

SPANISH COMMISSION FOR REFUGEE AID/ CEAR

DETENTION, DEPORTATION AND DEGRADING TREATMENT OF 42 BLACK PERSONS OF SUB-SAHARAN ORIGIN, ASYLUM-SEEKERS AND REFUGEES, IN MOROCCO IN THE EARLY MORNING HOURS OF 23RD TO 24TH DECEMBER 2006

LEGAL JUDGEMENT

A.- BACKGROUND AND KNOWN FACTS

I. CONTEXT IN WHICH THE VIOLATION OF THE GENEVA CONVENTION TOOK PLACE REGARDING THE REFUGEES SUBJECT TO THIS LEGAL JUDGEMENT.

1. In the early morning hours of 23rd December 2006 - a period of festivity in the Islamic world – members of the police force and other auxiliary forces (parapolice) entered the districts of Ayn Hada and Takadoum, in Rabat, violently forcing their entry into the homes of black immigrants and refugees (exclusively persons of black skin-colour), where the victims were sleeping. These forces detained and searched men, women and children. The most reliable reports indicate that some 248 persons were taken by force to the police station and, from there, without any further formalities, transported in buses to the border with Algeria, to a place located close to Oujda, some 600 kilometres from Rabat.

2. On 25th December 2006, a similar police and parapolice operation to that described in Point 1 took place in the town of Nador, close to Melilla. The detainees, who made up a group of 60 persons of black skin-colour, were driven to the same point on the Algerian border, close to Oujda.

3. On 29th December, 170 persons in the town of Laayoune were detained in similar conditions to those described in Points 1 and 2, whilst on 31st December confirmed reports indicate that 49 members of this group were taken to the same destination on the Algerian border as the previous detainees.

4. The border between Algeria and Morocco is closed and this is where the detainees were abandoned. The Moroccan police and auxiliary forces fired their weapons into the air in order to force the detainees to walk towards Algerian territory. When they arrived,

the Algerian police force fired into the air in order to make them return to Morocco. Over a number of days (we have reports leading up to 6th January 2007) these persons were left wandering in the desert or exposed to the elements, cold and fearing for their lives in Oujda.

5. The official Moroccan press agency, MAP, indicated in a press release that was published last 25th December 2006 in the daily newspaper, “Assabah”, that this was a large-scale operation that had been prepared with the help of the “auxiliary security forces”, civilian informers who work with the police in poor neighbourhoods. The same newspaper explained the cause of the operation by pointing to the stiffening of European immigration policies, in which respect the operation formed part of ***“the framework of the efforts made by the authorities to combat clandestine immigration and people-trafficking networks. This measure also forms part of the framework of cooperation with the European Union and the Spanish authorities”***.

II. IDENTITY OF THE MEMBERS OF THE GROUP OF REFUGEES AFFECTED.

6. The persons listed below according to their name and country of origin suffered deportation, abusive treatment and violation of their rights, as described in this document. All of them were interviewed personally by two members of the humanitarian action team that intervened in the area. The testimonies obtained are recorded in our files and have enabled us to compile this report.

<u>N°</u>	<u>Name and Surname</u>	<u>Date of Birth</u>	<u>Country of Origin</u>
1			D.R. of Congo
2			D.R. of Congo
3			Not recorded
4			Ivory Coast
5			D.R. of Congo
6			D.R. of Congo
7			Ivory Coast
8			Ivory Coast
9			D.R. of Congo
10			Ivory Coast
11			Ivory Coast
12			Congo-Brazzaville
13			D.R. of Congo
14			Congo-Brazzaville
15			Ivory Coast
16			Ivory Coast
17			Ivory Coast
18			Ivory Coast
19			Ivory Coast
20			D.R. of Congo
21			D.R. of Congo

22			Ivory Coast
23			D.R. of Congo
24			Ivory Coast
25			D.R. of Congo
26			D.R. of Congo
27			D.R. of Congo
28			Ivory Coast
29			D.R. of Congo
30			D.R. of Congo
31			D.R. of Congo
32			Not recorded
33			Ivory Coast
34			Ivory Coast
35			Ivory Coast
36			Ivory Coast
37			Ivory Coast
38			Ivory Coast
39			Ivory Coast
40			D.R. of Congo
41			Ivory Coast
42			Angola

II. PRELIMINARY POINTS AND QUESTIONS OF METHOD.

7. In the early morning hours of 23rd to 24th December 2006, several hundred black persons resident in three Moroccan towns, immigrants from various different countries, were driven by the Moroccan security forces into the desert on the border with Algeria some twenty-five kilometres away from Oujda. Several dozen of them had applied for asylum at the UNHCR offices in Rabat. Two people from the team that drew up this document interviewed the majority of these refugees in a discreet and detailed manner, as part of an approach that respected their declarations and testimonies. We examined 42 of the testimonies out of many others. All of the individuals, as we have mentioned, had requested asylum previously at the UNHCR offices in Morocco, before they were detained. We have the file numbers of 38 of them. 4 have not yet received confirmation of their interview or the number corresponding to their file.

8. The group consists of 36 men and 6 women. 16 are nationals from the Democratic Republic of Congo; 2 come from Congo-Brazzaville; 21 come from the Ivory Coast; 1 comes from Angola and 2 are of unknown national origin.

9. With regard to age, we find the following breakdown:

- Older than 40 years.....3
- Between 30 and 40 years12
- Between 25 and 30 years16
- Between 20 and 24 years3
- 16 or 17 years.....3

- 11 years1

10. The correlation of the numbers given to our interviews with the record numbers at the UNHCR office in Morocco is as follows:

N°	UNHCR Record
1	Does not appear
2	Does not appear
3	Does not appear
4	918-06C0057
5	918-06C00269, 918-00002803
6	918-06C00158, 918-00002702
7	Does not appear
8	918-06C00068
9	918-05C01890
10	918-06C00534
11	918-06C00418
12	918-05C02185
13	918-05C01230, 918-00003610
14	918-06C00350, 918-00002886
15	918-05C01194
16	918-06C00511
17	918-05C01955
18	918-06C01024, 918-00003599
19	918-06C01228, 918-00003885
20	918-05C01227*
21	918-05C01227* wife
22	918-06C00074
23	918-06C00347
24	918-05C02107
25	MORRA/HH/1488/05
26	918-06C00414
27	MORRA/MH/119/05
28	918-06C00505
29	MORRA/MH/205/05
30	918-06C00365
31	918-05C01890
32	918-06C00797
33	918-05C01960
34	918-06C00077
35	918-05C01957
36	918-05C01947
37	918-06C00249
38	918-06C00250
39	918-06C00247
40	918-05C00026
41	918-06C00073
42	918-06C01385

11. Out of the 42 persons who were interviewed and whose testimonies we have, 15 had previously suffered deportations in Morocco, in addition to the deportation that forms the subject of our analysis: 1 person had undergone 5 deportations; 2 had been subjected to 3 deportations and 12 persons had suffered 2 deportations. Below we indicate the figures corresponding to this list of repeated deportations:

N°	Deportations	UNHCR Record
6	2	918-06C00158
9	2	918-05C01890
11	2	918-06C00418
12	2	918-05C02185
15	3	918-05C01194
20	2	918-05C01227*
21	2	918-05C01227*
22	2	918-06C00074
24	3	918-05C02107
25	2	MORRA/HH/1488
31	2	918-05C01890
33	2	918-05C01960
36	2	918-05C01947
37	2	918-06C00249
41	5	918-06C00073

III. THE DETENTIONS IN RABAT.

12. Within the same period of time, between 4.00 a.m. and 7.00 a.m. in the early morning of 24th December 2006, a series of Moroccan security forces, consisting of royal gendarmes, uniformed police, civilian police and auxiliary forces wearing paramilitary uniforms, detained more than two hundred black Africans residing in Rabat, including the 42 asylum-seekers whose details are included in Point 6.

13. The neighbourhoods of Rabat where the detentions took place and about which we have sufficient information include the following:

- Aynnada
- Takadoum
- Ain Sinai
- Yousoufia
- Khalouia

14. Alongside our 42 interviewees, the security forces detained a total of 73 men, 4 women and 3 children, in the homes where they resided. Another 4 men and a woman (of minority age) were detained in the street. 8 men and 1 woman managed to escape from the round-up whilst the detentions were taking place.

15. The operating police forces, consisting of royal gendarmes, uniformed police, civilian police and paramilitaries (which in some cases numbered more than 60 men for a single building) surrounded the districts and, banging on the doors where they knew black immigrants resided, forced entry with hammers or broke down doors and smashed windows, entering the homes and detaining the persons who were sleeping inside. The detainees, who were dispossessed of their belongings by the police when they were detained or at a subsequent stage at the police station, were led to the Police Station of Aynnada, where buses were waiting for them to be driven to the border with Algeria, a spot located in the desert some 25 kilometres from Oujda.

IV. MODUS OPERANDI OF THE SECURITY FORCES DURING THE ARRESTS AND DURING THE DETENTION PERIOD AT THE POLICE STATION OF AYNADA.

16. We have described the way the security forces banged on doors, broke them down and smashed windows in the early morning in order to enter the detainees' homes. We must also mention the fact that none of the testimonies we gathered featured the police showing any kind of search warrant, or judicial order to enter into a private home or any kind of arrest warrant for administrative reasons. The policemen destroyed property that was not theirs, stole mobile telephones from the detainees (throwing away the models that were old or in poor condition) and kept other small items, as well as money and personal effects. The testimonies on this point are unanimous. And, what is even more serious, they broke and destroyed the UNHCR documents that testified to the fact that the holders had applied for refugee status, throwing them away as if they were useless and of no interest. They only accepted passports and Moroccan residency permits. UNHCR meant nothing to the Moroccan police authorities and UNHCR documents served for nothing, protecting nobody and nothing. It is of utmost importance to highlight the unanimity of the testimonies with regard to the fact that the protection afforded by UNHCR in Morocco is entirely meaningless; the testimonies also emphasise the contempt displayed by the agents of the Kingdom's Home Affairs Ministry towards UNHCR and towards the documents it issues.

17. During the arrests in the detainees' homes, a number of incidents occurred that we believe are important to record:

17.1. Case N° 9, Refugee Record: 918-05C01890. She was at home with her husband and young daughter. The threats and violence she received meant that, when she reached the police station, she suffered a fainting fit and convulsions brought on by extreme stress. The police were forced to take her to the hospital.

17.2. Case N° 12, Refugee Record: 918-05C02185. She has a daughter and she also looks after a girl whose mother, an asylum-seeker, died in summer 2005. This girl is 11 years old, identified here as Case N° 13, UNHCR Record 918-05C01230. The mother was detained whilst the children managed to remain in the house by taking advantage of the confusion that took place during the arrest of the adults who had been sleeping. At the police station, she suffered an attack; she had had a similar attack at UNHCR's

offices a few months beforehand. They took her to the hospital. When she was released, she returned home to find the two children on their own, in tears.

17.3. Cases N° 20 and 21 (spouses). Refugee Record: 918-05C01227. During a previous detention, on 17th September 2005, the wife, although six months pregnant, was beaten, along with her husband. After this assault, she became ill at the police station and was taken to the hospital, where she remained for three weeks, giving birth to a dead child. Since that time she has suffered psychological problems. For this reason, during the detentions on 23rd December, her husband hid her in a wardrobe. He was arrested and taken to the police station, where he was beaten. During the interview in which he gave testimony, blows and marks could clearly be seen on his back. His wife, who was pregnant again, has aborted.

17.4. Case N° 23, Refugee Record: 918-06C00347. This person suffers from asthma and his left arm is paralysed. He was detained and the police threw away the medicines and medical reports that he showed them.

17.5. Case N° 26, Refugee Record: 918-06C00414. Realising that the police were coming, he hid his belongings and hid himself. He was found by an agent in military uniform, who beat him on the back until he lost consciousness.

17.6. Case N° 38, Refugee Record: 918-06C00250. Having taken her refugee document, the police who detained her in her home stated that she could not leave without it. They beat her and dragged her into the police van, injuring her knees in the process.

17.7. Case N° 40, Refugee Record: 918-05C00026. When taken to the police station, this detainee suffered an anxiety attack, which resulted in convulsions and loss of consciousness. The Moroccan police themselves called an ambulance for the trip to the hospital.

18. After being violently forced into the military trucks and police vans following the detentions, the detainees began the trip to the police station. Some policemen beat them hard, whilst other testimonies state that they ceased to hit them. A large number of the testimonies indicate the theft of mobiles, watches and money on the part of the very policemen who were guarding them (Case N° 38, 500 dirhams in material that had been provided by Caritas). The detainees insisted on speaking to the head of the police station so that they could show him their UNHCR documents, but no heed was paid to these calls and none of them were able to talk to him. They were not taken to any court either. In no case were they provided with legal assistance during their time at the police station. Six buses were parked at the gates to the police station, which did not depart until the police had counted the number of persons in each bus. During this operation, ten of the detainees managed to escape.

V. THE JOURNEY FROM RABAT TO THE ALGERIAN BORDER CLOSE TO OUJDA.

19. The 240 detainees, including the 42 refugees who provided testimony for this report, were arrested in various neighbourhoods of Rabat, assembled at the police station of

Aynnada and forced to board six buses, which departed in the early morning, splitting into three groups of two buses. From the moment they were detained until three o'clock in the afternoon, they were given nothing to eat or drink. At three o'clock they were given bread and water. They were not allowed to urinate before embarking on the journey, being told to do so in the plastic bottles they had and then to throw them from the bus when it was moving.

20. The first group of two buses reached Oujda at around 6.00 p.m. on 24th December. A number of television journalists were already there, who filmed the arrival and even boarded the buses in order to film the occupants. Another group reached the border zone directly, without passing through Oujda, which is 25 kilometres away, at around 8.00 p.m. The detainees were abandoned there in the middle of the desert, without protection, without warm clothing, without food and without blankets. The last group also reached the border area at around 12.00 a.m., suffering the same conditions as the rest of the deportees.

VI. THE STAY AT THE BORDER.

21. Upon arrival, they were forced by Moroccan soldiers to form groups of three or five, depending on their time of arrival and the number of persons there were to disperse. Grouped together in this way, they were threatened with being shot upon from Moroccan positions if they attempted to return to Morocco. Warned that the threat would be made real, they were violently forced to walk towards the Algerian border. In some cases, the refugees stated that the soldiers who forced them to walk stole the few belongings they still had on them, even their shoes.

22. When they reached the border with Algeria and tried to enter the country, they came across Algerian soldiers who fired their guns in the air, arrested them and attempted to rob them. When the Algerian soldiers realised they had nothing to steal, they beat them and forced them to return to Moroccan territory.

23. The majority did not have any clothing or even shoes. The refugees who underwent this torment included two women (Cases N° 1 and N° 42), one of them a girl (see paragraphs --- and ---) and a boy (Case N° 5), who, upon finding themselves alone when returning to Moroccan territory and being frozen with cold, were permitted by Moroccan soldiers to sleep on the floor of a sentry post.

24. During their return to Oujda, unable to enter Algerian territory, they came across groups of English-speaking blacks (various testimonies claim that they were of Nigerian nationality) who beat them and robbed them, raping one of the women (see paragraph 33).

VII. THE RETURN TO OUJDA ON THE NIGHT OF THE DEPORTATION.

25. Lost in the middle of the desert, prevented from entering Algeria and attempting to avoid the Moroccan soldiers who threatened to shoot them if they tried to return, they had no other choice but to walk back to Oujda. In one case, a woman suffered an asthma

attack (Case N° 1) on the way and, thanks to a group of Congolese, was able to reach the church at Oujda and be helped by Médecins Sans Frontières (MSF). The extreme cold in the desert at night had traumatised them, given that they did not have any adequate clothing, they had not eaten properly for 24 hours and many of them were bare-footed, either because they had lost their shoes or because they had been robbed of them by Moroccan or Algerian soldiers.

26. The majority who returned to Oujda remained there, at the university or at the enclosure belonging to the Catholic Church, for a period of between four and ten days. They were able to eat once a day, thanks to MSF and a Moroccan association. MSF also provided shirts and blankets and other warm clothing. The share-out, shortages, cold and hunger led to clashes between various individuals staying at the enclosure.

27. The Moroccan police attempted again to detain the refugees who had sought refuge at the university, but they did not manage to do so.

VIII. THE RETURN TO RABAT.

28. All of the interviewees from whom we have obtained testimony managed to return from Oujda to Rabat through great trials, tribulation and suffering. They started to arrive back between 27th and 31st December, according to our information. All were obliged to walk for a number of days. Some of them walked to Fez and then travelled from there by train or hidden in the trucks of Moroccan traders, whom they paid with money or possessions in order to reach Rabat. They walked at night and remained hidden during the day in order to avoid police checks and the gendarmerie. Others chose back-routes that were hardly used for the same reason. In one case, four individuals went to Kayoun and waited there for a goods train that they managed to board, three of them later being detained by the police who were guarding the convoy. One, however, managed to hide and to reach Rabat. Several individuals chose to go to Naima, but there they were arrested and taken to the Algerian border, back to the place where they had started. Others walked to a small town and then took a train to Kenitra, from which point they continued on foot to the Moroccan capital.

29. When they reached their homes in Rabat, the majority, the immense majority, not to say all of the interviewees, stated that they had been robbed of all their belongings, which had been stolen by neighbours or unknown persons. In many cases, the owners of the accommodation they rented refused to renew their lease due to fear of the police, which meant they were left on the streets. One of the interviewees has declared that, as a result, up to 40 persons are living in an inappropriate dwelling.

IX. WOMEN WHO WERE RAPED DURING THE PERIOD BETWEEN THE DETENTIONS AND ARRIVAL AT THE UNIVERSITY OF OUJDA FROM THE ALGERIAN BORDER.

30. Within the group of almost five hundred black people of Sub-Saharan origin who were detained and deported to the Algerian border, various rape cases were reported by

women, some of whom have become pregnant as a result. We shall restrict ourselves to the cases we have been able to identify, women who provided direct testimony to the interviewers.

31. These women correspond to the following record details: Case 1, (CWK, of Congolese origin, who requested asylum in 2005, but has yet to be called for an interview at UNHCR); Case 42, corresponding to the official UNHCR Record 918-06C01385 (PMM, Angolan).

32. Case 1. She is a 27-year-old woman from the Democratic Republic of the Congo. Her declaration regarding the rape refers to the night of 24th to 25th December, when she was returning from the Algerian border where the detainees had been forced to walk by Moroccan soldiers. The Algerian soldiers prevented the detainees from entering the country and forced them to return to Morocco. The refugees walked in search of the way to Oujda in a group, but, as a result of the fact that she lagged behind the rest, she lost sight of the men she was walking with. She came across three men, who turned out to be Moroccans. They seized her and forced her to take off her trousers. All three of them raped her, one after the other. Although there was not anyone there to hear her screams, they threatened to kill her if she continued screaming. They were armed, carrying machetes. They left her where she was. Finally she started walking and linked up with a group of Congolese, with whom she managed to find the way to Oujda, suffering an asthma attack on the way, which was treated by MSF. When she told them she had been raped, MSF carried out a urine test, but they could not extract any blood due to the fact that they could not locate her veins and she was very weak. The refugees slept at the church in Oujda and the following Thursday they reached Rabat, because the organisations decided to send the women and the ill first. The testimony provided by ST (Case 14, 918-00002886) enables us to confirm some of the aspects of the declaration made by CWK, in which case we are dealing with a rape carried out by three Moroccan soldiers.

33. Case 42 corresponds to the official UNHCR Record 918-06C01385 (PMM, of Angolan origin). A minor, born in 1990, her parents and brothers and sisters died in the successive wars that the country has suffered. She reached Morocco on 27th October 2005. She told the interviewer that she had been raped on repeated occasions by different groups of men. She was detained in the street on 23rd December and deported to the Algerian border. On the night of 24th to 25th she began walking with a group of Congolese detainees but the group was prevented from entering Algeria by Algerian soldiers. However, during the return journey she was seized by a group of English-speaking black men and raped whilst the rest of the Congolese group escaped after being attacked. When the attackers left, she walked on her own until she was able to join another group of Congolese, reaching Oujda on 25th December. MSF took her to the hospital because she also had an injured foot. Among the women who left Oujda first, she reached Rabat on 29th December. The same organisation found a room for her in the home of a Congolese woman.

B. LEGAL REASONINGS.

First pleading of CRC-CEAR Legal Department: The Moroccan Security Forces which participated in the detentions and transfers violated the provisions contained in the applicable legal instruments.

Legal Framework

- **African Charter on Human and People’s Rights**, 1981.
- *The United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, proclaimed by the United Nations General Assembly on 20th November 1983.
- **Universal Declaration of Human Rights of 10th December 1948**. *Article 5 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*.
- **International Covenant on Civil and Political Rights of 19th December 1966**. *Article 7. “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*.
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- **International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families**.
- **Vienna Convention on Consular Relations**, 24th April 1963.

34. The facts reported and the testimonies offered as proof throughout this plea demonstrate a range of attitudes and actions on the part of the agents of the authority answerable to the Government of the Kingdom of Morocco which violate Article 4 of the **African Charter on Human and People’s Rights** of 1981. Said article stipulates that *“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”*. The testimonies gathered herein irrefutably demonstrate contempt, violence, theft of personal belongings and degrading treatment that force us to denounce not the individual agents who participated in the operation but the government authorities they are answerable to and the Moroccan Government itself, which holds ultimate political and administrative responsibility for such violations. All the above in relation to Article 7.1 of the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, proclaimed by the United Nations General Assembly on 20th November 1983: *“Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution”*. The insults on account of being black, the ill-treatment and the deportations for the same reason have been documented in great detail.

35. Paragraph 2 of Article 9 of the **International Covenant on Civil and Political Rights**, as well as Principles 13 and 14 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, state that any detained person shall, at the moment of arrest, be provided with information on the reasons for the arrest and an explanation of his rights, including guarantees against torture and ill-treatment. The facts and circumstances described in Paragraphs 12 to 18 (both inclusive) clearly show that in this operation the Moroccan Police violated each and every one of the rules contained in the abovementioned articles and principles. The violent acts committed by the police officers during the time of the arrests and the insults to which the detainees were subjected (which we have specified in the abovementioned paragraphs) are examples of this.

36. The police officers were not clearly identified as such, and neither was it made clear which unit they belonged to. There is no record of any signed declarations made by persons detained at police stations, including the reasons for arrest, the time and place of arrest and the identity of the intervening police officers. None of this was carried out. Nothing exists in the police files, reference to which is therefore useless.

37. The arrests we examine refer to foreign citizens, i.e. non-Moroccan citizens whom the Government of the Kingdom of Morocco regards as undocumented immigrants, but for whom it does not accept the protection they are entitled to as a result of having been documented as refugees by the UNHCR's legation in Morocco. Article 16, Paragraph 7 of the **International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families** establishes that the consular authorities of the foreign detainee's State of origin shall be informed without delay of his or her arrest or detention, a guarantee which is provided for in Section b) of Paragraph 1 of Article 36 of the **Vienna Convention on Consular Relations**. Provision of this information without delay to the foreign detainee's consular authority is established in Paragraph 2 of Principle 16 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**. None of these provisions was complied with by the Moroccan Government. None of the enforceable guarantees was respected by the Moroccan Government.

38. Article 14 of the **International Covenant on Civil and Political Rights** and Principle 17 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** regulate prompt access to legal counsel on the part of detainees. Comment N° 20 of the Commission on Human Rights demands that the protection of the detainee also requires that prompt access be given to ... lawyers. Furthermore, Commission on Human Rights Resolution 1994/37 emphasises: "... *That the right to consult a lawyer is one of the basic rights of a person who is deprived of his liberty and that restrictions on this right should therefore be exceptional and always subject to judicial control*" and recalls that "*Security personnel who do not honour such provisions should be disciplined*". The detainees have not had, either in Rabat, on the border or in Oujda, access to a lawyer. This lack of access has not been subject to judicial control. The officers who violated the detained refugees' right to have prompt access to a lawyer have not been reprimanded or subject to any disciplinary punishment whatsoever.

39. The Moroccan authorities have not given the detainees and deportees access to jurisdiction to be able to highlight the circumstances in which the events took place. The United Nations Special Rapporteur on Torture, in his report and recommendations E/CN. 4/2003/68, Paragraph 26 i, stated that “provisions should give all detained persons the ability to challenge the lawfulness of the detention, e.g. through habeas corpus or amparo. Such procedures should function expeditiously”.

40. The ill-treatment received during the detention and the transfer, the physical violence perpetrated in certain cases as described above, the absence of food and water throughout the period of detention and the journey to the place of deportation, the theft committed by the security and military forces and reported by the refugees, and the destruction of their documents and belongings, all directly violate the provision laid down in Article 10 of the **International Covenant on Civil and Political Rights**, according to which “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*”. The United Nations Commission on Human Rights, in its **General Comment N° 29 on Article 4**, has established that said article and the principle codified therein should be interpreted as “**a norm of general international law not subject to derogation**”. Likewise, Article 5 of the **African Charter on Human and People’s Rights** of 1981 states that: “*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited*”.

41. On 5th February 2004, the United Nations Committee against Torture published its “**Conclusions and Recommendations: Morocco**”, deriving from the 31st Session, 10th – 21st November 2003. The following extracts are taken from the English version (original in French):

“C. Subjects of concern. 5. The Committee expresses concern about:

.....

d) The increase, according to some information,..... in the number of allegations of torture and cruel, inhuman or degrading treatment.....

f) The application to acts of torture of the prescription period provided for by ordinary law, which would appear to deprive victims of their imprescriptible right to initiate proceedings.

g) The non-existence of a provision of criminal law prohibiting any statement obtained under torture from being invoked as evidence in any proceedings.

.....

i) Prison overcrowding, and the allegations of beatings and violence among prisoners.

D. Recommendations. 6. The Committee recommends that the State Party (i.e. Morocco):

a) In the context of the ongoing reform of the Criminal Code, include a definition of torture which is fully consistent with the provisions of Articles 1 and 4 of the Convention.

b) In the context of the ongoing reform of the Criminal Code, clearly prohibit any act of torture, even if perpetrated in exceptional circumstances or in response to an order received from a superior officer or public authority.

.....”

42. A simple reading of the Committee’s conclusions, albeit only the extracts we have selected for the sake of brevity, demonstrates what is common knowledge: the existence

of torture and ill-treatment in the Kingdom of Morocco and the practice of such Convention-prohibited forms of conduct in the security, penitentiary and even judicial spheres of said State.

Second pleading of the CRC-CEAR Legal Department: The government authority (and therefore political authority, given the non-democratic structure of the Kingdom of Morocco) which ordered the intervention of the Security Forces in the events described above knowingly violated the provisions contained in the international instruments concerning protection of refugees, asylum-seekers and forcibly displaced persons signed by the State Party.

Legal Framework

- **Convention Relating to Status of Refugees, adopted in Geneva on 28th July 1951.** *“Article 33. Prohibition of Expulsion or Return. I. No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.*
- **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Spain on 19th October 1961.** *“Article 3.1. No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2.- For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.*

43. The Kingdom of Morocco signed the UNO Convention relating to refugees in 1956; it signed the 1967 Protocol in 1971; the Organisation of African Unity’s 1969 Convention on refugees was ratified in 1974 (*it is necessary to emphasise in this respect that in 1984 Morocco abandoned the OAU and, consequently, its obligations undertaken with said Organisation*). During 1979 it was a Member of the Executive Committee of the High Commissioner’s Programme. We are, therefore, dealing with a State which has carried out responsibilities in the UNHCR and has signed and ratified agreements in favour of refugees.

44. The individuals whose testimonies we have examined thoroughly have requested protection at the UNHCR office in Morocco. Thirty-eight of them are documented with numbered UNHCR records. These individuals have been arrested, beaten in some cases, robbed in others, ill-treated in most cases, deported and harassed by security officers answerable to the Moroccan Government. The UNHCR, in its “Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers”, has declared that the **detention of asylum-seekers is inherently undesirable**. We are dealing with individuals whose documentation proves their **UNHCR refugee** status:

Ce document certifie que la personne susmentionnée a été reconnue comme réfugié par le Haut Commissariat des Nations Unies pour les réfugiés à Rabat, conformément à son mandat.

En tant que réfugié il (elle) relève de la compétence du HCNUR et doit notamment être protégé contre tout retour forcé vers un pays où il (elle) s'expose à des menaces sur sa vie et sa liberté. Toute assistance accordée à la personne susmentionnée serait hautement appréciée.

45. A brief perusal of the related facts shows the Moroccan State's failure to fulfil its international obligations relating to refugees. Although responsibility for such failures is solely attributable to the Government of the Kingdom of Morocco, it is not possible to forget and sidestep the responsibility directly incumbent upon Spain and the European Union in relation to what has occurred systematically with refugees in Morocco. In this respect we cite one of the concerns expressed by Amnesty International in its document entitled **Amnesty International's Concerns and Recommendations for the Directorate General of Internal Policy of the Spanish Ministry of the Interior** in connection with the reform of Law 5/1984, of 26th March, concerning the Right of Asylum and Refugee Status, in keeping with the Directives of the European Union (Council Directive 2003/9/EC of 27th January; Council Directive 2004/83/EC of 27th April):

“The organization has expressed on various occasions its concern about the European Union's current policy of signing immigration control agreements with third countries of transit, as well as readmission and association agreements. The dominant logic of this policy – within the so-called “external dimension” of EU asylum policy – is that the countries of transit, with the support of the EU, increase the capacity to control their borders and thereby limit the secondary movements of asylum-seekers and immigrants towards the EU”.

46. Of the various statements made in **Conclusion N° 44/1986 (37th Session of the Executive Committee of the UNHCR)**, we highlight the following: “a) *Noted with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation*”, which leads us to confirm that, as far as Morocco is concerned, the situation remains exactly the same in relation to detentions of refugees, despite the fact that the Moroccan State has had more than enough time (20 years) to study and apply such recommendations. “d) *Stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers and that of other aliens*”; once again, the testimonies compiled and the documents consulted and summarised in this plea show that the Kingdom of Morocco not only fails to take into consideration the above-mentioned points from the 37th session of the UNHCR's Executive Committee, but also disregards, destroys and attaches no legal value to the very documents which recognise and protect refugees. In the incidents described earlier in this document we can clearly observe the sarcasm with which the Government of the Kingdom of Morocco complies with the following section of Conclusion 44: “*Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies*”.

C. REFERENCE DETAILS

This legal judgement has been prepared by the undersigned lawyer, Member N° 1731 of the Bar Association of Huelva (Spain) and N° 100494 of the International Criminal Bar of the Hague (Holland), Alberto J. Revuelta Lucerga, who expressly waives any type of fee from individuals or legal entities, private or public.

It has been produced at the request of the René Cassin Committee, a non-profit entity registered in the Spanish Ministry of the Interior's National Register of Associations with N° 124.673, and in compliance with the agreement reached by the Joint Management Committee of the Spanish Commission for Refugee Aid (CEAR) in Andalusia, Ceuta and Melilla on 10th January 2007.

The factual basis of this document is the result of the work of various members of humanitarian organisations working in direct contact on the ground with the refugees whose details are mentioned herein.

Seville, 16th February 2007.