

**SPAIN**  
**THE OTHER FACE OF THE CANARY ISLANDS:**  
**Rights Violations Against Migrants and Asylum Seekers**

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## SUMMARY AND RECOMMENDATIONS

Migrants arriving illegally to Spain's Canary Islands face appalling treatment—both prior to and during detention in the old airport facilities of Fuerteventura and Lanzarote. Detainees, including asylum seekers, held at these facilities suffer not only from severe overcrowding, but also complete deprivation of communication with the outside world—no phones, no visits, no ability to send or receive mail. They do not have proper access to information, lawyers, translators, or physicians, and are deprived of fresh air, sunlight, and exercise for a period of up to forty days. Family members, friends, nongovernmental organizations (NGOs), and humanitarian organizations other than the Spanish Red Cross are routinely denied the opportunity to visit the facilities or even to meet with specifically identified detainees. The only lawyers permitted access to the facilities are the lawyers from the local Bar Association<sup>1</sup> who were on duty the day the migrant in question arrived. The police can phone this lawyer on behalf of the detainee if he or she makes the request. In practice, lawyers rarely visit the facility. Decision-making regarding the detention and expulsion of migrants arriving in the Canary Islands is often arbitrary and contrary to Spanish law. Judicial oversight of detention required by Spanish and international law is cursory and amounts to little more than a rubber stamp. Moreover, the ability for migrants to exercise their right to seek asylum is in jeopardy.

Human Rights Watch conducted a six-week research mission to Spain in October and November 2001 to investigate the human rights situation of migrants. Research focused on the arrival, detention, and expulsion of migrants and included visits and in-depth interviews with members of nongovernmental organizations, governmental representatives, and migrants in Madrid, Málaga, Murcia, Algeciras, Tarifa, Barbate, the two Spanish cities in North Africa, Ceuta and Melilla, and the Canary Islands.

Our research in the Canary Islands at the end of October and the beginning of November revealed an urgent need to highlight the circumstances surrounding the detention of migrants arriving on the islands of Fuerteventura and Lanzarote as well as the general conditions in which they are being detained. Human Rights Watch spoke with NGOs, lawyers, doctors, humanitarian aid workers, police, and government administrators familiar with both the process leading up to detention and the actual state of detention conditions in Fuerteventura and Lanzarote. We also conducted in-depth, individual interviews with more than thirty migrants who had been detained in these facilities upon arrival in Spain. Both local authorities and the national government representatives based in the Canary Islands denied our researchers access to visit the Fuerteventura detention facility, noting that nongovernmental organizations are not permitted access and that they could not make an exception for Human Rights Watch.

Conditions have not improved since our investigation—in fact, new information indicates they have worsened—and there are currently no immediate plans to implement temporary measures to address the rights abuses in these facilities or to initiate the immediate transfer of these detainees to appropriate facilities,<sup>2</sup> although

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<sup>1</sup> The Spanish term *Colegio de Abogados* translates as “bar association.” Thus, although the colegios differ from bar associations in some countries in a number of ways, the term “bar association” is used throughout this report when referencing Colegio de Abogados lawyers. Colegios de Abogados in Spain are not associations, but cooperative entities with an important role in the administration of justice in Spain. Among other things, they work directly with the Ministry of Justice in order to provide court-appointed lawyers on duty in courts and to supply legal aid lawyers for nationals and non-nationals when required. Only people who have a certified diploma of law may be a member of a colegio and only lawyers formally registered in a colegio (and paying taxes and meeting other colegio obligations) may work as lawyers in Spain. There are approximately fifty—one per province—colegios in Spain. Within the colegios there are a number of special departments, including a department on immigration. Colegio lawyers who have signed up for a particular division are called when there is a need for their services. They perform the services on a *pro bono* (free) basis to the client, but are paid for their work by the Colegio.

<sup>2</sup> There is an ongoing debate between national, regional, and local Spanish authorities over what to do with the increasingly difficult migrant problem in the Canaries. In late 2001 the possible transfer of migrants in the airport facilities, in particular the Fuerteventura facility, to an abandoned military barracks in Fuerteventura became the topic of a heated debate. Tomás Bárbulo, “Government to Shelter Immigrants to Fuerteventura in Disused Military Base,” *El País*, December

the Spanish government has been aware of the gravity of the situation for some time.<sup>3</sup> Human Rights Watch urges that the following measures be undertaken as a matter of urgency to address ongoing human rights violations against migrants in the Canary Islands:

### To the Government of Spain

- Promptly provide arriving migrants and asylum seekers with information pamphlets on their rights under Spanish law and their right to apply for asylum in several languages they can understand, particularly Arabic, English, and French. Provide interpreters on an as-needed basis to convey rights information to those migrants who cannot read;
- Permit representatives of migrants' groups, humanitarian agencies, legal services agencies, intergovernmental bodies (for example, UNHCR) and nongovernmental organizations to visit migrants in detention facilities to provide basic humanitarian and legal support and to monitor conditions of detention;
- Immediately pursue ways to alleviate severe overcrowding, particularly at the Fuerteventura airport installation, including the use of alternatives to detention (such as reporting obligations or guarantor requirements) and transfers to other facilities. The government cannot consider the construction of a new detention facility as an immediate measure;
- Remedy the absence of outside communication detainees are offered by providing access to telephones and opening the facility to personal visits;
- Throughout the detention facilities post information bulletins in a number of languages, detailing migrants' rights and phone numbers for migrants' and humanitarian organizations that may be able to help migrants find lawyers or necessary social services in Spain;
- Undocumented migrants must have a prompt and effective opportunity to challenge the lawfulness of both their detention and deportation order in a judicial proceeding or before another competent authority. Continued detention should be subject to periodic review;

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18, 2001; Tomás Bárbulo, "Interior Halts Plan to Locate Undocumented Immigrants in a Fuerteventura Base," *El País*, December 20, 2001. At the time of writing there was no consensus on whether the facility would be converted into a temporary detention facility. Human Rights Watch telephone interview, Ministry of Labor and Social Affairs of the government of the region of the Canary Islands, January 8, 2002. It appears, though, that in the meantime more recent meetings (January and February 2002) between central and regional government officials have led to an agreement for the construction of six new centers for migrants, each with a capacity of 250 people, by the summer of 2002. Yet, these discussions—even as late as the second week of February—have not yielded concrete decisions about when, where and how the construction will begin. Nor has there been serious discussion about remedying the current situations in Fuerteventura and Lanzarote. See e.g., "Interior will Facilitate the Exit of Illegal Immigrants from the Canaries without Taking on their Transfer," *La Provincia*, January 25, 2002; "Rajoy Stays Silent on Methods to Slow Down the Influx of Immigrants," *La Provincia*, February 6, 2002. It should also be pointed out that the plan for construction, while generally endorsed by all official parties in the Canaries (central, regional, and local), is not original. In fact, it is the same plan that was laid out under the supervision of Jaime Mayor Oreja in the Greco Plan, which sets forth the Spanish government's policy for foreigners. See Ministry of Interior (Government Delegation for Foreigners and Immigration), Global Program to Regulate and Coordinate Foreign Residents' Affairs and Immigration in Spain (Greco Plan), approved March 30, 2001 (published April 27, 2001), which is available at <http://www.mir.es/dgei/programaenglis h.htm>, (accessed February 6, 2002).

<sup>3</sup> Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001. After a visit to the facilities in 1999, the Office of the Ombudsman concluded that the facilities were inadequate and recommended the adoption of immediate measures of improvement (Recommendation No. 9912449), which have not yet been adopted. Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, Section 3.1.2.3. "The Centre for the Temporary Residence of Immigrants (C.E.T.I.) in Las Palmas," pp. 64-65.

- Detainees should have access to legal counsel, including information about how to contact their government-appointed lawyer, a private lawyer, or non-governmental organizations providing free legal assistance, and the means to contact such advocates. Lawyers should have unhindered access to their clients in detention facilities;
- A complaints procedure regarding conditions of detention should be developed and implemented. All detainees should be informed of the existence of a complaints procedure in a language they understand. Detainees should have access to a judicial remedy for abuses suffered in detention that amount to torture or other cruel, inhuman or degrading treatment or punishment;
- Provide detainees with adequate facilities for exercise and access to fresh air on a daily basis;
- Alleviate the poor hygiene conditions, particularly in Fuerteventura where the extreme overcrowding exacerbates the poor baseline conditions, by providing a regular cleaning service for the facility as well as a laundering service for sheets and ensuring that there are adequate toilet and bathing facilities for detainees;
- Provide and set guidelines to ensure that routine and emergency medical care is available to all detainees; medical care should include medical examinations (with appropriate equipment and under conditions of privacy) and the administration of vaccinations where necessary;
- Implement a reliable system for administering medications to detainees, including the designation of responsible authorities for this purpose;
- Asylum seekers, in general, should not be detained. Exceptions to this general principle should be applied on a case-by-case basis only and as a matter of last resort. Asylum seekers must have a prompt and effective opportunity to challenge a detention order before a judicial or administrative body independent of the detaining authorities. Periodic reviews of continuing detention should be conducted and asylum seekers and their representatives should have the right to be present at such reviews;
- Alternatives to detention (such as reporting obligations or guarantor requirements) should be employed for all families with children;
- Implement the European Committee for the Prevention of Torture's (CPT) recommendations regarding the detention of migrants and asylum seekers, including in the Canary Island airport facilities;
- Provide training to Spanish authorities and lawyers working with arriving migrants and asylum seekers in the Canary Islands on the Spanish foreigners' and asylum law;
- Provide training to judicial authorities in the Canary Islands on the law on foreigners and the need to provide oversight of administrative detention on an individual basis;
- Ensure that all migrants or asylum seekers wishing to apply for asylum have the practical means to do so and are not barred from making such application by local authorities;
- Initiate quality-control measures for the provision of interpretation and translation services to arriving migrants and asylum seekers to ensure that the right to interpretation is meaningful and in conformity with international and regional standards;

- Clarify among the responsible government agencies, including the Ministries of Justice, Interior, and Foreign Affairs, the varying types of procedures by which migrants may be deported from Spain, with a view to ensuring that treatment of migrants and asylum seekers is both just and predictable, particularly with regard to the issues of deportation by the processes of *retorno* and *devolución* (two forms of repatriation identified in Spanish law);

### **To the United Nations**

- The United Nations High Commissioner for Refugees (UNHCR) should undertake the following:
  - (1) Regular visits to the Canary Islands by UNHCR protection officers to monitor detention conditions;
  - (2) Work with the Spanish authorities to produce information brochures informing migrants and asylum seekers of their legal right to seek asylum and procedures for doing so;
  - (3) Work with the Spanish authorities to develop and conduct training programs for police, immigration officers, and lawyers on national and international refugee law;
  - (4) Ensure that its Spain office has the necessary resources to make sure that asylum seekers arriving in the Canary Islands receive information on and are able to exercise their right to seek asylum by providing regular monitoring of the situation and supplying necessary training and information resources to local authorities, lawyers and judges;
  - (5) Recommend and request donors to provide UNHCR in Spain with the necessary resources to do its work;
- The U.N. Working Group on Arbitrary Detention should plan a site visit to Spain in 2002 in furtherance of its 1997 mandate expansion to include the administrative detention of migrants and asylum seekers;
- The U.N. Committee against Torture (CAT) should evaluate Spain's upcoming report (November 2002) in light of concerns voiced by international and national nongovernmental organizations, as well as intergovernmental organizations at the regional level, about the conditions of detention for foreigners in the Canary Islands. The CAT should urge the Spanish government in its concluding observations to take short, medium, and long term measures to bring Spain into conformity with international standards regarding the treatment of foreign detainees;
- The U.N. Special Rapporteur on the Human Rights of Migrants should visit Spain, including the Canary Islands;
- The U.N. Committee on the Rights of the Child (CRC) should query Spain (reporting May-June 2002) on its policies and practices of detention of migrant children;

### **To the Council of Europe**

- The European Committee for the Prevention of Torture (CPT) should visit official and unofficial detention facilities in Spain, notably the airport installations in Fuerteventura and Lanzarote, to monitor the detention conditions of migrants and asylum seekers and ensure the Spanish government's compliance with the CPT's recommendation after a visit to Spain in late 1997;
- The European Commission against Racism and Intolerance (ECRI) should investigate the treatment of migrants and asylum seekers as part of its upcoming visit to Spain, and in particular report on any progress on conditions in the Canary Islands documented in this report;

### **To the European Union**

- The European Union should ensure that the common policy on immigration and asylum it has been developing since the European Council in Tampere in October 1999 is in full conformity with international human rights standards. Any measures to prevent illegal entry and residence

and the removal of illegal residents from the territory of the European Union pursuant to Article 63(3) of the EC Treaty must be designed with the view to meeting the obligation of the community and individual member states to protect human rights as part of the general principles of community law;

- In this regard, in the Commission's November 15, 2001 "Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Migration," the Commission undertook to draw up guidelines for the Council's consideration "in view of initiating an open coordination policy in the area of immigration." Such guidelines should establish minimum E.U. standards governing the status and rights of undocumented migrants—including in areas such as detention procedures and conditions—consistent with international human rights law. The European Parliament and nongovernmental organizations should be duly consulted at all stages of this process;

#### **To the Organization for Security and Cooperation in Europe (OSCE)**

- The OSCE Office for Democratic Institutions and Human Rights (ODIHR), together with its advisory panel of experts on the prevention of torture, should develop guidelines on the conditions and length of administrative detention of migrants and asylum seekers in OSCE participating states;
- The OSCE should include conditions of administrative detention of migrants and asylum seekers among the topics for its 2002 human dimension seminar or supplementary human dimension implementation meetings.

### **DETENTION CONDITIONS IN THE OLD AIRPORT FACILITIES**

The men and women detained at the Fuerteventura and Lanzarote facilities are all migrants who have arrived in Spain on small boats ("*pateras*") from the North African coast, principally Morocco and Mauritania. The vast majority of these migrants do not possess proper travel documents, if they carry documentation at all. There are two main groups of migrants who arrive in the Canaries by *patera*—North Africans, particularly Moroccans, many of whom have family on the Islands, and Sahrawis;<sup>4</sup> and sub-Saharan Africans coming from countries such as Cameroon, Congo, Gambia, Ghana, Guinea-Bissau, Guinea Conakry, the Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.<sup>5</sup> In most cases, the Spanish Civil Guard either picks the migrants up at sea or soon after they arrive on shore, and provides basic humanitarian assistance before transferring them to the authority of the Spanish national police who are responsible for their transfer to and detention in the airport facilities. (See section below on the process leading to detention.)

#### **Overcrowding**

It is a small place (twenty-by-twenty-meters) for a lot of people—between 200 and 400, depending on the day—where there is no privacy, where there is no ventilation, where there is not a good bathroom, and where they cannot move—all this for young people who did not even commit a crime. There is no more to say because the most important things—food, a place to sleep, a roof—they [the police] cover. . . . There are no social workers. The only translators are the Red Cross volunteers. . . . The problem is not that they don't want people to enter, but

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<sup>4</sup> By "Sahrawis" Human Rights Watch intends to refer to persons who are indigenous to the disputed Western Sahara. That region is classified by the international community as a non-self-governing territory. Most of it is presently under de facto Moroccan control.

<sup>5</sup> This list of countries was developed based on Human Rights Watch interviews with migrants.

that they don't want lawyers et cetera to see the conditions. It's not a new problem and more and more people are coming.<sup>6</sup>

In both Fuerteventura and Lanzarote a disused terminal of the old island airport has been converted into a detention facility. The conditions of detention within these makeshift facilities raise serious concerns about the human rights of those detained. This section focuses on the conditions of detention in the Fuerteventura facility, bringing attention to similarly adverse conditions in the Lanzarote facility where appropriate.<sup>7</sup>

According to the Spanish Red Cross, the entire facility in Fuerteventura measures approximately thirty-by-thirty-meters (9,600 square feet) in size. There is a corridor upon entry, two rooms for detainees (one for the men and one for the women), an office for the police, and toilet and shower facilities (four toilets and three showers for the men and two toilets and two showers for the women).<sup>8</sup>

The number of women detained in the facility varies between a few to fifteen or twenty. For the most part, pregnant women or women with small children are not detained. (See section below on the detention of children.)

The men's room, the largest area of the detention facility, measures approximately twenty-by-twenty-meters (4,300 square feet).<sup>9</sup> It is the baggage claim area passengers previously used to enter from the airport landing strip. The space retains bulky structures such as the two old baggage claim carousels and includes the men's bathroom and wash area. Consequently, only a portion of that space is available as living space for all of the male detainees. This area is informally divided into two parts, one-half for the North Africans and one-half for the sub-

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<sup>6</sup> Human Rights Watch interview, Dr. Juan Letang, head of surgery at the Fuerteventura hospital, Puerto del Rosario, November 1, 2001, describing the Fuerteventura airport detention facility.

<sup>7</sup> Most of the information on detention conditions gathered by our researchers in late October and November 2001 pertains to the Fuerteventura facility. In addition, Human Rights Watch interviewed seven migrants who had recently been detained in the Lanzarote airport facility upon arrival in the Canary Islands as well as migrants' and humanitarian organizations providing service to migrants in Lanzarote. Migrants and humanitarian organizations report that migrants in Lanzarote, like those in Fuerteventura, are detained in a cramped, overcrowded space where there is limited sunlight and no fresh air or ventilation. They do not have access to exercise nor can they communicate with the outside world or have visitors. Organizations other than the Spanish Red Cross are denied access to see or speak with migrants. Human Rights Watch interviews with migrants, Las Palmas, November 3, 2001; Human Rights Watch telephone interview, Lanzarote Acoge, October 31, 2001; Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002. Note that because some Spanish Red Cross workers requested anonymity, we have chosen to withhold all names.

It is clear that while some aspects of reported conditions at Lanzarote are not as severe as those in the Fuerteventura facility (for example, the extreme overcrowding and the paucity of toilets), the conditions are nevertheless substandard and require the same immediate interim measures proposed in the Recommendations Section of this report. This is particularly true given that the main reason Lanzarote is considered "better" than Fuerteventura is that there are simply fewer migrants detained there. Fewer migrants arrive at the island of Lanzarote, thus reducing the overcrowding in already substandard conditions. It should also be noted that although there are fewer arrivals to Lanzarote than Fuerteventura (less than 20 percent of migrants to the Canary Islands reach Lanzarote), recent reports indicate that the *patera* routes are changing to destinations in Lanzarote. Tomás Bárbulo, "The boats that set sail from the Sahara are changing their routes and overwhelming Lanzarote's facilities," *El País*, October 19, 2001. Statistics for January 2002 indicate that the number of migrants who arrived in Lanzarote in January alone is approximately 25 percent of last year's arrivals to Lanzarote. See "The Arrival of Immigrant Minors has Increased Ninety-seven Percent in Fuerteventura," *La Provincia*, January 31, 2002.

<sup>8</sup> The Spanish national police added additional toilet and shower facilities after mid-2001, bringing them to these current numbers. Human Rights Watch interview, Spanish Red Cross, Puerto del Rosario, October 31, 2001.

<sup>9</sup> There are conflicting reports on the size of the Fuerteventura detention facility. Spanish Red Cross, however, which has daily access to the facilities, told Human Rights Watch that the portion of the old airport used for detaining migrants is approximately thirty-by-thirty-meters in size and that the men's living and sleeping area measures approximately twenty-by-twenty-meters. In January 2002, Spanish Red Cross staff verified these dimensions during a follow-up telephone interview. Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001; Human Rights Watch telephone interview, Spanish Red Cross (Fuerteventura), December 17, 2001. But see Tomás Bárbulo, "An Airport Becomes Hell for Immigrants," *El País*, December 17, 2001.

Saharan Africans. Mattresses and bunk beds line the walls and surround the baggage claim carousels.<sup>10</sup> There are no places where migrants can store their personal effects or where they can talk, relax, or play games during the day, except where they have rolled up their mattresses.<sup>11</sup>

As one worker at the Spanish Red Cross noted,

[i]t is not an internment center. There is no right to see a lawyer, to get visits or phone calls, no open place or room where they can play games. They live and sleep in the same room; they can never leave. There is never fresh air or the chance to go outside. They get everything from the Red Cross, including medical care because the government doesn't provide medical or sanitary assistance. . . . There should be a social worker, a doctor, and a translator but there is not. The only phone is for the police. Visits are not allowed; family can only leave cigarettes or something.<sup>12</sup>

The Spanish Red Cross has determined that the men's living and sleeping space is only large enough to accommodate fifty detainees,<sup>13</sup> yet while the number of migrants detained in the facilities fluctuates, depending on the number of arrivals, migrants Human Rights Watch interviewed reported that there are frequently more than 300 men being held in detention in the Fuerteventura facility. Representatives at the headquarters of the Spanish Red Cross in the Canary Islands told Human Rights Watch that at the time of our visit to the islands in late October the actual number of detainees was closer to 400.<sup>14</sup>

Subsequent reports from the Spanish Red Cross indicate that since late November the number of migrants arriving in the Canaries has risen dramatically, bringing the number of detainees in the Fuerteventura facility to more than 500 for weeks at a time.<sup>15</sup> This trend of increased arrivals shows no apparent signs of abating. Rather, reports in January 2002 indicate that the number of migrants arriving in the Canaries during the fall of 2001 is more than three times greater than the number of migrants who arrived on the islands in fall 2000.<sup>16</sup> Moreover,

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<sup>10</sup> Spanish Red Cross did not know the exact number of bunk beds and mattresses available, noting that some of the beds were already broken on arrival. They estimate that there are enough beds for 200 to 250 of the men detained, with extra mattresses for the floor. Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001. Recent press reports indicate that on January 31, 2002 the Spanish army brought additional beds to the Fuerteventura facility. See Juan Manuel Pardellas, "A Hundred Immigrants Detained in Fuerteventura, Lanzarote, and Algeciras," *El País*, February 1, 2002.

<sup>11</sup> Human Rights Watch interviews with migrants, Las Palmas, October 30-November 1, 2001; Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>12</sup> Human Rights Watch interview, Puerto del Rosario, October 31, 2001.

<sup>13</sup> Human Rights Watch telephone interview, Spanish Red Cross (Fuerteventura), December 17, 2001.

<sup>14</sup> Human Rights Watch interview, Spanish Red Cross (Las Palmas), Las Palmas, October 30, 2001. While the conditions in Lanzarote are better than those reported in the Fuerteventura airport facility with regard to overcrowding, there are nonetheless routinely one hundred, at times 200, migrants detained in a room similar in dimension to the room in Fuerteventura. For the time-being there are enough bunk beds for all detainees, but the recent transfer of forty-five migrants from the Fuerteventura airport facility to the facility in Lanzarote raises concern that the Spanish government (or local authorities) may pursue a short-term strategy of relocating detainees to an equally substandard, albeit less crowded, facility in lieu of addressing the profound inadequacy of the current makeshift detention facilities in the Canary Islands. The Spanish Red Cross expressed concern that transferring migrants from Fuerteventura to Lanzarote can only alleviate the overcrowding in Fuerteventura to a minor degree and that a significant increase in the number of detainees in Lanzarote would overwhelm the already inadequate facilities. Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002. See also Juan Manuel Pardellas, "The Canary Islands Demand Control over Immigration and Border Security," *El País*, December 22, 2001.

<sup>15</sup> Human Rights Watch telephone interview, Spanish Red Cross (Fuerteventura), December 17, 2001. See also Pardellas, "The Canary Islands Demand Control . . .," *El País*.

<sup>16</sup> See Tomás Bárbulo, "Immigrant Boat Routes have Shifted from Andalucía to the Canaries," *El País*, January 10, 2002. Some immigration experts hypothesize that the unprecedented increase in arrivals to the Canaries during fall 2001

just in the first ten days of 2002 at least 150 migrants were intercepted while arriving in the Canary Islands.<sup>17</sup> Another 300 migrants arrived in the two weeks following.<sup>18</sup>

During a Forum for Immigration in Gran Canaria called by the regional government in the Canary Islands in December 2001,<sup>19</sup> the Spanish Red Cross and volunteer doctors servicing the Fuerteventura facility publicly denounced the conditions in the old airport terminal and expressed concern over the possibility of a dangerous health epidemic.<sup>20</sup> In early January 2002, the four volunteer doctors and two nurses providing medical care at the Fuerteventura facility announced their decision to stop providing these services. Their reason was the government's failure to make any significant improvements in conditions for migrants in the facility since they began providing voluntary medical care, a condition upon which they had originally agreed to offer their services.<sup>21</sup> Regional government and political party actors are increasingly demanding that the national government address the migrant crisis in the islands.<sup>22</sup>

### Health and Welfare

Migrants detained at the old Fuerteventura and Lanzarote airport terminals live in a closed facility where the only available sunlight filters through small windows in the ceiling. They are not permitted to go outdoors and cannot engage in any form of exercise since the room in which they must live and sleep is overrun by large numbers of other migrants, baggage carousels, and mattresses and bunk beds lining the walls. In addition, there is no access to fresh air, nor is there a proper ventilation system installed in the facilities.<sup>23</sup> Migrants complained most about their inability to see the sun or go outside:

I entered the Fuerteventura camp on September 12, 2001. . . . It's a prison. We don't even see the sun. For twenty-four days I did not see the sun.<sup>24</sup>

There are insufficient toilets and showers (only cold water). In Fuerteventura, there are currently four toilets and three showers (one of each was recently added) for more than 300, and recently, more than 500 men. In other words, at best there is one toilet for every seventy-five men and, for many weeks at a time, only one toilet for every 125 men. Not surprisingly, recent reports indicate that the toilet and bathroom area is regularly flooded: "The water seeps out under the door and wets the nearby mattresses, putting the health of those sleeping there at risk."<sup>25</sup>

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stems from a tightening of control on routes across the Gibraltar Strait to the Andalusian coasts after the attacks on September 11, 2001. Ibid.

<sup>17</sup> See Tomás Bárbulo and Juan Manuel Pardellas, "The PSOE Calls for an Emergency Plan for Immigration in the Canaries," *El País*, January 11, 2002.

<sup>18</sup> "In search of a better place," *La Provincia*, January 27, 2002.

<sup>19</sup> The forum was created by the regional government of the Canary Islands for the purpose of discussing immigration policy among local, regional, and central government representatives and nongovernmental and humanitarian organizations concerned with migrants' issues. The December 11, 2001 session addressed among other issues conditions in the airport detention facilities as well as the ongoing debate over the construction of new internment facilities.

<sup>20</sup> Human Rights Watch telephone interview, Spanish Red Cross (Fuerteventura), December 17, 2001.

<sup>21</sup> See Juan Manuel Pardellas, "The Immigrants Housed in Fuerteventura have Stopped Receiving Medical Attention," *El País*, January 10, 2002.

<sup>22</sup> See e.g., Juan Manuel Pardellas, "Canaries Demands Competence on Immigration and Border Control," *El País*, December 22, 2001; Bárbulo and Pardellas, "The PSOE Calls for an Emergency Plan. . .," *El País*.

<sup>23</sup> Human Rights Watch interviews with migrants, Las Palmas, October 29 – November 3, 2001; and Human Rights Watch interview, social worker who previously worked for the Spanish Red Cross distributing medical kits inside the Fuerteventura facility, Puerto del Rosario, October 31, 2001.

In Lanzarote, ventilation is equally poor. According to the Spanish Red Cross, none of the windows in the ceiling open and there is never fresh air. Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002.

<sup>24</sup> Human Rights Watch interview, forty-year-old man from Guinea Bissau, Las Palmas, November 3, 2001.

<sup>25</sup> Bárbulo, "Airport Becomes Hell. . .," *El País*. In Lanzarote there are three to four toilets. Yet, according to a number of migrants interviewed by Human Rights Watch, there are no bathing facilities to which detainees have unrestricted access. Rather, police must escort detainees in groups to facilities outside the building if they wish to shower. Human Rights Watch interviews, seven migrants who had been detained in the Lanzarote airport facility, Las Palmas, November 3, 2001. Spanish

Nonetheless, there is no cleaning service for either of the airport facilities. Instead, migrants are expected to organize among themselves a cleaning schedule for the bathrooms, using supplies provided on a humanitarian basis by the Spanish Red Cross. There is no hot water and although migrants can theoretically hand-laundry their own clothing, there are no clotheslines on which to dry them nor is there an area in which they can wash larger items such as jeans, sweaters, or bed-sheets.<sup>26</sup> Moreover, the poor ventilation and lack of fresh air or sunlight make it extremely difficult to dry wet clothing. Consequently, migrants “just give up. [The facility] smells like acidic sweat, feet, and bad breath.”<sup>27</sup>

Because Human Rights Watch was denied access to the facilities, our researchers were not able to personally assess the conditions of detention in these facilities, but the consistent accounts of the substandard conditions in which hundreds of migrants are held for up to forty days raises serious concerns about the hygiene and health risks they face.

Until recently, volunteer doctors and a nurse from the Red Cross visited the Fuerteventura facility one to two times per week for a few hours.<sup>28</sup> The Spanish Red Cross created lists of patients by order of priority (based on the seriousness of their complaints). For critical care or emergency treatment, the police must take migrants to the hospital.<sup>29</sup>

Doctors volunteering at the Fuerteventura facility said that the general conditions of detention are substandard and problematic. They confirmed that many migrants sleep on the floor on mattresses and sheets that are not routinely cleaned and that while they have food and water,<sup>30</sup> they have very little else. Dr. Juan Letang, head of surgery at the Fuerteventura hospital, told Human Rights Watch:

[i]n general they're all very healthy. They have only small medical problems, much of which comes from the change in food. The other problems are headaches and back pain that they have because they don't move or get any sunlight or ventilation. All of the health problems they have are because of the conditions of the center.<sup>31</sup>

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Red Cross confirmed these reports in a subsequent interview. Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002.

<sup>26</sup> A social worker who previously worked in the Fuerteventura airport facility told Human Rights Watch: There are not enough beds. They have foam mattresses to sleep on. The idea was that they could change bed sheets every week but in practice they spend forty days with the same sheet and cover.

Human Rights Watch interview, Puerto del Rosario, October 31, 2001.

<sup>27</sup> Bárbulo, “Airport Becomes Hell...,” *El País*, quoting Els van Leemput, Spanish Red Cross worker.

<sup>28</sup> These volunteers have since suspended their work in the facility in protest of the conditions. See above discussion (Overcrowding Section).

<sup>29</sup> The medical attention offered by volunteer Red Cross doctors to detainees at the Lanzarote facility is comparable to the treatment described in Fuerteventura. Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002.

<sup>30</sup> Migrants in the two airport facilities have three meals a day. In Fuerteventura, the morning meal consists of a bread roll with cheese or meat, milk, and juice. The afternoon meal, the largest meal of the day, is a meal provided by the airline catering service (like those given to airline passengers) and dessert. And the evening meal is another bread roll. They have water throughout the day. Although migrants complained that they did not like the food and that it was not fresh, the doctors Human Rights Watch interviewed did not believe that the food was substandard. Human Rights Watch interview, Spanish Red Cross (Fuerteventura), October 31, 2001, Puerto del Rosario; Human Rights Watch telephone interview, Dr. Pedro Media, November 1, 2001; Human Rights Watch interview, Dr. Juan Letang, Puerto del Rosario, November 1, 2001. A Spanish Red Cross representative who works in the Fuerteventura facility, however, recently reported that the food is inadequate and is frequently delivered at erratic intervals. Bárbulo, “Airport Becomes Hell...,” *El País*; Human Rights Watch telephone interview, Spanish Red Cross, December 17, 2001.

<sup>31</sup> Human Rights Watch interview, Dr. Juan Letang, Puerto del Rosario, November 1, 2001.

Soon after our interview, the number of migrants being held in cramped rooms without ventilation rose to more than 500, causing Dr. Letang and the other volunteer doctors providing assistance at the facility to join the Spanish Red Cross in condemning the detention facilities. They expressed serious concern that the abject conditions and lack of routine check-ups of detainees could lead to an epidemic, particularly of HIV/AIDS and tuberculosis, which are endemic in many of the migrants' countries of origin.<sup>32</sup>

Dr. Letang told Human Rights Watch that another issue of very serious concern to the doctors volunteering their services in the Fuerteventura airport is the current health clinic set-up in the detention facility:

There is no room for the doctor. There is just a small partition set up in the women's room. There used to not even be a bed; so, if someone had a stomach problem we couldn't even examine him or her. Now there is a very old bed from Red Cross and a small dirty table that's supposed to be used for everything.

We even have to take the dispensary from the police's office and do everything there because the police are so afraid of epidemics they don't want us in their office with patients. We have to do everything in the women's room. We don't have the instruments we need. There is no control.

There is no privacy. If we're asking a man in English what his problem is all the women can hear and so can the police. Everyone can even see. It's only when the people really have to take their trousers down that the police have the decency to turn their backs. There is no curtain; there are just divider screens and now one of the screens is being used as the table.<sup>33</sup>

The state of the "health clinic" in the Fuerteventura airport facility restricts the ability of doctors to provide adequate care to detainees. The lack of privacy and inability of patients to speak in confidence with their physicians raises serious concerns about the ability of migrants to access what could be critical health care.<sup>34</sup>

Human Rights Watch also received reports of problems with the distribution of medication to detainees. One Red Cross worker noted that migrants frequently complain that they have not gotten their medications. Upon inquiry, the Red Cross then discovers that a doctor had written an order for medication that was not recorded or acted upon.<sup>35</sup> Dr. Letang confirmed that patients complain about not getting their medications and added that the problem is that "the police don't have to give it to them because it is not their function. Yet, there is no doctor on staff to do this. Red Cross gives them a card saying what they need and the police have a list for minor things and what people need for that (for example, paracetamol for headaches); if they want to, they give it."<sup>36</sup> For detainees who are receiving medication there are problems with continuation of treatment once they are transferred from the facility. Essentially, their medications are not continued and they are not informed about the medications that they have been taking so that they may be continued elsewhere.

The government has a clear responsibility to ensure that there is a system in place for maintaining the basic health condition of detainees in their custody, including the administering of required medications in between short weekly or bi-weekly visits from voluntary doctors.

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<sup>32</sup> Bárbulo, "Airport Becomes Hell..." *El País*.

<sup>33</sup> Human Rights Watch interview, Dr. Juan Letang, Puerto del Rosario, November 1, 2001.

<sup>34</sup> The Spanish Red Cross told Human Rights Watch that doctors in Lanzarote are similarly dissatisfied with the area in which they must perform physical examinations of detainees. The examining room is a small room (normally used by the police) where although the lack of privacy may be less serious than in the Fuerteventura facility, the level of hygiene is not appropriate for a medical clinic and is cause for concern. Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002.

<sup>35</sup> Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>36</sup> Human Rights Watch interview, Dr. Juan Letang, Puerto del Rosario, November 1, 2001.

In short, reports from migrants, migrants' organizations, the Spanish Red Cross, and independent doctors indicate that hygiene and health conditions at the Fuerteventura airport detention facility are cause for serious concern. The paucity of toilet, bathing, and washing facilities, in combination with scarce sunlight, fresh air, and ventilation and the failure of the Spanish authorities to take responsibility for routine cleaning of the facility, violates the basic human rights of those detained. The current health care set-up depends solely on volunteer doctors, who are required to work in substandard conditions, and does not incorporate routine health checks to prevent epidemics or reliable systems for the administration of medication to migrants.

### **Communication**

Every migrant that Human Rights Watch interviewed who had been detained in one of the old airport facilities reported that they and the other detainees were deprived of all communication with the outside world. Ekow M.,<sup>37</sup> a twenty-five-year-old Nigerian man, recalled his experience in the Fuerteventura facility:

There was a phone, but we had no access to it. I don't know why. We couldn't even get calls. So many times we asked for the phone number and they wouldn't give it to us. No, we didn't have access to visits; it's more or less like a mini prison. You don't have access to anything. You're just there to sleep, wake up, and do whatever. It is only when you get your liberty that you have a chance to start soliciting for a lawyer, only when you get to Las Palmas.<sup>38</sup>

There are no telephones available to migrants at the Fuerteventura facility, nor can migrants receive phone calls, visits, or mail.<sup>39</sup> Government officials and an agent of the Police Intervention Unit guarding the Fuerteventura facility confirmed these reports in interviews with Human Rights Watch.<sup>40</sup>

Migrants' and humanitarian organizations also report that Moroccan family members cannot get information on their relatives who they suspect are being detained in either the Fuerteventura police station or the airport facility awaiting deportation.<sup>41</sup> Spanish law requires that the authorities inform detainees' family members about their detention if a detainee requests the release of such information.<sup>42</sup> Human Rights Watch has no information regarding whether detainees are informed of their right to request disclosure of information about their detention to family members.

### **Detention of Children**

While generally children are not detained in the airport facilities, Human Rights Watch has received reports that at times infants and young children are detained. As recently as January 23, 2002, in fact, there were press reports of the detention of children, one as young as nine-months-old, in Fuerteventura and Lanzarote.<sup>43</sup> On

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<sup>37</sup> Not his real name.

<sup>38</sup> Human Rights Watch interview, Las Palmas, October 30, 2001.

<sup>39</sup> Human Rights Watch interviews with migrants, Las Palmas, October 30-November 1, 2001. The facilities in Lanzarote are equally restrictive. There is no public phone and migrants cannot receive visits or mail. Human Rights Watch telephone interview, Coordinator for the Spanish Red Cross, Washington, D.C., January 4, 2002. A lawyer for Lanzarote Acoge, the main migrants' non-governmental organization operating in Lanzarote, told Human Rights Watch that, like in Fuerteventura, lawyers and nongovernmental organization representatives may not visit the Lanzarote airport facility. Human Rights Watch telephone interview, Carmen Steinert, lawyer, Lanzarote Acoge, December 19, 2001.

<sup>40</sup> See e.g., Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch interview, officer of the Police Intervention Unit (special police force), Fuerteventura, November 1, 2001.

<sup>41</sup> Human Rights Watch interview, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001; Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>42</sup> See Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 2.a (Internment Centers for Foreigners), Article 127(4) of the law's Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>43</sup> Juan Manuel Pardellas, "Interior Returns 200 Illegal Immigrants Detained in Fuerteventura to Morocco," *El País*, January 23, 2002, noting that on January 23 the Civil Guard had detained one hundred migrants who were then transferred to

December 8, 2001, a six-year-old child from Senegal who arrived in Fuerteventura with his father was detained for ten days in the airport facility without either parent. His father was kept separately in the area reserved for men while he was kept in the smaller room with detained women. Spanish Red Cross told Human Rights Watch that the child was constantly wetting his bed and crying because he was so frightened.<sup>44</sup> On December 18, the child and his father were removed from the facility and transferred to a Red Cross shelter.<sup>45</sup>

Representatives of CEAR<sup>46</sup> (Fuerteventura), an organization that aids migrants and asylum seekers in Fuerteventura and runs a children's center in Puerto del Rosario, described a case in which a child was kept in a children's home, separated from his parents because they were being held in detention in the old airport facility. The boy, who was Moroccan and approximately eleven years old, was left at the CEAR-run children's center in Puerto del Rosario while his mother was being held in detention in the Fuerteventura airport. The child and his mother had no contact with each other for about one week, after which time the national police removed the child from the CEAR facility. Although the boy had departed the center when Human Rights Watch representatives visited, other children at the center, as well as one of the teachers, confirmed his recent presence, commenting that he spent much of the time crying for his mother.<sup>47</sup> CEAR believes that the child and his mother were deported together to Morocco.<sup>48</sup> Lack of cooperation from the national police in Fuerteventura made it impossible to obtain further information or official comment on this case.

Spain's obligations under international law are particularly high with respect to migrant children. Not only should children not be separated from their parents against their will and against their best interests, they should not be held in detention with unrelated adults or in facilities that are not established to ensure their physical and psychological safety and well being. (See below section on International and Regional Standards (The Detention of Children).)

### Official Response

Human Rights Watch spoke with officials of the Ministry of Labor and Social Affairs for the regional government of the Canary Islands, as well as with the deputy director general for immigration, and the head of the office for foreigners and documentation at the Spanish National Police headquarters in Madrid, both within the Spanish Ministry of Interior.

Deputy Director General of Immigration Carlos Guervós noted that, "[o]f course the Spanish administration is not satisfied with the installations we have in the airports. . . . After the visit of Special Representative Enrique Fernández-Miranda we were sure we had to do something."<sup>49</sup> Marcial Morales from the Canary Islands' Ministry of Labor and Social Affairs, who has visited the Fuerteventura facility, described it as a place that "can only work for a short time because there is no privacy, no fresh air, no direct sunlight."<sup>50</sup> He further expressed that "[i]t is

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the airport facilities in Fuerteventura and Lanzarote, including a nine-month-old and six other minors in Fuerteventura and four minors in Lanzarote.

<sup>44</sup> Human Rights Watch telephone interview, Spanish Red Cross (Fuerteventura), December 17, 2001.

<sup>45</sup> Tomás Bárbulo, "The Canaries Government Rejects the Creation of an Immigrant Center in the Old Army Barracks in Fuerteventura," *El País*, December 19, 2001.

<sup>46</sup> The Comisión Española de Ayuda al Refugiado (CEAR) (Spanish Commission for Refugee Aid) is one of the primarily refugee and asylum aid organizations in Spain. It has seven offices throughout Spain, including offices in Las Palmas and Fuerteventura.

<sup>47</sup> Human Rights Watch interview, CEAR (Fuerteventura) children's center, Puerto del Rosario, November 1, 2001. In addition to concerns regarding the separation of the child and his mother, Human Rights Watch noted during the visit that the children's center is an open facility near the port in Puerto del Rosario where children of all ages are mixed and can freely come and go, without a significant level of supervision or guidance.

<sup>48</sup> Human Rights Watch interview, Pedro Santana, Coordinator, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>49</sup> Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001. Special Representative Fernández-Miranda was appointed Government Representative for Foreigners and Immigration (Ministry of Interior) on May 13, 2000. His primary responsibilities are to formulate government policy in relation to overseas, immigration and asylum rights issues and to coordinate and promote all related activities.

<sup>50</sup> Human Rights Watch telephone interview, November 5, 2001.

just for emergencies but it has been like that for more than some months. We and NGOs are asking for a new installation for a long time now.”<sup>51</sup>

In an interview with Human Rights Watch, Head of the Office for Foreigners and Documentation (Spanish National Police headquarters, Ministry of Interior) Manuel Prieto candidly asserted:

The situation of the islands is always in the press. . . . We are working on fixing this. You have to think that it is temporary. The rooms [airport facilities] even belong to the airport, not to us. We don’t want migrants in the street. I have to insist that it is not that the administration does not care about the phenomenon, but that it is really new. When situations are new, it is difficult to find new solutions. . . . We cannot have pleasure in seeing this. . . . It is an emergency procedure.<sup>52</sup>

While the Ministry of Interior indicated that the Spanish government plans to build new detention centers, it is unclear when construction will begin. Human Rights Watch could not confirm any concrete plans for new construction despite the urgency of the situation in Fuerteventura.<sup>53</sup> Moreover, officials at the Ministry’s Department of Immigration and the National Police seemed to believe that interim measures such as arranging for telephone calls, visits, or exercise time were not feasible.<sup>54</sup>

Human Rights Watch acknowledges the difficult position of the Spanish government given the rapid increase in migration to Spain in recent years. However, the severely substandard conditions of detention for migrants in the Canary Islands has persisted and only grown worse in the last couple of years, to the point that the current situation, particularly in Fuerteventura, has reached emergency proportions. The Spanish government simply cannot wait to address the systematic violation of migrants’ human rights until new detention facilities can be built.

## THE PROCESS LEADING TO DETENTION<sup>55</sup>

### Reception Conditions at the National Police Facilities

Once in the custody of the Spanish national police, migrants arriving in the Canary Islands are interviewed and then transferred, typically by court order, to the airport facilities for a period of up to forty days. Many of the migrants Human Rights Watch interviewed said that they had remained between one and three nights in police custody, sleeping in small, crowded cells at the police headquarters in Fuerteventura or Lanzarote, before their paperwork was processed and they were physically transferred to the airport facility. They recalled that their experiences at the police station were confusing and uncomfortable, leaving them with little understanding of their fate. A twenty-four-year-old man from the Ivory Coast told Human Rights Watch:

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<sup>51</sup> Ibid.

<sup>52</sup> Human Rights Watch interview, Madrid, November 14, 2001.

<sup>53</sup> Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch interview, Manuel Prieto, Head of Foreigners and Documentation Department, José García Santalla, Chief of Central Foreigners Unit (Foreigners and Documentation Department), and José Ramón Pérez García, Chief of Statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001. See also footnote 2 of this report.

<sup>54</sup> Ibid.

<sup>55</sup> The Spanish term for prolonged detention (up to forty days) of migrants awaiting the processing of their expulsion orders and/or deportation is *internamiento* (internment). Human Rights Watch uses the terms court-ordered detention and prolonged detention in lieu of “internment” for the purpose of this report. Detention of migrants in police station facilities immediately following arrest is distinct from court-ordered and prolonged detention and is only discussed in the first subsection of this section (Reception Conditions at the National Police Facilities).

The police didn't speak French and I don't speak English so it wasn't easy to have a conversation. A white person, a policeman, who spoke French, was at the airport so it was only then that I could have someone to communicate with me. They hit me at the police station because there was a misunderstanding with the interpretation. I got hit in the back with a baton. We slept two nights at the police station. It was not easy because the food was not good. There was no bed, but we had a cushion to put on the ground. There were sixty to seventy of us, all blacks.<sup>56</sup>

Another young man told Human Rights Watch how he arrived on Fuerteventura with twenty-two other sub-Saharan Africans who were taken to the police station and divided into groups. His group was put into a small police detention cell at the police station in Fuerteventura where they "slept one night, fourteen of us all crouched down without even enough room to lie down."<sup>57</sup> Similarly, Joseph F.<sup>58</sup> from Togo told Human Rights Watch how he and sixteen others from sub-Saharan African countries arrived on the coast of Lanzarote and went looking for the police for help:

[Upon finding the police], we spent three days at the police station, four to a cell. It was a very small cell with mattresses on the ground. You had to ask to be let out for the toilet. There was no interview. After three days at the police station they took us to a lawyer who sent us to the airport [detention facility].<sup>59</sup>

### **Access to Lawyers, Translators, and Information**

Spanish law requires the provision of a lawyer and interpreter to migrants who have been arrested or taken into police custody<sup>60</sup> and judicial oversight for all cases in which migrants will be deprived of their liberty for more than seventy-two hours.<sup>61</sup> Spanish law also requires that migrants detained for violations of the foreigners' law have access to translation and interpretation services prior to and during detention in an "internment facility"<sup>62</sup> and to information about administrative and judicial decisions pertaining to them in a language they

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<sup>56</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>57</sup> Human Rights Watch interview, twenty-two-year-old migrant from Sierra Leone, Las Palmas, November 3, 2001.

<sup>58</sup> Not his real name.

<sup>59</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>60</sup> Article 22(1) of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) states:

Foreign nationals in Spain who lack sufficient economic resources, according to the criteria established in the regulations regarding free legal assistance, shall have a right to this in administrative or legal procedures which might lead to refusal of entry, to repatriation or expulsion from Spanish territory, and in all procedures regarding asylum. They shall furthermore have the right to the assistance of an interpreter if they do not speak or understand the official language employed.

See also Section 5.a, Articles 137(2) and 138(2) of the Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>61</sup> Article 62 of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 2.a (Internment Centers for Foreigners), Article 127(1) of the law's Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>62</sup> There are six "internment centers" for foreigners in Spain. These centers are regulated by a separate law on internment centers and are equivalent to administrative detention facilities for migrants in other countries. This report refers to internment centers or facilities as detention centers.

understand.<sup>63</sup> In addition, authorities must provide migrants with information about the place in which they are being detained, including information on their rights.<sup>64</sup>

Similarly, international and European standards governing the conditions of detention require that communication (oral and written) with detainees be in a language they understand and prohibits the detention of persons without an effective and prompt opportunity to be heard by a judicial or other authority and an opportunity to challenge the lawfulness of detention, including access to the assistance of legal counsel.<sup>65</sup>

Notwithstanding these requirements, very few of the migrants Human Rights Watch interviewed could recall having been provided with an interpreter or a translator. Moreover, at no point in the process—in the presence of the Civil Guard, at the national police station, or in the airport facilities—were the migrants with whom Human Rights Watch and our Spanish NGO colleagues spoke presented with a version of the documents they signed in a language other than Spanish. Nor were they ever given standard information—oral or written—on their rights in Spain, either in Spanish or in a language they could understand. According to numerous accounts, this type of information is not even available in the airport facilities in the form of a bulletin or notice posted on the wall.

Eric S.,<sup>66</sup> a thirty-one-year-old man from Cameroon, described his experience to Human Rights Watch:

We had a problem of language. They don't speak French or English. We didn't understand. There was no translator, nothing. No lawyer either. At the airport I had an interview of five or six minutes where they asked me how I got here, did I have papers, and what is my nationality. We all signed papers, but before interpretation. We didn't know what it was. We didn't speak Spanish. I don't know if you refused what would happen; you just have to sign.<sup>67</sup>

A young nineteen-year-old man from Togo reported a similar experience, telling Human Rights Watch:

Everything was in Spanish; I understood nothing. I didn't have a lawyer, but I did sign something. They gave me a paper. It was in Spanish. They said, "sign." I signed. I still don't know what it was! We all fourteen signed it.<sup>68</sup>

For many migrants it was only at the airport facilities, where there were a few Red Cross staff members and a couple of police officers who could speak broken English or French, that they were able to gain a slightly better understanding of what was happening, even if just an explanation that they would be detained for forty days. Kalou B.,<sup>69</sup> a forty-five-year old Nigerian migrant, told Human Rights Watch that he never saw a lawyer or went to a courtroom. Only when he "went to the camp [airport]" was he "told it [the detention] would be forty days."<sup>70</sup>

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<sup>63</sup> Article 63(2) of Law No. 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law No. 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 127(7) of the law's Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado* [Official Bulletin of the Spanish State], no. 47, pp. 7681-7688), February 24, 1999.

<sup>64</sup> Article 62 of Law No. 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law No. 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 129 of the law's Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado*, no. 47, pp. 7681-7688), February 24, 1999.

<sup>65</sup> See section on International and Regional Standards.

<sup>66</sup> Not his real name.

<sup>67</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>68</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>69</sup> Not his real name.

<sup>70</sup> Human Rights Watch interview, Las Palmas, October 30, 2001.

The guarantee of legal representation does little to remedy the situation. To satisfy the obligation to provide foreigners with a lawyer, the Spanish national police call the Bar Association lawyer on duty<sup>71</sup> when migrants arrive at the station. The lawyer remains at the station during brief interviews with the migrants, meant to ascertain how and why they came to Spain, and how much they paid for transport. The lawyer is also generally present during the signing of paperwork.

Notwithstanding these safeguards, Human Rights Watch's investigation suggests that in practice, most migrants arriving to the Canaries by *patera* know neither that they have a right to a lawyer nor that they have actually been assigned a lawyer. Most had no understanding that what they had signed was a document for their deportation.<sup>72</sup> When Human Rights Watch asked migrants what their documents said, a large number of them indicated that they believed they were identification or registration papers that granted semi-legal status to the individual holding them. In fact, the documents indicated that the migrants were in Spain illegally and were subject to deportation.

The following account by a young Nigerian man as to whether he had a lawyer is representative of the experience of many migrants Human Rights Watch interviewed:

I spoke with many people there. I don't know if one was a lawyer. I knew the police by their clothes. . . . Most people who came to interview don't really say; they just say that they want to ask questions.<sup>73</sup>

Gabriel A.,<sup>74</sup> a twenty-nine-year-old man from Cameroon, explained that “[t]he problem is that we didn't know what our rights were and what we must do. So it was impossible to imagine having a lawyer. We were [just] afraid of being deported.”<sup>75</sup>

Other migrants told Human Rights Watch that they did have lawyers. However, their descriptions of the roles their lawyers played raise very serious concerns about the quality of legal representation provided.

François S.,<sup>76</sup> a thirty-three-year-old man from Cameroon, for example, told Human Rights Watch that when he and eighteen other migrants arrived on the island of Lanzarote they were taken to the police station. He recalled that while there was no translator, a lawyer was presented, but “[s]he didn't talk to us at all. She and the police just told us to sign.”<sup>77</sup> Abderahman K.,<sup>78</sup> also from Cameroon, relayed a similar story:

They gave us a lawyer. . . . She didn't do anything for us. She spoke to us all in a group; you couldn't even see her eyes. We went to the court; it was in an office

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<sup>71</sup> See explanatory note in footnote 1. Every province in Spain has a Colegio de Abogados, or Bar Association, that provides *pro bono*—free—legal services to migrants as required by Spanish law. Within the Colegios there are particular lawyers who participate in providing migrants service on a rotational basis. In Fuerteventura there are sixteen lawyers who provide *pro bono* legal services to arriving migrants on a rotational basis. Every sixteen days the lawyer is on duty and responsible for providing legal services to all migrants arriving that day, regardless of how many migrants arrive.

<sup>72</sup> In the Canary Islands, the majority of the orders for deportation are drafted such that deportations should be carried out by either the process of *retorno* or of *devolución*, two forms of repatriation identified in the most recent Spanish foreigners' law. *Retorno* is applicable to migrants who are considered to have not yet entered Spanish territory (such as migrants arriving in airports) while *devolución* is applicable to migrants found illegally entering Spain or who have previously been expelled from Spain with an expulsion order. See Articles 58 and 60 of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 5.a, Articles 137 and 138 of the law's Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>73</sup> Human Rights Watch interview, Las Palmas, October 29, 2001.

<sup>74</sup> Not his real name.

<sup>75</sup> Human Rights Watch interview, Las Palmas, October 30, 2001.

<sup>76</sup> Not his real name.

<sup>77</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>78</sup> Not his real name.

with the lawyer, a judge and a translator. They asked how we came, what we want, if we want work, and so forth. The judge said nothing. Afterwards, the interpreter explained our rights: [she] said to sign the papers and go to the airport and then after we would go to Las Palmas. We were sent directly to the airport.<sup>79</sup>

Amadou O.,<sup>80</sup> a thirty-nine-year-old man from Guinea Conakry, described the following interaction with his lawyer:

After the airport we were taken together to the court. We were shown a person who said he was the lawyer and that we should obey him. He told us to sign. I don't know what it was. There was no interpretation. The lawyer said he was there for us so everything he says we should accept and whatever he says to sign we should sign. But there was no interpretation. I don't know what I signed.<sup>81</sup>

Amadou signed a document from the court ordering his and twenty-seven other men's detention for a period of up to forty days in an official detention center in Spain.

Similarly, Georges F.,<sup>82</sup> a young man from Togo, told Human Rights Watch that he and a number of other migrants were brought to a court where there was a judge, a lawyer, and an interpreter:

They asked us questions like why we came and where are we from. They explained our rights. They said you came here and you shouldn't be aggressive or do or sell drugs or make problems. We were then taken to the airport where I stayed two weeks.<sup>83</sup>

Access to counsel implies more than merely having a lawyer physically present. The Spanish authorities have incorporated a right to counsel in Spanish law,<sup>84</sup> and in fact rely on counsel to inform migrants of their rights. In a meeting with Human Rights Watch, Manuel Prieto, head of the Office of Foreigners and Documentation (Ministry of Interior, Spanish National Police headquarters), repeatedly assured us that whatever shortfalls there might be in the government's communication of rights to migrants were remedied by their lawyers.<sup>85</sup>

Unfortunately, though, for migrants arriving in Spain by *patera* to the islands of Fuerteventura and Lanzarote, lawyers do little to inform them of their rights or promote their interests. A Bar Association lawyer in Fuerteventura described the role she plays in migrants' cases:

When they arrive at the police station, the police call me. I can talk to them if they want to talk to me. They're all in a big room together—men, women, and children. If there are many people we don't talk to them one on one; we do it all at once. . . . Normally they always say the same things. We ask them how much they paid, how long was their travel, what do they want here. Many times they don't know where they are.

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<sup>79</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>80</sup> Not his real name.

<sup>81</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>82</sup> Not his real name.

<sup>83</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>84</sup> Article 22(1) of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration).

<sup>85</sup> Human Rights Watch met with Head of Foreigners and Documentation Department Manuel Prieto, Chief of Central Foreigners Unit of the Foreigners and Documentation Department José García Santalla, and Chief of Statistics José Ramón Pérez García at the Spanish National Police headquarters in Madrid on November 14, 2001.

Interviews are always very short. . . . The work is very quick. We have experience. Normally, they have no problem; they don't ask for anything. It's very quick. The papers are always the same. . . . They sign many papers. . . . I am there and the person who speaks and the police give information that they are going to be in Spain in a center for up to forty days and that after that they will be returned to their country.<sup>86</sup>

When asked if she or the police also give information on asylum or the law on foreigners, the lawyer told Human Rights Watch, "No, never. Nobody can inform about that."<sup>87</sup>

Spanish law specifies that migrants should have access to counsel not only during legal procedures, but also during prolonged administrative detention.<sup>88</sup> Yet, in Fuerteventura and Lanzarote, there are no lawyers stationed in the airport detention facilities, nor are there lawyers who come to the facilities on a rotational basis to ensure that migrants who need their services can access them. The only lawyer available to migrants is the duty lawyer that was first assigned at the police station. In order to have contact with their lawyers, migrants must ask (and know they can ask) the police to phone him or her on their behalf. Non-assigned lawyers such as those working for nongovernmental organizations are prohibited from visiting or providing legal advice or representation to migrants detained in the airport facilities, even upon a specific request for such services by a detainee. This is equally true of detainees wishing to exercise their right to seek asylum. (See below section on the detention of asylum-seekers.)

Migrants and representatives of nongovernmental organizations who met with Human Rights Watch said they were unaware of cases in which lawyers had appealed an order for detention or the initiation of expulsion proceedings on behalf of his or her migrant client. One of the sixteen Bar Association lawyers working with migrants in Fuerteventura told Human Rights Watch that even though migrants could appeal through her representation, "they never want to." When we asked if migrants know that they have the right to appeal, she further explained, "[w]e tell them [but] they don't ask because we say you can ask but it won't stop the deportation."<sup>89</sup>

While an appeal on the issue of court-ordered detention might not prevent repatriation, it could prevent detention in one of the airport facilities and the immediate initiation of expulsion proceedings, which, as distinct from repatriation proceedings, result in the issuance of an expulsion order by which the migrant is deported and which has the effect of officially placing the migrant on the Schengen list, thus barring future attempts to regularize in Spain or other Schengen countries.<sup>90</sup> In cases where judges in the Canary Islands have ordered the

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<sup>86</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

<sup>87</sup> Ibid.

<sup>88</sup> See Article 63(2) of Law No. 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law No. 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 128(1) of the law's Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado*, no. 47, pp. 7681-7688), February 24, 1999. While the airport facilities are not officially "internment centers" as described under Spanish law, it is clear that the intention of the legislature in drafting the guidelines for the legal functioning of "internment centers" was to set forth minimum procedural safeguards for migrants being held in detention while awaiting the processing of their expulsion orders or to be deported. Human Rights Watch interview, Colegio de Abogados (Madrid), Madrid, October 24, 2001. Detention in *ad hoc* facilities, such as those at the airports in Fuerteventura and Lanzarote, which is limited by the forty-day period prescribed in the law for official internment (prolonged detention) centers and is frequently combined with a period of detention in one of these formal detention facilities, should be protected by the same guarantees set out in the Spanish law on internment centers.

<sup>89</sup> Ibid.

<sup>90</sup> In 1985, five European states (France, Germany, Belgium, Luxembourg, and the Netherlands) signed an agreement creating a border-free territory within their external borders. A further convention, which was drafted and signed on 19 January 1990 and came into effect in 1995, abolished the internal borders of the signatory states and created a single external border where immigration checks are carried out in accordance with a single set of rules. In the late 1990's, this border-free zone, "the Schengen area" (named for the town in which the agreement was concluded), expanded to include all the European

detention of migrants pending their deportation or repatriation by *devolución*, a timely appeal against both prolonged detention and the initiation of expulsion proceedings can be of critical importance.

*Devolución* is a form of repatriation set forth in the most recent Spanish foreigners' law<sup>91</sup> defined as the return within seventy-two hours of persons found illegally entering Spain (such as migrants arriving by *patera*) to the country from which they departed or transited (frequently Morocco or Mauritania in the case of the Canary Islands).<sup>92</sup> The Court of Instruction Number Five based in Algeciras has held that foreigners for whom *devolución* is applicable cannot legally be held in detention centers pending deportation.<sup>93</sup> Rather, courts may only order the transfer of migrants to detention centers in cases where expulsion proceedings, as distinct from the process of deportation by *devolución*, have been initiated.<sup>94</sup> Yet, a number of the migrants Human Rights Watch interviewed showed us court orders for their detention, which indicated that the return of the identified illegal foreigner would be done in accordance with the process of *devolución*.<sup>95</sup>

Moreover, as the Office of the Ombudsman noted in its annual report to Parliament in October 2001, the initiation of expulsion proceedings for the return of persons trying to illegally enter the country (such as those arriving by *patera* to the Canary Islands) "is not in line with the law in force, as these foreign citizens were detained at the very moment they were trying to enter the country, and not once they already found themselves in national territory."<sup>96</sup> Thus, technically, the immediate detention and initiation of expulsion proceedings against migrants arriving to the Canary Islands by *patera* is a misapplication of Spanish law. Migrants improperly

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Union members states, with the exception of the United Kingdom and Ireland. One of the core features of the creation of the Schengen system is the establishment of an automatic network that allows all police stations and consular agents from Schengen group member states to access common data. Placement into the Schengen Information System (SIS) on the basis of the denial of entry to territory or for the purpose of recording the issuance of an expulsion order from a member state effectively bars future entry of such persons into the same and all other Schengen member states' territory. For more detailed information, refer to: <http://europa.eu.int/scadplus/leg/en/lvb/l33020.htm>, (accessed February 6, 2002).

<sup>91</sup> See Article 58(2) of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration).

<sup>92</sup> As highlighted above, *devolución* also applies to the expedited repatriation of migrants who have previously been expelled by expulsion order from Spain. See Article 58 of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 5.a, Articles 138 of the law's Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>93</sup> Juzgado de Instrucción, Número Cinco, Algeciras, August 31, 2001. According to José Luis Rodríguez, lawyer and President of Andalucía Acoge, a Spanish legal aid organization for migrants, the decision of this court is applicable across Spain. Human Rights Watch telephone interview, José Luis Rodríguez, February 6, 2002.

<sup>94</sup> Juzgado de Instrucción, Número Cinco, Algeciras, August 31, 2001; Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch telephone interview, José Luis Rodríguez, President of Andalucía Acoge and lawyer for migrants in the Málaga Internment Center, October 17, 2001; Human Rights Watch interview, Cristina Olmedo, Red Acoge (Legal Department), Madrid, October 11, 2001; Human Rights Watch interview, Rafael González, lawyer for migrants in the Málaga Internment Center, Málaga, October 22, 2001; Human Rights Watch interview, Carlos Alava, Legal Director, Médicos Sin Fronteras, January 18, 2002. See also Article 58(5) of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration). Migrants held on the basis of *retorno*, as distinct from *devolución*, may also be placed in internment if, after seventy-two hours, a judge makes the order. See Article 60 of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration). While some authorities in the Canary Islands argue that *devolución* should be viewed as *retorno* in order to legitimize the detention of migrants after the initial seventy-two-hour period, both judges and lawyers working on the islands have expressed their disagreement with this interpretation. Human Rights Watch interview, CEAR (Las Palmas), Las Palmas, November 2, 2001.

<sup>95</sup> Human Rights Watch interviews with migrants, Las Palmas, October 29-November 3, 2001.

<sup>96</sup> Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, Section 3.1.2.4, pp. 65-66. The Ombudsman Report further explains that the initiation of expulsion proceedings (that result in the issuance of an expulsion order) would act as a form of double sanction for one act and that for many of these migrants the expulsion order may never be realized, having "[t]herefore, the only practical effect of . . . obstruct[ing] the regularization of these persons via the appropriate administrative authorization, leading them to become marginalized in society." Ibid.

detained immediately after they attempted to enter Spanish territory illegally along the Andalusian coast have obtained court-ordered release on these grounds.<sup>97</sup>

It is disturbing that lawyers in the Canary Islands are failing not only to fully inform migrants of Spanish law and their rights, but are also neglecting to raise such issues and otherwise advocate on behalf of their clients. As discussed, Human Rights Watch did not find a single case in the Canaries in which a lawyer filed an appeal against the prolonged detention of a client, either on the basis of the inapplicability of such detention in cases applicable to *devolución* or the extremely poor conditions of detention in the airport detention facilities. This second point is critical given that court-ordered detention is not mandatory and is governed by clear guidelines that are violated at the old airport detention facilities.<sup>98</sup>

To summarize, the quality of legal, translation, and interpretation services as well as the information available to migrants arriving in the Canaries is alarmingly poor. Where authorities are failing, nongovernmental organizations are unable to step in. Several NGO and humanitarian organization representatives complained to Human Rights Watch that they were not permitted to provide legal or translation services or information to migrants being detained at the police station, that the lawyers the police insisted on using changed every day and had no legal training on immigration or asylum issues, and that the translators and interpreters being used were not independent from Spanish authorities.<sup>99</sup>

When Human Rights Watch addressed these issues in meetings with officials of the Ministry of Interior, representatives of the Foreigners and Documentation Department of the Spanish National Police headquarters insisted that interpretation and translation services are being provided.<sup>100</sup> Asked to show Human Rights Watch investigators copies of statements provided to migrants about their rights, National Police representatives produced a list of rights printed in several languages. However, the list delineated the rights of criminal defendants and contained no information specifically relevant to migrants. Moreover, after interviews with more than thirty migrants, six lawyers, and a number of migrants' and humanitarian organization representatives in the Canary Islands, Human Rights Watch concluded that such printed statements are not provided to migrants. When Human Rights Watch asked if it was possible that the information was simply not being distributed or that there had been a miscommunication, Spanish authorities again assured us that this is not the case and that, in any case, migrants have an interpreter at their disposal.<sup>101</sup> Government officials further informed Human Rights Watch that the lawyers understand their function and share the responsibility of providing information to arriving migrants.<sup>102</sup> Moreover, they insisted that the lawyers and translators being used "are professionals and that is a guarantee."<sup>103</sup>

As evidenced by the accounts of migrants gathered by Human Rights Watch, this confidence is misplaced. Most migrants arriving in the Canary Islands receive neither helpful information nor effective representation. In this procedural vacuum, the authorities reach expulsion and detention decisions that profoundly effect the

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<sup>97</sup> On September 2, 2001, Court of Instruction Number Five in Algeciras released thirty-one Nigerians who had been detained in Capuchinos Internment Center (Málaga) for fourteen days. Leonor García, "A Judicial Order Finds the Detention of Immigrants Arriving in *Pateras* Illegal," *El País*, September 2, 2001.

<sup>98</sup> See Article 62(2) of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), which states "The judicial decision authorizing it [prolonged detention or "internment"], in light of the circumstances in each case, may fix a maximum period for the internment's [detention] duration inferior to that already cited." See also Human Rights Watch telephone interview, Blanca Ruiz, Coordinator, Red Acoge, January 23, 2002; Human Rights Watch telephone interview, Raúl Báez, lawyer, January 18, 2002; Human Rights Watch telephone interview, Carlos Alava, Legal Director, Médicos Sin Fronteras, January 18, 2002.

<sup>99</sup> Human Rights Watch interview, Spanish Red Cross (Gran Canaria), Las Palmas, October 30, 2001; Human Rights Watch interview, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001; Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>100</sup> Human Rights Watch interview, Manuel Prieto, Head of Foreigners and Documentation Department, José García Santalla, Chief of Central Foreigners Unit (Foreigners and Documentation Department), and José Ramón Pérez García, Chief of Statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

migrants' subsequent treatment in Spain—subjecting them to prolonged detention in substandard conditions, prohibitive constraints on their abilities to work or reunite with family, and permanent restrictions on regularizing their status. It is critical that the Spanish government act immediately to ensure that migrants' rights to effective legal representation and interpretation and translation, identified both in Spanish and international law, are fully realized.

### **Judicial Oversight**

Spanish law requires that a court order and oversee the detention of any person held longer than seventy-two hours.<sup>104</sup> Moreover, it specifies that prolonged detention is not a necessary measure in all cases of illegal presence in Spain. In the event that the national police wish to place a migrant in prolonged detention, they must petition the court, which is then responsible for weighing the necessity of detention (while awaiting the deportation process) in light of the circumstances.<sup>105</sup>

According to several lawyers and migrants we interviewed, the court review prior to ordering prolonged detention differs between Lanzarote and Fuerteventura. Migrants who arrived in Lanzarote said that although they were brought before a judge, these proceedings provided little opportunity for individualized consideration of their different cases. They were generally presented to the judge in large groups. Frequently, the judge said nothing to them and they felt unable to tell their stories.<sup>106</sup> While in Lanzarote detention is ordered after a cursory judicial review, a new streamlined procedure in Fuerteventura makes a live hearing with a judge a rarity. As one lawyer described the process to Human Rights Watch representatives:

[t]he police send the papers to the judge and if everything is okay then the person is sent to the airport. . . . Two years ago we used to go with them to the court but now it's more people, sometimes more than thirty at a time, and it is too much work for the judge to attend to all these people.<sup>107</sup>

It does not appear that the courts on either island are providing an individualized judicial assessment of the necessity for detention or any form of judicial oversight of the detention process. Rather, migrants are placed in the airport facilities under prolonged detention as a matter of course, and the judiciary serves as a rubber stamp to authorize it. Despite repeated inquiries, Human Rights Watch learned of no case in which the courts had refused to order the detention of a migrant. Objections to detentions ordered without proper judicial review are only heightened by the appalling state of conditions in the airport facilities.

In addition, Human Rights Watch is concerned that there do not appear to be clear guidelines governing how long migrants are detained in the airport facilities (within the forty-day period). We spoke with migrants who had been detained in one of the airport facilities for as little as six days as well as with migrants who had been detained nine, ten, eleven, twelve, thirteen, fourteen, twenty, twenty-three, twenty-four, twenty-six, twenty-eight, forty days, and forty-one days.<sup>108</sup> While some were deported to their countries of origin, others were transferred to the official detention center in Las Palmas and still others were released onto the streets. The lack of accurate information at the airport facilities about what will actually happen procedurally, coupled with the varying treatment of migrants upon the conclusion of the detention period, creates a high degree of uncertainty among the migrants about their situation and what rights they have to challenge detention and deportation.

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<sup>104</sup> Article 62 of Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 2.a (Internment Centers for Foreigners), Article 127(1) of the law's Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>105</sup> *Ibid.*, Article 62(2).

<sup>106</sup> Human Rights Watch interviews with seven migrants who had been detained in the Lanzarote airport facility, Las Palmas, November 3, 2001.

<sup>107</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

<sup>108</sup> Human Rights Watch interview, migrant from Sierra Leone, Madrid, October 27, 2001; Human Rights Watch interviews with migrants, Las Palmas, October 29-30, 2001; Human Rights Watch interviews with migrants, Las Palmas, November 3, 2001.

Lawyers, the national police, and Ministry of Interior officials with whom Human Rights Watch spoke could not clarify when orders of *retorno* versus *devolución* are issued, noting only, that “it depends.”<sup>109</sup> One migrant Human Rights Watch interviewed attempted to clarify the distinction between the two types of orders based on his own experience of detention in the Canary Islands. He explained that:

If they get you from the water you are immediately released; you get papers and are sent to Las Palmas. If they get you on land you get a paper for forty days [detention]. If you do say twenty-eight days in Fuerteventura then you have to do the others in Barranco Seco in Las Palmas [the official detention center based in the Canary Islands].<sup>110</sup>

Even if this explanation were an accurate interpretation of how the law is applied, Human Rights Watch interviews did not confirm that judicial decisions ordering prolonged detention were so consistent. First, consistent reports from migrants, lawyers, and nongovernmental and humanitarian organizations indicate that all migrants arriving in Fuerteventura and Lanzarote are detained and soon after transferred to one of the airport facilities for a period of detention. No migrants are “released immediately.” Moreover, we interviewed numerous migrants who were picked up at sea and not released immediately or even within a couple of days from the airport facilities, as well as a number of migrants who made it to land and were released from the airport detention facility without completing their forty days (and who were not required to spend time in detention in the Las Palmas Internment Center). No particular circumstances in their cases could objectively explain the distinctions in their treatment.

Regardless of the type of order a migrant has conditioning detention, it is unclear to nongovernmental and humanitarian organizations, doctors, lawyers, and migrants whether an individual migrant’s stay in the airport facility will result in deportation to his or her country of origin, transfer to the official detention center for foreigners located in Las Palmas, or release onto the streets of Las Palmas. It is equally unclear which factors affect a migrant’s fate. The only discernible pattern seems to be that when there are enough Moroccans, and small planes (fourteen-person-capacity) can be sent to the Canaries, Moroccans and Sahrawis are generally flown back to Melilla and then sent through the land border to Morocco. Similarly, when there is a plane available and there are enough Nigerians, Nigerians are deported to Nigeria from the detention facility.<sup>111</sup> Because these conditions—the critical mass of Nigerian citizens and the availability of a plane—are not always met, and there are a number of non-Nigerian sub-Saharan African migrant detainees, a significant number of the sub-Saharan Africans detained in the Fuerteventura or Lanzarote facilities are eventually released onto the streets of Las Palmas, where they are expected to survive on NGO aid while awaiting deportation.

In short, Human Rights Watch’s investigation found that the Spanish legal requirement that there be judicial oversight of prolonged administrative detention is not operating effectively in the Canary Islands. There appears

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<sup>109</sup> Human Rights Watch interview, Spanish Red Cross and CEAR (lawyer in the Las Palmas office), Las Palmas, October 30, 2001; Human Rights Watch interview, Carlos Guervós, Deputy Director of Immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch interview, Manuel Prieto, Head of Foreigners and Documentation Department, José García Santalla, Chief of Central Foreigners Unit (Foreigners and Documentation Department), and José Ramón Pérez García, Chief of Statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

<sup>110</sup> Human Rights Watch interview, twenty-nine-year-old migrant from the Ivory Coast, Las Palmas, November 3, 2001. This man arrived in Fuerteventura by *pateta* with another thirty migrants; they all made it to land where the Civil Guard arrested them and then transferred them to the custody of the national police. After twenty-eight days those who had not already been deported from the airport detention facility were transferred to the internment center in Las Palmas where they spent an additional eleven days.

<sup>111</sup> Migrants and NGO and aid organization representatives also indicated that there have been a few flights to Cameroon and Senegal, but that these flights are much more rare. Human Rights Watch interviews with migrants, Las Palmas, October 29–November 3, 2001; Human Rights Watch interview, Spanish Red Cross, Puerto del Rosario, October 31, 2001; Human Rights Watch interview, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001.

to be neither individualized review of cases nor assessment of the necessity of internment. Similarly, there appears to be a complete lack of judicial monitoring or standard guidelines to determine the type of orders to be issued to individual migrants, the length of individual migrants' detention, or the status they obtain upon release from one of the airport facilities.

## ACCESS TO ASYLUM

Human Rights Watch interviewed a number of migrants who had been detained in one of the airport facilities upon arriving in Spain and reported being unable to apply for asylum, including several who later successfully applied and were admitted for consideration of their asylum claims.

In particular, migrants complained that they faced substantial language barriers when attempting to request asylum in both the police stations and in the airport detention facilities. As well, migrants said they found that the lawyers available to them were unable or unwilling to advocate on their behalf or to provide them with necessary information to access the asylum system.<sup>112</sup> Spanish law and international guidelines on asylum procedures, however, require the provision of legal and interpretation and translation services necessary for applicants to submit a claim to the authorities,<sup>113</sup> as well as information on their rights in a language they understand.<sup>114</sup>

According to a man from Sierra Leone, after the Spanish Civil Guard picked him up from the sea off the coast of Fuerteventura in September 2001, he requested asylum, but his request was ignored, and he was immediately detained in the old airport facility. He told Human Rights Watch that the police did not provide him a lawyer and that he was unable to apply for asylum from the airport facility:

They're not speaking the language; they don't understand us. They just bring doctors to look after us. There was no communication with anyone. We could

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<sup>112</sup> Personnel of the local office of the Comisión Española de Ayuda al Refugiado (CEAR) in Fuerteventura reiterated these concerns, telling Human Rights Watch that they fear legitimate asylum seekers are unable to apply for asylum in the police station or at the airport facility in Fuerteventura. Human Rights Watch interview, Pedro Santana, Coordinator, and Itziar Díaz Soloaga, lawyer, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>113</sup> Spanish Law 9/1994 (March 19) (published in *Boletín Oficial del Estado*, nos. 122 and 131), amending Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum, Chapter Two, Article 4(1); Royal Decree 203/1995 (February 10) approving the Implementation Regulation [hereinafter "Implementing Decree"] of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16) (published in *Boletín Oficial del Estado*, no. 52, 2 March 1995), Articles 8(4) (request made within Spanish territory) & 19(2) (requests made at border points); Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, 1992), para. 192. The Handbook on Procedures and Criteria for Determining Refugee Status was written to guide governments in conducting their own asylum procedures. See Executive Committee of the High Commissioner's Programme, Conclusion No. 8 (1977), para. 53.6 (listing basic requirements for procedures for the determination of refugee status from which the Handbook on Procedures and Criteria for Determining Refugee Status was prepared). Since 1975, the Executive Committee (ExCom) has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. While the Conclusions are not legally binding, they do constitute a body of soft international refugee law and ExCom member states are obliged to abide by them. Spain is an ExCom member state; as such it is obligated to respect the international standards stipulated in the Conclusions.

<sup>114</sup> Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16), Section 1, Article 5(1) stipulates that:

The Administration, in collaboration with the UNHCR and the non-governmental organisations that pursue such objectives as providing aid to refugees, must produce a brochure in several languages with all of the information useful to asylum-seekers. This document will be available at any of the governmental agencies mentioned in article 4 above [which includes border points and Provincial Police Departments or District Police Departments] and must be given to asylum-seekers when they submit their request so that they may contact those organisations that they deem necessary.

not leave the camp. We were there twenty-four hours a day. They gave us food three times a day and let us go to the toilet. Nothing. No communication for twenty-three days.<sup>115</sup>

Balthazar D.,<sup>116</sup> a thirty-three-year-old from Togo, told Human Rights Watch he had difficulty applying for asylum because of language barriers and that when he was in Lanzarote he could not tell the judge that he wanted to apply because he was brought to the court with a large group of migrants and never had the opportunity to discuss his personal situation. Human Rights Watch researchers saw copies of the document (in Spanish) that he received from the court, which indicated only that he should be “expelled” by the process of *devolución* and transferred to an official detention center such as Barranco Seco in Las Palmas in the meantime. Balthazar explained that when he tried to request asylum at the Lanzarote airport facility the police told him he was lying and so refused to proceed with his application. After his release from detention Balthazar was able to apply for asylum in Las Palmas, but only after persistent efforts. He told Human Rights Watch that for several days in a row, authorities at the Las Palmas police station refused to act on his request to apply.<sup>117</sup>

Other migrants we interviewed reported ongoing difficulties applying for asylum. Jonathan N.,<sup>118</sup> a thirty-two-year-old man from Gambia, for example, told Human Rights Watch that he had wanted to apply for asylum since the day he arrived but that he had planned to do it after he was released from airport detention when he could find a lawyer and get information about the process and his rights. He explained that once he was released the Spanish authorities and a lawyer in Las Palmas informed him that he was required to apply for asylum within the first month of arrival and was thus no longer eligible to make the application. Because Jonathan does not have documents or legal status in Spain, he cannot travel from the Canary Islands to seek other legal help or further information on his current options.<sup>119</sup>

Jonathan ran afoul of a Spanish law that requires migrants to apply for asylum within one month of their entry into Spanish territory, or risk prejudicial assumptions against their cases.<sup>120</sup> This law creates a serious procedural and legal barrier to potential asylum seekers arriving in the Canary Islands. Reported practices at police stations and during detention at the airport facilities indicate that for most asylum seekers arriving in the Canaries it is effectively impossible to get access to the procedure within the first month of their arrival in Spain. Only a minority are fortunate enough to be released and to find a lawyer in time to apply before the one-month deadline lapses. Moreover, although legally asylum seekers may still proceed with their applications for asylum after one month in Spain, as Jonathan found, few lawyers are willing to take these cases or argue that the delay should not be considered prejudicial given the circumstances. Consequently, the guideline for application within one month is now interpreted by many to be a steadfast rule prohibiting later application for asylum.

In some cases current practice in the Canary Islands, especially in Fuerteventura, appears to be even more stringent with regard to time limits on the ability to apply for asylum without prejudice. One lawyer told Human Rights Watch that:

[i]f they came looking for asylum, they are supposed to ask for it immediately. If they are in the airport two to three days then maybe they talked to someone; it's not a good request.<sup>121</sup>

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<sup>115</sup> Human Rights Watch interview, thirty-five-year-old man from Sierra Leone, Madrid, October 27, 2001.

<sup>116</sup> Not his real name.

<sup>117</sup> Human Rights Watch interview, Las Palmas, November 3, 2001.

<sup>118</sup> Not his real name.

<sup>119</sup> Human Rights Watch interview, Las Palmas, October 30, 2001.

<sup>120</sup> Spanish Law 9/1994 (March 19) (published in *Boletín Oficial del Estado* nos. 122 (27 March 1984) and 131 (6 June 1994)), amending Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum, Chapter Two, Article 4(1) in combination with Section 1, Article 7(1) of the Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16).

<sup>121</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

The United Nations High Commissioner for Refugees (UNHCR) has expressed concern that the introduction of strict time limits for the filing of asylum requests “is contrary to accepted asylum and refugee protections.”<sup>122</sup> The Executive Committee (ExCom), which is UNHCR’s governing body and whose conclusions are binding on Spain, has further expressed that:

[w]hile time limits may well be set for certain specific administrative purposes, the asylum seeker’s failure to submit the request within a certain time limit should not lead to the asylum request being excluded from consideration.<sup>123</sup>

Although Spanish asylum law does not, in fact, prohibit applications for asylum after the one-month “deadline,” the law does stipulate that in such cases the Ministry of Interior and competent authorities for the processing of asylum claims may interpret the request as:

based on facts, information or allegations which are openly false, implausible or, because they are no longer valid or significant, do not constitute the basis of a need for protection.<sup>124</sup>

This provision must be considered in light of article 31 of the Convention Relating to the Status of Refugees (Refugee Convention), which prohibits states from penalizing asylum seekers who present themselves to the authorities “without delay.” Paragraph 4 of the UNHCR Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (UNHCR Guidelines), an authoritative interpretation of Spain’s obligations under the Refugee Convention, provides that:

[g]iven the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum seeker to another, there is no time limit which can be mechanically applied or associated with the expression “without delay.”<sup>125</sup>

In short, Spain’s one-month rule, even were it not being erroneously interpreted by lawyers as a strict time limit on applications for asylum, raises serious concerns about compliance with refugee protection standards.

The considerable obstacle asylum seekers face when attempting to apply for asylum in the Canary Islands, caused by misinterpretation of the one-month rule and the implicit penalization of asylum seekers who apply after one-month in-country, is further compounded by local perspectives on what constitutes a request for asylum. According to one lawyer working with arriving migrants in the Fuerteventura police station,

[w]e the lawyers, we can’t say anything when they talk about their experience. They must say, “I want asylum.” They have to say it. If they don’t, we can’t do anything for them.<sup>126</sup>

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<sup>122</sup> *Note on International Protection*, Refugee Survey Quarterly, Vol. 18:2, 1999, 88-101, at p. 88 para. 18.

<sup>123</sup> See Executive Committee of the UNHCR’s Programme, Conclusion 15(i) (1979).

<sup>124</sup> Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16), Article 7(2), citing Law 5/1984, Article 5(6)(d).

<sup>125</sup> United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Geneva, February 1999.

<sup>126</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

Representatives of the Fuerteventura office of CEAR, a Spanish asylum and refugee organization, confirmed that the national police in Fuerteventura have a similar approach. Coordinator Pedro Santana observed that:

The problem is some of these people could be refugees. But, if they don't say the two magical words—*asilo político*—then the police are not obliged to open the process to them. If I am an immigrant and I say, “in my country we have a war. I have a lot of problems because of my political ideas and I could go to jail.” . . . The police do nothing. Normally people stay here and then get transferred to Barranco Seco [the official detention center in Las Palmas]. Our CEAR office in Las Palmas gives them assistance there. But here, the proceedings are not started.<sup>127</sup>

According to a Bar Association representative in Fuerteventura, if asylum is requested after the issuance of an order of *retorno*—one of the most common orders issued to migrants before their transfer to the airport detention facility (and issued within a few hours to a maximum of seventy-hours after their arrest)—deportation cannot be stopped or even suspended.<sup>128</sup> This interpretation is in conflict with Spanish and international asylum law with regard to the deportation of asylum seekers. Spanish law and international refugee standards prohibit the deportation of or refusal of entry to any migrant or refugee who has applied for asylum, pending the decision on his or her application.<sup>129</sup> The fact that the Spanish authorities have initiated procedures for deportation should not prohibit one from applying for asylum nor should it limit the protections afforded asylum seekers during the period pending a decision on their request.<sup>130</sup>

If lawyers working with migrants interpret the law to bar asylum applications after the issuance of an order of *retorno*, migrants' rights to seek asylum are significantly narrowed. In effect, migrants arriving in the Canary Islands must apply for asylum (and convince lawyers or police of the merits of this claim) within a few hours to a few days, depending on the speed at which paperwork for their particular group of arrivals can be processed, without information on their right to apply or assistance through lawyers and translators. The variable time-line for the acceptance of applications for asylum depends largely on the speed at which the Spanish authorities in Fuerteventura process migrants' paperwork upon arrival and issue orders of deportation by *retorno*, not on the ability or will of migrants to apply for asylum. Consequently, migrants' access to asylum is substantially determined by external and unpredictable factors such as how many other migrants arrived that day, whether it is

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<sup>127</sup> Human Rights Watch interview, Pedro Santana, Coordinator, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001. The Spanish Red Cross also expressed concern that potential asylum seekers are being deported to their countries of origin on the basis of orders for repatriation by *devolución* or *retorno* or by expulsion orders before their asylum claims can be heard or processed. Spanish Red Cross officials noted that the local police perceives them as encouraging migrants to apply for asylum because they routinely provide information on the right to seek asylum and that consequently the police do not believe that migrants applying for asylum are legitimate asylum seekers. The Spanish Red Cross told Human Rights Watch that in fact many migrants do want to apply for asylum but are either afraid to ask the police or fail to “say the magic word to get the process rolling: *refugiado*.” Human Rights Watch telephone interview, Spanish Red Cross, January 4, 2002.

<sup>128</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

<sup>129</sup> Spanish Law 9/1994 (March 19) (published in *Boletín Oficial del Estado*, nos. 122 and 131), amending Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum, Chapter Two, Article 5(1), “Consequences of the request for asylum.” See also Executive Committee of the UNHCR's Programme, Conclusion No. 8 on Determination of Refugee Status (1977), which states that an applicant should be permitted to remain in the country pending a decision on his or her initial request and while an appeal is pending. Returning an asylum seeker without a full consideration of the asylum claim could amount to *refoulement* as access to full and fair asylum determination procedures is a necessary safeguard against *refoulement*, which is prohibited under article 33 of the Refugee Convention, article 3 of the European Convention on Human Rights, and article 3 of the U.N. Convention against Torture. See European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), Article 3.

<sup>130</sup> Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16), Article 7(2), citing Law 5/1984, Articles 5(6)(d), 11, and 12.

the weekend or a holiday, how full the airport facility is, or whether there are scheduled planes to one's country of origin or to Las Palmas slotted for use by police authorities.

In addition to the numerous procedural obstacles barring access to asylum procedures, many migrants arriving in the Canary Islands face serious substantive problems when attempting to apply for asylum because they do not possess official documents. Lawyers in Fuerteventura told Human Rights Watch that migrants must demonstrate proof of their country of origin and individual persecution "at the moment they apply for asylum."<sup>131</sup>

This is particularly problematic for migrants coming from the disputed territory of the Western Sahara, who cannot produce immediate proof that they are from the disputed territory. Numerous NGO and humanitarian aid workers with whom we spoke indicated that in the Canary Islands there is a strong presumption against the validity of claims that one is Sahrawi, which is only strengthened by the fact that Sahrawis frequently speak Arabic and are not readily distinguishable from Moroccans arriving in the Canaries. Moreover, in many cases, someone from the Western Sahara who has documents would be carrying a Moroccan passport, further solidifying the local view that people claiming to be Sahrawis are really just Moroccans trying to stay in Spain. Consequently, very few of these migrants are able to actually apply for asylum before they are deported back to Morocco.<sup>132</sup>

NGO and humanitarian aid workers with whom we spoke also expressed serious concern that Spanish authorities were making preliminary determinations as to whether migrants from certain sub-Saharan African countries have a valid claim for asylum. These determinations are particularly prejudicial to Nigerians because Spain has signed a readmission agreement with Nigeria that enables the swift deportation of large groups of Nigerians back to Nigeria. Consequently, potential asylum seekers from Nigeria risk being deported before they are able to retain counsel or convince the authorities of the validity of their asylum claim. By contrast, deportation to Sierra Leone or other sub-Saharan African countries with which there is no agreement is significantly less frequent and more resource-intensive for the Spanish government.<sup>133</sup> The lack of transparency surrounding the processes affecting migrants arriving in the Canary Islands makes monitoring access to asylum difficult, but one aid worker suggested to Human Rights Watch that local police and lawyers, acting on presumptions or stereotypes, create serious obstacles to asylum in Spain:

They [the police] start from the base that they [sub-Saharan African migrants] are all Nigerian: if not, then prove it. Why should a Sierra Leonean who has lived in the bush all his life know what the biggest supermarket in Freetown is? A woman will say, for example, that she is from one country and the lawyer will say "no [you are not] because those marks on your left cheek are markings from Senegal."<sup>134</sup>

Spanish asylum law stipulates that proof or documentation of one's country of origin and facts indicating personal persecution are critical to the success of an application, but the law does not require that migrants demonstrate proof of their country of origin or of individual persecution immediately upon arrival in the Canaries in order to apply for asylum.<sup>135</sup> Preventing migrants from applying on this basis would be in violation of Spanish

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<sup>131</sup> Human Rights Watch interview, lawyer from the Colegio de Abogados (Fuerteventura), Puerto del Rosario, October 30, 2001.

<sup>132</sup> Human Rights Watch interview, Pedro Santana, Coordinator, and Itziar Díaz Soloaga, lawyer, CEAR (Fuerteventura), Puerto del Rosario, October 31, 2001; Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>133</sup> Ibid.

<sup>134</sup> Human Rights Watch interview, Spanish Red Cross (Fuerteventura), Puerto del Rosario, October 31, 2001.

<sup>135</sup> Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 16), Section 1, Articles 8(3) and 9(1).

and international law.<sup>136</sup> Furthermore, under international refugee law, the requirement that a refugee establish his or her “well-founded fear of persecution” is generally recognized to require proof of a fear of future persecution, not actual past persecution.<sup>137</sup> Any interpretation to the contrary by local police and lawyers conflicts with Spain’s obligations under international refugee law.

In sum, Human Rights Watch’s investigation revealed that migrants arriving in the Canary Islands face severe problems accessing the asylum system. There is little information available to migrants about the right to apply for asylum or the necessary steps in the application procedure. The quality and availability of translators is extremely limited, making it difficult for many migrants to even express a desire to apply for asylum or to ask for information that is not readily provided. Available lawyers are not specially trained in asylum and refugee matters nor do they appear willing to initiate claims and advocate on behalf of arriving migrants wishing to seek asylum in Spain, resulting in misinterpretations of the law to the detriment of potential asylum seekers. Moreover, local perspectives on what constitutes a legitimate asylum claim and preliminary determinations of the legitimacy of asylum requests compound these preexisting procedural barriers to applying for asylum.

Human Rights Watch raised these concerns in meetings with UNHCR (Spain) and the head of the Ministry of Interior’s Office for Asylum and Refugee Documentation Department, Carlos Báez.<sup>138</sup> The Spanish branch of UNHCR told Human Rights Watch that it has received information about the Canaries situation from the asylum and refugee organization CEAR in Las Palmas and has plans to travel to the Canary Islands to investigate the situation facing asylum seekers there later this year if they are able to find sufficient funds for the project. Báez acknowledged that there are indeed comparatively few asylum applications filed in the Canary Islands but noted that there was little cause for concern. When we queried him on the extremely low number of asylum applications coming from the Canary Islands, he suggested we “ask the migrants. Maybe they think it is better to apply in Madrid.”<sup>139</sup> Báez later added that in his opinion migrants arriving by *patera* do not typically have reasons to ask for asylum, as they come from richer sub-Saharan African countries and can afford to pay to cross by *patera*. With regard to procedural or practical barriers to applying for asylum in the Canaries, Mr. Báez assured us that in the last five years people have generally been able to ask for asylum and know where to go to apply, because the police “usually have a pretty good level of knowledge. Plus, if one asks the police, they will say where to go and the NGOs will inform the foreigner.”<sup>140</sup> He stated unequivocally that he had no notice of cases in which migrants reported that it was difficult to apply because of practical barriers and that the police in Spain “have very precise instructions.”<sup>141</sup>

## INTERNATIONAL AND REGIONAL STANDARDS

International and European standards require that the material conditions for all persons in any form of detention—including persons subject to immigration control measures that include detention—must meet basic minimum standards that guarantee health (both physical and mental), safety, and access to social support services. Spain’s obligations under international law and the European Convention on Human Rights (ECHR) also require

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<sup>136</sup> Ibid. See also Refugee Convention, Articles 1(a) and 31. Article 31 prohibits states from penalizing asylum seekers for the matter in which they enter a country, such as without proper documentation. Penalties imposed by states on asylum seekers could include: detention; rejection at the frontier; or negative impacts on asylum claims.

<sup>137</sup> Refugee Convention, article 1(a). See also European Council on Refugees and Exiles (ECRE), *Position on the Interpretation of Article 1 of the Refugee Convention*, September 2000, which can be found at: <http://www.ecre.org/positions/csrinter.shtml> (accessed February 5, 2002).

<sup>138</sup> UNHCR has only one office in Spain, in Madrid, but does conduct research and investigative missions to other parts of Spain when it is determined that there is a need for investigation and they are able to find funding in their budget. Human Rights Watch interview, UNHCR (Spain), Madrid, October 24, 2001; Human Rights Watch telephone interview, UNHCR (Spain), January 15, 2001.

<sup>139</sup> Human Rights Watch interview, Carlos Báez Evertsz, Head of Documentation, Ministry of Interior (Office of Asylum and Refugees), Madrid, October 25, 2001.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

that any deprivation of personal liberty—such as prolonged detention of migrants at the Fuerteventura and Lanzarote facilities—be governed by a basic set of procedural guarantees to ensure that a detention is not arbitrary and that detainees have an effective opportunity to challenge the legality of the detention in a court of law. Finally, asylum seekers and refugees enjoy special protection against detention—unless very specific circumstances obtain—afforded by the 1951 Refugee Convention and enshrined in guidelines developed by the United Nations High Commissioner for Refugees (UNHCR), which oversees the implementation of the convention by states parties, including Spain.

### **Conditions of Detention and Procedural Guarantees**

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)<sup>142</sup> and the European Prison Rules<sup>143</sup> serve as authoritative guides for states on how to comply with their international and regional obligations to protect the human rights of persons held in all forms of detention. The Standard Minimum Rules provide a set of guidelines for interpreting article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibiting torture, cruel, inhuman or degrading treatment or punishment, and ICCPR article 10 which states that “[a]ll persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.”<sup>144</sup> The United Nations Human Rights Committee has held that most of the rights guaranteed by the ICCPR—including the prohibition against cruel, inhuman, or degrading treatment and the right of those detained to humane treatment—devolve upon any alien on the territory of a state party.<sup>145</sup> Likewise, the European Prison Rules provide guidelines to ensure that European states are in conformity with article 3 of the European Convention on Human Rights—the prohibition against torture, inhuman or degrading treatment—and the European Court of Human Rights has ruled that migrants subject to immigration detention enjoy the right to safe and humane detention conditions in conformity with article 3.<sup>146</sup> Key provisions of both sets of rules require:

- Sleeping accommodations that meet basic requirements of health and hygiene including adequate sleep space, air, lighting, heat and ventilation. The European Prison Rules recommend individual cells or shared accommodation with reasonable space for each detainee and a separate bed and bedding for each detainee;
- Adequate bathing and shower installations;
- Proper maintenance and cleaning of all parts of a detention facility;

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<sup>142</sup> Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders; ECOSOC Resolutions 663 (July 1957) and 2076 (May 1977).

<sup>143</sup> Council of Europe, Committee of Ministers Recommendation No. R(87)3, adopted on February 12, 1987.

<sup>144</sup> According to Nigel Rodley, former U.N. Special Rapporteur on Torture and current member of the U.N. Human Rights Committee:

Although not every rule may constitute a legal obligation, it is reasonably clear that the Standard Minimum Rules can provide guidance in interpreting the general rule against cruel, inhuman, or degrading treatment or punishment. Thus, serious non-compliance with some rules or widespread non-compliance with some others may well result in a level of ill-treatment sufficient to constitute violation of the general rule. The SMR [Standard Minimum Rules] can provide similar guidance in interpreting the general requirement of Covenant article 10(1) of humane treatment and respect for human dignity...”

Nigel Rodley, *The Treatment of Prisoners Under International Law*, (Oxford University Press: New York, 1987), p. 222. Spain has ratified the ICCPR and the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>145</sup> General Comment No. 15, “The Position of Aliens under the Covenant,” in United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev4, February 7, 2000, p.98, para. 7.

<sup>146</sup> European Court of Human Rights, *Dougoz v. Greece*, 40907/98, March 6, 2001.

- Provision of toilet articles as necessary for health and cleanliness;
- Food of nutritional value adequate for health provided at normal times; drinking water available at all times;
- Access to medical and psychiatric care and psychological support services;
- Absolute prohibition against cruel, inhuman or degrading treatment or punishment;
- Communication, both written and oral, with detainees in a language they can understand;
- System for making complaints;
- Provision for regular exercise and access to natural light and fresh air;
- Provision of a library, educational programs, and access to necessary social services;
- Separation of detainees in separate facilities away from convicted felons.

Migrants subject to immigration detention are also guaranteed basic procedural rights under international and regional law to ensure that no person is detained arbitrarily.<sup>147</sup> The U.N. Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Body of Principles)<sup>148</sup> state that any detained individual has the following basic procedural rights:

- To be informed at the commencement of detention with information on and an explanation of his rights and how to avail himself of such rights and to receive such information promptly in a language he understands with the assistance of an interpreter, free of charge, if necessary;
- “Not to be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority;” the right “at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of their detention;” and the right to do so through proceedings that are “simple and expeditious and at no cost for detained persons without adequate means;”
- To have the assistance of legal counsel, to have legal counsel assigned to him if he cannot afford his own lawyer, to receive reasonable help in obtaining counsel, to have adequate time and facilities to communicate with legal counsel, to be able to communicate in full confidentiality with legal counsel (interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official);
- To have an “adequate opportunity to communicate with the outside world,” including communication and visits by legal counsel and family members;

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<sup>147</sup> ICCPR Article 9 and ECHR Article 5 guarantee the rights to liberty and security of person and provide, among other things, any person deprived of her or his liberty with an *effective* opportunity to challenge the lawfulness of a detention before a court. In its General Comment No. 8, the U.N. Human Rights Committee interpreted ICCPR Article 9 to include “all deprivations of liberty, whether in criminal cases or in other cases such as...immigration control.” United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.4, February 7, 2000, p. 88, para. 1. The European Court of Human Rights has ruled that migrants in detention enjoy the basic procedural guarantees enshrined in ECHR Article 5, including the right to effective review of the legality of their detention by a court. See *Dougoz v. Greece*, 40907/98, March 6, 2001.

<sup>148</sup> Adopted by U.N. General Assembly Resolution 43/173, December 9, 1988.

- To be informed of disciplinary rules prevailing in a given detention center, to appeal any disciplinary action, and to make a request or complaint regarding treatment or detention conditions;
- To make a request or complaint regarding treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

Many of the international and regional standards for conditions of detention and procedural protections identified above are duplicated in Spanish domestic law.<sup>149</sup> The substandard conditions of detention in the Fuerteventura and Lanzarote airport facilities detailed in this report as well as the demonstrated inadequacy of legal and interpretation and translation services, and the paucity of information available to migrants prior to and during their detention violate many of the requirements of both internationally and regionally recognized basic minimum standards for the treatment of detainees as well as Spanish domestic law.

Conditions documented by Human Rights Watch—up to forty days detention under circumstances that include severe overcrowding; an absolute bar against communication with the outside world, including lawyers and family members; lack of adequate sleeping accommodations; no access to fresh air, ventilation, or exercise; the refusal of the national police to clean the facility or provide laundering despite the absence of adequate facilities for washing or drying clothing or bed-sheets; and insufficient medical care and facilities—raise serious concerns of cruel, inhuman or degrading treatment prohibited under the ICCPR and the ECHR.

Moreover, it is a fundamental principle of human rights that no one should be arbitrarily placed in detention. The Universal Declaration of Human Rights states that “no one shall be subjected to arbitrary arrest, detention or exile” and article 9 of the ICCPR declares similarly that “[n]o one shall be subjected to arbitrary arrest or detention [or] be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” Detention is considered “arbitrary” if it is not authorized by law or in accordance with law. It is also arbitrary when it is random, capricious, or not accompanied by fair procedures for legal review.

Arbitrary detention has also been defined as not only contrary to law but as including elements of injustice and lack of predictability. Due to the growing phenomenon of indefinite detention of migrants and asylum seekers, the U.N. Working Group on Arbitrary Detention in 1999 developed criteria for determining whether or not the deprivation of liberty of migrants and asylum seekers is arbitrary.<sup>150</sup> The principles mandate that a migrant or asylum seeker placed in custody “must be brought promptly before a judge or other authority” and that decisions regarding detention must be founded on criteria of legality established by law. Moreover, migrants and asylum seekers in detention must be notified in writing—in a language they understand—of the grounds for detention and the requirements for a remedy to a judicial authority empowered to decide promptly on the lawfulness of detention and to order release if appropriate. Such measures are intended to safeguard against arbitrariness and uncertainty by affording migrants and asylum seekers in detention with a requisite level of information to understand the reasons and terms of detention and to enable them to determine a course of action to challenge the detention if desired.

As demonstrated above, Human Rights Watch’s investigation raises serious concerns about the predictability of migrants’ treatment in the Canary Islands. There is no certainty as to how long migrants will be held in

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<sup>149</sup> See Law No. 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 2.a (Internment Centers for Foreigners), Articles 127-132 of the law’s Regulations for the Application of Spanish Law on Foreign Nationals.

<sup>150</sup> United Nations Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, “Situation Regarding Immigrants and Asylum Seekers,” which can be found at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd58025667300306dea/39bc3afe4eb9c8b480256890003e77c2?OpenDocument#annexII>, (accessed February 6, 2002).

detention, on what basis they will be held, or whether they will be deported or released onto the streets at the termination of their detention. Moreover, the quality of legal services and judicial oversight do not effectively provide fair procedures for legal review or fulfill Spanish law requiring the provision of counsel to all detainees.

### **The Detention of Children**

As a state party to the Convention on the Rights of the Child (CRC), Spain has a legal obligation to ensure every child within its jurisdiction the protection and care necessary for his or her well being, without discrimination of any kind. In all actions concerning children, the best interests of the child shall be a primary consideration.<sup>151</sup> Moreover, states parties are required to:

ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.<sup>152</sup>

The CRC also requires heightened care for especially vulnerable children, including children who are temporarily deprived of their family environment,<sup>153</sup> and extends specific protections to children deprived of their liberty.<sup>154</sup> In particular, article 37 of the CRC states that detention of a child must be “used only as a measure of last resort and for the shortest appropriate period of time,” and that every child deprived of his or her liberty shall be separated from adults, with the exception of unusual cases in which it is not in the child’s best interest to maintain such separation. In the event that children are detained in state facilities, the CRC requires a state party to:

ensure that the institutions, services and facilities responsible for the care or protection of children . . . conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.<sup>155</sup>

The detention of children in the appalling airport facilities of Fuerteventura and Lanzarote, either with or separated from their parents, as well as the removal of children from their parents’ care to inadequate and insecure care facilities while their parents are detained raise serious concern that Spain’s treatment of migrant children in the Canary Islands falls far short of required international standards.

### **The Treatment of Asylum Seekers**

The right of every person to seek asylum is enshrined in article 14 of the 1948 Universal Declaration of Human Rights. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees govern the protection of refugees and provide the core principle of refugee protection—*nonrefoulement*, the prohibition against returning a person to any territory where his or her life or freedom would be threatened.<sup>156</sup>

The United Nations High Commissioner for Refugees (UNHCR), tasked with monitoring implementation of the Refugee Convention by states parties, has enumerated a set of basic requirements that should govern asylum procedures in order to ensure that a person wishing to apply for asylum is provided with certain essential guarantees. These basic requirements include the following:

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<sup>151</sup> Convention on the Rights of the Child (CRC), Article 3(1), G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (adopted November 20, 1989; entered into force September 2, 1990).

<sup>152</sup> CRC, Article 9(1).

<sup>153</sup> CRC, Article 20(1).

<sup>154</sup> CRC, Article 37.

<sup>155</sup> CRC, Article 3.

<sup>156</sup> Refugee Convention, Article 33.

- The competent official (e.g. immigration officer or police officer) to whom the applicant addresses himself at the border or in the territory of a state party should have clear instructions for dealing with cases which might come within the purview of refugee protection instruments. He should be required to act in accordance with the principle of *nonrefoulement* and to refer such cases to a higher authority;
- The applicant should receive the necessary guidance as to the procedure to be followed;
- There should be a clearly defined authority—wherever possible a single central authority—with responsibility for examining requests for refugee status and taking a decision in the first instance;
- The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.<sup>157</sup>

Potential asylum seekers arriving in the Canary Islands have little information on their rights or the process by which they can apply for asylum. Few have access to adequate translation or interpretation services. In addition, the lawyers available to them are generally untrained in asylum matters and unwilling to assist them in applying for asylum or to advocate on their behalf. The centralized government Office for Asylum and Refuge and the UNHCR do not currently monitor or review the local procedures or practices in the Canaries nor can local NGOs or private lawyers monitor practices in the police stations or detention facilities. Similarly, local NGOs and private lawyers are not permitted to provide information or legal services to arriving migrants who may wish to apply for asylum.

International standards state that those seeking asylum generally should not be detained. Article 31 of the Refugee Convention states that governments “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” The convention goes on to state that “[c]ontracting states shall not apply to the movements of such refugees restrictions other than those which are necessary.” The United Nations High Commissioner for Refugees’ Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (UNHCR Guidelines)<sup>158</sup> also note that detention should not be used as a punitive or disciplinary measure, and that detention should not be used as a means of discouraging refugees from applying for asylum. Indeed, even if detention is not explicitly used to discourage asylum applicants but merely to discourage future immigration altogether—including asylum seekers—such a use of detention undermines the right of every person to seek asylum as guaranteed by the Universal Declaration of Human Rights.

Although it is an accepted premise of international law that asylum seekers should not, in general, be detained, the Refugee Convention does permit states to detain asylum seekers in certain limited circumstances. Thus, “[i]n time of war or other grave and exceptional circumstances,” states may take “provision[al] measures” to detain asylum seekers, “pending the determination that the person is in fact a refugee and that the continuance of such measures is necessary in the interests of national security.” The UNHCR Guidelines further elaborate the instances in which asylum seekers may be detained: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) in cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the state in which they intend to claim asylum; or (iv) to protect national security or public order. However, under the exception regarding the determination of the elements of a claim, the guidelines state that “[t]his exception . .

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<sup>157</sup> United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/IP/Eng/REV.1, Geneva, January 1992, p. 31.

<sup>158</sup> United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Geneva, February 1999.

.cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.” According to the Guidelines, any other reason for detaining asylum seekers, such as its use as part of a policy to deter future asylum seekers, is contrary to principles of international law. The guidelines emphasize that “detention [should] only be imposed where it is necessary and reasonable to do so and without discrimination. It should be proportional to the ends to be achieved and for a minimal period.”<sup>159</sup>

The general principle stands that asylum seekers should not be detained. Alternative, non-custodial monitoring mechanisms, such as reporting requirements, should be employed as a matter of first course. Detention should only be used under exceptional circumstances and when it is prescribed by national law in conformity with international standards. Moreover, detention should be applied strictly on a *case-by-case basis* with a thorough review of an individual asylum seeker’s circumstances.

In cases where asylum-seekers are detained, UNHCR Guideline 4 enumerates minimum procedural safeguards, guaranteeing the right to challenge the lawfulness of the deprivation of liberty and to make contact with the local UNHCR office, other agencies, and a lawyer, including the provision of means to make such contact.

Human Rights Watch’s investigation reveals that the right to apply for asylum in the Canary Islands is rife with procedural and practical barriers that frequently prevent potential asylum seekers from making a claim for asylum before or during detention. Consequently, few applications for asylum are filed in the Canary Islands, particularly on the smaller islands of Fuerteventura or Lanzarote, and potential asylum seekers are detained in one of the old airport facilities along with other arriving migrants. As they do not have the means even to apply for asylum in the first place, they are certainly deprived of the means to make contact with the local UNHCR office, other agencies, or a lawyer other than the duty-lawyer assigned the first day of their arrival. Finally, duty lawyers and police often impose a prohibitive burden of proof on asylum seekers that further bars access to protection.

## CONCLUSION

The evidence gathered and presented in this report demonstrates that migrants arriving in the Canary Islands are subjected to appalling treatment. They are detained in substandard facilities and have little access to adequate legal, interpretation and translation and judicial services. In this regard, the Spanish authorities routinely violate the human rights of migrants enshrined in domestic, regional, and international law.

Human Rights Watch calls on the Spanish government to promptly address the issue of arbitrary detention of migrants and refugees, to implement immediate interim measures to improve the conditions of detention for migrants and refugees lawfully detained, to take steps to improve the quality of legal and judicial oversight services, and to ensure access to seek asylum for migrants arriving on the islands. The Spanish government has placed illegal migration at the top of its list of topics to address during its European Union presidency beginning January 2002 and should accordingly address as a matter of first priority the crisis situation facing migrants arriving in the Canary Islands.

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<sup>159</sup> Ibid.

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