www.novinite.com/articles/167722/Fence+along+Bulgaria-Turkey+Border+to+be+Completed+by+End+2015,+IntMin+Bachvarova+says (accessed 15 September 2015).

[187] Novinite, *Fence along Bulgaria-Turkey border to be completed by end 2015, IntMin Bachvarova says*, 5 April 2015, available at: www.novinite.com/articles/167722/Fence+along+Bulgaria-Turkey+Border+to+be+Completed+by+End+2015,+IntMin+Bachvarova+says (accessed 15 September

ordination centre involving Bulgarian, Greek and Turkish authorities is being pursued by the Bulgarian authorities.[188] However, despite these efforts, although still negligible in comparison to arrivals on Greek islands, the number of irregular arrivals to Bulgaria tripled in the first seven months of 2015 compared to the same period of 2014 according to the Bulgarian Ministry of Interior.[189] On 2 August 2015, the Bulgarian Ministry of Interior also announced that they have recorded 43,706 irregular entry attempts since the beginning of the year, 93% of them at Bulgaria's border with Turkey.[190] 2,751 individuals were apprehended at the green border and 1,983 at the official border crossings between Turkey and Bulgaria, totalling 4,734 entries in 2015 by the end of July.[191]

Bulgaria has received over 38 million euros between 2010 and 2014 and Greece has received 207 million euros since 2007 under the External Borders Fund.[192] These amounts do not include additional emergency funding or the national expenditure for border control. However, what the statistics above show is that the will to reach safety and security is stronger than any barrier that can be erected. These costly measures do not tackle the root causes that make people take the risky journey towards Europe; namely conflict, widespread violence, persecution and abject poverty. They simply shift the routes.[193] As long as these

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2015).

[188] Ministry of Interior of Republic of Bulgaria (news), *First visit in Bulgaria of the new Executive Director of Frontex,* 31 July 2015, available at: https://press.mvr.bg/en/News/news150731_04.htm (accessed 15 September 2015). European Commission, *Turkey Progress Report 2014,* October 2014, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (accessed 20 September 2015).

[189] Ministy of Interior of Republic of Bulgaria (news), *Minister Bachvarova for the Migratory Pressure: Spontaneously Occurring, This Phenomenon Becomes More and More an Assisted Migratory Process,* 2 August 2015, available at: press.mvr.bg/en/News/news150730_04.htm (accessed 15 September 2015). Total number of irregular entries at the green border between Bulgaria and Turkey in 2014 was 4,027 according to the "Weekly Report regarding the migratory situation in Bulgaria as of 26 March 2015" shared with Amnesty International by the Ministry of Interior of Republic of Bulgaria.

[190] Ministy of Interior of Republic of Bulgaria (news), *Minister Bachvarova for the Migratory Pressure: Spontaneously Occurring, This Phenomenon Becomes More and More an Assisted Migratory Process,* 2 August 2015, available at: press.mvr.bg/en/News/news150730_04.htm (accessed 15 September 2015).

[191] Ministy of Interior of Republic of Bulgaria (news), *Minister Bachvarova for the Migratory Pressure: Spontaneously Occurring, This Phenomenon Becomes More and More an Assisted Migratory Process,* 2 August 2015, available at: press.mvr.bg/en/News/news150730_04.htm (accessed 15 September 2015).

[192] For more details, see *The Human Cost of Fortress Europe: Human Rights Violations Against Migrants and Refugees at Europe's Borders* (Index: EUR 05/001/2014) available at www.amnesty.eu/content/assets/Reports/EUR_050012014__Fortress_Europe_complete_web_EN.pdf.

[193] See graph "Number of migrants and refugees at main entry points 2005-2015" in the centre of this report. The shifts are also demonstrated by an online map designed by the International Centre for Migration Policy Development, Europol and Frontex that shows the changes in migration flows to Europe across the Mediterranean between 2000 and 2013: www.imap-migration.org/index.php?id=471&L=0%20 (accessed 15 September 2015).

factors pushing people away from their home countries exist, the only result of erecting physical or other barriers will be to force people to take more dangerous routes, be it geographically (longer sea journeys) or at the hands of reckless smugglers.

NEW DEAL, NO DIFFERENCE: THE EU-TURKEY ACTION PLAN TO PREVENT ARRIVALS TO THE EU

On 16 October 2015, the European Commission published a joint action plan aimed at enhancing the cooperation with Turkey for the support of Syrians in Turkey and migration management.[194] As of 26 October 2015, details of the action plan were still under negotiation with Turkey.

According to the action plan, the EU, on the one hand, commits to "mobilize [...] concrete new funds [...] to support Turkey in coping with the challenge represented by the presence of Syrians under temporary protection" and to increase assistance for Syrian refugees in other countries in the region as well as Syrians displaced within Syria. On the other hand, both sides commit to increase cooperation to prevent irregular migration from Turkey to the EU with a number of concrete actions.

In this area, actions that the EU intends to support include for example cooperation between EU member states and Turkey in organizing joint returns to countries of origin of irregular migrants, enhancing information exchange on smuggling networks, and increasing financial assistance to Turkey to meet the requirements under the Visa Liberalization Dialogue.[195] Commitments by Turkey, on the other hand, include, stepping up cooperation with Bulgaria and Greece to prevent irregular migration across the common land borders, including by establishing a common centre in Capitan Andreevo (Kapıkule), better cooperation to readmit irregular migrants who transited through Turkey under existing bilateral agreements with EU member states, intensifying cooperation with Frontex, and ensuring speedier asylum procedures. With arrivals on Greek islands from Turkey having exceeded 500,000 in October 2015, one of the main objectives in this area that both parties commit to is strengthening the patrolling, surveillance and interception capacity of the Turkish Coast Guard.

EU plans to push Turkey to strengthen its border controls are fraught with risks. Since September 2015, Amnesty International has documented cases of refugees being forcibly

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[194] European Commission, *EU-Turkey Joint Action Plan,* 16 October 2015, available at: http://ec.europa.eu/priorities/migration/docs/20151016-eu-revised-draft-action-plan_en.pdf. A draft version of the action plan was published on 6 October 2015, which included references to support for Iraqi refugees in Turkey: European Commission, *Draft Action Plan: Stepping up EU-Turkey cooperation on support of refugees and migration management in view of the situation in Syria and Iraq*, 6 October 2015, available at: http://europa.eu/rapid/press-release_MEMO-15-5777_en.htm

[195] For details on the requirements Turkey is expected to meet under this dialogue and country's progress as of October 2014, see *Report from the Commission to the European Parliament and the Council on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*, available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/turkey_first_progress_report_en.pdf

returned to Syria and Iraq after being intercepted by Turkish authorities while trying to reach the EU. Others have been arbitrarily detained without access to lawyers.

On the other hand, the action plan lacks any concrete commitment to increase resettlement or alternative safe and legal routes, ignoring the obvious need for the EU to offer protection to a greater share of the world's refugee population.

As of 2 October 2015, there are over two million Syrian refugees in Turkey and only about ten percent of them in government run camps; others are struggling to survive with minimal assistance from state agencies, intergovernmental organizations and non-governmental organizations.[196] Hundreds of thousands of non-Syrian refugees and asylum-seekers in particular face severe obstacles to accessing asylum and securing livelihoods. Yezidi refugees fleeing the armed group that calls itself the Islamic State in Iraq have been asked to wait for more than five years just to register as asylum-seekers.

It is difficult to foresee any financial or other support from the EU being sufficient to ensure effective protection anytime soon in Turkey for Syrian and non-Syrian refugees with full access to social and economic rights as well as civil and political ones. As such, activities simply focused on keeping refugees within Turkey, run the risk of trapping large numbers of them in unsustainable situations, with no access to effective protection.

Any plans to prevent refugees from traveling irregularly from Turkey across EU borders should provide for concrete actions to increase resettlement places and other legal routes for them to reach the EU, in addition to greatly needed increased funding for refugees and asylum-seekers in Turkey.

SHIPWRECKED REFUGEES AT RISK OF FORCIBLE RETURN TO SYRIA AND IRAQ[197]

On 15 September 2015 at around 4:30am, a group of more than 250 persons were on a boat, which set sail from the coastal town of Bodrum in Muğla province of Turkey. According to testimonies of the refugees on the boat, a Turkish coast guard boat intercepted their boat at around 5:30am. Refugees interviewed told Amnesty International that the coast guard boat first circled their boat several times, causing big waves, which severely tilted their vessel left and right. The individuals reported that several shots were fired in quick succession from the coast guard boat causing panic and alarm. Eyewitnesses told Amnesty International that they believed the shots were fired at their boat.

After the shots were fired, the coast guard boat circled the refugees' boat several times causing it again to sway severely. Seawater then began to enter the lower deck, causing those present to panic. According to the refugees who spoke to Amnesty International, the coast guard then transferred around 20 women and children

[196] Amnesty International, *Struggling to Survive: Refugees from Syria in Turkey,* 20 November 2014 (Index: EUR 44/017/2014).

[197] Information below is gathered through phone interviews in September 2015, with four survivors from the incident; two Syrian men, one Syrian woman and an Iraqi man.

on to their boat. By the time a larger rescue boat arrived an hour later, the lower deck of the boat was submerged in water. Amnesty International has seen photos confirming this, consistent with survivor testimonies.

According to several survivors of the incident who gave detailed and consistent accounts of what happened, they were held in the gendarmerie compound in or around Bodrum after being brought ashore and were not provided with any medical checks. Survivors told Amnesty International that the compound authorities recorded their names and dates of birth and told them they would be allowed to leave.

On 16 September, a large majority of the surviving refugees were put on two busses and two vans, and told they would be taken to Muğla province and released from there. Instead, they were taken to a camp in Düziçi, in the eastern province of Osmaniye against their will and without being provided any information as to where they were being transferred.

A number of Syrian refugees held in the camp reported to Amnesty International that the authorities told them that they will be held there for an indefinite period unless they agree to be returned to Syria through one of the two border crossings, Bab al-Hawa and Bab al-Salam. Both crossings are believed to be under the control of the Harakat Ahrar al-Sham al-Islamiya which has been responsible for human rights abuses.

Refugees in the camp reported that most of the Iraqi refugees were released from the camp after being held there for a few days on the condition that they would return to Iraq within one month. Amnesty International spoke to one Iraqi refugee who has had to return to Iraq and is currently in hiding, fearing for his life as well as to a Kurdish family of four from Syria who were also pressured to return to Syria through Bab al-Salam border crossing.

According to the refugees, 50 to 60 refugees accepted to be returned to Syria when presented with the choice of indefinitely staying in the camp or being sent back to their country and were taken by Turkish authorities in vans to Bab al-Salam border crossing through which they were told to cross into Syria. Refugees also reported having been told to sign documents in Turkish, which they could not understand.

According to testimonies from refugees in the camp, all Syrian and Iraqi refugees, who had survived the shipwreck on 15 September 2015, were released from the camp in Düziçi on 5 October with orders to leave the country within periods less than a month. Amnesty International spoke to other Syrian refugees, who as of the end of October 2015, were being held at the Düziçi camp. A request Amnesty International made to visit the camp on 30 September 2015 was still outstanding as this report went to press in late October.

Holding individuals in need of international protection in a camp they cannot leave amounts to detention. Any custodial or non-custodial measure that restricts the right to liberty of refugees and asylum-seekers must be exceptional and based on a case-by-case assessment of the personal situation of the individual concerned.

Refugees being made to choose between indefinitely staying in a camp, which they cannot leave freely or being returned to Iraq or Syria amounts to forcible return, a violation of the principle of non-refoulement. Due to the ongoing conflicts in both Syria and Iraq, neither group of refugees should be forcibly returned to their countries, where they would be at real risk of serious human rights violations or abuses.

It is also vital that those individuals who survived the partial sinking of the boat on 15 September are able to take part in any investigation into the incident.

COLLECTIVE EXPULSIONS TO TURKEY FROM THE EUROPEAN UNION

CHAIN PUSH-BACK OF IRAQI YEZIDIS FROM BULGARIA AND GREECE TO TURKEY: Z'S STORY

We started our journey towards Bulgaria on 4 March 2015. We wanted to go to Germany. It was night time. It was only me, my cousin K and our uncle J. We reached Bulgaria towards the morning on 5 March. We were certain we were in Bulgaria. We were near a small town. We decided to walk into the town. We had to because it was raining a lot and we were all very cold and wet. Before we reached the town, a dark colored police car – jeep like – stopped us. There were two men in it. One was in civilian clothes; the other one was wearing a uniform. The civilian one had a truncheon in his hand. The other one had a gun. It was still dark and we were really tired and cold and wet and hungry.

We said we are Yezidis from Iraq, that there are terrorists in our country, that Daesh [Islamic State] persecutes us, and that we came to Bulgaria only for finding peace. The police said "Ok, ok, I understand." They told us to get in the car. We thought they'd take us to Sofia, but they brought us near a small river after about 30 minutes of driving. There was a chair there and a tent […].There was no one else but us and these two policemen. When they took us out the car, they started to beat us with their hands and the truncheon. They hit everywhere. Not too bad, so we were not injured, but it was humiliating. They took all our money and phone. The phone wasn't even something expensive, just a normal Nokia. But they took it anyway. We had a Turkish sim card in it and they took it out. Using hand gestures and bad English, they told us to cross the river to the other side. It was a small river. We had only one mobile amongst ourselves. We asked to be given back the mobile so that we could ask help. But they didn't even give the mobile back. We were really scared. They pushed us and hit us. It was horrible. They showed the other side, said "Sofia, Sofia". They were obviously lying. We found out, it was Greece.

We were scared, so we crossed the river and walked on. We saw a small town after about 15 minutes of walking and went in. There were Greek flags. We went to the Church of the town to ask help as we could barely walk. But the doors were closed. It was about 4pm by that time. So, we left the Church and continued walking in the town. Shortly after, a police car came. They asked where we are from and if we have passports. We said "no" and explained that we are Yezidis and we need help. There were three policemen in the car. They were wearing white shirts and dark blue pants. It was a small white car. They didn't take us into this car. I think they thought we'd make the car dirty, because we were all wet and muddy. Then, a station wagon type of car came. It had a metal bench in the back. We sat there. Then they drove really fast for about half an hour and caught up with a khaki colored bus. They transferred us into that bus; it was like a military bus. There were, I think, 12 Syrians in the bus – 10 young men and two women.

We drove with this bus for another 40 minutes and then came to a river, much much bigger than the first one the Bulgarian police made us cross. There were ten men dressed in black, completely. And their faces were covered. They filmed us coming off the bus and walking to the river. They mistreated us and forced us to the river. Then seven by seven, they put us on a […] little boat and brought us to an island in the middle of the river. Two of them were on the boat as well; one in the front, one in the back by the engine. They told us to put our heads down, didn't let us look around. The river was about 50-70m wide and this island was about 2-3km long.

They just left us on that island. They left us there to die. They did not give us any food or water. We had already

been in the rain without food. And now we were left there. It was still raining. We waited there for two days. Some people, including my cousin went around the island to find a way out. But they couldn't. My uncle, J, was already in a bad condition. Finally, two Syrian men, who looked strong, said that we will all die here if we don't do anything. So, they decided to try swimming across to Turkey. And they did. Then they found the Turkish gendarmerie, who rescued us from the island. They rescued us by boat. They treated us very well, took us to a guest house and gave us food and water. They took those who were sick to the hospital. My uncle was taken to the hospital, but I don't know which one. We stayed in the gendarmerie guest house for two days and then were transferred to a prison [describes Edirne Removal Centre]. There were Iraqis, Syrian, and Afghans there. There were around 120 Iraqis and about 85 of them were Yezidi; some of them were sent back from Greece like us. When we were in the Edirne prison, we were informed that our uncle died. They said that it was caused because of the water he drank on the island. We talked with our family back in Iraq and decided to go back there with the body. We had nothing and we wanted to go back to our families. The police asked us what we wanted to do and we said we want to go back, back to our family. We told them where we are from and said we want to go back there, to Khanke, Dohuk. So, we were taken to Istanbul with the body of our uncle. My father and my other uncle came from Iraq and met us in Istanbul. We all then flew to Erbil and went back to Dohuk. We had the funeral.

Here we have nothing. Fundamentalists took everything. We became refugees in our own country. We have nothing here, no safety. We need help to go to Germany, where we have family who can help us.

Z, a 24-year old Yezidi from Dohuk, Iraq[198]

Z's horrific story involving beatings at the hands of Bulgarian and Greek police, confiscation of valuables and being abandoned at uninhabitable places without any assistance is not an anomaly at the south-eastern land borders of the European Union. Although quite distinct because it encompasses two push-backs, one into Greece from Bulgaria followed by another from Greece to Turkey, it bears many similarities to the large number of testimonies Amnesty International has collected in the last few years about the Greek and Bulgarian police's abuse of migrants and refugees at their borders, and the unlawful and life endangering practice of pushing people back to Turkey.

PUSH-BACKS FROM GREECE TO TURKEY AT LAND AND SEA

Amnesty International has been documenting push-back practices and accompanying abuses by Greek police[199] at Greece's land border with Turkey and by the Greek coastguard[200] in the

[198] Phone interview on 30 April 2015, IDP camp in Khanke, Dohuk, Iraq.

[199] The Greek Police, under the Ministry of Public Order and Citizen Protection, is the country's main law enforcement agency. It is responsible for controlling the country's land borders, including those with Turkey. See Greek Police website at: www.astynomia.gr/index.php?option=ozo_content&perform=view&id=1831&Itemid=528&lang=EN (accessed 15 September 2015). Border guard units within the Greek Police are specifically charged with addressing the problem of "illegal" immigration and cross-border crime. They operate at land border areas with a high volume of irregular migration. See Greek Police website at: www.astynomia.gr/index.php?option=ozo_content&perform=view&id=56&Itemid=47&lang=EN (accessed 15 September 2015).

Aegean Sea, which lies between the two countries, since September 2012.[201] Since then, 85 refugees and migrants have shared with the organization their experience of being sent back to Turkey or abandoned near the Turkish coast of the Aegean Sea. Some of these individuals said that they were pushed back from Greece to Turkey more than once.[202]

The land border between Greece and Turkey is 203km long, and except for the 12km in the north largely fenced off by Greece, is marked by the River Evros, where the middle of the river is the border. The majority of migrants and refugees who use this route cross the River Evros at night on small inflatable boats. Those who were then pushed back described to Amnesty International how the Greek police caught them within a period varying from minutes to days after crossing the border into Greece.

In some cases, they were held in what appeared to be a police station for up to four days after being apprehended. All were taken to the River Evros by small vans or by military style bus, and then taken back to the Turkish side of the river by boat and dropped on Turkish land or left on one of the small islands in the river. In most cases, they were not handcuffed. However, in some instances, interviewees said that their hands were tied behind their backs and they feared drowning if they were to fall into water. Additionally, if left on the small islands in the river, migrants and refugees were trapped without food or water and in bad weather conditions until the Turkish military rescued them.

By sea, the distance between the Turkish coast on the Aegean and some of the Greek islands is less than five nautical miles (about 10km). Most of the refugees and migrants Amnesty International interviewed boarded inflatable boats to reach the nearest Greek islands from points in five Turkish provinces on the Aegean littoral. Those who were pushed back described being intercepted by the Greek coastguard either in the middle of the sea or a few meters off a Greek island. Some were pushed back even after making landfall on a Greek

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[200] The Greek Coast Guard under the Ministry of Shipping and the Aegean is responsible for controlling the country's sea borders, the policing of ports and assisting in search and rescue operations. See the website of the Greek Coast Guard at: www.hcg.gr/node/95 (accessed 15 September 2015).

[201] Amnesty International publications: G*reece: the end of the road for refugees, asylum-seekers and migrants* (Index: EUR 25/011/2012), available at: http://www.amnesty.org/en/documents/EUR25/011/2012/en/ (accessed 20 September 2015), *Frontier Europe: Human Rights Abuses on Greece's Border with Turkey* (Index: EUR 25/008/2013) available at www.amnesty.org/en/documents/EUR25/008/2013/en/ (accessed 14 September 2015); *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/ (accessed 14 September 2015); and *The Human Cost of Fortress Europe: Human Rights Violations Against Migrants and Refugees at Europe's Borders* (Index: EUR 05/001/2014) available at www.amnesty.eu/content/assets/Reports/EUR_050012014__Fortress_Europe_complete_web_EN.pdf (accessed 14 September 2015).

[202] While four incidents were recorded during a three-day mission in Istanbul in May 2015, remaining testimonies were provided by refugees and migrants, who randomly approached Amnesty International's section in Turkey. Two testimonies were received by Amnesty International's Greece researcher investigating the reception conditions in August on Lesvos Island.

island.[203]

After interception at sea, some migrants and refugees were taken aboard Greek coastguard vessels and then returned to their boat or – if theirs was no longer usable – aboard another inflatable vessel once they were brought closer to the Turkish side of the sea. Others' boats were towed by the Greek coastguard boat towards Turkey to be then left at sea. In most cases, the migrant boat was disabled by removing the engine, fuel or oars; and in some cases an inflatable boat was punctured by the Greek coastguard or the migrants themselves upon spotting the Coastguard in the hope that they would not be pushed back to Turkey with a punctured boat. Some of those trying to reach Greece by sea said that their boats were towed or encircled in a way that risked capsizing them.

Most of the people who claimed to have experienced push-backs – whether at the land border or at sea – said that they either experienced or witnessed violence or degrading treatment. People described being slapped, kicked, beaten and manhandled. Almost all of those interviewed described being searched and most said that their mobile phones, sim cards, money, jewellery, bags of spare clothes, documents or family photographs were confiscated – the belongings were either not returned or thrown into the sea. Some of the interviewees said that they were strip-searched, which they described as humiliating.

All those who claimed to be pushed back from Greece to Turkey reported that they were never given an opportunity to explain their situation or challenge their deportation. This is a breach of Greece's international and regional human rights obligations – most importantly the non-refoulement obligation as well as Greek domestic law. Additionally, the lives and well-being of people are endangered by the practice of abandoning migrants at sea on unseaworthy vessels or on land in uninhabited border areas or river islands.

Under Greek Law 3907/2011, all third country nationals arriving irregularly in Greece who are apprehended must be transferred to a First Reception Centre to ensure their proper registration, identification and assessment of their protection needs. Greek law requires that the authorities examine the individual situation of each person arriving on Greek territory and provide them with an opportunity to challenge any decision to deport them before any deportation or expulsion can be lawfully carried out.

Research carried out by Amnesty International in May 2015 at the land border between Greece and Turkey, as well as additional testimonies collected from migrants and refugees, demonstrate that Greek authorities continue pushing migrants and refugees back to Turkey without carrying out any procedure despite condemnation of the practice by the Alternate Minister of Interior responsible for Public Order during a meeting Amnesty International had

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[203] For details on two of the incidents, which had taken place after the migrants and refugees disembarked on Samos and Lesvos islands, see Amnesty International *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/ (accessed 14 September 2015). The third case, which had taken place in early April 2015, is from an unidentified island and will be described later in this report.

with him at the end of February 2015.[204]

The most recent push-back incidents documented by Amnesty International had taken place between late November 2014 and early August 2015. Seven of them were at the land border involving at least 248 people and four were in the Aegean, where at least 162 people were pushed back towards the Turkish coast. Interviewees who recounted these incidents were from Syria, Palestine, Iraq, Afghanistan and Sudan.[205]

These 19 testimonies about 11 push-back incidents provide similar details to the ones Amnesty International collected before and are summarized above. Some important patterns emerge regarding the push-backs across the River Evros. These include:

- incommunicado detention in Greek police custody – from a few hours up to four nights – of all those expelled to Turkey,

- the surveillance of the Turkish side of the border by the Greek police with what seemed to be night vision goggles before carrying out the push-back in order to avoid Turkish soldiers nearby, as well as

- the presence of armed masked men at the river, who transported migrants and refugees by boat towards Turkey.

Descriptions of the place of detention provided by all interviewees detained after crossing the River Evros into Greece match one another. Three interviewees who had experienced three separate incidents drew identical sketches of the detention place, which they had described as a police station. They all recalled seeing at least one Greek flag outside and said that the place was guarded by police officers wearing dark blue uniforms bearing the Greek flag. All except one said that the police guarding the place said that it was the Didimoticho police station and they saw a poster by the International Organization for Migration explaining the rights of migrants and asylum-seekers in different languages. Two of the interviewees, who were pushed back together in mid-March 2015, showed an Amnesty International researcher a shopping bag with the words "Kathe Mera" in Greek and an address in Didimoticho printed on it. They said that they had convinced the Greek police to buy them food, while they were being held, and the food was brought in this bag.

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[204] Meeting held in Athens on 27 February 2015. Until January 2015, Greek authorities' reaction to push-back allegations ranged between outright denial that push-backs take place or that if they happen at all they were just "isolated incidents". See *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/ (accessed 14 September 2015), pp. 21-23.

[205] Eight Syrians, one Palestinian from Syria and two Iraqis recounted the seven land incidents; while the four sea incidents were recounted by five Afghans including three unaccompanied children, two Syrians and one Sudanese refugee. Only one of the interviewees was a woman and she was from Syria.

Testimony by a 23-year-old Palestinian refugee from Syria provides a typical description of the recent push-backs from Greece's land border with Turkey:[206]

We [five Syrian friends] inflated our dingy with a pump and prepared to cross. By this time it was about 6am. We didn't see any border guards on the Turkish side or the Greek side. We all got in the boat and paddled towards the other side. Very soon we came to an island in the middle of the river. The sun was rising by this time and we thought that the Greek border guards might see us. We didn't want to get caught so we stopped on the island and waited for it to get dark again. We didn't have any food or water with us because we had planned to cross before the sun came up.

We waited on the island until it got dark. At about 6.30pm on Thursday [26 March 2015] we got back in the boat and crossed to the Greek side. On the Greek side there is a forest area, which is submerged under water. […] At about 1am we were still in the wood and in deep water. We had no water or food and couldn't find any way to cross. We tried to sleep inside the boat. I called the Turkish emergency number 112 and told them that I needed help. They told me to call 150 and that someone could speak to me in English. Nobody answered. We managed to sleep somehow. When we woke up on Friday morning [27 March 2015] we found an empty building with a fireplace. […] We walked across farmland until we got to the outskirts of the village of Nea Vyssa. It was about 6pm by this time. I stopped a car and asked them to take us to the centre of the village. They said that they couldn't help us because they would get in trouble with the police. We walked towards the centre of the village and started to change into fresh clothes that we had brought with us.

A car with two policemen in uniform came up to us. The number plate was EA 24 86 O. They asked us for our passports and we admitted that we had crossed the border from Turkey. We asked them to let us buy some food but they said we had to wait for another car to take us to the police station. They asked for our phones and chargers. It started to rain at this point so they took us to a shelter in the village. From the shelter two more police came in a plain white van. We got in the van and they took us to the highway to Orestiada. There was a family of Kurdish Iraqi refugees from Sinjar there. There were three children and their mother. They

[206] Interview in Istanbul on 1 April 2015 (push-back incident on 28 March 2015).

put the family in the van and then took us all to a police station.

There was an IOM notice on the wall written in 12 languages about rights to seek asylum. At this police station there was a police officer in uniform, who spoke some English, he told me to tell everyone in Arabic that they will search all of us so to give them our possessions. We told him that we had already given our [4] mobile phones to the police that had stopped us.

They searched us and put us in a cell. There were 13 of us in total, men, women and children. I asked him for blankets because it was cold and there were children there. The cell was very dirty and very bad. The toilet was very dirty too. They told us that a doctor would come and that we would be taken to a camp after that. We told them that we wanted food and that we could pay for it. We hadn't eaten since we left Turkey on Wednesday night. By this time it was 9pm on Friday night. He told me to wait. I told him that it was my right to have a phone call. He told me that I would have to wait until the next morning. They didn't want us to contact anyone to let them know that we were there. I wanted to call someone so that I could stay there and not be sent back to Turkey. I asked for a lawyer but he said that I would have to wait for the next day for this too. During the night many people were brought to this place. There were about 30 of us. There were Afghans and Pakistanis there.

The next morning, Saturday morning [28 March 2015], they called the names of some people being held there. They took their photos and then took them somewhere – I guess that they took them to the camp… Different police officers came in the morning. They treated us really badly, not like the ones the night before. We still had received no food or water. When I asked for food and water they shouted at me and told me to drink water from the tap in the toilet. By this time there were nine Pakistani men, three Afghans (the family described above), four men from Algeria, five of us and five other men from Syria, one man from Senegal and a Kurdish man from Turkey and eight men from Sinjar in Iraq. We were in a really dirty cell about 20 sqm. There was one mattress in the room. The police brought food to the people in the other room and treated them well. There were people there from Syria and other countries. I guessed that they would be sent to the camp. They treated us badly and didn't give us any food. I realized at this point that we would be sent back to Turkey.

At 2pm I was shaking from hunger and one of my friends was looking really white. I got really angry and started shouting that they would be responsible for what happened to us and that we needed food and water. The children hadn't eaten for two days and neither had we. I gave him money for us. The Algerian men had no money – the police said no money, no food. We gave money to the police and then shared the food that they brought with all of us.

At 5.30 or 6pm a black unmarked truck came to the place. The police told us to prepare ourselves. I asked where we were going. He said that he could send us where they wanted. I translated this to everyone. The Kurdish guy from Turkey was asking for his wallet with his ID card in it. The police told him that they didn't have it. They put all of us in the vehicle. I went in the front. I saw us pass the city of Kavyli [a small town near the Turkish border, around 30km away from Didimoticho]. We were heading north. We arrived to a place close to the border with Bulgaria. […] There were four men in military uniform with masks on.

They took us – there were 44 of us – to the river. They swore at a guy who didn't get on his knees. They were whispering to us and put us on the boat 6 people at a time. It was about

7.30pm. There was a guard with night vision glasses there. I asked for my passport. They hit one of my friends with an oar to make him put his head down. They took us 6 people at a time to the other side of the bank on the Turkish side of the border. We all waited there. They threw two plastic bags at us. One had passports in, the other had mobile phones but many were missing. We went to the left, others went to the right where there are military buildings. There were 24 of us together. Two Turkish soldiers came. We told the soldiers that we had been sent back from Greece. The soldiers treated us ok and took us to the military building. They were really angry that the Greek soldiers had sent us back. We stayed the night there and the next day they took us to a different place. We stayed there for a night and then they took us to the camp in Edirne. We stayed in the camp for another night. After that they sent us back to Istanbul. I paid 10 Euro for my bus.

Four Syrian friends, aged between 21 and 31, told Amnesty International how they were sent back to Turkey by boat over the River Evros after being held for almost two days in a police station said to be Didimoticho Police Station near the border with Turkey. Testimony of AC, a 31-year-old Syrian man, describes the violence they faced while being pushed back from Greece to Turkey on 13 April 2015:[207]

They took us to a small village. I think it is called Dilofos, I checked it later on the GPS on my phone. They took us out of the vehicles, the men in police uniform were there with us and there were others, they were wearing military clothes, with no writing on them. Some of them had guns. We couldn't look at them because if we did they would hit us. They were all wearing balaclavas covering their faces. One of them held me by my hair (AC has long hair) and said something to me in Greek, he was aggressive. They took us to the river bank and told us to get on our knees. It was dark by this time – about 8.30pm. There were other people there who would be sent back to Turkey. We saw them when we got out of the vehicles. One of the police hit me on my back, breaking the oud [a string instrument*] I had with me, he hit me on my legs and on my head with a wooden stick. They hit M. too. They took us closer to the river and told us to be quiet and not to move. They took M. and me away from the group and started beating us with their fists and kicking us on the floor. They held me by my hair and pushed me towards the river. I was scared that they would throw me into the river. They didn't do this though.*

His friend, 21-year-old Syrian man, M, also explained how they were treated violently when they refused to leave the cell they were kept in, fearing they would be pushed back to Turkey:[208]

Outside the cell they used electric shock batons – so we could hear the sound and be afraid. They opened the cell and took the women and children out. The male members of the families stayed in the cell with us. [The men from the families also left as per the testimony of AC]. In the end there were the four of us, two others from Syria, one from Raqqa and Daraa and another man from Algeria left in the cell. He was 19 years old. We had refused to go out. After they had put everybody in the cars they came again for us. The woman police

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[207] Interview in Istanbul on 16 April 2015.

[208] Interview in Istanbul on 16 April 2015.

officer asked us what we wanted. We said that we wanted to see a lawyer. We told them that we didn't want to go back to Turkey. They said that they will take us to the camp and not to Turkey. They told us that they will take us out if we don't go out on our own. They told us that there was nothing that they could do and that their boss told them that they have to do this. They came into the cell – 10 or 15 of them and started hitting the ground with their sticks. I was holding the bars of the window – they hit my hands with wooden sticks, five or six times. They held me by my hair and dragged us out of the cell.

The patterns of behaviour that emerged in testimonies about push-backs from the land border were confirmed at meetings with Turkish authorities and prosecutors in Edirne. At a meeting on 14 May 2015, two prosecutors from Edirne confirmed that refugees and migrants were being returned to Turkey from the border with Greece without any formal procedure. At another meeting on the same day at the Removal Centre of Edirne, representatives from the Provincial Security Directorate, Gendarmerie and the Provincial Migration Directorate also confirmed push-backs from Greece. The Turkish officials said that the Greek police observe the Turkish side of the River Evros with night vision goggles and push people back after a Turkish military patrol passes, knowing that the same patrol unit will be back in about half an hour. The representatives said that they have monthly meetings with Greek counterparts on irregular migration and smuggling related issues, and that they have raised the push-back allegations during these meetings. However, so far, they have not been informed of the result of any investigation. Amnesty International also talked to three soldiers doing their military service in the area. They said that push-backs from Greece take place approximately twice a week and include 60 to 80 people at a time. Information shared by one of the soldiers confirms the testimonies of migrants and refugees pushed back from Greece across the River Evros:

They [Greek police] send them back approximately twice a week. They hold them for 3-4-5 days, wait until their number is big and then bring them back over to Turkey five to ten people in a boat but in big groups. They wear black and cover their faces, because they fear being recorded. They tell migrants to put their heads down, so that if the boat is seen the migrants are not visible. When people are pushed-back, they sometimes have swollen faces and eyes because they also get beaten sometimes. We have seen the Greek police watching our side of the river to make sure we are not around when they do the push-back.

The testimony of another soldier corroborates the observation that the Greek police consolidate groups of migrants and refugees together who had crossed into Greece in smaller groups:

When migrants cross from here to Greece, they are usually in small groups. If we catch them before they pass into Greece, we have enough space at the barracks to accommodate them for a night. However, if we apprehend them after they are pushed back, it's very difficult. Because, when they are pushed back, they are about 80-90 people.

Amnesty International has also received recent allegations of push-backs in the Aegean Sea; one from April, two from July and one from August 2015. These instances contain details that show lives are being endangered and refugees and migrants are denied access to individualized procedures before being returned to Turkey. Two of them involved Greek speaking masked men, but the interviewees were unable to establish with certainty whether

they were civilians or members of the Greek coast guard. However, a promotional video footage published on the official website of the Greek Coast Guard[209] shows one of the officers on a speed boat wearing a mask fitting the descriptions Amnesty International received from refugees and migrants, recently and documented in previous reports on July 2013[210] and April 2014.[211]

It is always difficult to form an accurate impression of the scale of clandestine activity. But an indication of the frequency of push-backs at the Greek border was shared with Amnesty International at a meeting on 18 May 2015, with representatives from the Turkish Coastguard Command. They shared a presentation with Amnesty International, which disclosed that the Turkish coastguard rescued 3,412 individuals from the Aegean Sea as a result of 121 push-back incidents over the last five years, over half (62) of these incidents from 2014. The Turkish coastguard said that these numbers do not include all incidents they analyze as push-backs, but only those where there are either migrant testimonies or video footage available. However, the actual number of push-back incidents is estimated to be much larger. The Turkish Coastguard believed information on these incidents was also shared with the Greek authorities through the Turkish Ministry of Foreign Affairs. According to the presentation, push-back incidents involve boats being disabled by puncturing floats or removing engines, fuel and oars and migrants being beaten. Representatives from the Turkish Coastguard said that the push-backs continue in 2015.

Amnesty International's research suggests that push-backs at Greece's land border are carefully planned, involving a specific holding place in or near Didimoticho town and are systematic, while push-backs continue at sea. Despite many reports by non-governmental organizations of push-backs, including an incident where 11 people – eight of them children – lost their lives, there have been no effective investigations into alleged push-backs and to Amnesty International's knowledge no one has ever been held responsible for the human rights violations involved.[212]

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[209] Footage can be found under the media section of the website of the Greek Coast Guard: http://www.hcg.gr. Direct link to the footage is: https://www.youtube.com/watch?list=PLE70A9FB3E6CAFCD0&feature=player_embedded&v=PbZq5ipD0R0

[210] Amnesty International, *Frontier Europe: Human Rights Abuses on Greece's Border with Turkey* (Index: EUR 25/008/2013) available at www.amnesty.org/en/documents/EUR25/008/2013/en/

[211] Amnesty International, *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/

[212] For more detailed account of Amnesty International's findings and the Greek authorities' response, see *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back at Europe's Border* (Index: EUR 25/004/2014) available at www.amnesty.org/en/documents/EUR25/004/2014/en/ (accessed 14 September 2015). Responding to a letter from Amnesty International in late April 2014, which raised concerns over the continuing allegations of push-backs and ill-treatment along the Greek-Turkish border, the Greek coastguard wrote that the principle of *non-refoulement* is a fundamental principle of their operations. The coastguard added that 12 investigations were carried out between 2001 and 2013 over

PUSH-BACKS FROM BULGARIA TO TURKEY

" They put us in a jeep and took us near the international border crossing by jeep. They slapped our necks and said "walk, goodbye" showing Turkey. We began walking towards Turkey. When we turned back to look at them, they showed us their guns. …, I was too scared. After three years of war in Syria, I am scared of guns. Escaping from Syria, and then dying in Bulgaria would have been unacceptable. I was scared."

TJ, 22-year-old Syrian refugee[213]

Amnesty International has previously reported on allegations made by migrants and refugees of push-backs on Bulgaria's border with Turkey and has been following the situation at this border since March 2014.

Migrants and refugees Amnesty International has talked to since March 2014 have usually been apprehended by the Bulgarian police within minutes or hours of crossing the border from Turkey. They were then either escorted on foot back to the border or driven close to the border, and made to cross back into Turkey, in almost all incidents from a different location than they had entered Bulgaria. Some described being held in what they thought were police stations before being taken back to the border and unlawfully sent back to Turkey.

Most of the migrants and refugees interviewed, who had been pushed back from Bulgaria to Turkey told Amnesty International that they had experienced violence and ill-treatment at the hands of Bulgarian police. They said they were beaten and their money and phones confiscated. Many of those who were pushed back from Bulgaria told Amnesty International that they were held at the border for up to 12 hours, outdoors in the cold. Some said they were forced to lie face-down on the ground during that time.

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allegations of ill-treatment by the coastguard. These resulted in the discharge of one officer and the criminal conviction of six.

[213] Interview in Istanbul on 16 May 2015 on push-back incident of 12 April 2014.

Recent testimonies collected by Amnesty International as well as a research visit in May 2015 to Edirne and Kirklareli, the two Turkish provinces bordering Bulgaria, suggest that the push-backs by the Bulgarian border police continue regularly. However, based on the testimonies, push-backs from Bulgaria to Turkey are currently carried out against individual groups on an ad hoc basis, rather than following a set procedure and being conducted against large groups of refugees at a time.

New testimonies collected provide information on 17 separate incidents of push-backs to Turkey from Bulgaria between September 2014 and May 2015. They were recounted by 19 individuals from Syria, Afghanistan, Iraq and Morocco and involved groups of people ranging from two to 37, making a total of at least 177 people.[214] Seven said that they were apprehended and pushed back by men in dark green uniforms, while four said the uniforms were dark blue.[215] Both descriptions match uniforms of border police in Bulgaria. Six said that they read either "border police" or "police" on the uniforms. Except in one incident from mid-September 2014, all were searched. In two incidents involving Syrian men, one from mid-December 2014 and the other on 14 April 2015, interviewees said that they were strip-searched in front of others. While half said that their phones and money were taken, the others said that the police confiscated only their sim-cards and phone batteries, and returned their mobile phones.

None of these new testimonies include detention prior to being returned to Turkey as has been reported in two cases that Amnesty International has previously documented along this border. However, in one incident from January 2015, a 23-year-old Syrian said that in January 2015 the Bulgarian police drove him and his friend by jeep to a prefabricated cabin in the forest, in front of which they were searched prior to being pushed back to Turkey. Another Syrian told Amnesty International that after crossing the border into Bulgaria on 14 April 2015, he and his friend came upon a prefabricated cabin in the forest, where two police officers stopped them.

The majority of the migrants and refugees pushed back have said that they were slapped, punched and kicked, and forced to lie down on the ground. In one incident from late April 2015, a 22-year-old Afghan, who was pushed back with seven others, told Amnesty International that his friend hid his mobile phone when asked by the Bulgarian police before being pushed back. In return, he was severely beaten and a bone in his lower leg was broken. A 31-year-old Syrian man told Amnesty International that his friend was beaten by the Bulgarian police with a tree branch before being pushed back in late December 2014.

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[214] Two of these 19 individuals were encountered by Amnesty International during a research visit in February 2015 in Melilla, one of the two Spanish enclaves in North Africa. They were two young Syrian men. One told Amnesty International that he tried to go to Bulgaria many times but was pushed back three times in September 2014. The other one said he was pushed back from Bulgaria in October 2014. They both said that after their experience at the Bulgarian border and because they did not have the financial means to cross over to Greece by boat, they had decided to travel to Morocco and cross over to one of the Spanish enclaves.

[215] Eight interviewees were unable to describe the uniforms either because they could not remember or they said that it was too dark to see.

A widely publicized incident in March 2015 involved Iraqi Yezidis, who had died of hypothermia on the Turkish side of the border.[216] According to media articles and the testimony two others in their group had given to Turkish officials as part of the investigations on the deaths, they were pushed back from Bulgaria, but were not able to reach a village to seek shelter from the cold unlike others as they were severely beaten by Bulgarian police officers before being pushed back to Turkey. Following the incident, the UNHCR urged the authorities in Bulgaria and Turkey to investigate it and expressed concerns over the accounts of brutality, which may have contributed to the deaths of two people.[217] On 18 August, the deputy minister of the Bulgarian Ministry of Interior told Amnesty International that they have begun an internal investigation into the incident in March 2015. However, they said that the Bulgarian authorities could not proceed with the internal investigation as they were not in a position to establish the location of the incident from the information available to them. The internal investigation was therefore closed.

Not all reported push-backs from Bulgaria involved violence. F, a 35-year-old woman from Afghanistan, arrived in Turkey in early May after a horrendous journey over the mountains between Iran and Turkey. She was travelling with her husband and three sons, aged 14, nine and six, when they were trapped in the mountains for 48 hours without food and water, and in severe cold. They had left their home in Ghazni, Afghanistan because F's husband, GH, was receiving threats from the Taliban because he was a teacher. They decided to travel through Iran into Turkey and from there towards Germany, where they hoped to reunite with GH's cousin. However, their journey was cut short after they encountered the Bulgarian border police:

We arranged an agent [smuggler] to help us cross the border into Bulgaria. 5 days ago [10 May 2015], the agent took us from Kirklareli with a van in the middle of the night. There were no seats in the back and we were 20 people stuck in there. There was another Afghan family, who I knew from our journey from Iran. They have a 6-month old daughter. She had a broken leg and was in great pain. The van took us to a village and left us there. Then the agent walked us towards Bulgaria. It was completely dark. The only light was that from the torch of the agent and my husband's lighter. I was really scared of what may happen to us there, in the middle of the night, with my kids. After about an hour, we came to a fence, which had sharp edges. The agent held the fence up and we squeezed under it. My jacket got caught and ripped apart. My oldest son's head got scratched. Thankfully, nothing bad.

We kept walking after the fence, it was like a field I think but it was too dark to say. Then we were stopped by the police. They shouted at us, they had two dogs. We stopped. The agent

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[216] See for example, BGN News, *Yazidis fleeing ISIL beaten by Bulgarian police, freeze to death,* 12 March 2015 available at: http://world.bgnnews.com/yazidis-fleeing-isil-beaten-by-bulgarian-police-freeze-to-death-haberi/4231 and Milliyet, *Irakli kaçak göçmen, yaşadıkları dehşet anlarını anlattı,* 12 March 2015, available at: http://www.milliyet.com.tr/irakli-kacak-gocmen-yasadiklari-dehset-edirne-yerelhaber-668996/. Description of events was also confirmed during Amnesty International's interviews in May 2015 with locals from a border village, where one of the bodies was found.

[217] UNHCR, *UNHCR concerned by border practices after deaths of two Iraqis at the Bulgaria-Turkey border,* 31 March 2015, available at: www.unhcr.org/551abb606.html (accessed 16 September 2015).

ran away then, I think. I counted six policemen. They were wearing uniforms and had torch light. It was still not possible to see exactly, but I think their uniform was dark green. We didn't understand what they were saying. I was really scared because I heard Bulgarian police beating other people. But they did not mistreat us. They pushed us around a bit, searched us and took our money. About 300 euros. They took our sim cards, but returned our mobile phones. Then they made us walk, back in the direction we came from but not towards the same location. We walked for about an hour [towards the Turkish border]. I was holding onto my little one, he was quite scared of the dogs. But the dogs weren't aggressive. After an hour, they stopped, but told us to continue walking in the direction they showed. We continued walking, but in the dark we couldn't find out which way to go. I was scared of getting lost there in the middle of nowhere, in the dark. We had no water or food. We decided to stop walking and wait until sun light. After sun rise, the Turkish gendarmerie found us. They took us to the bus station in the centre of the town and we came back to Istanbul.

We slept in a park in Istanbul after that, because the Bulgarian police took all our money. Two days later, other Afghans helped us and took us in. We are now waiting for our family to send us some money, so that we can go to them and restart our life. My oldest son, he studied very well. He finished last year first in his class. He is very good in math. I just want them to have a normal and safe life.

Amnesty International also visited four villages recounted by interviewees as villages they reached on the Turkish side of the border after being pushed back from Bulgaria. Villagers Amnesty International talked to said that migrants and refugees walk into their village from the Bulgarian side of the border almost daily and tell the villagers they were sent back by the Bulgarian police after being beaten. Villagers have explained that in some instances marks, including dog bites, were visible. In one of the villages, the village head said that he had to call the ambulance twice in 2015 as the people pushed back needed medical help. Push-backs including beatings and confiscation of mobiles and money were also confirmed during meetings with prosecutors, gendarmerie, the police and provincial migration directorate in Edirne.[218] Amnesty International additionally talked to an Afghan man in Edirne, who said he helps migrants and refugees cross over to Bulgaria. He told Amnesty International that he and other smugglers he knows of accompany approximately 150 people – 80% from Syria – from Edirne across the border into Bulgaria. He said around 70% of these people are then apprehended either by the Turkish gendarmerie before they manage to cross the border into Bulgaria or by the Bulgarian police and pushed-back into Turkey. He explained that he himself was caught and pushed back many times. He claimed that he was beaten a number of times with batons and had seen Bulgarian police releasing dogs upon migrants and refugees who try to escape.[219]

Allegations of push-backs and accompanying ill-treatment Amnesty International collected from a variety of sources including refugees and migrants, villagers in Turkey along the Turkey-Bulgaria border, Turkish authorities as well as a smuggler, demonstrate that although ad hoc, these practices are routine. The fact that these push backs may not be systematic

[218] 14 May 2015.

[219] Interview in Edirne, 13 May 2015.

does not absolve the Bulgarian authorities of their responsibility to investigate these allegations effectively, hold those responsible to account and ensure justice for the victims. Despite numerous previous reports of push-backs by other organizations and the media[220] the response of the Bulgarian Minister of Interior has been to dismiss these reports rather than to launch effective investigations.[221]

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[220] For example, Human Rights Watch Report, Containment Plan (29 April 2014) (accessed 16 September 2015) and The Guardian, EU must open doors to avoid Syrian refugee catastrophe, says UN (13 January 2014) (accessed 15 September 2015).

[221] See for example, the 29 April 2014 dated response of the Minister of Interior of Bulgaria to the report "Containment Plan" by Human Rights Watch available at: www.hrw.org/sites/default/files/reports/FromGoBulgariaEnglish.pdf (accessed 12 June 2014).

REFUGEES UNWELCOME: HUNGARY'S EFFORTS TO KEEP REFUGEES OUT

> "This is an entirely unacceptable infringement of the human rights of refugees and migrants. Seeking asylum is not a crime, and neither is entering a country irregularly."

UN Human Rights Commissioner Zeid Ra'ad Al Hussein[222]

The journey for migrants and refugees who enter Greece does not end there. The majority of those arriving in Greece leave the country and continue on their irregular journey towards other EU countries, mainly because of the failings of the Greek asylum system, and lack of adequate reception services and integration prospects, coupled with the desire to reunite with family members in another member state or the prospect of receiving support from communities established in another country.

This journey takes the majority through the former Yugoslav Republic of Macedonia (Macedonia) and Serbia. Along the journey, they are at risk of being pushed back to Greece from Macedonia or to Macedonia from Serbia, and ill-treated by Macedonian and Serbian Border Police although seldom since June 2015 when Amnesty International reported on the Balkans route.[223] In both these countries, there is no effective protection for refugees, as they lack functioning asylum systems.[224] And at the Hungarian border, refugees have been

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[222] A statement by the UN Human Rights Commissioner Zeid Ra'ad Al Hussein concerning the amendments to the Criminal Code and the Asylum Law in Hungary, which entered into force on 15 September 2015. Office of the High Commissioner for Human Rights, "Hungary violating international law in response to migration crisis: Zeid", 17 September 2015, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449&LangID=E (accessed 19 September 2015).

[223] Amnesty International, *Europe's Borderlands: violations against refugees and migrants in Macedonia, Serbia and Hungary* (Index: EUR 70/1579/2015), available at: https://www.amnesty.org/en/documents/eur70/1579/2015/en/.

[224] For more details on the treatment of migrants and refugees along this journey, see Amnesty International's report *Europe's Borderlands: violations against refugees and migrants in Macedonia, Serbia and Hungary* (Index: EUR 70/1579/2015), available at:

increasingly unwelcome and their access to international protection in Hungary is impeded by physical or legal barriers.

The majority of those who currently take this journey from Greece to Hungary are from Syria and Afghanistan, reflecting the nationalities of those arriving on the Greek islands.[225] Hungarian police have reported that 155,480 individuals have entered Hungary from the border with Serbia during the first eight months of 2015; and of the 173,804 irregular entries through all borders, 57,175 were Syrian and 41,455 were Afghan.[226] 99% of all asylum applications in Hungary are estimated to be submitted by asylum-seekers who have travelled through Serbia.[227] Therefore, it is reasonable to assume that almost all of the 27,134 Afghan and 25,436 Syrian asylum-seekers, who had submitted applications in Hungary in the first eight months of 2015 travelled through Serbia.[228]

Since 2011, the Hungary-Serbia border has increasingly been used as an entry point into the EU for migrants and refugees. In 2102, 3,935 people crossed the border irregularly.[229] In 2014, this number had risen to 42,894 people, 1,059 of them unaccompanied children.[230] While half of them were migrants and refugees from within the Balkans, largely from Kosovo,

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https://www.amnesty.org/en/documents/eur70/1579/2015/en/. Also see UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, August 2015*, available at: www.refworld.org/docid/55c9c70e4.html (accessed 19 August 2015).

[225] UNHCR website on emergency response in Mediterranean states that 70% of individuals arriving on the Greek islands are from Syria followed by Afghans who make up 18% of the arrivals. Available at: http://data.unhcr.org/mediterranean/regional.php (accessed 6 October 2015).

[226] Detailed statistics are available at the official website of the Hungarian Police, available at: http://www.police.hu/sites/default/files/angol_hatarrendeszet_hk_2015._08.pdf.

[227] In Hungarian: "Itt hamarosan „jogi határzár" épül". Available at: helsinki.hu/itt-hamarosan-%E2%80%9Ejogi-hatarzas-epul%E2%80%9D-%E2%80%93-mi-kell-tudni-a-menedekjogi-szabalyozas-valtozasarol (accessed 15 September 2015).

[228] Official website of the Hungarian Police, available at: http://www.police.hu/sites/default/files/angol_hatarrendeszet_hk_2015._08.pdf. Applications of Afghans and Syrians were followed by those submitted by citizens of Kosovo (17,953), Pakistan (10,620) and Iraq (4,676). In 2014, majority of asylum-seekers in Hungary were from Kosovo (21,453) followed by those from Afghanistan (8,796) and Syria (6,857). www.asylumineurope.org/sites/default/files/report-download/aida_-_hungary_thirdupdate_final_february_2015.pdf (accessed 15 September 2015).

[229] Official website of the Hungarian Police, available at: www.police.hu/a-rendorsegrol/statisztikak/hatarrendeszet (accessed 15 September 2015).

[230] Hungarian Helsinki Committee, National Police Headquarters, and the UNHCR, *Asylum Seekers' Access to the Territory and to the Asylum Procedure - 2014,* 2015, available at: helsinki.hu/wp-content/uploads/Bordermonitoring_2014.pdf (accessed 20 September 2015) and Frontex, *Western Balkans Annual Risk Analysis 2015,* 2 May 2015, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2015.pdf (accessed 15 September 2015).

the others had previously entered the EU through Greece but then travelled through Macedonia and Serbia into Hungary.

This trend is still continuing in 2015. In the first half of 2015, 67,955 people irregularly entered Hungary from Serbia compared to 6,049 in the same period of 2014.[231] As of 3 September 2015, the government announced that 160,000 people had already arrived in Hungary irregularly.[232] With this rise, the Serbia-Hungary route has become one of the busiest routes into the EU.

While people escaping widespread violence, conflict or persecution because of their race, religion, nationality, political opinion or other specific characteristics increasingly try to find safety in Europe through Hungary, Hungary is not keen on providing them refuge as it has undertaken as a signatory to the 1951 Geneva Convention on the Status of Refugees, through efforts aimed at either preventing their arrival in the country or – once in – ensuring their speedy return to where they have come from.

Both Hungary and the EU have increasingly been paying attention to the Balkan countries both as a source of and, increasingly, a transit country for, refugees and migrants. With the leverage of the accessions process, Serbia has been pressured by the EU to combat irregular migration[233] and has received 45 million euros from the EU since 2001, in migration-related assistance, including 20 million euros pre-accession funding to "improve its border management".[234] This has been used for surveillance infrastructure and equipment, digital communications, biometric data systems, software for a central database on foreign nationals, and training for Border Police in the detection of irregular border crossings. Macedonia has also received pre-accession funding including for border police stations, border infrastructure, communications systems and training for the border police.[235]

In 2007, EU signed a readmission agreement with Serbia that includes provisions for returning not only Serbian citizens but also third country nationals who have travelled

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[231] The website of the Hungarian Government, *National Assembly asked to provide mandate for protection of southern border,* 3 September 2015, available at: http://www.kormany.hu/en/prime-minister-s-office/news/national-assembly-asked-to-provide-mandate-for-protection-of-southern-border (accessed 15 September 2015).

[232] www.kormany.hu/en/prime-minister-s-office/news/government-to-launch-campaign-in-transit-countries (accessed 15 September 2015).

[233] European Commission (EC), *Serbia: Progress Report 2014*, October 2014, Chapter 24 (Justice, freedom and security), pp. 52-56, available at ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf (accessed 15 September 2015).

[234] Between 2001 and 2006, Serbia received 25 million euros funding; Amnesty International interviews with the Ministry of Interior in March 2015, and the EU Delegation to Serbia in April 2015.

[235] Macedonia also adopted a Migration Management Strategy in early 2015. See eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/documents/projects/overview/contractlist-web-2015-01.pdf (accessed 15 September 2015).

through Serbia.[236] In 2009, the European Border Agency, Frontex, signed working arrangements with several countries in the region including Serbia and Macedonia with the objective of countering "irregular migration and cross-border crime by means of border control as well as strengthening security at the borders between EU Member States" and the signatory third country. These arrangements foresee training activities, technical co-operation, participation in joint operations as observers, and appointing national contacts for information exchange and participation in risk analysis.[237]

Hungary patrols its border with Serbia in co-operation with the Serbian border police. Austria and Germany have provided assistance to strengthen border security here by contributing officers since the beginning of 2015.[238] In August 2015, Hungary sent thousands of additional police officers to counties bordering Serbia for "protection against illegal border-crossers".[239] These measures extend further south to the Serbia-Macedonia border, where joint patrols also involve Hungarian officers. In August 2015, there were 10 Hungarian policemen and four mobile thermal cameras patrolling the Serbia-Macedonia border.[240]

Other initiatives, such as information campaigns in Kosovo and enhanced controls on trains running between Hungary, Germany and Austria to discourage Kosovo citizens travelling to Hungary from moving on to one of these countries, have already contributed to a significant reduction in the number of Kosovo citizens traveling to Hungary irregularly according to Frontex.[241] While 26,182 Kosovo citizens had entered Hungary in the first three months of

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[236] See European External Action Service, Treateas Database, available at: ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=6401 (accessed 15 September 2015).

[237] For Memoranda of Understanding and Working Agreements see, frontex.europa.eu/assets/Partners/Third_countries/WA_with_former_Yugoslav_Republic_of_Macedonia.pdf (accessed 15 September 2015); frontex.europa.eu/assets/Partners/Third_countries/WA_with_Serbia.pdf (accessed 15 September 2015).

[238] Reuters, *German police sent to Serbia-Hungary border to stem Kosovo exodus*, 12 February 2015, available at www.reuters.com/article/2015/02/12/us-germany-kosovo-migrants-idUSKBN0LG21H20150212 (accessed 15 September 2015). Also see Ministy of Interior of Republic of Bulgaria (news), *Minister Bachvarova for the Migratory Pressure: Spontaneously Occurring, This Phenomenon Becomes More and More an Assisted Migratory Process,* 2 August 2015, available at: press.mvr.bg/en/News/news150730_04.htm (accessed 15 September 2015).

[239] Website of the Hungarian Government (news), *Cabinet asks parliamentary groups of governing parties to initiate an extraordinary parliamentary session,* 18 August 2015, available at: www.kormany.hu/en/prime-minister-s-office/news/cabinet-to-request-parliamentary-group-of-government-party-to-initiate-extraordinary-session-of-parliament (accessed 15 September 2015).

[240] Website of the Hungarian Government (news), *Hungary is using its available resources and technical means to fulfil its duties as part of the Frontex cooperation,* 18 August 2015, available at: www.kormany.hu/en/ministry-of-interior/news/hungary-is-using-its-available-resources-and-technical-means-to-fulfil-its-duties-as-part-of-the-frontex-cooperation (accessed 15 September 2015).

[241] Frontex, *FRAN Quarterly: Quarter 1, January-March 2015,* 9 July 2015, available at: frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q1_2015.pdf.

2015,[242] only 1,067 entered in the following three months.[243]

The Hungarian government carried out an anti-immigrant billboard campaign in 2014 as part of its "national consultation on immigration and terrorism" that warns refugees and migrants not to take "Hungarian jobs" and to obey Hungarian laws.[244] UNHCR raised concerns over both the rhetoric of the billboard campaign that attempts to create an image of refugees and migrants as threats to Hungarian citizens, as well as the fence stating that it "may further lead people to undertake more dangerous crossings and place[s] refugees at the mercy of smugglers".[245] In August 2015, the government announced that a similar campaign would be launched in countries en route to Hungary, Greece, Macedonia and Serbia, including posters to "make it clear as part of the campaign that it is not worth heading towards Hungary as the relevant regulations have been changed, and a border fence is being built".[246]

Following the example of Greece and Bulgaria, the Hungarian Government announced in June 2015 that it will also begin the construction of a fence closing off its border with Serbia to stop irregular entries.[247] The four-meter high and 175km long fence was completed on 15 September 2015 and is estimated to have cost around 98 million euros.[248]

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[242] For relevant statistics, see official website of the Hungarian police, available at: www.police.hu/sites/default/files/hatarrendeszet_hk_2015._03.pdf (accessed 15 September 2015).

[243] For relevant statistics, see official website of the Hungarian police, available at: www.police.hu/sites/default/files/hatarrendeszet_hk_2015._06.pdf (accessed 15 September 2015).

[244] Amnesty International, *Refugee route into the EU at risk as Hungary draws up list of 'safe' transit states,* 1 July 2015, available at: www.amnesty.org/en/press-releases/2015/07/refugee-route-into-the-eu-at-risk-as-hungary-draws-up-list-of-safe-transit-states (accessed 15 September 2015). The campaign is estimated to have cost Hungary 4.5 million euros according to Hungarian Helsinki Committee: Hungarian Helsinki Committee, *Immigration and Asylum in Hungary: facts and figures,* August 2015, available at: helsinki.hu/wp-content/uploads/ffaug2015.jpg (accessed 15 September 2015).

[245] UNHCR, *UNHCR billboards in Hungary celebrate contributions by refugees,* 19 June 2015, available at: www.unhcr.org/5583d1466.html (accessed 15 September 2015).

[246] Ministry of Interior of Republic of Bulgaria (news), *Illegal migration – Zoltán Kovács: it is our elementary interest to relay the message to those on the way,* 14 August 2015, available at: www.kormany.hu/en/prime-minister-s-office/news/illegal-migration-zoltan-kovacs-it-is-our-elementary-interest-to-relay-the-message-to-those-on-the-way (accessed 15 September 2015) and Ministry of Interior of Republic of Bulgaria (news), *Government to launch campaign in transit countries,* 14 August 2015, available at: www.kormany.hu/en/prime-minister-s-office/news/government-to-launch-campaign-in-transit-countries (accessed 15 September 2015).

[247] Amnesty International, *Refugee route into the EU at risk as Hungary draws up list of 'safe' transit states,* 1 July 2015, available at: www.amnesty.org/en/press-releases/2015/07/refugee-route-into-the-eu-at-risk-as-hungary-draws-up-list-of-safe-transit-states/ (accessed 15 September 2015).

[248] Hungarian Helsinki Committee, *Immigration and Asylum in Hungary: facts and figures,* August 2015, available at: helsinki.hu/wp-content/uploads/ffaug2015.jpg (accessed 15 September 2015) and Hungarian Helsinki Committee, *Building a Legal Fence: Changes to Hungarian asylum law jeopardise*

On 1 August 2015, an amendment of the Asylum Law entered into force, which introduced lists of safe countries of origin and safe third countries of transit.[249] Serbia, Macedonia and EU member states, including Greece, are considered safe by the Hungarian authorities as a result of these changes, meaning that asylum applications by people who have transited through these countries can be sent back to them following expedited proceedings.[250] On 15 September 2015, when the construction of the fence at the country's border with Serbia was completed, another set of amendments to the Criminal Code and Asylum Law came into effect, making it an offence to enter the country through the border fence and establishing transit zones at the border. A week later, the Hungarian parliament adopted an amendment of the Police Act and the Act on National Defence, which authorises army to support the police in the "crisis caused by mass immigration" and to use rubber bullets, tear gas grenades and pyrotechnical devices.[251]

According to a statement by the Hungarian Minister of Justice, László Trócsányi, on 6 October 2015 "the measures are proving effective because the Hungarian Government had hoped that the numbers of immigrants would fall to a sixth or a seventh of the previous level, but their numbers have fallen even more drastically."[252] Hungarian police reported the same day that only 11 had entered the country irregularly from Serbia.[253] However, the statistics tell a different story: While irregular entries from Serbia have dropped significantly, from thousands every day down to just 11 on 6 October, on the same day 5,932 people were reported to have entered Hungary from Croatia irregularly. Instead of stopping the arrival of refugees and migrants, the effective "sealing off" of the border with Serbia in mid-September 2015 simply shifted the route. Instead of travelling from Serbia to Hungary, they have began to enter Hungary from Croatia in their thousands each day in early October 2015. However, Hungary had already begun constructing a similar fence along the Croatian border.[254] As a result of this closure of the route from Croatia to Hungary on 17 October 2015, refugees

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access to protection in Hungary, 7 August 2015, available at: helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf (accessed 15 September 2015).

[249] For more details, see following section titled "Legislative changes in Hungary to externalize responsibility towards asylum-seekers: collective expulsions to "safe countries."

[250] See Amnesty International's concerns over the use of "safe country" lists: https://www.amnesty.org/en/latest/news/2015/07/hungary-change-to-asylum-law-puts-tens-of-thousands-at-risk/

[251] Article 54/D of Act CXLII/2015.

[252] Website of the Hungarian Government, *Hungarian-Serbian Cooperation in Examplary,* 6 October 2015, available at: http://www.kormany.hu/en/ministry-of-justice/news/hungarian-serbian-cooperation-is-exemplary.

[253] Daily statistics of the Hungarian Police for 6 October 2015, available at: http://police.hu/hirek-es-informaciok/legfrissebb-hireink/hatarrendeszet/napi-tajekoztato-8.

[254] The Hungarian government has announced plans to construct a fence along a 41 km stretch of is border with Croatia: http://www.kormany.hu/en/the-prime-minister/news/construction-of-border-fence-on-croatian-section-has-begun

began to travel from Croatia to Slovenia instead.[255] These shifts from one route to another following border closures show that even if one EU country succeeds in sealing itself off from refugee flows, this still does nothing to stem the flow into the EU through other routes.

LEGISLATIVE CHANGES IN HUNGARY TO EXTERNALIZE RESPONSIBILITY TOWARDS ASYLUM-SEEKERS: COLLECTIVE EXPULSIONS TO "SAFE COUNTRIES"

In addition to measures aimed at physically closing the borders or stopping refugees even before they get to Hungary's borders, Hungary amended its Asylum Law[256] in a way to ensure that all asylum applications of people who traveled through Serbia are rejected automatically without an assessment on their merits. This is based on the argument that Serbia is a safe third country where asylum-seekers can find international protection. Since 99% of all asylum applicants in Hungary are estimated to have passed through Serbia in 2014, it is reasonable to expect that these amendments, which entered into force on 1 August, will affect thousands of refugees, who are at risk of being collectively expelled to Serbia without an individual assessment of their claims on its merit.

With the amendment, the relevant section of the Asylum Law now reads as:

"An application [for international protection] is inadmissible where… for the applicant, there is a third country qualifying as a safe third country for him/her." (Section 51(2)(e) of the Asylum Law, as amended by Article 34 of the Amendment.)

"The application may be declared inadmissible under paragraph (2)e only where the applicant a) stayed in a safe third country, and s/he would have the opportunity to apply for effective protection… in that country; b) travelled through the territory of that third country and s/he would have the opportunity to apply for effective protection… in that country; c) has relatives in that country and is entitled to enter the territory of the country; or d) the safe third country requests the extradition of the person seeking recognition." (Section 51(4) of the Asylum Law, as amended by Article 34 of the Amendment.)

Under international law, states are responsible for examining asylum claims lodged in their territory or jurisdiction. The application of a "safe third country" mechanism must not be used to sidestep Hungary's international obligations, in particular its obligation of non-*refoulement*. Amnesty International is concerned that the use of a list of "safe third countries" will allow Hungary to shift its responsibility for asylum procedure to third countries, without a thorough assessment of whether an applicant individually would be at risk of serious human rights violations in the third country concerned. As of early October, the few asylum applicants who have been admitted to Hungarian "transit zones" at the Serbia border since 15 September have almost all been returned to Serbia on these grounds.[257]

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[255] UNHCR, *Europe's Refugee Emergency Response Update #7*, 16-22 October 2015.

[256] Two of the amendments concern Safe Third Country and Safe Country of Origin (CXXVII/2015) notions.

[257] Amnesty International, *Fenced Out: Hungary's violations of the rights of refugees and migrants*, 8

As the "safe third country" assessment takes place at the admissibility stage of the application before a full review of its merits, the Hungarian Asylum Law allows the rejection of the claim without consideration of the particular circumstances of the applicant. Additionally, Hungarian law gives the asylum-seeker only three days to appeal any inadmissibility decision based on the "safe third country" concept and puts the burden of proof on them to demonstrate that there is no "effective protection" in the third country in question. These serious shortcomings of the Hungarian asylum law could result in *refoulement* (directly or indirectly).

Serbia is listed among the safe third countries, the Hungarian Government announced on 21 July 2015 through a decree.[258] However, the situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations. Amnesty International's recent research demonstrates that the asylum system in Serbia (as well as in Macedonia) is ineffective and fails to guarantee access to international protection to even prima facie refugees, including Syrian nationals, who make up the majority of applicants.[259] Failures and delays in the implementation of the provisions of Serbia's Asylum Law deny asylum-seekers a prompt and effective individual assessment of their protection needs and, in the majority of cases, result in the discontinuation or suspension of asylum applications. The failure of the Serbian Asylum Office to promptly register asylum-seekers, provide them with information on submitting a claim, identify vulnerable persons, conduct asylum interviews promptly and provide first-instance decisions in a timely fashion, places a significant number of individuals at risk of *refoulement* to Macedonia and onwards to Greece. In 2015, out of 545 applications for asylum, 15 applicants received refugee status and 9 received subsidiary protection status. In June 2015, the UN Committee against Torture concluded that "persons expelled from Hungary into Serbia are subjected to forced return to the former Yugoslav Republic of Macedonia, in application of the readmission agreements, without effective procedural guarantees to gain access to legal remedies against the decision".[260]

October 2015 (EUR 27/2614/2015).

[258] On 30 June, the National Assembly Amendment of the Asylum Act (CVI/2015) authorized the Hungarian Government to draw up a list of safe countries. Following the amendment, the government issued a decree on 21 July, specifying the lists of the safe countries of origin and safe third countries (countries of transit). They include the EU Member States, Albania, Macedonia, Montenegro, Serbia, Member States of the European Economic Area, states of the US that have abolished the death penalty, Switzerland, Bosnia and Herzegovina, Kosovo, Canada, Australia and New-Zealand. Available in Hungarian: www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15106.pdf (accessed 15 September 2015).

[259] Amnesty International, 2015. *Europe's Borderland: Violations Against Refugees and Migrants in Macedonia, Serbia and Hungary*. (Index: EUR 70/1579/2015) available at: www.amnesty.org/en/documents/eur70/1579/2015/en/ (accessed 16 September 2015).

[260] Committee against Torture, *Concluding Observations on Serbia*. CAT/C/SRB/CO/2. 3 June 2015, para. 15. Available at daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement (accessed 15 September 2015) and UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, August 2015*, available at: www.refworld.org/docid/55c9c70e4.html (accessed 19 August 2015).

The amendments to the Asylum Law also introduced expedited procedures for applicants from a "safe country of origin":

"The application [for international protection] may be decided on in an expedited procedure where the applicant… originated in a country listed on the European Union or national list of safe countries of origin as specified by separate legislation." (Section 51(7)(b) of the Asylum Law, as amended by Article 34 of the Amendment.)

The imposition of an expedited procedure to asylum-seekers originating from countries considered to be "safe", while such a procedure is not imposed on asylum-seekers originating from other countries, amounts to discrimination on the basis of their national origin. The prohibition of discrimination based on nationality is one of the fundamental principles of international law, recognized among others by Article 3 of the 1951 Refugee Convention, Article 21 of the Charter of Fundamental Rights of the European Union and Article 26 of the International Covenant on Civil and Political Rights, as well as the Hungarian Constitution (Article XV).

Furthermore, the amended provision restricts access to the regular asylum procedure for asylum-seekers originating from the countries in the list, on the basis of a presumption of "safety" in his/her country of origin. While an applicant may rebut the presumption of safety, s/he bears the burden of proof and is required to do so in an accelerated procedure with fewer safeguards. As a result of these restrictions, individuals in need of international protection risk being returned to a "safe country of origin" in violation of the obligation of *non-refoulement*.

Amnesty International is also concerned that the drawing up of a list of "safe countries of origin" will generate or perpetuate prejudice against asylum-seekers from countries designated as "safe", when the need for international protection must be determined on the basis of individual circumstances.

In other countries where such lists have been used, they have been challenged in courts and most recently, a list of safe countries of origin was found to be discriminatory and unconstitutional by the Federal Court in Canada on 23 July 2015. The Federal Court rejected the government's argument that the principal reason for the "designated countries of origin" regime is "to deter abuse of our refugee system by people who come from countries generally considered safe and 'non-refugee producing'". It held that the distinction drawn between applicants originating from the countries on the list and those who do not was discriminatory "on its face".[261]

A blanket refusal of asylum applications submitted from people who are nationals of, or who have travelled through, countries deemed safe is discriminatory and will result in instances of *refoulement*. As such, Amnesty International recommends that states within the Dublin system do not transfer asylum-seekers, who had travelled through Serbia, back to Hungary.

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[261] *Y.Z. and the Canadian Association of Refugee Lawyers v The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness*, 2015 FC 892; 23 July 2015, paras 124, 130.

Hungary is not alone in the use of safe third country and safe country of origin notions. The Asylum Procedures Directive of the European Union allows member states to designate certain countries as safe for swift processing of asylum applications submitted by their nationals by subjecting them to accelerated procedures.[262] The Directive also enables member states to deny a thorough examination of an asylum application on its merits, if the applicant transited through a safe third country. On 20 July 2015, the Justice and Home Affairs Council of the European Union recommended that all member states consider Western Balkans countries,[263] including Serbia and Macedonia, as safe countries of origin.[264]

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[262] 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.

[263] The Council conclusions list Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo as Western Balkans countries.

[264] Outcome of the Justice and Home Affairs Council Meeting on 20 July 2015, available at: www.consilium.europa.eu/en/meetings/jha/2015/07/20/ (accessed 15 September 2015).

HUMAN RIGHTS OBLIGATIONS RELATED TO PUSH-BACKS

Under international and European Union (EU) law, individuals whose transfer is sought from the jurisdiction of a state to that of another state have the right to both substantive and procedural safeguards. Substantively, the principle of non-refoulement prohibits states from transferring anyone, whether directly or indirectly, to a place where they would have a well-founded fear of persecution or would face a real risk of other serious human rights violations or abuses. Procedurally, states are obliged to give the individuals concerned an effective opportunity to challenge the transfer.

Push-backs, which have become intrinsic features of any heavily pressured EU external border, are expulsions that are realized summarily, without any of the guarantees required by international and EU law. As a result they are in breach of international conventions, including Article 13 of the International Covenant for 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. They are also in violation of EU legislation, such as the Schengen Borders Code,[265] the Asylum Procedures Directive[266] 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.

Such expulsions are also in breach of the Convention on the Rights of the Child as per the General Comment of the Committee on the Rights of the Child, which said that "[s]tates shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention" and that "the assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services".[267]

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[265] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders.

[266] Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).

[267] General Comment no. 6, 1 September 2005, para. 27. Article 6 protects the right to life and Article 37 of the Convention deals mainly with the prohibition of torture and other cruel, inhuman or degrading treatment and the right to liberty and security of the person.

States have an obligation to respect, protect and fulfil the human rights of everyone on their territory or under their jurisdiction, irrespective of their migration status.[268] Whether or not the boats carrying refugees and migrants are intercepted by Greek coastguard vessels in Greek territorial waters, and whether or not the areas within the fences surrounding Ceuta and Melilla are considered Spanish territory, once Greek or Spanish officials have effective control over them the migrants and refugees are under Greek or Spanish jurisdiction.[269]

Ill-treatment and degrading treatment in the course of border control operations or while in migration related detention also constitute a breach of human rights standards, including in particular the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on Human Rights.[270] Authorities also have an obligation to prevent ill-treatment and to promptly and impartially investigate all allegations of ill-treatment.

Furthermore, the conduct of law-enforcement officers must ensure full respect for the right to life, liberty and security of all persons, enshrined in the International Covenant on Civil and Political Rights. The UN Code of Conduct for Law Enforcement Officials (1979)[271] and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)[272] (Basic Principles) provide detailed guidance for law enforcement officers on how to ensure respect for these rights while performing their duties. The core provisions on the use of force in these documents have been recognized as reflecting binding international law by

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[268] Article 1 of the European Convention on Human Rights (ECHR), for example, establishes that the parties to the Convention "shall secure to everyone within their jurisdiction the rights and freedoms" enshrined in the Convention. See the European Court of Human Rights factsheet on the extra-territorial jurisdiction of State parties to the ECHR (February 2014), in particular the case of *Hirsi Jamaa and others v Italy*, where the Court stated that "whenever the State through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual", available at: www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf (accessed 15 September 2015).

[269] As the UNHCR, the Human Rights Committee, the Committee against Torture, and other international bodies have confirmed, a state's human rights obligations toward an individual attach as long as that person is subject to the state's effective power and control. Also see, for example, *Hirsi Jamaa and Others v Italy*, App. No. 27765/09 (Eur. Ct. H.R. Grand Chamber), paras 74-75, 79-82; *Medvedyev and Others v France*, App. No. 3394/03, Judgment of 29 March 2010 (Eur. Ct. H.R. Grand Chamber), paras 62-67.

[270] Article 2 of the UN Convention against Torture prohibits torture and requires parties to take effective measures to prevent it in any territory under their jurisdiction. Article 3 of the European Convention on Human Rights prohibits torture and other inhuman or degrading treatment or punishment.

[271] Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 of 17 December 1979.

[272] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.[273] In particular, law-enforcement officials should only use force if non-violent means of restraint are ineffective (Basic Principle 4) and force should only be used where it is absolutely necessary and strictly proportional to the legitimate aim pursued (Basic Principle 5). Assistance and medical aid must be given as swiftly as possible to those injured or otherwise affected by the use of force by law-enforcement officials (Basic Principles 5 and 6).

"Less lethal" projectiles, including rubber bullets, should never be used unless strictly necessary, by fully trained firearms officers subject to effective regulation, monitoring and control. They should only be used in order to avoid the use of lethal force in self-defence or defence of others against the imminent threat of death or serious injury, and only in a manner likely to decrease the risk of unnecessary harm when less extreme means are insufficient to achieve this objective.

Before using "less lethal" projectiles, law enforcement officials should be required to identify themselves as such and give a clear warning of their intent to use such weapons, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident. A system of monitoring and reporting should be activated whenever law enforcement officials use such weapons in the performance of their duties.

Where use of force by law-enforcement officials has resulted in injury or death, a prompt, thorough, independent and impartial investigation into the incident must be conducted, in conformity with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions[274] (Basic Principles 6, 11(f) and 22). Such investigations must include the protection of plaintiffs and witnesses against violence, threats and intimidation (Principle 15 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). Where a death has occurred, an autopsy must be performed before any other decision is made with respect to the remains, including repatriation (Principle 12).

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[273] Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 September 2006 (A/61/311, para. 35).

[274] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

NEED FOR MORE SAFE AND LEGAL ROUTES FOR REFUGEES

> " If we were to keep the money we spend on smugglers, we could build a life for ourselves in Europe. But we spend all this money on criminals. An Iraqi family we met in Greece in detention; they paid 10,000 euros for each family member; another family 9,000 euros and they were 10 in the family. They were told that they'll be taken to Germany. But they ended up being pushed back from Greece to Turkey like us…"

RL, 23-year-old Syrian refugee

In 2013, the number of forcefully displaced globally exceeded 50 million for the first time since World War II. In 2014, this figure reached around 60 million people forcefully displaced worldwide including 19.5 million refugees.[275] Over four million people fled Syria alone, making this one of the worst refugee crises in history.

However, they are not hosted equitably around the world. While some countries receive millions of refugees escaping violence and persecution, others receive only a few for reasons including their geographic location, or means they have put in place to prevent arrivals such as those adopted by some EU member states described in this report. 86% of the world's refugees are living in developing countries, 25% of them in the least developed ones.[276] 95% of the Syrian refugees are living in countries neighbouring Syria. One in every five people in Lebanon, a country with a population of four million, is a refugee from Syria.[277] Turkey,

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[275] UNHCR, *Global Trends 2014*, 18 June 2015.

[276] UNHCR, *Global Trends 2014*, 18 June 2015.

[277] UNHCR's Syria Regional Refugee Response website available at:

where the majority of Syrians currently arriving in Europe depart from, already hosts around two million Syrian refugees.[278] In contrast, there were around 1.1 million refugees living in the whole of the 28 EU member states in 2014.[279]

Built in response to the displacement crises of World War II, the international refugee protection regime anticipated the need for international co-operation in the face of mass population movements. Numerous standards have developed since the principle of international burden and responsibility sharing was explicitly enunciated in the 1951 Refugee Convention.[280]

The international system for protecting refugees cannot function without international solidarity. This means an equitable share of the global refugee population throughout the world, which can only be achieved by ensuring **safe and legal routes** for refugees to reach and live in a larger number of countries rather than a few, as well as by supporting countries hosting large numbers of refugees through funding United Nations humanitarian appeals to assist refugees globally. There are a variety of measures EU states can adopt to offer safe and legal routes people in need of protection to reach the EU.

Opening up more safe and legal routes for refugees would not only reduce the need for refugees to take dangerous journeys to reach Europe. Ensuring a more equitable distribution of the world's refugees globally is necessary to relieve the pressure on states hosting the majority of the world's refugees and preventing erosion of the protection space that exists in these countries. Enabling refugees or asylum-seekers to legally and directly travel to EU member states would also relieve the pressure on frontline EU member states on the main routes to the EU. Although refugees usually do not want to stay in the countries where they first enter the EU, they cannot travel to other countries within the EU without passing through those on the external borders such as Bulgaria, Greece, Hungary, Italy and Spain, as the majority do not have any other option than to travel irregularly into the EU.

One way to extend safe and legal routes to refugees would be to increase **resettlement** places, which is the transfer of vulnerable refugees to countries where they can restart their lives in dignity.[281] Resettlement is normally co-ordinated by the UNHCR, which refers cases of

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data.unhcr.org/syrianrefugees/regional.php (accessed 17 September 2015).

[278] UNHCR's Syria Regional Refugee Response website available at: data.unhcr.org/syrianrefugees/regional.php (accessed 17 September 2015).

[279] UNHCR, *Global Trends 2014*, 18 June 2015, available at: unhcr.org/556725e69.html (accessed 17 September 2015).

[280] See UNHCR, A Thematic Compilation of Executive Committee Conclusions, pp. 471-478, available at: unhcr.org/53b26db69.html (accessed 17 September 2015).

[281] UNHCR defines resettlement as: "Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized

recognized refugees to countries that have offered resettlement places. Some countries also have **humanitarian admission** programmes that refugees can apply for and if accepted are transferred to these countries, which are not co-ordinated through the UNHCR. Resettlement places offered to refugees globally are far below what is needed.

UNHCR estimated that in 2016 the total number of refugees who need resettlement would be almost 1,153,300.[282] In contrast, the total number of resettlement places that states offered in 2014 was only 105,200 places. In 2014, approximately 73,000 refugees[283] were resettled through the UNHCR and the remaining were resettled directly by states.. Based on current needs and accounting for possible increases in the number of refugees needing resettlement, Amnesty International believes there should be a global resettlement commitment of 1.45 million refugees over the coming two years, on the assumption there will be a 26.5% increase in the number of refugees needing resettlement during this period.[284]

Resettlement and humanitarian admission places so far offered by EU member states remain woefully low. For example, for Syrians, eighteen of the 28 EU member states pledged less than 68,000 resettlement places since 2013, 38,500 of them by Germany.[285] These are multi-annual pledges, rather than recurring annual commitments. EU member states, making up the wealthiest political bloc, can and should offer at least 300,000 in resettlement and humanitarian admission places over the next two years for the most vulnerable refugees outside of the EU. This could be done through national programmes or a mandatory programme to be set up by the EU.

Another way of allowing a safe and legal way to access protection in the EU for refugees would be by facilitating **family reunification** for refugees who have family members living in the EU. Family reunification is triggered by the sponsor refugee already residing in an EU Member State. Access to the EU for family reunification purposes is regulated by EU law, notably the Family Reunification Directive.[286] EU member states have the ability to adopt more favorable provisions than those available under EU law, which is also encouraged by the

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citizen of the resettlement country." Source: UNHCR Resettlement Handbook, available at: www.unhcr.org/46f7c0ee2.pdf (accessed 21 November 2014).

[282] *UNHCR Refugee Resettlement Trends 2015*, June 2015, p.7, online at: www.unhcr.org/559e43ac9.html (accessed 17 September 2015).

[283] *UNHCR Refugee Resettlement Trends 2015*, June 2015, p.23, online at: www.unhcr.org/559e43ac9.html (accessed 17 September 2015).

[284] The 26.5% increase is based on an average increase in resettlement needs of 12.5% annually since 2009, when UNHCR started publishing figures for full resettlement needs.

[285] Numbers include other forms of admission such as humanitarian admission or private sponsorship programmes. UNHCR, *Resettlement and other forms of admission for Syrian refugees,* 2 October 2015, available at: http://www.unhcr.org/52b2febafc5.html.

[286] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

European Commission with regards to refugees.[287] However, this option is generally restricted to one's partners and children; or in the case of child refugees to their parents. This route can be made more accessible by applying a broad definition of family members to include extended or non-nuclear families, and applying flexibility as to documentary or other requirements. Increasing the possibilities of refugees accessing family reunification would not only fulfill the protection needs of refugees but also their right to family life. Secondly, the family would represent a supporting net for the refugee reaching Europe, thus reducing the burden on the receiving country and enhancing the refugee's integration. Family reunification does not place a refugee in any random EU member state, but in the one hosting the sponsor, thus reducing the secondary movements of refugees within the EU.

The majority of the people in need of protection cannot travel to and enter the EU legally because they are required to meet visa requirements that are virtually impossible for refugees and asylum seekers to satisfy.[288] However, EU member states can grant **visas on humanitarian grounds** to those in need of international protection even when the applicant does not meet all documentary or other conditions required for being issued a visa. This would allow refugees to travel to EU member states safely and legally and make an asylum application upon arrival.

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[287] European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification* (COM(2014) 210 final), 3 April 2014, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0210_/com_com(2014)0210_en.pdf (accessed 20 September 2015).

[288] These requirements include, for example, documents in relation to accommodation, or proof of sufficient means to cover his accommodation, indicating the purpose of the journey; and that "the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence." See Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0810 (accessed 20 September 2015).

CONCLUSION AND RECOMMENDATIONS

Building fences and strengthening border controls are not the answer to the migration related challenges that the EU is currently facing. While they will reduce entries where introduced, the experience of recent years shows that they do not reduce net flows of refugees and migrants to the EU as a whole, but merely displace routes, typically to more dangerous ones. Moreover, attempts to ensure that land borders become impermeable to migrants and asylum-seekers have consistently resulted a range of human rights violations, including the excessive use of force, ill-treatment and the denial of access to asylum proceedings.

Amnesty International is not opposed to border controls per se. States have the clear prerogative to regulate entry to their territory and such controls are both necessary and desirable for a host of reasons. However, border control measures must always be applied in a manner consistent with the international human rights and refugee protection system. There is no place in this system for the irregular push-backs and inhumane treatment along the EU external borders documented in this report.

Those arriving at the EU's borders must be allowed the opportunity to apply for asylum. More crucially, the EU and its member states must commit to providing refugees with safe routes to reach the EU, that reduce pressures on periphery states and the need for hundreds of thousands of people fleeing conflict and persecution to embark on dangerous journeys. EU countries should not be acting alone in this. There is a global refugee crisis, which requires global action and global solutions. What is certain, however, is that EU countries cannot simply shut door on this problem and hope that the hundreds of thousands of refugees in need of protection will just go away. They will not and nor should they have to.

RECOMMENDATIONS

Amnesty International calls on the Spanish authorities to:

- Stop the practice of summarily expelling migrants, asylum-seekers and refugees to Morocco;

- Either repeal or amend the law to precisely regulate how "border rejections"[289] in Ceuta and Melilla will be carried out with the necessary safeguards to prevent refoulement and collective expulsions from Spain to Morocco;

- Undertake a full and thorough review of operating procedures in relation to migration control, to ensure that safeguards to ensure the protection of the human rights of migrants,

[289] First paragraph of the tenth additional provision introduced by the first final provision of the Organic Law 4/2015 of 30 March 2015 on Public Security ("BOE" March 31). Effective: 1 April 2015.

asylum-seekers and refugees, as required by international law, are in place and effectively implemented;

- Ensure that persons in need of international protection have access to Spanish territory, in Melilla and Ceuta or elsewhere;

- Suspend any cooperation with Morocco on migration control, including the agreement on the readmission of third-country nationals, and stop returning third-country nationals to Morocco until the country fully respects the human rights of migrants, refugees and asylum-seekers;

- Renegotiate the readmission agreement with Morocco and amend it to include human rights safeguards in line with Spain's and Morocco's obligations under international law;

- Investigate reports of human rights violations committed against migrants, asylum-seekers and refugees, make the findings publicly available, hold those responsible to account and provide victims with adequate remedies;

- Immediately end the restrictions imposed on the freedom of movement of asylum-seekers in the enclaves, and allow asylum-seekers to travel freely within the country;

- Ensure that the reception conditions in Ceuta and Melilla are in line with international standards by allocating necessary resources for this purpose as per Article 29(2) of the Reception Conditions Directive.[290]

Amnesty International calls on the Bulgarian and Greek authorities to:

- Immediately halt unlawful push-back of migrants and refugees to Turkey;

- Conduct prompt, effective, and independent investigations into all allegations of push-backs and ill-treatment at their borders with Turkey with a view to eradicate these practices;

- Ensure that migrants and refugees who survive push-back operations or ill-treatment by law enforcement officers are given a temporary legal status, unless a more favourable one is available, to allow them to follow up on their complaints and seek remedy to the harm they have suffered;

- Make public all migration related cooperation agreements and operational protocols with Turkey.

Amnesty International calls on the Hungarian authorities to:

- Annul the safe country of origin and safe third country lists and ensure that all asylum-

[290] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

seekers, including those arriving in Hungary irregularly through Serbia, have access to a fair and effective asylum procedure, including an assessment of their claims for international protection on their merit through an individualized procedure;

- Ensure that those in need of international protection are admitted to Hungary:

  - Repeal the legislative amendments criminalizing "illegal entry" and introducing "transit zones" at the border;

  - Ensure that asylum-seekers are identified and granted access to Hungary, where their needs can be properly assessed and addressed;

- Suspend the readmission agreement with Serbia and do not return third country nationals to Serbia until the country demonstrates its respect for the human rights of migrants, refugees and asylum-seekers.

Amnesty International calls on EU leaders to:

- Take on a fair share of the global refugee population by opening more safe and legal routes for refugees to reach EU countries:

  - Offer at least 300,000 resettlement and humanitarian admission places over the next two years for the most vulnerable refugees outside of the EU;

  - Offer more humanitarian visas for asylum-seekers;

  - Facilitate family reunification for refugees who have family members living in the EU, by applying a broad definition of family members to include extended or non-nuclear families, and applying flexibility as to documentary or other requirements;

- Ensure that refugees have access to territory and asylum at the external land borders of the EU to reduce the need for refugees to take dangerous sea journeys;

- Significantly enhance EU financial, technical and operational support to frontline EU states for the processing of asylum applications and the reception of asylum-seekers;

- Maintain search and rescue capacity along the main migration routes to the EU commensurate with foreseeable departure trends;

- Refrain from developing a list of "safe countries of origin" as refugee status determination is a process based on individual circumstances;

- The European Commission should rigorously enforce the EU asylum acquis, regarding the processing of asylum applications and the reception of asylum-seekers by EU member states to ensure their human rights compliance:

  - Initiate infringement proceedings against Greece, Bulgaria and Spain under articles 3b, 5(4)c, 13(1) and 6, of the Schengen Borders Code and, where applicable, the

asylum acquis principally Article 6 of Asylum Procedures Directive;

- Use all necessary measures, including formal infringement proceedings to ensure Hungary´s full compliance with Union law;

- The European Parliament, the European Commission and EU Member States to submit a reasoned proposal to the European Council to activate the preventive mechanism foreseen under Article 7(1)TEU, in the light of the evidence of "a clear risk of a serious breach of the values referred to in Article 2 TEU", including "the respect for human dignity... and respect for human rights," in Hungary.

- Encourage and support countries of transit to develop and implement asylum systems and migration policies complying with human rights.

ANNEX

Number of refugees and migrants irregularly arriving in Europe through major entry points:[291]

	Bulgaria: Land route (from Turkey)	Greece: Sea route to Greek islands (from Turkey)	Greece: Land route (from Turkey)
2005	163	–	–
2006	103	–	–
2007	651	16,781	16,789
2008	278	30,149	14,461
2009	462	27,685	8,787
2010	620	1,030	47,079
2011	555	5,190	54,974
2012	1,700	3,651	30,438
2013	11,158	11,447	1,109
2014	4,028	43,518	1,903
31-Aug-15[292]	5,438	244,928	1,818

[291] Source for data on arrivals to Greece is the official website of the Hellenic Police. Data on Bulgaria before 2015 is obtained from the Bulgarian Ministry of Interior. Sources for data on Spain before 2015 are from the Spanish Ministry of Interior and the UN Office for Drugs and Crime. Data on Italy is from the UNHCR and the International Organization for Migration and data on Hungary is from Hungarian Helsinki Committee publications and the official website of the Hungarian Police.

[292] Data on Bulgaria reflect arrivals as of 3 September 2015. Source for data on Bulgaria is available at: http://www.bgnes.com/bylgariia/obshchestvo/4369309/. Data for Spain is available for the first six months of 2015. 2015 statistics from Spain are based on an interview Gil Arias Fernandez, Deputy Executive Director of Frontex, gave to Spanish radio Cadenaser, available here: http://cadenaser.com/ser/2015/07/30/internacional/1438278656_598166.html.

Hungary: Land route (from Serbia)	Italy: Sea route (from Tunisia, Libya, Egypt, Greece and Turkey)	Spain: Sea route to the southern coast of Spain (from North Africa)	Spain: Sea route to the Canary Islands (from Western Africa)	Spain: Land and sea routes[293] to Ceuta and Melilla (from Morocco)	
–	22,939	7,066	4,715	5,566	2005
–	22,000	7,502	31,678	2,000	2006
–	19,900	5,579	12,478	1,553	2007
–	36,000	4,243	9,181	1,210	2008
–	9,573	5,039	2,246	1,108	2009
–	4,348	3,436	196	1,567	2010
–	61,000	5,103	340	3,343	2011
3,935	13,200	3,631	173	2,841	2012
19,035	42,925	3,041	196	4,235	2013
42,894	170,100	4,256	296	7,485	2014
155,480	115,500	1,754	113	4,936	31-Aug-15

[293] While the majority of arrivals to Ceuta are by boat, the majority of arrivals to Melilla are by land -- either over the fence surrounding the Spanish enclave, or through the official border crossing, with false or fake documents or by hiding in vehicles.

Following is a full translation of a letter Amnesty International received from the Greek Coast Guard on 6 November 2015 in response to Amnesty International's letter of 23 October 2015 (TG EUR 25/2015.026). In that letter, Amnesty International communicated to the Greek Ministry of Shipping and Island Policy the human rights concerns raised in this report. The response is not available in the print version of the report as Amnesty International received it after the report went to print.

HELLENIC REPUBLIC
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ISLAND POLICY
HELLENIC COAST GUARD HQ
DIVISION OF SECURITY & POLICING
DIRECTORATE OF MARITIME BORDER
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URGENT
Piraeus, November 6, 2015

Ref. No: 2151.12/35686/15

Att: see List of recipients

SUBJECT: "The Hellenic Coast Guard's (HCG) response to allegations of collective expulsion and ill-treatment of migrants, asylum-seekers and refugees at sea."

Ref: Your letter No TG EUR 25/2015.026/22.10.2015

As regards the content of the aforementioned letter, we would like to give you an overview of the positions of the Hellenic Coast Guard:

A) EVOLUTION OF MIGRATION AND REFUGEE FLOWS – ACTIONS UNDERTAKEN BY THE HELLENIC COAST GUARD

1. In recent years, the Hellenic Coast Guard (HCG) has been facing, on a daily basis, countless cases of sea border crossings by mixed migration flows at non statutory entry and exit points in Greece, mainly from Turkey to the eastern Aegean Sea islands. The continuously aggravating political and social unrest in the Middle East has given unprecedented duration and intensity to the phenomenon of irregular migration. In particular, most recently mixed migration flows arriving from the Turkish coast have grown out of proportion. It should be noted that by October 2014, the number of migrants / refugees crossing into Greece through its blue borders totalled to 29,750 people, whereas during the same period in 2015, the figure was 587,098, thus reflecting an **exponentially increasing** upsurge in migration by 1,873%. A corresponding increase was observed in the number of incidents which has leapfrogged from 1,079 for the first 10 months in 2014 to 4,783 during

the respective 10-month period in 2015.

2. The Hellenic Coast Guard, within the framework of its functional and geographical duties and on the basis of its resources, has been carrying out an ongoing maritime border policing task and is constantly rescuing people in danger at sea. In this context and in full compliance with the relevant international, European and national legislation, the respect for the fundamental rights of all people is deemed a top priority. **HCG's commitment and professional dedication of its staff members to their humanitarian work is proven beyond dispute by the number of rescues that the Coast Guard has handled successfully since the beginning of the year**. More specifically, from the beginning of 2015 to the end of October 2015, **a total of 83,001 migrants / refugees have been rescued, a unique number at international level**.

3. Due to the dramatic increase of incidents occurring on a 24-hour basis, HCG's boats patrol across the borderline in order to achieve the early detection, reporting and reception of migrants by the Turkish Coast Guard. It is nevertheless well known that migrants / refugees deliberately scupper their vessels with sharp objects provided to them by traffickers, as soon as they see a HCG patrol boat, so that HCG officers will be forced to rescue them. In these cases, HCG's boats pick up and rescue these people and then hand them over to the competent Turkish authorities, as long as the incident takes place within the Turkish territorial waters.

B) ALLEGATIONS ON PUSH-BACKS AND ILL-TREATMENT OF MIGRANTS / REFUGEES

4. As regards the allegations contained in your letter and referring to four (4) incidents (whereas, as already mentioned, the number of cases handled by HCG since the beginning of the year is already over 4,783) which have occurred in the months April, July and August 2015, it should be noted that, on the first place, the allegations are one-sided and lack specific evidence since they are only based on unconfirmed descriptions made by migrants / refugees. Regarding the alleged clothing worn by the alleged infringers, it is striking to see the simplistic associations and links made between the HCG officers and these incidents ('…punctured their boats and removed the engines…'), whereas it is evident that this kind of clothing can be found and purchased anywhere. Also, unlawful impersonation of a law enforcement officer and misuse of an authority's duties and actions is highly possible.

5. Moreover, it is pointed out that infringement proceedings have already been opened against certain Greek individuals pretending to be law enforcement officers and exploiting migrant populations with the aim to illegally acquire their vessels and equipment used during migration across the sea. In all the above cases, these masked individuals wearing uniforms resembling those of a law enforcement officer have been arrested and brought to justice. It was repeatedly determined that they were not Coast Guard members.

6. Further and independent thereof, we would like to inform you that, in general, all allegations of 'ill-treatment', 'push-backs' or 'failure to provide aid to people at sea' are brought to the attention of the HCG HQ, where they are taken seriously and examined given that the reported actions are:

- in no way related to HCG's operational practices,

- not in line with HCG's civic mission, or its officers' high moral standards, humanitarian values and professionalism,
- manifestly contrary to the HCG's standing rules and strict guidance in how to deal with such incidents.

7. The validity of these allegations is under examination; therefore, if these are regarded as relevant severe penalties will be imposed. Where this is not the case, we believe such allegations diminish the significant humanitarian support provided by HCG officers in terms of rescue and reception of migrants / refugees who have dealt with **more than 587,000 people**, since the beginning of the year, in an effort to cope with the unfolding refugee crisis and ongoing migration flows. At the same time, it is reasonable to assume that these allegations intend to mar HCG's reputation and the morale of its staff, thus creating a false and unfair impression against HCG's officers which are working tirelessly every day to rescue migrants / refugees and provide them with first aid, under unfavourable conditions.

8. As has been said on several occasions, in every case of evidence-based suspicion, indication, report or complaint concerning the deviant behaviour of one of its officers, the HCG takes prompt action to apply the appropriate investigatory instruments enabling the rapid initiation and termination of the proper investigation for each incident, in accordance with legislation in force, while ensuring that the competent judicial authorities are kept actively informed and provide supervision. Both internal and external control mechanisms have been discussed more fully in the unit 5 of HCG's document with reference number 421.821072/17.03.2014, which has already come to your attention.

C) THE ALLEGED INCIDENT OF THE 13TH AUGUST 2015 – MEETING BETWEEN AMNESTY INTERNATIONAL DELEGATES AND REPRESENTATIVES OF THE TURKISH COAST GUARD

9. As regards the information contained in your letter, in relation to the Turkish press report accompanied by relevant audiovisual material, the following should be noted:

a) The video made publicly available does not confirm the allegations of the alleged Turkish fisherman and eyewitness of the incident, namely that HCG's officers "pierced" the inflatable boat that was carrying approximately 50 migrants / refugees, as the video does not show how the boat's inner tubes were destroyed.
b) From the expert conclusions it appears that this video is a product of collage of various footages taken during a search and rescue operation which apparently took place within the Turkish territorial waters. The film was enriched with scenes showing a HCG patrol boat at a different location. However, it has been impossible to identify either the Greek boat or the exact location of the video recording.

10. Moreover it should be noted that various reports made available through the media and Internet show migrants / refugees denounce attacks from Turks during embarkation and while vessels are under way[294]. Also, some migrants / refugees have made complaints concerning

[294]http://www.zougla.gr/greece/article/tourki-mafiozi-ksilokopisan-metanastes,
http://www.emprosnet.gr/article/75185-toys-leilatisan,
http://www.protothema.gr/greece/article/507857/emmanouil-logothetis-o-giatros-ton-metanaston-sti-

their ill-treatment and other unlawful acts which, most probably, were not committed by official public authorities, and are under investigation[295]. Furthermore, we should recall the incident that took place on the Greek island of Samos, according to which various migrants / refugees were injured from gunfire that allegedly was opened against them from the Turkish coast. Given the importance that both Amnesty International and the HCG attach to safeguarding lives and physical integrity of migrants / refugees, as well as to the dismantling of organised crime networks which allow the exploitation of human suffering, continue to make ever larger profits and put human life at stake, we would like to be informed of any relevant investigation and its results.

11. From the above, as well as according to the testimonies of migrants / refugees gathered by both HCG and Frontex officers during identification and debriefing process, there is some interesting evidence concerning the **courses of action of organised criminal networks active on the Turkish coasts**. In particular, according to these testimonies, migrants / refugees have been subjected to violence in order to use traffickers to reach their destination i.e. the Greek coasts. They are also subjected to sabotage and intimidation in case **they don't use these criminal networks**, and are forced to pay the price of this denial.

D) INCIDENT OF THE 20TH JANUARY 2015 ON THE GREEK ISLAND OF FARMAKONISI

12) As regards your report dated January 20, 2015, concerning the Farmakonisi incident, it should be noted that the relevant judicial authorities have already undertaken a criminal investigation and, as you know, the courts' decisions are taken by judges enjoying both functional and personal independence. It is also noted that HCG has proceeded to the administrative and disciplinary investigation of the case in compliance with specific procedures, while there are no retainable charges against HCG officers.

13. However, apart from the aforementioned isolated incident and, more specifically, with regard to the testimonies of people rescued that you mention in your report, until today no evidence-based complaint has been brought to the attention of HCG authorities against the members of the organised crime networks that condemn every day our fellow people to death by piling them into overcrowded, unseaworthy vessels, under inhumane conditions, and leading them, often by force, to cross the maritime passages under adverse weather conditions.

E) IN CONCLUSION

14. It is once more necessary to note that HCG's operation is conducted in full compliance with the principles of the national and international institutional framework as regards its maritime area of action, along the borderline, and with due regard for the relevant rules of international law. Based on the responsible and lawful performance of its mission, the

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samo/, http://www.era-aegean.gr/en-katakleidi/8-2010-10-25-23-27-08/9237-2015-09-11-13-53-48, etc.)

[295] TV central news programme (ERT 1) on 11/09/2015, report published in "EMPROS" newspaper on 06/08/2015, page 07.

Hellenic Coast Guard shall continue to perform its role with humanity and to contribute in every possible way to the national effort to deal with the humanitarian crisis while honouring the values of the Greek State and respecting the human rights of all citizens.

15. Given the fact that this phenomenon calls for a holistic rather than a one-sided approach, as shown in your letter, the joint efforts to establish effective cooperation structures could make a useful contribution to this end, contrary to the publication of allegations from your part which are not confirmed by specific evidence, therefore leading others to believe unfounded and unfair allegations calling into question the status of the HCG. Similarly, the use of awareness campaigns among third-country citizens, with the support and assistance of international / European organisations, could be an important tool to help refugee populations be aware of the risks they run when dealing with traffickers and attempting the passage in unseaworthy vessels / crafts, often under adverse weather conditions.

Further to the above, we remain open to any well-meant cooperation, taking into account the best possible management of migration / refugee flows and in the interest of the vulnerable refugee populations, both at national and international level and in the light of the humanitarian dimension of this issue. Finally, we would really appreciate if your reports and press articles could reflect the HCG's humanitarian work rather than highlighting isolated incidents, thus creating false impressions that anticipate the international public opinion and incorrectly question the authority of our organisation.

***I. Karageorgopoulos*,**
Head of Division
HCG Rear Admiral
Signed and sealed by
Kalliopi Gerakiti,
HCG Chief Petty Officer

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FEAR AND FENCES

EUROPE'S APPROACH TO KEEPING REFUGEES AT BAY

In the wake of the biggest global refugee crisis since the end of the Second World War, Europe has seen record numbers of irregular arrivals on its shores in 2015. With scant regard for the rights of hundreds of thousands of refugees making dangerous journeys to Europe, several European Union (EU) countries have responded by erecting fences, deploying ever-increasing numbers of border guards, investing in surveillance technology and seeking to enlist neighbouring countries – already hosting large numbers of refugees – as gatekeepers.

This report describes some of the border management measures employed by Spain, Greece, Bulgaria and Hungary, including unlawful push-backs from Greece and Bulgaria to Turkey and from Spain to Morocco, as well as legislative changes in Spain and Hungary which deny refugees access to effective asylum procedures.

By analyzing trends of irregular arrivals across EU countries in recent years, this report shows how the successive sealing of land routes has only pushed migratory flows to other, often more dangerous, routes. Amnesty International calls on EU countries to acknowledge their responsibilities to provide protection to a fairer share of the world's refugees, to offer more safe and legal routes for them to reach Europe, and to adopt border management policies that respect the rights of those seeking sanctuary.

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