

CASE REPORT _____

D.D. v. Spain: Automatic expulsions of minors at the Spanish-Moroccan land border violate children's rights

Spanish authorities apprehend and summarily deport unaccompanied minors to Morocco without a procedure to identify them and protect their rights. Despite assertions from the Spanish government that children 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. Supported by ECCHR, D. D., an unaccompanied minor from Mali, submitted a complaint against Spain to the UN Committee on the Rights of the Child. The individual communication challenged D.D.’s unlawful return from Spain to Morocco in December 2014. In February 2019, the Committee ruled that Spain violated its obligations under the UN Convention on the Rights of the Child. The decision sets a precedent for the protection of the rights of unaccompanied minors not only at the Spanish-Moroccan border, but at land borders in general.

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-organized 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 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 six 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.

Indiscriminate automatic expulsions from Spain to Morocco in violation of the UN 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. 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 At the time of D.D.'s push-back in December 2014, 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

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.

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 (CRC) 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

EU institutions and states seek to outsource border violence to Moroccan authorities. 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 (CPT) 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

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

³ *Ibid.*

is handed over to them.”⁴ Nevertheless, the automatic expulsions from Spain to Morocco continued.

The Committee on the Rights of the Child condemned the indiscriminate summary deportations in the course of its examination of Spain’s periodic report under the Convention on the Rights of the Child. The Committee Expert and Rapporteur for Spain Gehad Madi voiced serious concerns during the [Committee’s deliberations in January 2018](#) and stated that “[t]he policy of automatic pushback of refugees to Morocco constituted a violation of the Convention on the Rights of the Child and of the Conventions on Refugees.”⁵ The Committee reaffirmed these concerns in its [Concluding Observations](#) on Spain published in March 2018 and urged Spain to “[e]nd the practice of the automatic pushback of some children, ensuring that all procedures and standards are in accordance with their status as children and with national and international legislation.”⁶

Unaccompanied minors at European borders encounter violence instead of protection

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 an increasingly 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.” [Eurostat](#) publishes annual data on the number of asylum applications from unaccompanied minors in the EU. 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. There is no accurate data on the number of unaccompanied minors who have not been registered.

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.

⁵ Committee on the Rights of the Child, *Committee on the Rights of the Child examines report of Spain*, 22 January 2018, p. 6.

⁶ Committee on the Rights of the Child, *CRC/C/ESP/CO/5-6, Concluding observations on the combined fifth and sixth periodic reports of Spain*, 5 March 2018, §44(d).

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(ized) 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.

As State Parties to the CRC, all EU Member States are bound to fulfill their duties with respect to the principle of the best interest of the child. However, the extensive reports from national and international human rights organizations demonstrate that European states are failing to protect the rights of unaccompanied minors.

D.D. v. Spain: The first individual communication against push-backs in front of the Committee on the Rights of the Child

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.

The individual communication of D.D. against Spain was filed in November 2015 by ECCHR's German partner lawyer Carsten Gericke and Madrid-based minors' rights NGO *Fundación Raíces*. D.D.'s communication called upon the CRC to

rule on the automatic returns of unaccompanied minors at the Melilla border for the first time.

A joint [Third Party Intervention](#) supporting the case was filed by the International Commission of Jurists (ICJ), ECRE, AIRE Center and the Dutch Council for Refugees in May 2018. The intervention addressed the questions of jurisdiction, access to territory, specific safeguards for children, *non-refoulement* and collective expulsions, highlighting that “[c]hildren who are subject to the authority or effective control of a State on or at its land border must be granted access to the territory as a prerequisite to the initial assessment process and further afforded the opportunity to meaningfully raise objections to their transfer, as the principle of *non-refoulement* and the prohibition on collective expulsions require.”⁷

Committee on the Rights of the Child affirms fundamental rights of minors and obliges Spain to amend its law on border expulsions

In February 2019, the Committee found Spain’s practice to be in violation of three core rights and principles of the CRC: the best interest of the child (Article 3), the special protection of unaccompanied minors (Article 20) and the prohibition of torture and inhuman or degrading treatment (Article 37), as submitted by the complainant.

In particular, the Committee ruled that the lack of any procedure to identify D.D. as an unaccompanied minor constituted treatment prohibited by Articles 3 and 20. In this regard, the Committee referred to the [CRC General Comment No. 6](#),⁸ which asserts the need for an initial assessment – the first and most crucial step to guarantee any type of subsequent protection. This assessment must include the identification of unaccompanied minors, as well as the evaluation of protection needs and specific vulnerabilities. Concerning the evaluation of the best interest of the child, the Committee underlined that children should be guaranteed the right to “[a]ccess to the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights,” as stipulated in the CMW and CRC Joint [General](#)

⁷ ICJ, ECRE, AIRE Center, Dutch Council for Refugees, *Third party intervention in D.D. v Spain*, 31 May 2018, p. 1

⁸ UN Committee on the Rights of the Child, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, §31.

[Comment No 4/23](#).⁹ In D.D.’s case, the Committee found that the lack of any risk assessment prior to his expulsion violated Articles 3 and 37 CRC. The decision took place in light of D.D.’s past experiences of ill-treatment by Moroccan forces as well as the general situation of violence perpetrated against migrants in Morocco’s border zones.

The Committee’s [decision](#) clearly upholds the complainant’s rights. Notably, the Committee did not accept any of Spain’s misleading claims seeking to dismiss the case on admissibility grounds. As to admissibility *rationae personae*, Spain first stated that the applicant was not a minor and then that he is not the person who was summarily returned by the Spanish authorities, thereby seeking to undermine the applicant’s credibility. As to admissibility *rationae materiae*, Spain tried to mud the issues at stake in this claim by arguing that it is about asylum, a right which is not covered by the Convention. The Committee rejected Spain’s arguments. It found that the official documents submitted on D.D.’s behalf confirmed that the complainant was 15 years old at the time of the events, that he provided a credible and consistent account, and that his complaint did not revolve around refugee protection or asylum but the rights stipulated in Articles 3, 20 and 37 of the Convention.

Last but not least, Spain had also argued that the claimant failed to exhaust domestic remedies, because he did not apply for a visa or asked for asylum in transit countries or the Spanish border post Beni Enzar. In response, the Committee underlined that these concern alleged possibilities before his expulsion and therefore do not constitute an effective remedy against the latter. Further, the immediate execution of the expulsion without any formal procedure implies that there were no effective remedies available. Based on the above, the Committee declared the complaint admissible and examined its merits.

In order to prevent similar violations in the future, the decision obliges Spain to amend the special legal regime authorizing automatic expulsions in Ceuta and Melilla. Furthermore, the Committee ordered Spain to compensate for the harm suffered by the complainant. Thereby, the decision sets a precedent for the

⁹ *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, §17.

protection of the rights of unaccompanied minors not only at the Spanish-Moroccan border, but at land borders in general.

Legal interventions against push-backs at Europe's borders

Over the past years, ECCHR has initiated various legal interventions against push-back practices in Europe, funded by Brot für die Welt and PRO ASYL. 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. 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.

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