

CASE REPORT _____

The Spanish-Moroccan land border in Melilla – A lawless zone of automatic expulsions

On 13 August 2014, a group of sub-Saharan Africans – some fleeing conflict zones – managed to reach Spanish territory at night using one of the few routes available to them: scaling the fence between Morocco and the Spanish enclave [Melilla](#).

When they entered Spanish territory, most were stopped by the Spanish Guardia Civil – the Spanish paramilitary police – within the Spanish border fence structure. Spanish authorities then asked Moroccan security forces within this fence structure to “take back” these individuals. Some who had not climbed high enough suffered extreme violence and disappeared into the hands of Moroccan security forces. Others escaped ill-treatment by balancing on top of the fences, waiting to be identified and processed in accordance with Spanish immigration law. Their claims remained unheard. No one asked them who they were, where they came from or why they were there. Hours went by until, exhausted and thirsty, they came down, one by one. Without exception, each was handcuffed, escorted through the border fence structure and handed over to the Moroccan authorities. They were given no due process, nor the opportunity to challenge their expulsion.

It is reported that on that day, over 70 unidentified individuals were summarily expelled into Morocco. No one knows how many of them would have been entitled to international protection.

The incident on 13 August 2014 is not an isolated case. Spanish authorities do not keep records of these automatic expulsions, so no figures are available. However, sporadic media reports indicate a minimum of 1000 summary deportations in 2014 alone.

The European Center for Constitutional and Human Rights ([ECCHR](#)) has worked with communities of undocumented migrants since 2014, considering potential legal interventions against the practice of push-backs at EU borders, and assisting affected persons with individual legal proceedings.

Spain's unlawful policy of automatic expulsions at the Moroccan land border

Melilla's Spanish side of the land border with Morocco has a structure comprising three fences of six, three and six meters tall respectively. This border fence structure is located on Spanish territory, and remains under Spanish authorities' control at all times. Only they can open its gates.

Spain acknowledges that its territory includes the border fence structure. Yet, it claims that to enter Spanish territory, another line – which it calls “the operative border” – must be crossed. This “operative border” is not strictly defined and moves from case to case, allowing the authorities to argue that a person has not entered Spanish territory, thus depriving them of the protection awarded under national and European law. These individuals are simply walked back to Morocco from where they stand on Spanish territory.

This practice is known as “hot returns” or “push-backs,” and has been in place since 2005. On the day of the reported collective expulsion in August 2014 through April 2015, the practice had no legal basis in Spanish law, relying only on a Ceuta and Melilla Guardia Civil internal “operative protocol” that gave instructions to automatically and summarily expel everyone who had not crossed the ad hoc “operative border.”

Push-backs have been strongly criticized by international institutions and NGOs. The practice triggered several clear statements from the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, about the unlawfulness of these automatic expulsions under human rights and international law. EU Home Affairs Commissioner Cecilia Malmström also called the practice a “violation of EU legislation.” These concerns were shared by the UN Refugee Agency (UNHCR) and the Council of Europe's Committee for the Prevention of Torture, which highlighted the associated danger of ill-treatment by Moroccan security forces during and after push-backs.

Despite widespread regional and international condemnation, Spanish authorities continued collective expulsions at the Spanish-Moroccan border. The Spanish government proceeded to give the practice a legislative basis. The [Organic Law](#) on the Protection of Public Safety (*Protección de la Seguridad Ciudadana*) entered into force in April 2015, and stipulates that individuals found trying to cross the Ceuta or Melilla territorial borders “may be rejected in order to prevent their illegal entry into Spain” (Article 75). This law and its negative repercussions on human rights have sparked heavy international criticism. Moreover, it was challenged for its unconstitutionality in front of the [Spanish Constitutional Court](#),

and several political parties proposed legislative amendments (see [here](#), [here](#) and [here](#)).

People continue to try to cross the fences in Ceuta and Melilla, and the Spanish authorities continue to return them without examining their personal circumstances. Similar practices occur at the Spanish-Moroccan maritime border – with lethal consequences. Several women died during an unlawful push-back operation in September 2017.

The EU outsources human rights violations against migrants and refugees to Morocco

Research by local and international NGOs, and video footage confirm that automatic expulsions of sub-Saharan individuals at the Melilla border fence frequently result in their severe mistreatment by Moroccan forces. This ill-treatment is both preventive and punitive, and involves a very high level of violence. This is known by members of the Spanish forces and sometimes happens in their plain view, as in the case of 13 August 2014.

This violence is part of a wider problem in Morocco. EU partnership agreements have been criticized for focusing on fighting immigration without ensuring that partner countries put appropriate mechanisms in place. In Morocco, this partnership translates into increased institutionalized racism, and widespread mistreatment of and targeting undocumented sub-Saharan refugees and migrants, through raids accompanied by severe violence, theft, and destruction of property, including passports and other documents.

This abuse was described as both institutional and systematic, and has led the UN Committee on Migrant Workers to voice concern. Regarding the persecution of sub-Saharan communities in the informal camps around Melilla, the UN Special Rapporteur on Torture said that the evidence “suggested a pattern of systematic abuse of sub-Saharan migrants.”

Despite these alarming reports, the EU and Spain continue to intensify their border externalization policies, circumventing their obligations under the European Convention on Human Rights. After Spain was strongly criticized for its land push-backs in Ceuta and Melilla, Morocco initiated a series of measures. The razor wire fences that were taken down in response to public outcry on the Spanish side reappeared on the Moroccan side. Furthermore, Moroccan forces have conducted a systematic policy of persecuting sub-Saharan migrants in the Nador and Tangier regions near Ceuta and Melilla. The informal camps where sub-Saharan communities lived in the Nador region were destroyed. Some community

members were unlawfully detained, others were simply displaced. Persecution continues in Tangier, and has already resulted in several deaths.

The European Court of Human Rights rules on Spanish push backs

Due to their precarious legal status and resulting underground life, undocumented migrants are generally excluded from the justice system. This makes them especially vulnerable to grave human rights violations.

Despite their extreme vulnerability and precarious situations in both Morocco and Spain, two individuals who were summarily and collectively expelled on 13 August 2014 came forward and submitted their case (*N.D. and N.T. vs. Spain*, 8675/15 and 8697/15) to the European Court of Human Rights (ECtHR). They were represented by ECCHR's partner lawyers, Gonzalo Boye from Madrid and Carsten Gericke from Hamburg.

In their submission to the European Court of Human Rights, the migrants argued that their summary expulsion was in breach of the absolute prohibition on collective expulsion in Protocol 4 of the European Convention on Human Rights ("the European Convention"), which Spain has ratified. They also asserted that in light of Moroccan authorities' prior violence against others stuck in the border fence structure, and widespread reports of Moroccan forces' severe ill-treatment of sub-Saharan migrants around Melilla, their summary expulsion to Morocco, directly into the hands of Moroccan forces, exposed them to a risk of inhuman treatment, in contravention of Article 3 of the European Convention. Finally, they contended that because they had no access to administrative or legal processes to challenge their expulsion, as provided under Spanish law, their right to an effective remedy, as protected under Article 13 of the European Convention, was breached.

In its October 2017 judgment, the ECtHR's Third Section found a violation of European Convention Article 4 Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy). This judgment confirmed that automatic expulsions at the Spanish-Moroccan border are unlawful, and reaffirms that the European Convention applies at borders, its safeguards also protect migrants, and push-backs violate the Convention. This judgement makes *N.D. and N.T. vs. Spain* an important precedent in the enforcement of the right to have rights of refugees and migrants.

Last updated: February 2020

European Center for Constitutional and Human Rights (ECCHR) e.V.

www.ecchr.eu