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MAURITANIA : « NOBODY WANTS TO HAVE ANYTHING TO DO WITH US»

ARRESTS AND COLLECTIVE EXPULSIONS OF MIGRANTS DENIED
ENTRY INTO EUROPE

SUMMARY



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MAURITANIA: “NOBODY WANTS TO HAVE ANYTHING TO DO WITH US”

ARRESTS AND COLLECTIVE EXPULSIONS OF MIGRANTS DENIED ENTRY INTO EUROPE

SUMMARY¹

1. INTRODUCTION

Since 2006, thousands of migrants, accused of setting out from Mauritania with the intention of entering the Canary Islands (Spain) irregularly, have been arrested, then forcibly returned to Mali or Senegal without any right of appeal to challenge the decision before a judicial authority. Many of them have been held for several days in a detention centre at Nouadhibou (in northern Mauritania), where some have been ill-treated by members of the Mauritanian security forces. Nationals of West African countries say they have been arbitrarily arrested in the street or at home and accused, apparently without any evidence, of intending to travel to Spain. Some of these people have been the victims of racketeers and many have been forcibly returned by the Mauritanian authorities to Mali or Senegal. These arrests, followed almost automatically by being returned to the border, are all the more arbitrary since it is not an offence under Mauritanian law to leave Mauritania irregularly.

This policy of arrests and collective expulsions by the Mauritanian authorities is the result of intense pressure exerted on the country by the European Union (EU), and Spain in particular, as they seek to involve certain African countries in their attempt to combat irregular migration into Europe. Mauritania, which has traditionally been welcoming in its attitude to large numbers of nationals of neighbouring countries, agreed to sign an agreement with Spain in 2003 which obliges it to readmit onto its territory not only Mauritanian citizens but also the nationals of third countries where it has been “ascertained” or “presumed” that they have attempted to travel to Spain from the Mauritanian coast. Mauritania has also agreed to the presence on its soil of an aeroplane

¹ The current text is a summary of a 49 pages document entitled *Mauritania: “Nobody wants to have anything to do with us” arrests and collective expulsions of migrants denied entry into Europe*. AI Index AFR 38/001/2008, published by Amnesty International on 1 July 2008.

and a helicopter, deployed in the context of an operation conducted by the EU in order to control its external borders. Moreover, members of the Spanish *Guardia Civil* undertake joint patrols with the Mauritanian authorities along the country's coastline. This cooperation between the EU and Mauritania has been presented as a security and humanitarian operation designed to discourage and stop migrants who are trying to reach Europe, and to save those who are at sea in makeshift crafts and are at risk of drowning. Information gathered by Amnesty International reveals that this cooperation has given rise to the violation of certain fundamental rights of migrants in Mauritania.

The reasons that drive thousands of young Africans to face difficult times and often death in an attempt to reach Europe are linked essentially to poverty, a lack of prospects and family pressure as well as political violence and the civil wars that have affected, in particular, Liberia, Sierra Leone and Côte d'Ivoire. The EU and its Member States have responded to this irregular migration by tightening up their policy on migration flow management.

In this regard, Amnesty International is extremely concerned about the security policy of the EU and its Member States, and Spain in particular. These states are in the process of externalizing their policy of migration flow management by pressing the migrants' countries of origin, or the countries through which they pass – especially certain countries of the Maghreb and sub-Saharan Africa – to themselves manage the flow of migrants who attempt to reach Europe from their territory. These countries have become the *de facto* "policemen of Europe".

Generally speaking, Amnesty International is opposed to the use of detention for the purpose of migration control. Migrants have a right to freedom and a right not to be arbitrarily arrested. The organization takes the view that the detention of migrants is legitimate only when the authorities can demonstrate that it is necessary and proportionate to the aim to be achieved, that alternatives would not be effective, that it is on the grounds laid down by law and when there is an objective risk of the person concerned absconding. In particular, it should be a requirement that such incarceration be the subject of a judicial review and that it should be for as short a time as possible. The person in question must also be provided with an effective opportunity to challenge the decision to detain him.

Moreover, the rights of some refugees and asylum-seekers, the majority of whom come from the countries of West Africa and Liberia and Sierra Leone in particular, are also under threat and at times denied in Mauritania. For instance, several refugees were arrested for short periods of time and at least two of them were forcibly returned to Mali. An asylum procedure was set up in 2005, but it has not yet been implemented. It is still the Office of the United Nations High Commissioner for Refugees (HCR) that recognizes the status of refugee, but its decisions can be challenged by the new institutions that have been created by the Mauritanian authorities. In addition, there is no appeal mechanism in the event of refusal.

This report is based on a fact-finding mission undertaken by Amnesty International in Mauritania in March 2008, during which the organization's delegates were able to interview, in particular, people held at the detention centre in Nouadhibou, migrants who had attempted – or who intended to attempt – to get to Europe, and refugees, most of whom came from the countries of West Africa. The delegates also met high officials of the Mauritanian authorities, including the then Minister of the Interior, Yall Zakaria, and diplomatic representatives of Spain in Mauritania. This report sets out the main concerns of Amnesty International in relation to the treatment of migrants, refugees and asylum-seekers in Mauritania and puts forward recommendations to the Mauritanian authorities and the EU and especially the Spanish government, calling on them to ensure that the rights of these people are upheld in accordance with current international standards.

2. HEADING FOR EUROPE TO ESCAPE POVERTY AND CONFLICT

Migration flows from the countries of sub-Saharan African towards Europe have grown substantially since the 1990s. This phenomenon is the consequence of civil wars and the economic crisis which have affected many of these countries, especially in West Africa. The gateway to Europe, the coast of north west Africa (especially the coast of Morocco and Mauritania) has become a favourite transit point for sub-Saharan migrants.

The reasons that drive thousands of young Africans to face difficult times and often death in an attempt to reach Europe are linked essentially to poverty, a lack of prospects and family pressure as well as political violence and the civil wars that have affected, in particular, Liberia, Sierra Leone and Côte d'Ivoire. Many migrants Amnesty International met emphasized the extent to which their parents depended on them to take them out of poverty, or simply to survive in a context of endemic economic crisis and high unemployment.

Most of the migrants who try to reach the Canary Islands from Mauritania are from the Economic Community Of West African States (ECOWAS). The great majority are from Senegal or Mali, but Amnesty International also met nationals of Gambia, Guinea, Côte d'Ivoire, Ghana, Liberia and Sierra Leone. The reason why the vast majority of migrants in Mauritania are nationals of ECOWAS countries, is that they can enter the country without a visa, provided they have identity documents.

A Senegalese migrant, whom Amnesty International met in early March 2008 at the detention centre in Nouadhibou, said: "My mother is old and I have two sisters; I promised my family I would go to Europe to earn some money".

Many migrants pointed out that the entire family had clubbed together so that they could leave the country and try to reach Europe. One migrant from Côte d'Ivoire told Amnesty International at the Nouadhibou detention centre:

"It wasn't because of the war that I left the country, but because of poverty. My father sold our radio and television and almost all our personal possessions so that I could leave. He said 'Do it, son, do it for me'. That's what gave me the will to do it." Since his arrest by the Mauritanian authorities at the beginning of March 2008, this person has been trying to phone his father. "My father wept when he heard that I'd been arrested. He said that our luck had run out and asked me not to be discouraged, but to try again. I know that I'll be sent back to Senegal, but I'm going to work there for a while to get some money and then I'm going to come back to Nouadhibou to give it another try. I know that without me, my family is finished. I am their only hope."

Since 2006 Mauritania has become a particularly favoured departure point for migrants who want to go to Europe. For a long time, the majority of west African migrants tried to reach Europe from northern Morocco, using small fishing boats to cross the straits of Gibraltar, where the crossing is a mere 15 km. After 2002, the reinforcement of controls along the Mediterranean coast obliged migrants wishing to reach Europe to change their itinerary, notably by trying to enter the Spanish enclaves of Ceuta and Melilla in northern Morocco. Many set out to sea on board *pateras* from the port towns of Dakhla and Layoune (in Western Sahara) and from the Moroccan town of Tarfaya (less than 100 km from Fuerteventura in the Canary Islands, only 8 to 10 hours by sea).

Following the events of October 2005 in Ceuta and Melilla and the intensification of controls along the Moroccan border, particularly between Western Sahara and Mauritania, migrants were obliged to find other, longer and therefore more dangerous, routes and try to reach Europe by sea via the Canary Islands. So thousands of people set off from Mauritania (which is some 800 km from the Spanish islands) and even Senegal (2,000 km from the Canary Islands). As the voyage is longer and more dangerous, migrants adopted new means of transport, taking to the sea in *cayucos*.

Since the end of de 2005, there has been an enormous increase in the number of migrants leaving Mauritania for the Canary Islands by sea, and this has been the subject of considerable media interest, in particular on the part of the Spanish media. Reports vary as to the number of migrants arriving in the Canary Islands from Mauritania. Confronted with the influx of migrants to the Canary Islands, along with images broadcast by the international media of bodies floating in the water and dehydrated and starving migrants drifting aimlessly, the EU reacted by seeking some means of dissuading these migrants from making the journey and saving human lives. The EU and its Member States also put pressure on Mauritania to play a more active role in the control of migration flows to Europe.

In order to be able to leave Mauritania by boat and elude the Mauritanian and Spanish authorities, anyone wishing to migrate is obliged to use a trafficker and pay an enormous sum of money, which may be as much as several thousand euros. Traffickers are people who know the area and which authorities to bribe; they may be fishermen, or people who are planning to migrate themselves, or who have already done so. Irregular migration is based on a complex network of relationships and dealings the extent of which is difficult to grasp, because it is constantly changing in response to the reactions of the authorities.

According to information gathered by Amnesty International, this complex system involves different levels of responsibility and individuals: first there is the "trafficker", who organizes the whole operation; he works with touts (known locally as "coxeurs")² who have to find the migrants who want to go to Europe. At times, potential migrants might themselves become touts, seeking out other migrants keen to get to Europe by some irregular means. There are also the "captains" of small fishing boats, who receive large sums of money to engage in this kind of crossing. Finally, there are certain representatives of the Mauritanian security forces who will agree, in return for large sums of money, to allow the very departures they are supposed to prevent. As the number of potential migrants has risen, these activities have become increasingly lucrative.

One migrant who had made several attempts to go to Europe explained to Amnesty International that some traffickers would cheat prospective migrants by promising large numbers of people a place in the same boat knowing that there would not be room for all of them. "Some do the same as the airlines, they overbook. They ask 100 people for money but they know that only 75, maybe not even that many, will be able to leave because the boat mustn't be overloaded. So they give some people the wrong date, or they inform on them to the authorities". Asked about the "criteria" adopted by the traffickers to determine who was actually going to be able to go on the boat, the same person said: "They take the most determined migrants, those who could make problems for them if they don't get away, that's why it's often the women or the English-speaking migrants [who don't understand the local languages] who are left behind".

Several people have told Amnesty International that some members of the security forces with responsibility for coastal surveillance, would, in return for large sums of money, allow migrants to leave, even if that meant pursuing them later. One person who had attempted to go to Europe several times, told Amnesty International that at certain locations on the coast, "at night, there are only three soldiers on guard between midnight and six in the morning. They ask for 250,000 ouguiyas (around 700 euros) to close their eyes for an hour; migration is a major source of revenue for soldiers. Many of

² A word used in various African countries, notably Senegal, to describe the person who assembles a certain number of passengers to fill a bush taxi or a bus.

them have a Mercedes back in Nouadhibou in spite of the fact that they earn only 35 000 ouguiyas (around 100 euros)".

3 "FORTRESS EUROPE" PUSHES ITS EXTERNAL BORDERS SOUTH

Over the last 10 years or so, the Member States of the EU have considerably hardened their policy of managing migration flows. The aim was to limit the number of irregular migrants arriving on their territory, especially by reinforcing controls on their external borders. Having failed to contain this migratory phenomenon, in the end they decided to externalize their policy of combating "illegal migration".

So pressure was exerted on the countries of the Maghreb and of sub-Saharan Africa to include them in combating irregular migration and to turn these countries into the *de facto* "policemen of Europe".

During the last few years the EU has developed its policy on migration flows around two main axis: the clauses of readmission and the joint operations of the Frontex Agency.

Readmission agreements and readmission clauses inserted into co-operation and association agreements have consequently become one of the EU's preferred weapons against irregular migration. This type of agreement provides for reciprocal undertakings between the two signatories concerning the return of nationals of their own countries or of any third country who have entered the territory of one of the two parties irregularly.

Amnesty International is not opposed in principle to readmission agreements, which are not illegal in themselves. However, the organization stresses that any readmission agreement has to be fully compliant with the human rights obligations with the states parties to the agreement. They must contain clear provisions protecting the rights of migrants and asylum-seekers. These must include their rights to liberty and freedom from arbitrary detention; protection against torture or other ill-treatment; their rights to access to a fair and satisfactory asylum procedure and protection from return to a country or territory where he or she would be at risk of serious human rights violations.

In order to stem migration flows, the EU and its Member States have sought to persuade the migrants' countries of origin and the countries through which they travel to agree to enter into readmission agreements or clauses within the framework of their development aid policies.

In parallel with these readmission agreements, in October 2004 the EU set up a European Agency for the management of operational cooperation on the external borders of the Member States of the EU, known as Frontex. The objective of this agency is to reinforce security on the EU's external borders by coordinating the action of Member

States and facilitating the application of Community measures relating to the management of such borders.

4. VIOLATION OF MIGRANTS' HUMAN RIGHTS

Several of the migrants Amnesty International met at the detention centre at Nouadhibou told how the security forces had treated them roughly or insulted them at the time of their arrest. Most had been robbed of some of their possessions and many said that they had been arbitrarily arrested in the street or at home, when they were not making preparations to try to reach Europe irregularly. It is possible that some of these people were present in Mauritania irregularly, but others stated that their papers were in order and that they had seen these documents confiscated or torn up by the security forces at the time of their arrest.

Whatever the circumstances of these arrests, there is no legal foundation for detaining migrants who are accused of nothing more than wishing to reach Europe by irregular means. Indeed, leaving Mauritanian territory by irregular means does not constitute an offence of any kind under the country's criminal code. The only reference to leaving national territory appears in decree 64-169 of 15 December 1964 on the immigration system in Mauritania and applies only to ordinary foreign immigrants who, when they wish to leave Mauritanian soil, must "have [their] foreign identity cards stamped by the administrative authority at the place of exit". Failure to observe this formality cannot be classified as an offence. The National Security officers responsible for the detention centre at Nouadhibou are aware of this basic principle of law. One of their senior officers clearly indicated to the Amnesty International delegates that seeking to leave the country in a clandestine manner "does not constitute an offence under the law". This was also recognized by the prosecutor at Nouadhibou when he told the Amnesty International delegates: "These migrants have done nothing wrong because it is not, at least at the present time, an offence to leave the country irregularly".

Penalizing a person for an offence that does not exist under the law is a violation of one of the basic principles of national and international law. This is recalled, in particular, in article 6 of the African Charter on Human and Peoples' Rights, which states: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

Several migrants told the Amnesty International delegation that they had been beaten and their possessions had been taken by the Mauritanian security forces at the time of their arrest. No investigation was undertaken by the authorities to verify these allegations.

Corroborating information indicates that some members of the security forces do carry out arbitrary arrests of foreign nationals, notably nationals of ECOWAS countries. These people, arrested in the street or at home, apparently without any evidence, were allegedly accused of intending to leave Mauritania irregularly to travel to Europe. Some of these people, held at the detention centre at Nouadhibou to await being sent back to Mali or Senegal, told the Amnesty International delegation that they were legally present in Mauritania and that, at the time of their arrest, the security forces had torn up their residence permits. Amnesty International fears that these arbitrary arrests are one of the perverse effects of the pressure exerted by the EU on the Mauritanian government.

Some people being held at the detention centre at Nouadhibou said that they had been arrested at home in the middle of the night. A 41-year-old Malian who had been at Nouadhibou for two years said: "I was arrested yesterday, in my room. I don't know why. I slept on the floor at the police station and I came here [to the detention centre] this morning. Yet I have a job, I have a rickshaw, I'm not an illegal migrant, I have been living here for two years and all my papers are in order. I have no intention of going to Europe; I'm head of a family. I don't know what's going to happen, they don't tell us anything. What will happen to me and my family if they send me back to Mali? My rickshaw is worth 20,000 ouguiyas (around 55 euros) and I could lose it".

Others who have been arrested then sent to the detention centre at Nouadhibou told Amnesty International that they had been arrested in the street simply because they were wearing two jackets or two pairs of trousers. This simple fact appears to be interpreted by the Mauritanian security forces as proof that they are preparing to leave for Europe, even though the weather can be cold in Nouadhibou, especially in the evening. One Malian, born in 1987, recalled: "I live here at my friends' house and I do odd jobs, especially car washing. Yesterday evening [2 March 2008], I was walking alone; I was cold and was wearing two pairs of trousers and a jacket when I was arrested by the police. I don't speak their language, but I understood that they were accusing me of intending to leave for Europe. They seized my identity card and brought me here. I know that I'm going to be sent back to Mali, but it's not fair because I wasn't going to go to sea."

As soon as they arrest persons suspected of trying to reach Spain irregularly, the Mauritanian authorities interrogate them concerning their nationality and their point of entry into Mauritania (in almost all cases, these people enter over land through either Senegal or Mali). This may prove to be a difficult task, because those migrants who leave in fishing boats dispose of their papers. Some migrants say they are of a nationality other than their real nationality to avoid being forcibly repatriated to countries to which they do not wish to go. This is particularly true of some Senegalese migrants whom the Amnesty International delegation met at the detention centre at Nouadhibou. These migrants had been arrested in Morocco, then expelled to Algeria via the border post of Oujdah in very difficult conditions. Re-arrested by the Moroccan authorities after attempting another crossing to the Canary Islands, they said they were Mauritanian, so as to be expelled to that country rather than Algeria.

"Guantanamo", a detention centre with no official name

The detention centre at Nouadhibou was opened in April 2006. It is a former school which was restored by the Spanish authorities early in 2006. The authorities had set up large tents and a canteen in the school yard. However, as soon as the Mauritanian authorities began to use it as a detention centre, the tents and the canteen disappeared, leaving just the former classrooms which became *de facto* "cells". At the present time, the former classrooms have 216 bunk beds distributed among several former classrooms, but when the Amnesty International delegation visited the centre at the beginning of March 2008, only three classrooms were in use, which resulted in a serious problem of overcrowding and deplorable hygiene conditions. The centre is managed by the Mauritanian authorities, but meals are funded and delivered by the Spanish Red Cross and the Mauritanian Red Crescent. These two organizations also give migrants the opportunity to telephone their parents.



© AI – Nouadhibou Detention Centre

The centre, which is not governed by any regulations applicable to Mauritanian detention centres, does not appear to have an official name, either. The Regional Director of National Security in Nouadhibou told Amnesty International that the Mauritanian authorities referred to it as the "reception centre for clandestine migrants". The Spanish Consul in Nouadhibou has said that the Spaniards called the centre "internment centre or detention centre" (*Centro de internamiento o centro de retención*). The migrants held at the centre refer to it as the "Red Cross Centre", while other inhabitants of Nouadhibou and some migrants call it "*Guantanamo*". This uncertainty

as to the name of the centre is a further indication of the absence of any legal character for this detention centre.

According to official sources, the centre receives between two and three hundred people every month. Statistics supplied to Amnesty International by the National Security Service in Nouadhibou show that, for the year 2007, 3,257 people were held in the retention centre, including 1,381 Senegalese and 1,229 Malians. All were subsequently expelled to Senegal or Mali. As the centre is not governed by any law, there is no limit on the duration of such detention, which may extend from one or two days to a week or more, until the police are able to organize transport for these people.

Although Mauritania agreed to co-operate with Spain in the battle against irregular migrants, it also adopted a policy of expulsion to Mali or Senegal with regard to migrants from third countries expelled by Spain or arrested on its own territory while avowedly or allegedly trying to travel to Spain irregularly. Repatriation is organized as quickly as possible and with no right of appeal. A Mauritanian official told Amnesty International that the number of migrants taken to the border rose to 11,600 in 2006 and 7,100 in 2007. All Malian migrants or those supposed to have entered Mauritania through Mali are sent to Gogui (a Malian village near the border with Mauritania). All other arrested migrants, of whatever nationality, are sent to Rosso, on the River Senegal, from where they are forcibly expelled by boat to Senegal.

In some cases, these collective expulsions lead to disputes between the Senegalese and Mauritanian local authorities, with each country trying to get rid of the migrants. One Ghanaian migrant told Amnesty International that in December 2007: "The Mauritians took us to Rosso. We got on the ferry to cross the river, accompanied by Mauritanian police officers. When we got to the Senegalese shore, the Senegalese soldiers refused to accept us and sent us back. We did four round trips between Mauritania and Senegal. Nobody wanted anything to do with us. In the end, the Senegalese agreed to take us. After a week in Senegal, I came back to Mauritania and now I'm trying to get to Spain."

5. SPANISH PRESSURE ON MAURITANIA

It is impossible to understand Mauritanian policy towards migrants who attempt to travel to Europe irregularly via the Canary Islands without examining the pressure that Spain puts on the Mauritanian government.

The presence of Spanish forces on Mauritanian territory forms part of the increasingly close cooperation between Spain and Mauritania in their fight to control the flow of migrants attempting to reach Spain, especially the Canary Islands, from the Mauritanian coast. This cooperation has its principal legal basis in the Agreement on Immigration signed by the two countries in July 2003. The agreement contains a

readmission clause covering migrants from third countries. The agreement also provides that Spain will provide technical assistance to Mauritania.

Spain has increasingly based its actions on this agreement since 2006, when the flow of migrants from Mauritania increased considerably. Under the agreement, Spain can request that Mauritania readmit not only Mauritanian migrants but also migrants from third countries who have tried to travel to Spain from the Mauritanian coast.

The Spanish government has therefore been within its rights to request that the Mauritanian authorities readmit migrants who have avowedly or allegedly reached the Canary Islands from the Mauritanian coast. During its mission, Amnesty International learned that between 28 February and 6 March 2008, the Mauritanian authorities received three requests for readmission of a total of 274 migrants, including 14 minors who, according to the Spanish authorities, admitted embarking from Nouadhibou. Almost all these migrants were citizens of ECOWAS countries.

Amnesty International believes that all irregular migrants expelled from Spain to Mauritania should have access to fair and satisfactory asylum procedures in Spain if they so wish. In addition to respecting the principle of non-refoulement, Spain must respect the right of individuals to determine their state of destination. Such third country citizens should not be forced to return to Mauritania, but should instead chose their country of destination, subject to the latter country's agreement.

6. CONCLUSIONS AND RECOMMENDATIONS

The information obtained by Amnesty International during its mission to Mauritania in March 2008 shows that the rights of migrants and some refugees are violated by the Mauritanian security forces, which sometimes make arbitrary arrests, operate rackets and inflict ill-treatment on individuals accused of wanting to travel to Europe irregularly.

The organization is particularly worried about conditions at the Nouadhibou detention centre, which houses individuals accused of having avowedly or allegedly travelled to Spain irregularly. This detention centre is not governed by any legal framework and is not subject to any judicial control. The duration of detention is not subject to any limit and there is no appeal against decisions on deportation. Amnesty International is also concerned that individuals are forcibly deported to Mali or Senegal, whatever their nationality. These people are left at the border, often without much food and no means of transport. Amnesty International is particularly concerned at the conditions in which some migrants have been abandoned without food or water on the border between Morocco and Mauritania, in the no man's land called "Kandahar".

The organization is also extremely concerned about the pernicious effects of pressure put on Mauritania by the EU, especially Spain, to oblige Mauritania to

participate actively in the EU's fight against irregular migration. It seems that some violations committed against migrants are the product of a desire to show the EU and its Member States that Mauritania is "fulfilling its part of the bargain", even though this means denying fundamental rights such as the right to not be subjected to arbitrary detention or ill-treatment.

Amnesty International reiterates that international law states that detention must be an exception and not the rule. International standards expressly restrict recourse to detention and demand that prisoners and their fundamental rights are respected. They also affirm that special attention must be given to particularly vulnerable groups, notably women and children. In its fight to protect the rights of uprooted people, Amnesty International has adopted positions on several questions related to the fundamental rights of migrants and refugees. Anyone placed in detention must be promptly brought before a judicial authority and have the option of disputing the legality of the decision to imprison. In Mauritania, the right to appeal against the legality of their detention is systematically refused to migrants accused of wanting to travel to Europe irregularly and it seems clear that the intense pressure exercised by the EU and especially Spain on the Mauritanian government contributes to the violation of this fundamental right.

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© AFP – Migrants arrested at sea by Spanish coast guards in the Spanish Canary Island of Tenerife, 10 September 2006.