

CASE REPORT \_\_\_\_\_

**Spanish-Moroccan land border in Melilla –  
a lawless zone of automatic expulsions**

On 13 August 2014, a group of sub-Saharan individuals – some of them fleeing conflict zones – managed to reach Spanish territory in the darkness of night by using one of the few routes available to them: scaling the fence between Morocco and the Spanish enclave of Melilla.

Once they entered Spanish territory, most of them were stopped by the Spanish *Guardia Civil* within the Spanish border fence structure. Spanish authorities then invited Moroccan security forces within this fence structure to “take back” these individuals. Some, who had not climbed high enough, suffered great violence and disappeared into the hands of Moroccan security forces. Others escaped ill-treatment by balancing at the 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 simply handcuffed, escorted through the border fence structure and handed over to the Moroccan authorities. They were given no due process and no 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 keep no records of these automatic expulsions, so numerical figures are not available. However, sporadic media reports have indicated a minimum total of 1,000 summary deportations in 2014 alone.

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## **Unlawful Spanish automatic expulsions policy at the Moroccan land border**

Melilla is a Spanish enclave which shares a land border with Morocco. This border is marked, on the Spanish side, by a structure comprising three fences in succession of 6, 3, and 6 meters in height respectively. This border fence structure is located on Spanish territory and remains at all times under the control of Spanish authorities who exclusively control the opening of its gates.

Spain acknowledges that its territory includes the border fence structure. Yet, it considers that in order 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 the person has not entered Spanish territory, thus depriving them of the protection awarded under national and European law. As a result, these individuals are simply walked, from where they stand on Spanish territory, back to Morocco.

The practice is known as “hot returns” or “push backs” and has been in place since 2005. On the day of the reported collective expulsion and until April 2015, this practice had no legal basis in Spanish law and relied only on an internal “operative protocol” of the *Guardia Civil* in Ceuta and Melilla which gave instructions to automatically and summarily expel anyone who had not crossed the ad hoc “operative border”.

The use of “hot returns” has been heavily criticized by international institutions and NGOs alike. It triggered several unambiguous statements from the Council of Europe’s Commissioner for Human Rights, Nils Muižnieks, as to the unlawfulness of these automatic expulsions under human rights and international law. EU Home Affairs Commissioner Cecilia Malmström also qualified the practice as a “violation of EU legislation”. These concerns were shared by the UN Refugee Agency (UNHCR) and by the Council of Europe’s Committee for the Prevention of Torture, which highlighted the associated danger of ill-treatment in the hands of Moroccan security forces during and after “hot returns”.

Despite the widespread regional and international condemnation, Spanish authorities continue the collective expulsions at the Spanish-Moroccan border. The Spanish government also proceeded to give the practice a legislative basis when the [Organic Law](#) on the “Protection of Public Safety” (Protección de la Seguridad Ciudadana) entered into force in April 2015. The law stipulates that

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individuals detected while trying to cross the Ceuta or Melilla territorial borders "may be rejected in order to prevent their illegal entry into Spain" (Art. 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 made proposals for legislative amendments (see [here](#) and [here](#)) to be negotiated and agreed in [parliament](#).

Nevertheless, in both Ceuta and Melilla, people continue to try to cross the fences, and the Spanish authorities continue to return them without an examination of their personal circumstances. Similar practices prevail at the maritime border separating Morocco and Spain – with lethal consequences. [Several women died during an unlawful push-back operation in September 2017.](#)

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

Research from local and international NGOs along with video footage confirms 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 plain view of them, as happened in the present case on 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 appropriate mechanisms are put in place in partner countries. In Morocco, this partnership translates into an increased institutionalized racism and widespread mistreatment and targeting of undocumented sub-Saharan refugees and migrants, through raids accompanied by severe violence, theft, and the destruction of property, including passports and documents.

This abuse is described as both institutional and systematic and has led the UN Committee on Migrant Workers to voice its concerns. On the particular campaign of persecution imposed on 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".

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Despite these alarming reports, both the EU and Spain continue intensifying their border management externalization policy, thus escaping their obligations under the European Convention on Human Rights. After strong criticism voiced against Spain in relation to land push backs in Ceuta and Melilla, Morocco took a series of new measures: the razor wire fences which had been taken down on the Spanish side after public outcry now reappeared in front of the border fence, this time on the Moroccan side. Further, Moroccan forces have conducted a systematic policy of persecution of sub-Saharan migrants in the regions of Nador and in Tangier, both located in the vicinity of Ceuta and Melilla. The informal camps in which sub-Saharan communities lived in the region of Nador have been destroyed. Some of the community members were unlawfully detained, others were simply displaced. In Tangier, this persecution campaign continues and has already resulted in several deaths.

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## **For the first time, the European Court rules on Spain's push back practice**

Due to their precarious legal status and resultant underground life, undocumented migrants are generally excluded from justice systems. As such, they are especially vulnerable to grave human rights violations.

Over the past two years, the European Center for Constitutional and Human Rights (ECCHR) in Berlin has been working with communities of undocumented migrants, considering potential legal interventions against the practice of push-backs at EU borders and assisting affected persons with individual legal proceedings.

Despite their extreme vulnerability and the precariousness of their situation, both in Morocco and Spain, two members of these communities who were summarily and collectively expelled on 13 August 2014 had the courage to come forward and submit their case to the European Court of Human Rights. They were represented by ECCHR's cooperation attorneys, Spanish lawyer Gonzalo Boye and German lawyer Carsten Gericke.

In their application to the European Court of Human Rights (ECtHR), they argue that their summary expulsion was in breach of the absolute prohibition on collective expulsion contained in Protocol 4 of the European Convention on Human Rights ("the European Convention"), as ratified by Spain. They also submit that in light of the violence displayed by Moroccan authorities against

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other individuals stuck within the fence structure a few hours earlier, and on the basis of widespread reports of severe ill-treatment of sub-Saharan migrants by Moroccan forces in the areas around Melilla, their summary expulsion back 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 also contended that, because they had no access to any administrative or legal process to challenge their expulsion as provided for under Spanish law, there was also a breach of their right to an effective remedy, protected under Article 13 of the European Convention.

In its judgement from July 2015, the ECtHR decided to consider possible violations of the prohibition of collective expulsion contained in Protocol 4 of the ECHR, and Art 13 ECHR granting the right to an effective remedy. The Court considered additional allegations regarding a violation of Art 3 to be inadmissible.

The Court asked Spain to answer several questions regarding the immediate expulsion of N.D. and N.T. The preliminary decision of the Court in N.D. and N.T. v. Spain (8675/15 and 8697/15) is available [here](#), and questions submitted to the Spanish government are available [here](#). Spain answered these questions and submitted its Observations in January 2016. The Applicants responded in April of the same year with the support of ECCHR, to which Spain responded with further Observations.

In its final judgment in October 2017, the ECtHR found a violation of Article 4 Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) ECHR. This judgment confirms that the automatic expulsions at the Spanish-Moroccan border are unlawful. It reaffirms that the ECHR applies at borders, that its safeguards also protect migrants and that push-back practices violate the Convention.

**The judgment in the case N.D. and N.T. v. Spain therefore sets an important precedent to assert the fundamental right to have rights of persons on the move across borders.**

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