

CASE REPORT _____

Justice for survivors of violent push-backs from Ceuta

On 6 February 2014, approximately 400 people attempted to circumvent the border fence separating Morocco from the Spanish enclave of Ceuta. The Guardia Civil, Spain's paramilitary police force, tried to prevent the group from entering and attacked them with tear gas, rubber bullets and batons. At least 15 people were killed and many more were seriously injured. Those who survived and managed to reach the Spanish side of the beach were immediately pushed back to Morocco.

The violent expulsion operation conducted by the Spanish security forces in cooperation with Moroccan authorities breached Spanish, European and international human rights law. However, there are numerous hurdles to overcome in the struggle for legal and political accountability. Over a year passed before a number of Guardia Civil officers involved in the incident were summoned by the investigating judge in Ceuta. A few months later, she decided to suspend the procedure. However, following an appeal against its closure, the court reopened the investigation. The criminal proceedings form part of the process to challenge the de facto impunity surrounding systematic human rights violations at the Spanish-Moroccan border.

Facts: The lethal Guardia Civil operation in Ceuta on 6 February 2014

Testimonies from survivors and witnesses, together with [official videos](#) released by the Guardia Civil, document the fatal events that occurred in the early hours of 6 February 2014. The Spanish authorities had activated the maximum level of alert, which included mobilising various Guardia Civil units armed with riot gear equipment, in order to prevent a group of around 400 individuals from Sub-Saharan Africa from crossing the border. After a failed attempt by Moroccan border forces to stop the group from reaching Spain, parts of the group managed to enter the water and started advancing to the Spanish side. A number of people tried to wade through the water along the jetty. As the jetty became submerged in water after a few meters, they tried to hold on to its edge. Those who approached the Spanish side were beaten by the Guardia Civil. Nathan, one of the survivors, described how a Guardia Civil officer hit him on the head with a baton and injured his arm (see [article](#) in Süddeutsche Zeitung). Numerous people were using inflatable swimming aids to keep afloat in the water. Several videos document how the officers shot [rubber bullets](#) and [smoke cans](#) to stop them. The survivors described the asphyxiating effects of the gases and the destruction of their floating devices. At least 15 refugees and migrants did not survive the violent attack. Several corpses washed up on the shore on the day itself, others followed in the next days.

Caminando Fronteras, a multidisciplinary collective working with refugees and migrants in Morocco since 2002, collected witness testimonies and documented the deaths and injuries in a [report](#) . One of the survivors describes:

“They [the Guardia Civil] came and started to shoot at our bodies. The shots punctured our floating aids. Suddenly I saw smoke rising up from the water, it was the tear gas they were firing, it suffocated the people. I became unconscious. [...] My friend who was always with me and who came to Morocco with me lost his life” (Caminando Fronteras, pp. 14-15, translation by ECCHR).

The Guardia Civil never alerted the Red Cross or the rescue organization Salvamanto Maritimo. Instead, they immediately pushed back those who reached the Spanish side through a gate in the fence constructed for this very purpose (see [video 1](#), [video 2](#), [video 3](#)). 23 individuals were returned to the Moroccan security forces without an examination of their personal circumstances, without the opportunity to present an asylum claim and without the possibility to object to their immediate return.

Justifications: The statements and rationale presented by the Spanish authorities/GC

The authorities have been eschewing any legal or political responsibility for their actions. In the first of several [statements](#) relaying the official version of events, they claimed that the Guardia Civil officers did not intervene at all against the people in the water. As additional evidence emerged, the authorities had to gradually adapt their version: On 8th February, the Guardia Civil issued an [official report](#), now conceding the use of anti-riot material. However, the report claims that “the anti-riot material was shot to delimitate the border line in the water, with the usual order that there should be several meters of distance between the place of impact in the water and the migrants” (Guardia Civil, p. 3, translation by ECCHR). The report also emphasizes that the Guardia Civil is permitted to engage in the “legitimate use of force with anti-riot materials” (Guardia Civil, p. 6, translation by ECCHR). Despite the video evidence (see above) showing how the people who barely managed to reach the Spanish shore were immediately forced back to Morocco, the report concludes:

“There was no unlawful entry onto national territory [...] Therefore, there was no expulsion (devolución en caliente) [...] The actions of contention and rejection were carried out in said instances by the agents in charge of border surveillance based on the rational use of regulated anti-riot material [...] No injuries or victims were produced on national territory, as a logical consequence of not having directed the anti-riot actions directly against the migrants [...] It is deduced that the deceased migrants died in Moroccan waters or territory, the probable cause being drowning due to the human avalanche which carried the migrants towards the sea, without a cause-effect

relationship between the use of anti-riot material by the agents of the Guardia Civil and the deaths” (Guardia Civil, p. 9, translation by ECCHR).

Representatives of the Spanish government made similar statements defending the actions of the Guardia Civil officers as a proportionate response. They eventually admitted the use of rubber bullets and smoke cans, but the [Interior Minister Fernandez Diaz](#) insisted that they were shot from a "large distance" and were not aimed at migrants in the water. In the [Spanish Parliament](#), he also claimed that the anti-riot material was shot into the water to "demarcate the border line" maintaining several meters of distance between the place of impact and the migrants in the water. The [Secretary of State for Security Francisco Vazquez](#) added that nobody had suffered any injuries. The [Interior Minister](#) admitted that 23 people were returned to Morocco, but disputed the unlawfulness of these immediate returns.

Procedural developments: Delayed judicial investigation and lack of accountability

In the months after the incidents, the judicial investigation was delayed significantly. This contributes to an ongoing climate of impunity around human rights violations by Guardia Civil officers at the Spanish-Moroccan border. It was only in March 2015, more than one year after the tragic events in Ceuta, that the Spanish authorities summoned 16 Guardia Civil officers as defendants in the criminal proceedings in Ceuta. While some of the agents decided to remain completely silent, others refused to answer the questions by the civil parties. Those who answered questions admitted that this was the first time that anti-riot material was used to deter entry on a maritime route, and that the minimum distance was not respected. The accused Guardia Civil officers maintained that the material was not directly shot at persons in the water, the rubber bullets did not puncture the floating devices and the smoke cans did not affect the persons who inhaled it. The officials continued to attempt to shift responsibility to the Moroccan side. It remained unclear where the first orders had come from. Moreover, many of the discrepancies between the video evidence and the official statements remained unresolved.

Nevertheless, the investigation was closed in October 2015. Ceuta’s investigating judge denied any criminal liability of the defendants for the deaths. She found that the attacks against the people in the water were lawful and proportionate, and that the Guardia Civil officers were not obliged to rescue the injured and drowning persons. The decision states:

“The Guardia Civil agents acted in accordance with their duty to patrol and protect the border, actions which require the agents to impede the illegal entry of unauthorized persons onto national territory [...] The Guardia Civil is authorized to use anti-riot material when exercising their function to patrol and protect the border. [According to] the Orden de Servicio 15/11 of the Comandancia of Ceuta [...] personnel may use

anti-riot materials, including rubber bullets and batons [...] The use of smoke cans is a last resort [...] In conclusion, the circumstances on 6 February legitimized the use of anti-riot materials by the agents of the Guardia Civil, who were obliged to use this equipment as part of their duty to protect the Spanish border [...] The longstanding practice of the “devoluciones en caliente,” its justification by the Interior Ministry, and the express legal cover it enjoys determine that they are not criminal in nature, which excludes from legal culpability those who practice it in Ceuta, and more concretely, on 6 February 2014” ([Ceuta Court of 1st instance](#), §§8-9, translation by ECCHR).

A day after the decision to close the proceedings, the Interior Ministry published a [statement](#) conveying the congratulations of the Director General of the Guardia Civil, Arsenio Fernández de Mesa, to the Guardia Civil of Ceuta. He emphasized his absolute confidence in the work of the Guardia Civil for the defense of the Spanish borders, and in particular in the conduct of the agents who participated in the operations on 6 February 2014.

The decision to close the investigation was appealed immediately. Over a year later, in January 2017, the Audiencia Provincial regional court in Ceuta eventually ordered the reopening of the investigations into the brutal actions by the Guardia Civil officers. The [decision](#) criticized the superficial and rushed forensic examination, emphasizing that the analysis lacked toxicological and histopathological tests that could have determined the effects of the gases used against the refugees in Ceuta. Moreover, the judgement stated that not all investigative means had been exhausted, given that further information could be obtained from survivors or direct witnesses – rather than relying mainly on testimonies provided by the Spanish officers. Lastly, the decision criticized the proceedings for not having completed the identification of several bodies, including those recovered in Spanish waters. Consequently, the decision to close the investigation was judged to be premature. This means that survivors of the attack who had not been heard before can now testify against the Guardia Civil officers in Spanish courts.

Politico-legal background: Spain’s policy and practice of violent push-backs

The events of 6 February 2014 are part of Spain’s violent and systematic practice of push-backs at the maritime and terrestrial borders between Morocco and Spain. The borders between the Spanish enclaves Ceuta and Melilla are the only terrestrial borders between Europe and Africa. In order to prevent unauthorized passages, Spain constructed multiple fences topped with razor wire and surveillance cameras. People who manage to overcome the border complex by climbing over or swimming around it are immediately returned to Morocco through gates in the fence structure. These push-back operations conducted in cooperation with the Moroccan authorities repeatedly resulted in injuries and deaths. In Ceuta, the organization [Caminando Fronteras](#) documented 311 push-backs and 466 grave injuries,

several of them affecting minors, between September 2015 and December 2016 alone. The total scale of the practice since its introduction in 2005 is difficult to estimate, because there are no official records of the expulsions and injuries.

The Spanish government claims that the summary returns immediately after individuals crossed the territorial border do not constitute unlawful expulsions, but rather lawful “rejections at the border” (rechazos en frontera). According to the authorities, an imaginary “operative border” line has to be crossed in order to enter Spanish territory, a line which differs between situations and depends on the position of the Guardia Civil officers. The [Guardia Civil report](#) on the events on 6 February explains this so-called “Operative Concept of Border Control”:

“In the case of Tarajal at the border with Ceuta [...], the actions of vigilance, contention and rejection should be carried out along an imaginary line in the sea. [...] The state retracts the line of vigilance and contention to a secure scenario, which is on the firm ground at the beachline [...] The line is materialized and visibilised by the line of border agents, depending on the case and circumstances, establishing a line until the place on the beach considered necessary [...] The attempts of unlawful entry counteracted by the operations of contention and rejection, along the above-mentioned line, do not constitute unlawful entry into national territory, which only takes place if the migrant passes the established line of vigilance [...] This operative concept, which was consolidated in 2005 and maintained unaltered until today, implies that the migrants who are contained and rejected in the above-described lines of vigilance are not the object of immediate push-backs, because this concept supposes that an entry into national territory took place” (Guardia Civil, p. 7, translation by ECCHR)

Applying the rationale of the movable border to the incidents of 6 February 2014, the Guardia Civil concluded that no expulsions took place, because there had allegedly been no previous entry onto Spanish national territory.

The continuous violence and push-backs at the Spanish-Moroccan border are widely and continuously criticized, but the authorities refrain from making significant policy changes. The Guardia Civil has a [new internal order](#) prohibiting the use of rubber bullets at the borders of Ceuta and Melilla, but other anti-riot materials are still permitted. Moreover, instead of ceasing the human rights violations at the border, the Spanish government legalised the practice of push-backs with the [Organic Law](#) on the “Protection of Public Safety” (Protección de la Seguridad Ciudadana), which entered into force in July 2015. The law establishes a special regime for Ceuta and Melilla, stipulating that 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).

ECCHR's role: Legal interventions against violent expulsions

ECCHR is assisting the survivors and eyewitnesses who decided to come forward in order to participate in the proceedings. Nathan, who was an unaccompanied minor at the time of the violent expulsion, and Liliane (names changed for anonymity) were both subjected to the attack by the Guardia Civil. They intend to testify in front of Spanish courts in order to shed light on the violence at the border. ECCHR is also working in cooperation with attorney Gonzalo Boye in Madrid and the NGO Observatori DESC from Barcelona, which participates in the proceedings as a civil party.

Over the past years ECCHR has initiated various legal interventions against the EU's push-back practices. In particular, ECCHR focused on push-backs at the Spanish-Moroccan borders in Ceuta and Melilla. 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 order to complain against their collective expulsion from Melilla to Morocco in August 2014. The ongoing proceedings in front of the UN Committee on the Rights of the Child in the case of *D.D. v. Spain* address the push-back of an unaccompanied minor from Melilla to Morocco in December 2014. These interventions seek to reclaim the right to have rights with and for those who are denied their fundamental human rights at the borders of the European Union.

Further information:

Documentary "[Tarajal: A European Phantasmagoria](#)", coproduced by Metromuster and Observatorio Desc in 2016.

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