

URGENT ACTION

IMMIGRATION LAW AMENDMENT WILL VIOLATE RIGHTS

The Spanish government has proposed an amendment to the immigration law that would facilitate automatic and collective expulsion of migrants, refugees and asylum-seekers from the borders of the two Spanish enclaves in North Africa, Ceuta and Melilla, depriving them of the right to seek asylum and exposing them to the risk of serious human rights violations.

On 22 October, the ruling Popular Party's Parliamentary Group (Grupo Parlamentario Popular) tabled an amendment to the draft Law on Public Security (Ley Orgánica para la Protección de la Seguridad Ciudadana) currently being debated in Congress. The amendment (Amendment no. 191 to the draft Law on Public Security, Initiative 121/105) aims to modify Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration in a way that would allow rejecting migrants, asylum-seekers and refugees at the borders of Spain's two enclaves in North Africa, Ceuta and Melilla.

The amendment which reads "foreigners detected on the boundary line of the demarcation of Ceuta and Melilla attempting an unauthorized crossing of the border in a clandestine, flagrant or violent way, shall be rejected in order to prevent their illegal entry into Spain", does not detail the procedure for "border rejections" or provide any human rights safeguards. This failure will deprive asylum-seekers of access to the asylum procedure in Spain and could result in refoulement by exposing migrants, asylum-seekers and refugees to the risk of serious human rights violations in Morocco. The adoption of the amendment would also lead to violations of the prohibition of collective expulsions, the right to an effective remedy and reparation for victims of human rights violations.

Please write immediately in Spanish, English or your own language:

■ Calling on the Spanish authorities to repeal amendment no 191 to the draft law on Public Security, Initiative 121/105, which would lead to violations of the rights of migrants, asylum-seekers and refugees and constitute a breach of Spain's obligations under European and international human rights law.

PLEASE SEND APPEALS BEFORE 12 DECEMBER 2014 TO:

Interior Minister

Jorge Fernández Díaz
Paseo de la Castellana, 5
28071 Madrid, Spain
Fax: +34 91 537 14 83
Email: secmin@interior.es

Salutation: Dear Minister

Popular Party Spokes Person

Alfonso Alonso Aranegui
Florida Blanca s/n
28071 Madrid, Spain
Fax: + 34 91 390 63 03
Email: portavoz.gpp@gpp.congreso.es

Salutation: Dear Mr. Alonso

And copies to:

Public Security Law Rapporteur

Conrado Escobar
Florida Blanca s/n
28071 Madrid, Spain
Fax: +34 91 390 63 03
Email: conrado.escobar@congreso.es

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Amnesty International, and other human rights organisations have been documenting excessive use of force, and summary and collective expulsions at the borders of the two Spanish enclaves in North Africa, Ceuta and Melilla, where migrants and refugees are being pushed back by Spanish Civil Guards to Morocco.

On 6 February 2014, for example, at least fifteen 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. A judicial investigation into these deaths is still ongoing. On the same day, 23 people who had survived the swim across and reached the Spanish beach had immediately been returned to Morocco, apparently without access to any formal procedure.

The 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. Such statements demonstrate that the Spanish authorities are willing to redefine where Spanish territory begins on a case by case basis in order to deflect from 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 Spanish territory. However, regardless of where push-backs occur, Spain is responsible as long as it exerts any control or jurisdiction over individuals through the actions of Spanish Civil Guard officers. Statements aimed at limiting Spanish responsibility over its territory, raise serious concerns that the government could apply "border rejections" introduced in the amendment not only to migrants and refugees at Spain's borders but also to those who have already entered Spanish territory.

Expulsions, which deny individuals an opportunity to appeal their return and explain their individual circumstances, are prohibited under international law and may lead to violations of the right to seek asylum and the non-refoulement obligation. Implementation of the proposed amendment would also be in breach of the 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 (Schengen Borders Code), 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), the European Convention on Fundamental Rights and Freedoms and its 4th Protocol, the International Covenant on Civil and Political Rights, and the Charter of Fundamental Rights of the European Union.

The proposed amendment would introduce further exceptions to Spain's immigration law, which prohibits summary returns and guarantees irregular migrants the right to legal counsel and an interpreter during expulsion proceedings. Law 12/2009, on the right of asylum and subsidiary protection, guarantees to all those present on Spanish territory the right to apply for international protection. Rejection at the border as envisioned in the proposed amendment would deprive of these legal safeguards migrants and asylum seekers at the borders of Ceuta and Melilla.

The governing Popular Party, which has an absolute majority in both chambers of Parliament (Congress and Senate), tabled this proposal on the deadline for amendments to the draft Law on Public Security. The introduction of the amendment at this stage prevents civil society from participating meaningfully in the debate and impedes any human rights impact assessment of the legislative change. This law is being fast-tracked and may definitively be adopted by January 2015.