

CASE REPORT ---

No rights for unaccompanied minors at the Spanish-Moroccan land border in Melilla

Spanish authorities apprehend and summarily deport unaccompanied minors to Morocco without a procedure to identify them and protect their rights. One of these border operations was recorded in the summer of 2014 in a [video](#) showing the push-back of an unaccompanied minor at the Melilla fence structure.¹ Despite assertions from the Spanish government that children and pregnant women would not be subjected to automatic push-backs – conducted since 2005 and also known as “hot returns”, “devoluciones en caliente” or more recently “rechazos en frontera” – this practice is in fact indiscriminate and no exceptions are being made.

ECCHR supports an individual communication against Spain on behalf of the unaccompanied Malian minor D.D., submitted to the UN Committee on the Rights of the Child in November 2015. The communication challenges D.D.’s unlawful return from Spain to Morocco and seeks to reclaim the fundamental rights of unaccompanied minors at the borders of the European Union. In June 2017, the Committee on the Rights of the Child decided to examine the admissibility of the communication together with its merits.

The summary deportation of D.D. in December 2014

D.D. had to leave his home due to the armed conflict in Mali when he was around 14 years old. Since early 2014, he survived alone in Morocco. He found refuge and protection amongst the Sub-Saharan communities living in self-organised camps on Mount Gurugu, who knew him as “*bambino*” (Italian word which designates a small child). He slept in the forest under a shelter constructed out of branches and plastic, lacking direct access to clean water and nutritious food, as well as health services and education. In March 2014, a few months after arriving in the Mount Gurugu camps, he attempted to cross the fences separating Morocco from Melilla. He was violently prevented from doing so by

¹ The video was published by the Melilla-based NGO [PRODEIN](#) campaigning for the rights of refugees and migrants who attempt to cross the Spanish-Moroccan border.

members of the Moroccan forces, who hit him in the mouth with a wooden pole and broke his front teeth. He fell to the ground, and the Moroccan forces continued to hit him. Eventually he escaped, and had to walk back up the mountain alone, bloodied and in pain. He did not receive any medical treatment. Moreover, he experienced several raids by the Moroccan security forces, who regularly destroyed the informal camps on Mount Gurugu and used violence to force their inhabitants to leave.

Months and several attempts later, D.D. managed to reach the top of the third fence of the Spanish-Moroccan land border at Melilla in December 2014. He was still terrified of the Moroccan security forces and what might happen to him in their hands. So he stayed on top of the 6 meters high fence for several hours, without access to water or food, in the hope that someone would help him. The *Guardia Civil*, Spain's paramilitary police force, was positioned on the other side of the fence, immediately pushing back the individuals who came down the fence. The *Guardia Civil* had no interest in either D.D.'s age or his well-being. Their paramount interest was to prevent everybody from entering and staying on Spanish territory. Eventually, the exhausted 15-year-old minor climbed down the fence. He stepped on Spanish ground, outside of the fence structure. The *Guardia Civil* immediately grabbed and handcuffed him, escorted him through the fence structure and handed him over to the Moroccan forces.

D.D. was not identified and thereby denied an opportunity to explain his age and his personal circumstances. He had no possibility to object to his summary deportation or to claim protection as an unaccompanied minor. This is a clear violation of his rights under the Convention on the Rights of the Child (CRC) and in utter disregard of the principle of the best interest of the child.

Indiscriminate automatic expulsions from Spain to Morocco in violation of the Convention on the Rights of the Child

Immediate expulsions are part of a systematic practice at the external borders of the European Union in general and at the Spanish borders specifically. D.D.'s push-back is illustrative of Spain's policy at the Spanish-Moroccan border. At the time of the 15 year-old minor's push-back, this Spanish practice was grounded on an internal "operative protocol" of the *Guardia Civil*. This protocol does not refer to any procedure which would ensure that the rights of unaccompanied minors are protected. Spain is bound to respect the rights of minors, as defined in the UN Convention on the Rights of the Child which Spain has ratified. These obligations – like many others under the Refugee Convention,

the European Convention on Human Rights and EU law - are disregarded by Spain in its North African enclaves, turning these spaces into lawless zones devoid of human rights. In addition, in March 2015, Spain passed the [Organic Law](#) on the “Protection of Public Safety” (Protección de la Seguridad Ciudadana) legalizing the indiscriminate summary deportations from Ceuta and Melilla. Again, the amended legal provisions do not contain any procedures to identify and protect unaccompanied minors from direct push-backs to Morocco.

The [Committee on the Rights of the Child](#) has already raised its concerns about the situation of unaccompanied migrant and refugee children in Morocco. In its concluding observations from October 2014 it highlights that “procedural safeguards to identify and determine the best interests of these children have not been developed” and that Morocco “does not provide these children with any type of assistance and protection”.² Due to the lack of state support, unaccompanied minors often have no option but to live in makeshift tents in informal camps without access to basic provisions. In addition, the Committee has noted the lack of access to health services.³

Sub-Saharan individuals in Morocco are exposed to systematic abuse and mistreatment, particularly in the zones close to the border. Moroccan security forces conduct raids, destroy property, and inflict violence on non-citizens trying to survive in precarious environments - regardless of their age. The violence is particularly reckless during and after indiscriminate summary deportations at the Melilla border fences. It includes stone throwing, the use of metal and wooden tools, collective beating, direct blows to the head and breaking of limbs. This ill-treatment is both preventive and punitive. The [European Committee for the Prevention of Torture](#) and Inhuman or Degrading Treatment or Punishment visited Melilla in July 2014 and concluded: “In the light of the risk of ill-treatment by members of Moroccan Auxiliary Forces of irregular migrants returned to Morocco, the CPT recommends that the Spanish authorities ensure that no person is handed over to them.”⁴ Nevertheless, the automatic expulsions from Spain to Morocco continue until today.

² Concluding observations on the combined third and fourth periodic reports of Morocco, Committee on the Rights of the Child, 14 October 2014, CRC/C/MAR/CO/3-4, § 62

³ Ibid.

⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Spanish Government on the visit to Spain carried out by the CPT from 14 to 18 July 2014, p.23

Unaccompanied minors at European borders encounter violence instead of protection

D.D.'s case does not constitute an isolated incident. The plight of unaccompanied minors at EU borders has been systematically neglected. The lack of specialized protection for unaccompanied migrant children is not only a long-standing problem, but also a more and more common one. In April 2017, the [European Commission](#) stated that “a growing number of children in migration have arrived in the EU, many of them without their families.” Indeed, [Eurostat](#) reported that the 12,725 asylum applications from unaccompanied minors in the EU in 2013 almost doubled to 23,150 in 2014 and more than tripled to 96,465 in 2015. Notably, the official figures on unaccompanied minors applying for asylum do not accurately represent the number of unaccompanied minors affected. According to the [European Council on Refugees and Exiles \(ECRE\)](#), while 12,725 unaccompanied minors had applied for asylum in 2013, another 12,770 had not done so; meaning the number of unaccompanied minors claiming asylum matched the number of those who did not. Significantly, there is no reliable or accurate data on the number of unaccompanied minors who have not been registered by Member States.

Unaccompanied minors are particularly vulnerable to abuse throughout their migratory trajectory, as emphasized by the [UN Committee on the Rights of the Child](#), [UNICEF](#), [Human Rights Watch](#), the [NGO Committee on Migration](#) and the [UK House of Lords EU Committee](#). Children in migration are at a heightened risk of violence, sexual exploitation, child labor, detention, discrimination, as well as insufficient access to food, shelter, housing, health services and education.

At the external border of the European Union, unaccompanied minors encounter additional forms of institutionalized violence instead of protection. Unaccompanied minors are often not identified, immediately returned after entering European territory, prevented from accessing asylum services, detained, and repeatedly subjected to physical and psychological violence. These forms of ill-treatment are administered systematically at the external(ised) and internal borders of the European Union ([Greece](#), [Balkan states](#), [Hungary](#), [France](#), inter alia). The dismal treatment by European authorities does not cease after territorial lines are crossed. Inside the European Union, unaccompanied minors face deplorable reception conditions, are subjected to invasive age assessments, often unable to access legal advice, barred from family reunification, faced with distrust, and suffer from the fear of being returned.

The [*CRC General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*](#) stipulates safeguards in light of these dangers faced by unaccompanied and separated children. Based on the Convention on the Rights of the Child (CRC), the General Comment asserts the need for an initial assessment based on the best interest of the child; the first and most crucial step to guarantee their protection. This assessment must include identification, registration, assessment of international protection needs, issuance of identity documentation and tracing of family members. As State Parties to the CRC, EU Member States are bound to fulfill their duties with respect to the principle of the best interest of the child. However, the case of D.D., together with extensive reports from national and international human rights organisations, demonstrate that European states are failing to protect the rights of unaccompanied minors.

D.D.'s communication calls upon the UN Committee on the Rights of the Child to rule on unaccompanied minors at the Melilla border for the first time

Despite the well-documented absence of minors' protection at the Spanish-Moroccan border, this issue has never been addressed by an international court or tribunal. However, in April 2014 a new mechanism of individual communications in front of the UN Committee on the Rights of the Child entered into force. This new procedure allows minors to complain to the Committee for violations of their rights under the UN Convention on the Rights of the Child.

ECCHR supports an individual communication against Spain, which was submitted on behalf of the unaccompanied Malian minor D.D in November 2015 by ECCHR's German cooperation lawyer Carsten Gericke and Madrid-based minors' rights NGO *Fundación Raíces*. The communication to the UN Committee on the Rights of the Child addresses D.D.'s unlawful return by Spanish authorities and the risk of inhuman and degrading treatment he was thereby exposed to. It also criticizes Spain's failure to take into account D.D.'s best interest and to identify and protect him as an unaccompanied minor.

The communication argues that this treatment violated Article 3, 20 and 37 CRC. In the first place, the Spanish authorities violated Article 3 because they failed to take into consideration the best interest of the complainant child. Secondly, D.D. was not given special protection and assistance by the Spanish state despite being temporarily or permanently deprived of his family environment, in violation of Article 20 CRC. Thirdly, D.D.'s treatment breaches Article 37 CRC

because the Spanish authorities exposed him to the risk of torture or other cruel, inhuman or degrading treatment or punishment by returning him to Morocco. In June 2017, the Committee on the Rights of the Child decided to examine the admissibility of the communication together with its merits.

Over the past years, ECCHR has initiated various legal interventions against push-back practices in Europe, funded by *Brot für die Welt* and *ProAsyl*. ECCHR supported several legal proceedings against push-backs at the Spanish-Moroccan borders in Ceuta and Melilla, as well as at the Greek-Macedonian border near Idomeni. The case of [*N.D. and N.T. v. Spain*](#) was brought to the European Court of Human Rights by two individuals from Mali and Ivory Coast in February 2015 in order to challenge the Spanish practice of automatic expulsions in Melilla. The case of [*A.A. and Others v. the former Yugoslav Republic of Macedonia*](#) submitted in September 2016 addresses the push-backs at the Greek-Macedonian border following the closure of the Balkan corridor and was communicated by the European Court of Human Rights in January 2017. These interventions seek to reclaim the right to have rights with and for those who are denied their fundamental rights at the borders of the European Union.

See also:

[Table of pending cases before the Committee on the Rights of the Child](#)

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