



REPORT

SOUTHERN BORDER: BROKEN LIVES AT THE ENTRANCE OF EUROPE

**Catalan Commission for Refugees and
SOS Racism Catalonia**

Barcelona, 2017

THE SOUTHERN BORDER

Index

Index	3
Introduction: Why the Southern Border?.....	4
What has the Observation Mission consisted of?.....	5
Contextualization / socio-demographic data	6
Morocco	6
Nador and Tangier	7
Ceuta and Melilla	8
Arrival of immigrants and refugees	9
Matters of concern	10
Externalization of migration control	10
Human rights violations around the fences.....	12
Inadequate conditions at Temporary Reception Centers for	
Immigrants (CETI) and discretionary transfer to the peninsula.	13
Lack of attention to vulnerable groups.....	15
Women	15
Victims of trafficking for the purpose of sexual exploitation.....	16
LGBTI	16
Unaccompanied foreign minors	17
Limitations to the right of asylum	18
Conclusions	19
Bibliography	22

Introduction: Why the Southern Border?

Even though in recent years, several reports [1] describing the gravity of the forced displacement faced by people at the South Border were issued and raising community awareness, serious violations of human rights continue to occur. So, it is still important to bring to light, document and report violations, which occur when people try to access the territory of Spain and Europe. As several entities have denounced [2], the South Border is considered as a successful formula for border management of the European Union (EU) and its member states. As a result, this model has been exported to other European borders.

We have decided to visit this border first because of its strategic importance in the process of strengthening the external borders of Europe (e.g., it is the only land border between the African continent and the EU; It is the Spanish border and therefore all happening there is the responsibility of the Spanish State; many people arriving to Catalonia have crossed this border; and finally, numerous human rights violations of people who are subjects to forced displacement, including minors have been reported there; many of these violations remain unpunished or invisible for EU citizens).

Moreover, recent statistics illustrates importance of the South Border as a gateway to the EU: as for now it is the third entry route to the Mediterranean after Italy and Greece, with 28,587 people arrived in Ceuta, Melilla, the coasts of the peninsula or the Canary Islands and the Balearic Islands in 2017 year (this doubles the number of the previous year [3]) and this trend is expected to increase. Out of these arrivals, more than three quarters (22,419) were by sea, which is three times more than in the previous year (8,048). Majority of people arrived were men, 92.7% (N=20,785) and only 7.3% (N=1,634) were women, of whom 161 were pregnant [4]. Only 13.3% were under 18 years old (minors), and 86.7% were reported to be adults, although there were difficulties while estimating age.

According to the report "The invisible walls after the southern border" of the Spanish Commission for Refugees (CEAR) , this increase in arrivals is caused by several reasons: instability in countries of origin pushing people to leave their counties; dismantling of the informal settlements where people lived in countries of transit which pushed people to cross the border; geopolitics allowing

[1] Comisión Española de Ayuda al Refugiado (CEAR) (2017), Refugiados y Migrantes en España: Los muros invisibles tras la frontera sur: <https://www.cear.es/wp-content/uploads/2018/02/INFORME-FRONTERA-SUR.pdf>; Irídia (2017), La frontera sur: Accesos terrestres: <http://ddhhfronterassur2017.org/assets/frontera-sur.pdf>; Amnistía Internacional (2006), España y Marruecos: Falla la protección de los derechos de las personas migrantes: Ceuta y Melilla un año después: https://www.es.amnesty.org/uploads/media/Ceuta_y_Melilla_2006.pdf; Asociación Pro-Derechos Humanos de Andalucía (APDHA) (2017), Derechos Humanos en la Frontera Sur 2017: <https://www.apdha.org/media/informe-frontera-sur-2017-web.pdf>

[2] SOS Racismo (2017), Informe Anual .17: Sobre el racismo en el estado español: <https://sosracismo.eu/wp-content/uploads/2017/09/Informe-Anual-2017-SOSweb.pdf>, Asociación Pro-Derechos Humanos de Andalucía (2017), Derechos Humanos en la Frontera Sur 2017. Op.cit.

[3] Asociación Pro-Derechos Humanos de Andalucía (APDHA) (2017), Balance Migratorio: Frontera Sur: <https://apdha.org/media/Balance-Migratorio-Frontera-Sur-2017-web.pdf>

[4] Asociación Pro-Derechos Humanos de Andalucía (APDHA) (2017), Balance Migratorio: Frontera Sur. Op.cit

Morocco to turn a blind eye to people entering the EU territory as a manifestation of disagreement with the EU [5]; last, but not the least, agreements between the EU, Turkey, Italy with and Libya, which aimed to "seal" those routes in order people to find alternative routes like the Morocco- Spain Border.

If the number of arrivals is increasing, so does the number of people who have lost their lives in the attempt to cross the Strait of Gibraltar or the Sea of Alboran due to the lack of legal and safe routes [6]. The death toll in the western Mediterranean reached a total of 224 deaths in 2017, an increase of 75% with respect to the total number of the previous year (128) and 280% with respect to the number of deaths registered three years before, in 2014 (59). At the same time, the percentage of the total loss of life in the entire Mediterranean area has increased exponentially: representing 1.8% of the total in 2014, the 2017 this percentage rose to 35%.

As for the March 1, 2018 this year might be the deadliest one, with 100 deaths registered in the first two months of the year (38% of those occurred throughout the Mediterranean), constituting an increase of 400% over the same period of the previous year.

What has the Observation Mission consisted of?

In April 2017, a joint team of observers from the Catalan Commission for Refugees (CCAR) and SOS Racism visited Spanish autonomous cities of Melilla and Ceuta and the neighbouring Moroccan cities (Nador and Tangier respectively). The objective of the mission was to examine how migration control is realized on the ground and how international protection of the southern border is managed. Apart from the direct observations of what is happening at the border in Beni Enzar (Melilla) and El Tarajal (Ceuta), the team visited and interviewed different stakeholders working on the ground (the Migrant Protection Platform (PNPM), the Diocese of Tangier, the Association Thissaghness pour le Culture et le Développement, the Moroccan Association of Human Rights, the Office of Foreigners of Melilla, the CETI of Ceuta and Melilla, the Lawyers Association of Melilla, CEAR Melilla, CEAR Ceuta, UNHCR in Melilla, the DIGMUN association, human rights lawyer Karim Chaïri and journalists Jesús Blanco de Avellaneda and Antonio Sempere). Also, we reviewed testimonies of people who are currently living in the CETI. Based on all materials examined, which are added as supplement files to the previous reports, we were able to analyse the situation in the South Border and denounce the violations of human rights occurring on the part of Spanish and Moroccan security forces and bodies.

[5] https://politica.elpais.com/politica/2017/02/25/actualidad/1488026444_744406.html

[6] All the information in this paragraph has been extracted from the portal of the International Organization for Migration (IOM), Missing Migrants: <https://missingmigrants.iom.int/region/mediterranean>

Contextualization / socio-demographic data

Morocco

The Kingdom of Morocco is a parliamentary constitutional monarchy, located in the North Africa. It has a border with Algeria, Western Sahara and the autonomous cities of Ceuta and Melilla, aside from the natural border of the Mediterranean Sea to the north and from the Atlantic Ocean to the west. Morocco occupies the 123th place of the human development index [7].

It is of concern that access to social rights such as health is not universal. In order to access the public health system, both nationals and migrants must show a rental contract, which is almost impossible requirement to comply with in the case of refugees and immigrants in transit. This situation is especially alarming in the case of pregnant women, who do not receive medical assistance, with all the risks to their lives and the life of the baby this situation implies [8].

Also, it is of concern that the lack of social protection, and the EU outsourcing policies aiming to prevent the arrival of people encouraging them to stay in transit countries, Morocco has become a country of forced destination. So, reception and inclusion of people is now a responsibility of NGOs which do not have any type of support from the State. According to the report, which was developed based on the field visit of several organizations to Morocco as well as interviews with local stakeholders [9], Morocco is not a safe country for immigrants and refugees, which do not respect human rights. In 2006 Amnesty International pointed out, "Even if Morocco is a State party to the Refugee Convention, it can't be considered as a safe third country. Morocco has not enacted national asylum procedures, and in recent years has repeatedly expelled asylum seekers from its territory without examining its applications. On other occasions, the Moroccan authorities have arbitrarily arrested groups of asylum seekers and have not given them access to the UNHCR [10].

With regard to the right of asylum, Morocco has ratified the Geneva Convention, but has not yet approved an asylum law at this time. It has only created an Office for Refugees and Stateless persons that does not work properly. As a consequence, the UNHCR is the organization that registers the requests and sends them to this office in order to be resolved. The difficulty in accessing this right is evident due to the fact that asylum can only be requested at the UNHCR office in Rabat, far

[7] United Nations Development Program, Human Development Report 2016: http://hdr.undp.org/sites/default/files/hdr_2016_report_spanish_web.pdf

[8] Comisión Española de Ayuda al Refugiado (2017). Op.cit.

[9] Comisión Española de Ayuda al Refugiado (2017). Op.cit., Iridia (2017). Op.cit., Amnistía Internacional (2016), En tierra de nadie: La situación de las personas refugiadas y migrantes en Ceuta y Melilla: https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla_FINAL-1.pdf

[10] Amnistía Internacional (2006). Op.cit. Traducció del castellà.

from any border, which makes it a real chimera crossing the country without being stopped on the way. In case of reaching the UNHCR office and formalising the application or even obtaining the recognition of the protection, it does not mean so much in practice, because there is no state program for reception and protection and, therefore, for practical purposes, effective access to rights such as legal assistance, health or education is not guaranteed [11]."

Nador and Tangier

Regarding the specific situation in the Moroccan cities of Nador and Tangier, close to Melilla and Ceuta, we have described specific characteristic of each of them. Nador is a small urban center, located in widely settled population across 15 km area to the south of Melilla. It faces major water purification problems. Unlike the rest of the country, healthcare is free. This is also a territory with a legal exception, as it is a militarized zone. The police and ambulance emergency service units force migrants, who are trying to get into the EU, to go more and more away from the urban centers, into the areas without basic services (e.i., water and electricity supply).

According to the local organizations there are 18 settlements on the outskirts of Nador, where 3,000 to 4,000 people live, including children, who were born there, and who survived thanks to the solidarity of the neighborhood. They also received help from some local organizations, which despite having legal status, were persecuted and had to call for the international support in order to be able to survive [12] (according to the interviews with local stakeholders). Moreover, there were several raids in the settlements, which were done by paramilitary groups attacking men as well as sexual violations were reported. Although it is extremely difficult to document and consequently, to estimate number of such cases [13], several interviewees suggested that there could be around 1,800 people passing Nador annually.

Additionally to institutional repressions, there is also a persistent problem of racism, leading to aggression, especially towards people from sub-Saharan Africa. Thus, these populations of migrants have to stay in absolute secrecy and survive in extremely precarious conditions.

In contrast, Tangier is a large city with a population of nearly two million inhabitants and a diverse cultural context. These allow people in transit to keep certain anonymity and to be less vulnerable if to compare with individuals living in Nador. The majority of people in transit stay in the overcrowded peripheral

[11] Comisión Española de Ayuda al Refugiado (2017). Op.cit.

[12] For example, Morocco no longer leaves the head of Migrations of the Archbishopric of Tangier, Esteban Velázquez, after living there for three years providing assistance to people in forced displacement: http://cadenaser.com/ser/2016/01/24/internacional/1453634407_234253.html

[13] <http://periodismohumano.com/migracion/marruecos-arrasa-los-campamentos-del-monte-gurugu-y-se-lleva-a-cientos-de-inmigrantes-con-destino-desconocido.html>

Boukhalef neighborhood; many others stay in the nearby forests, which are surrounded by the Moroccan security forces conducting regular raids [14].

Ceuta and Melilla

Regarding the context of Ceuta and Melilla, it must be remembered that these two Spanish autonomous cities on the African continent are vestiges of the old Spanish control over Morocco during the colonial era. They have a special status as autonomous cities and even though they are EU territory, they do not belong to the Schengen area, which restricts the freedom of asylum seekers accessing it (this will be discussed below). As these territories are located outside of the peninsula, human rights violations occurring there remain unknown to the Catalan, Spanish and European citizens, as they consider these territories to be far away and so, problems occurring there are perceived as external to the public awareness of EU citizens.

Both cities have accesses to sea and since the 90s were surrounded by fences, which case feeling of isolation. From Ceuta you can still see the peninsular coastline, which seems to connect the city a bit more with the state. Yet, Melilla is far away from the peninsular coast. Both cities have high unemployment rate (Ceuta: 31.44% and Melilla 27.24% [15]) and high risk of poverty (Ceuta: 36% and Melilla 21.8% [16]). Moreover, there are frequent tensions which are manifestations of rejection and social racism.

Some media do not contribute into eradication of stigmatization and keep promoting the discourse of fear and hatred; they continue to use by terms such as "avalanches", "violent assaults" or "illegal immigrants." As shown in the report of the Network "Immigrationism: Do self-criticism, xenophobia-free media" these discourses criminalize refugees and immigrants and decontextualize the facts [17]. For example, the cover of El Faro de Melilla, October 16, 2014 described an attempt of migrants to climb on the fence as follows: "One of the agents fell from four meters pushed by a sub-Saharan who was not arrested" and "Urines and spit of 'Ebola', fire and stones from the top of the fence". These covers fueled fear that virus might spread among EU population, and led to a number of public accusations of migrant populations in violent behavior; yet violence experienced by migrants was completely ignored. Moreover, it also shows how skewed is media coverage with lack of attention to violations of human rights of migrants, including cases physical traumas received while crossing the borders.

[14] https://www.eldiario.es/desalambre/redadas-Marruecos-obligan-cientos-personas_0_600890112.html

<http://www.ceutaldia.com/articulo/sucesos/marruecos-bate-montes-cercanos-frontera-desmonta-campamentos-migrantes/20170904101618165855.html>

<http://www.europapress.es/ceuta-y-melilla/noticia-marruecos-repele-otro-intento-entrada-ceuta-frontera-realiza-detenciones-20170810092843.html>

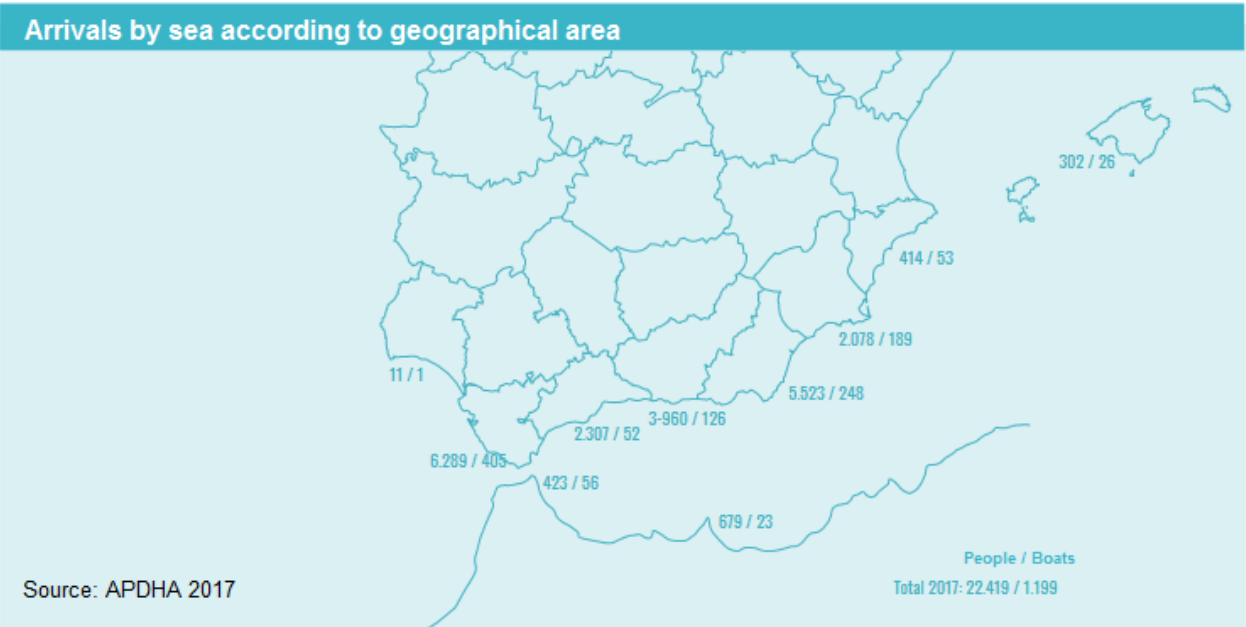
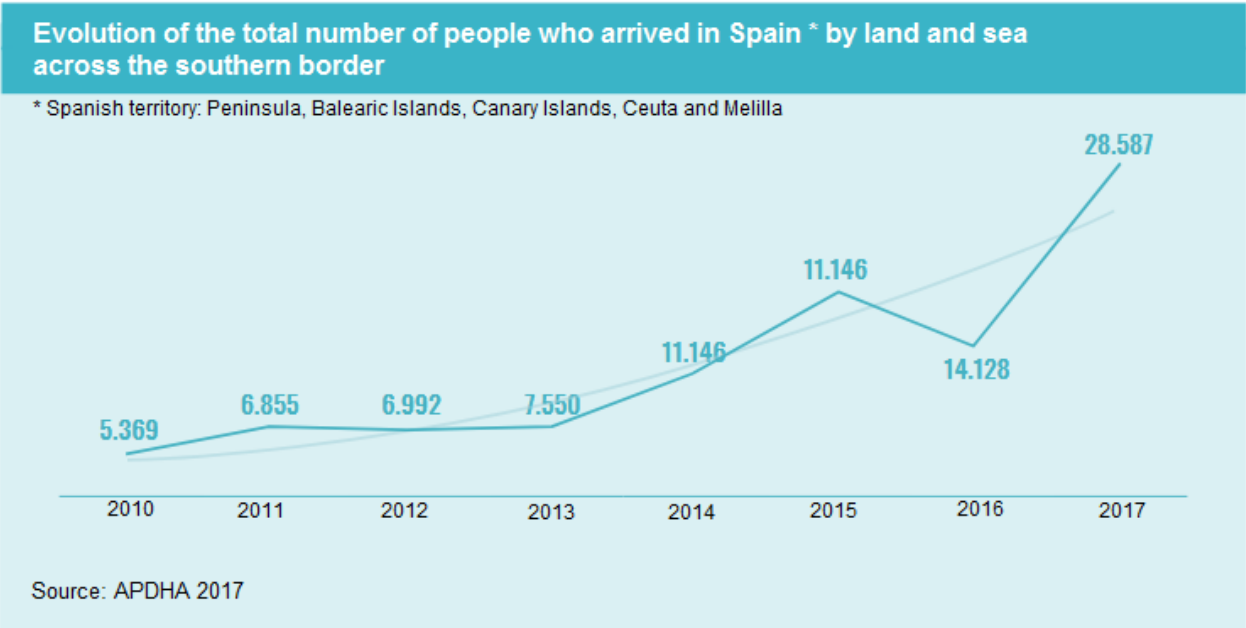
[15] National Institute of Statistics (2018), Activity, unemployment and employment rates by province: <http://www.ine.es/jaxiT3/Datos.htm?t=3996>

[16] National Institute of Statistics (2018), Rate of risk of poverty by autonomous communities: <http://www.ine.es/jaxiT3/Datos.htm?t=9963>

[17] Red Acoge (2014), Inmigracionalismo – Hagamos Autocrítica: medios de comunicación libres de xenofobia: <http://redacoge.org/mm/file/InformeInmigracionalismo-RedAcoge.pdf>

Arrival of immigrants and refugees

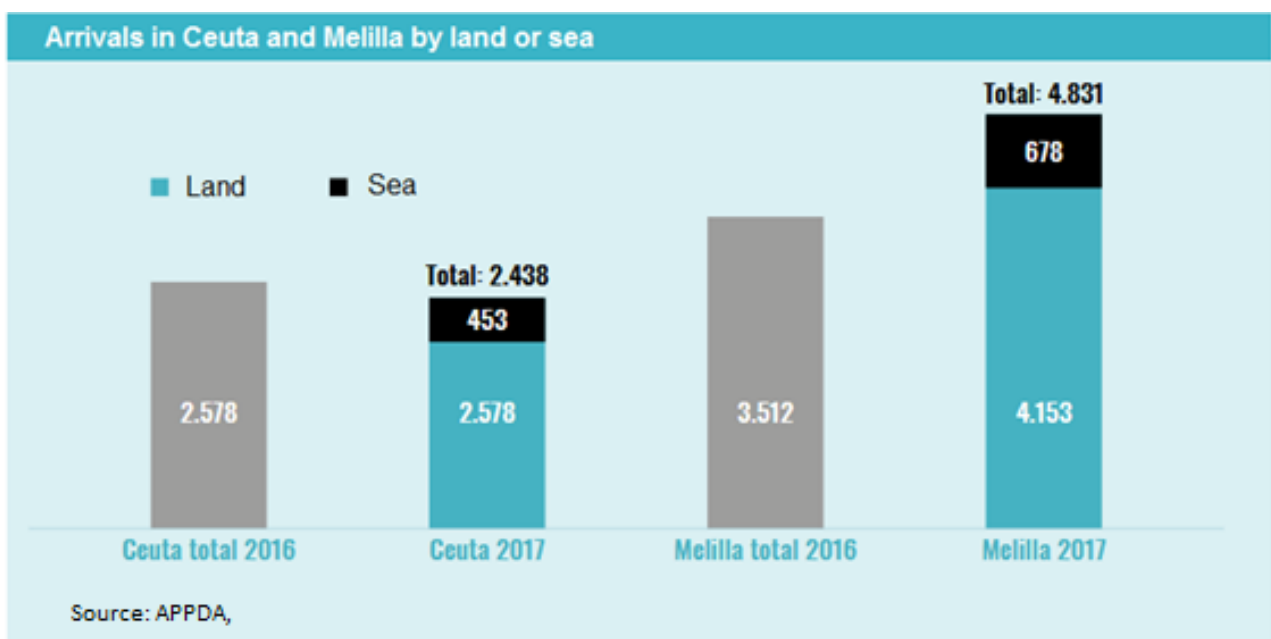
As mentioned above, the South Border is the third gateway to the EU through the Mediterranean, with growing trend being observed in recent years. According to the data of the Asociación Pro Derechos Humanos de Andalucía (APDHA) [18], in 2017, 28.587 people accessed Spanish territory and, therefore, Europe through this border (by land and by sea). This doubles the number of the previous year (14,128). The vast majority of the people (18.090) reached Andalusia coasts (by sea), and the rest arrived to Melilla (4.831), or the lands of Levante (2 .492), or Ceuta (2.438) and the Canary Islands (434). Moreover, 302 persons reached to the



[18] All the data mentioned in this section are extracted from Asociación Pro-Derechos Humanos de Andalucía (2017). Op.cit and Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit.

Balearic Islands. Most people arrived by sea and this mode of arrival is expected to rise in future: almost 80% of arrivals in Spanish territory were by sea (22.419 people), this is three times higher than in 2016 (8.048 people). As explained earlier, the shrinking of access through land lead to increase of number of people trying to access EU territory by sea.

Regarding the specific areas that we have visited, arrivals in Ceuta have decreased slightly in 2017 (2.438 compared to 2.457 in 2016), while in Melilla there was an increase of more than 40% (4.831 compared to 3.512 in 2016). In both cases, in 2017 more than 80% of the entries (2.015 in Ceuta and 4.153 in Melilla) were done through the land (for example, crossing the border while hiddening in the double bottom of vehicles or climbing on the fence), and the rest was by sea. It is noteworthy that in 2016, Melilla doubled the number of arrivals through the land in comparison with Ceuta. This can be explained by the fact that the border in Melilla can be crossed by the individuals of “typical” Arab characteristics (2,500 in 2016), who bought falsified documents and paid bribes, which is impossible for people in sub-Saharan Africa (it will be explained further in the text) This is the commonly used strategy in Melilla. There is few possibilities to cross the border in Ceuta, mainly using double bottoms of vehicles or crossing the fence (in 2016, only 316 of the 3.512 people that entered it did so by crossing the fence). Thus, in Ceuta, most arrivals are done by climbing the fence (1.771 by 2016) or hiding in the double bottom of a vehicles (325 by 2016), which, unlike Melilla, is the only way in which it is possible to cross the border [19]. Regarding entries by sea, in 2016 there were 482 in Ceuta in 2016, while in Melilla there were only 87.



[19] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit.

Matters of concern

Externalization of migration control

As explained above, the border management carried out in the field of cooperation between Spanish and Moroccan authorities has served as a model for the control of other European borders. It implies the externalization of migration control to a third country (in this case, Morocco) to whom the EU entrusts the control of entry of people to European territory in exchange of political and economic support. This model has been reproduced in the EU-Turkey agreement [20] or by EU associations with African countries such as Libya or Niger. Thus, in order to maintain them it is usual to use development cooperation funds to meet the migratory management goals of the EU [21]. The importance of this situation is, on the one hand, because it leaves decision about the people who want to migrate or seek refugee status the EU over to the third countries that do not respect human rights of migrants, while the EU completely denies any responsibility even when human rights violations are funded by the European funds. On the other hand, it does not address the structural factors forcing people to move, with further criminalization of migrants and usage of terms like "illegal", which leads to encouragement to strengthen walls preventing migrants to reach the EU.

In the case of Morocco, the repression and violence of the security forces against refugees and immigrants who want to reach Europe has been widely documented and denounced by the international organizations such as Human Rights Watch [22]. As Irídia report describes [23], and so do people interviewed, Moroccan forces carry out all kinds of physical violence actions such as raids against settlements and neighborhoods where these people live, burning migrants' property and expelling them. Furthermore, there is evidence showing cases of poor treatment of migrants in the area close to the fence, where they are thrown with all kinds of objects, scared away with dog bites or stones being hurled. Arrests are also frequent and people are sent to parts of the country far from the border with Spain. All these situations are produced with the aim of deterring the attempts to enter the European territory.

One of the most serious and documented recent cases are violent deaths of two young Cameroonian ; they died in the who arson fire during a raid of the Moroccan forces [24]. Unfortunately, these episodes are not occasional, and institutional violence towards people in transit in Morocco is systematic. Yet, these cases are

[20] European Council (2016), Declaration EU-Turkey, March 18, 2016: <http://www.consilium.europa.eu/es/press/press-releases/2016/03/18/eu-turkey-statement/pdf>

[21] Concord Europe (2018), ¿Asociación o condicionalidad? Supervisión de los Pactos sobre Migración y el Fondo Fiduciario de la UE para África: https://coordinadoraongd.org/wp-content/uploads/2018/04/EUTFReport2018_-espa%C3%B1ol.pdf

[22] Human Rights Watch (2014), Abused and Expelled: Ill-treatment of Sub-Saharan African Migrants in Morocco: <https://www.hrw.org/report/2014/02/10/abused-and-expelled/ill-treatment-sub-saharan-african-migrants-morocco>

[23] Irídia (2017). Op.cit.

[24] https://www.eldiario.es/desalambre/Investigan-inmigrantes-Camerun-auxiliares-Marruecos_0_458455104.html

poorly documented and usually stayed unpunished. Morocco is not a member of the African Union, which means that it does not participate in any of the human rights treaties carried in the region and that it can't be denounced to the Commission and the African Court of Human Rights.

Human rights violations around the fences

While there are attempts to cross the Morocco to Ceuta or Melilla border by sea (with boats or by swimming) or through crossing points (in double bottom of vehicles or with false documentation that is only accessible to people with Arab appearance), the access which generates more moments of tension and where more technological and military resources are used to repress immigrants and refugees are border fences. These fences are impressive constructions, they use costly military technology such as anti-tread meshes, concertina, cameras or infrared rays, and represent a very lucrative business for many European companies. The Spanish government has even considered the usage of water cannons and drones [25]. As the delegation has shown, the Ceuta fence has a double fence on the Spanish side and a lower fence on the Moroccan side and a deep pit in the middle. In addition, these fences have the well-known concertinas, small cutting elements that cause deep wounds.

The Spanish Guardia Civil is the body in charge of controlling irregular migration and is the one who patrols and watches the fences. According to other reports as well as testimonials on the ground showed both Ceuta and Melilla inflict excessive use of force and poor treatment to people who are both up and down the fence. On occasion the Guardia Civil has used devices designed for the purpose of riot control [26], has stuck the people to lower the fence [27] or did not call the medical services for hours despite having injured people [28]. The fact that there is no record of injuries caused by these fences is especially serious.

Other serious violations of rights that occurs at the fence and which has been repeatedly reported by many organizations, the Ombudsman and the European Court of Human Rights are what is known as "hot returns" (in Spanish, devoluciones en caliente): as soon as people have been able to cross the fence and they are in Spanish territory, they are returned to Morocco, which violates the principle of "non-refoulement", the core of the right to asylum. International law prohibits the expulsion or return of a person to a third country in which their life and liberty is not guaranteed and where there are well-founded grounds for torture, inhuman or degrading treatment or violation of their human rights (Article 33.1

[25] <http://www.europapress.es/ceuta-y-melilla/noticia-interior-estudia-usar-vehiculo-antidisturbios-canon-agua-control-fronterizo-ceuta-20170404130107.html>

[26] https://www.eldiario.es/politica/Podemos-pregunta-Congreso-antidisturbios-Ceuta_0_661784460.html

[27] https://www.eldiario.es/desalambre/VIDEOS-Guardia-Civil-ilegalmente-inmigrante_0_314268729.html

[28] Iridia (2017). Op.cit.

of the Geneva Convention and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both treaties signed by Morocco and Spain [29]). As described above, Morocco is not a safe country for people who are in transit on their way to Europe. “Hot returns” also violate international law regarding the children protection (no identification of minors, to which the State is obliged to give them protection) and international protection (they are not allowed to request international protection). In short, collective expulsions are prohibited in international law.

This completely illegal practice is carried out for years and in 2015 the Spanish government tried to legalize it through the reform of the Organic Law of Public Safety, also known as Gag Rule (in Spanish, Ley Mordaza) [30]. Consequently, many organizations and campaigns are pushing for its eradication. Moreover, it is worth noting the importance of the decision of the European Court of Human Rights, which in 2017 condemned Spain in the case of two people who had been directly returned from Melilla to Morocco without being identified or without having had access to any kind of procedures or guarantees [31].

There is a serious concern on what has been reported during the Observation Mission: the fact that Spanish authorities have occasionally let Moroccan police to enter the Spanish part of the fence in order to return migrants to Morocco, including unconscious or seriously injured people [32]. Furthermore, after being returned to Morocco, national police strikes and prosecutes them, breaking their legs or arms to prevent them from trying to jump over the fence.

Finally, regarding violent acts at the perimeter of the border, we can't forget the case of institutional violence that has received more attention during the recent years. In fact, it was not at the fences but at the sea. In February 2014, the Guardia Civil shot rubber bullets to a group of people trying to access Ceuta by the Tarajal, and 15 of them drowned.

Inadequate conditions at Temporary Reception Centers for Immigrants (CETI) and discretionary transfer to the peninsula

People who get access to Ceuta or Melilla are derived from CETIs, which are provisional first reception facilities provided while resolving their administrative situation. According to the lawyers of the office of Melilla, most people who arrive in the city do not have documents, and in-court representation service is

[29] United Nations (1951), Convention relating to the Status of Refugees:

<http://www.ohchr.org/SP/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

[30] Boletín Oficial del Estado (2015), Llei Orgànica 4/2015, de 30 de març, de Protecció de la Seguretat Ciutadana:

https://boe.es/boe_catalan/dias/2015/03/31/pdfs/BOE-A-2015-3442-C.pdf

[31] European Court of Human Rights (2017), Case N.D. and N.T. against Spain: http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/area-internacional/tribunal-europeo-derechos/jurisprudencia-tedh/articulo-prohibicion2#Se_1288796454174_1

[32] See audiovisual example at: https://www.eldiario.es/desalambre/VIDEOS-Guardia-Civil-ilegalmente-inmigrante_0_314268729.html and

https://www.eldiario.es/desalambre/Acnur-voluciones-caliente-evidente-refugiados_0_558194314.html

implemented almost always for cases of expulsion. They point out that expulsion orders are often incorrect, since sentences are often ill conceived. Lawyers are systematically objecting this and it delays the procedure so much that in many cases, when witnesses are called to testify, it is found out that they have already traveled to the peninsula and the procedure can't be continued or concluded as satisfactorily.

All people residing in the CETIs are waiting for their transfer to the peninsula, which can't be done on their own since Ceuta and Melilla are not Schengen in spite of being a territory of the EU. Therefore, there is no freedom of movement towards the peninsula without authorization. As several testimonials have explained and organizations on the ground have confirmed it to us, this transfer is given with flagrant discretion and discriminatory criteria. On the one hand, the transfer is normally performed when there is an influx of more people and there is an unsustainable overcrowding of CETIs. The choice of people to be transferred discriminates people by their origin; people from sub-Saharan Africa is usually moved earlier than those from Asia or Maghreb. Thus, they may stay for more than one year inside the CETI or may be directly returned to their home countries in case of lack of deportation agreement. Moreover, there are no transfers of asylum seekers, except for Syrians, as we will see later.

People transferred to the peninsula, with the exception of asylum seekers, do so with the corresponding expulsion order (and petitions for court stay are systematically denied, which makes it difficult to regularize them) and, in some cases, are sent to Alien Internment Centers (CIE) if it is considered that they have entered the territory using violence ((jumping the fence is considered an act of violence). According to participants interviewed on the ground, in many cases it is difficult to determine the reasons that justify the transfer. Only in case they are sent to a CIE, the judge of instruction intervenes and the lawyer of the foreigner is informed, but in the rest of the cases there are no public records of the causes justifying these transfers.

This unequal granting of the transfer authorization leads to very unequal distribution of the duration of the stay at the CETI: from two -four weeks up to 12 months or more.

Ceuta has a capacity for 512 people and Melilla for 700, but as several organizations reported and as they have later confirmed on the ground they are almost always overcrowded.

CETI Melilla Capacity: 796 Oct. 2016 979 people 65% M 35% F	Asylum	12-18 Mesos	According to Country of Origin * Black Africa: 1 year and 1 year and 6 months Morocco: 1 year and 1 year and 6 months Algeria: 1 year and 1 year and 6 months
	No asylum	3-6 Mesos	
CETI Ceuta 512 people Oct. 2016 631 people 90% M 10% F	Asylum	1-18 Mesos	Segons País d'Origen* Àfrica negra: 1 año y 1 año y 6 meses Marroc: 1 año y 1 año y 6 meses Algeria: 1 año y 1 año y 6 mes
	No asylum	3-6 Mesos	

*February 2017: 0 people from Syria

Lack of attention to vulnerable groups

One of the most serious problems identified in the South Border is the ineffectiveness of the protection mechanisms for vulnerable people, including victims of trafficking for the purpose of sexual exploitation, LGBTI or unaccompanied foreign minors (MENAs), both in the border perimeter where these cases have not been recognized and given the necessary protection. Moreover, in places like CETI, there is no specific attention protocols or they do not work, and transfers to the peninsula are not accelerated, or in the juvenile facilities, where several abuses were reported. This increases vulnerability of this people, which has been reported by several organizations [33].

Women

Women are exposed to many cases of sexual violence during passing through their migratory route, which are not sufficiently taken into account either in Morocco, which does not contemplate gender violence within their international protection system, nor once they arrive to Ceuta or to Melilla. If a woman wants to reach Europe, she often has to pay for it with her body in one way or another [34]. Many are victims of organized crime prostitution rings (mostly of Nigerian origin), others are raped, and pregnant women, or even children are assigned a "husband", as this facilitates entry into the EU for men (they try to preserve family units). Women are exposed to violations by the police, forced prostitution, forced abortions without any health guarantees or women are forced to choose one man in order to avoid being raped by many.

[33] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit. Ildia (2017). Op.cit.

[34] On sexual violence suffered by people moving in the South Frontier, see a report by Doctors Without Borders (2013), Violence, Vulnerability and Migration: Trapped at the Gates of Europe. A report on the situation of sub-Saharan immigrants in an irregular situation in Morocco: https://www.doctorswithoutborders.org/sites/usa/files/Trapped_at_the_Gates_of_Europe.pdf

The majority of women cross the South Border by sea in boats [35]. Only one has climbed over the fence and another has entered by swimming, both in Melilla, in 2017. In Spanish territory it has been reported the lack of specific resources to protect female victims of trafficking for the purpose of sexual exploitation or gender violence. It has been shown in the case of a young Algerian woman who denounced her husband for assaults and death threats, yet had to share a room with him and again suffered ill-treatment after he was re-admitted to CETI. In fact, an effective solution would have been to move her to the peninsula, where she would be in a safe territory [36].

Victims of trafficking for the purpose of sexual exploitation

According to the CEAR complaints many women and girls could be victims of trafficking for the purpose of sexual exploitation [37], yet there are no specific resources for them in Morocco, Ceuta and Melilla. Moreover, the protection system for these people in these territories demonstrated an absolute lack of efficiency. The reluctance to recognize victims as such, along with the lack of police willingness to identify this crime, explains why there are no asylum applications for this reason. Although there are protocols for intervention for to work with victims, they do not feel safe to collaborate because they coexist with their traffickers in CETIs and because, if they apply for asylum, as we will see later, their transfer to the peninsula is delayed. This is especially serious in this last case, as they continue to live together with traffickers at CETI and, if they make denounce their situation publicly, they can be exposed to reprisals or more violence. This lack of identification means that they go to the peninsula as foreign women in an irregular situation with an order of expulsion, which increase their vulnerability and may push them in prostitution.

LGBTI

LGBTI people pushed to forced displacement suffer serious violations of rights in migratory transit through the South Border and this multiplies persecution they have faced in the countries of origin. Morocco denies their rights: sexual diversity is pursued both at the legal (the Criminal Code penalizes sexual relations with people of the same sex) and social level (aggressions or rejection), but the Office for Refugees and Stateless of Morocco do not recognize this type of persecution as reason for asylum in the country [38]. Once in Spain, the CETI of Ceuta and Melilla do not have specific mechanisms to avoid discrimination and they are exposed to aggression by other residents.

[35] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit

[36] <https://www.es.amnesty.org/actua/acciones/refugiados-migrantes-ceuta-melilla-nov16/>

[37] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit.

[38] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit.

Unaccompanied foreign minors (MENAs)

Unaccompanied foreign minors (MENAs) is another group to whom the necessary protection is not provided. In many cases, they are not even identified properly when they reach Ceuta or Melilla. As they usually do not carry documents, many minors declare themselves to be over 18 years old in order to avoid being sent to a juvenile facility and have to stay forcibly in Ceuta or Melilla until they are older. According to the interviewees, by declaring themselves of legal age, they aspire to a fast transfer to the peninsula and to continue the route to other European countries. The authorities do not ask for the affirmation of the majority of age. However, they check those cases where a person claims to be a minor [39]; a process which accuracy is questioned.

If a minor is detected in Ceuta or Melilla, he or she will be retained in the autonomous city, assuming his guardianship and sending him or her to a juvenile facility: in Ceuta there is the one of "La Esperanza", and in Melilla there are "La Purísima" for boys and centers "Centro de Asistencia Gota de Leche" and "Centro Divina Infantita" for girls. These centers are care facilities managed by the governments of the autonomous cities and they have been denounced by various organizations to have a problem of child abuse [40]. As explained by José Palazón [41], an activist in Melilla, in the two autonomous cities, the childhood protection system has become "undesirable" and "unbearable" (exclusion of minors from the educational system, extinction of their residence permits after their majority of age and poor conditions at the centers), in order to discourage the arrival of minors and avoid a "pull effect". The consequence is that many choose to live in the street, a situation that, as we have seen, is especially evident in Melilla, where in March 2017 it was estimated that there were about 600 minors, one hundred of whom in street situation [42].

Due to the extreme vulnerability of minors both in the centers and in the street, exposed to institutional violence (which has led to deaths [43]), social racism and lack of coverage of basic needs, despair makes some people to try to sneak inside ships of the port to get as stowaways to the peninsula. This is a very dangerous practice for their life called by them as "risky" [44]. In front of this reality, the answer of Spanish authorities is once again shielding borders with mechanisms that cause serious injuries, such as the triple fence of 4 meters height [45] and with "concertinas", which have been installed in February 2018 at the port of Melilla.

[39] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit.

[40] Asociación Pro Derechos de la Infancia Melilla, videos of denouncement at Vimeo channel: <https://vimeo.com/user12822802>, Asociación Harraga (2016), Report on the situation of Unaccompanied Foreign Minors in Melilla; and Human Rights Watch (2002), Spain and Morocco. Impasse: Abuses committed by the Spanish and Moroccan authorities against migrant children: <http://pantheon.hrw.org/legacy/spanish/informes/2002/spnmorc0502sp.pdf>

[41] Harraga. Op.cit.

[42] https://politica.elpais.com/politica/2017/03/25/actualidad/1490458315_423945.html

[43] <http://www.publico.es/sociedad/mena-melilla-denunciar-denuncia-estrategia-gobierno-melilla-muerte-menores-extranjeros-tutelados.html>

[44] <https://www.20minutos.es/noticia/2473442/0/menor-aspirante-polizon-muere-melilla-al-caer-entre-rocas-puerto/>

[45] <http://www.publico.es/sociedad/melilla-concertinas-cuchillas-ninos-ultima-medida-melilla-blindarse-menores-extranjeros-melilla-blindamenores-extranjeros-poniendo-cuchillas-puerto.html>

The lack of information about the situation of the MENAs on the other side of the border and unaccompanied foreign girls, who can be victims of trafficking for the purpose of sexual exploitation, is also a matter of concern. In Morocco, minors are totally unprotected. Interviewed organizations stated that the Moroccan government wants to build a reception center for minors in Nador but associations are opposed to it because, as they suggest it will be like a prison.

Limitations to the right of asylum

The right of asylum has been one of the most directly violated rights in the South Border for many years, mainly due to the lack of legal and safe ways to access Spanish territory. On the one hand, despite the fact that there are asylum offices at the land crossing points in Ceuta and Melilla, it is almost impossible for people in forced displacement to access them. The common rule is that they must have crossed the Moroccan border, where they have been rejected. On the other hand, as many organizations stated [46] as well as we have confirmed on the ground, it is totally impossible for people from sub-Saharan Africa to receive the permission to pass from the Moroccan authorities and therefore they are excluded of the right of asylum. Meanwhile people of Arab phenotypes in Morocco can cross with Moroccan documents. It means that only nationals from Morocco or Syria have a real chance to seek international protection, in the latter case by buying Moroccan false passports and paying to the border control and security forces. This explains why there has not been received any single asylum application at the asylum office at the border crossing point since it was created in 2015 in Ceuta no. In Melilla there were only asylum applications received from Morocco, Palestine or Syria (in 2016 2,038 applications were received, of which 1,829 were from Syria, 173 from Palestine and 161 from Morocco [47]).

This means that applicants for the international protection of sub-Saharan origin have no choice but to try to climb over the fence or try to access by sea to Ceuta or Melilla. However in these cases, access to this right is not guaranteed. As explained earlier, pushbacks in the fence or collective expulsions prohibited by international law (because they violate the possibility of requesting international protection), yet they are common.

In addition to all these obstacles, many people do not know that they have the possibility to seek international protection or the reasons why they can do it. If they do arrive to CETI, there are CEAR lawyers who help them to submit their applications. Even so, many who could do it renounce: as of October 2017, only 11.6% of residents in CETI of Ceuta had requested asylum,

[46] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit., Irídia (2017). Op.cit, Asociación Pro-Derechos Humanos de Andalucía (2017). Op.cit.

[47] Comisión Española de Ayuda al Refugiado (CEAR) (2017), Informe Anual 2017: Las personas refugiadas en España y Europa: <https://www.cear.es/wp-content/uploads/2017/06/Informe-Anual-CEAR-2017.pdf>

of which the majority were from Algeria, no one from Black Africa and of whom only 9 were women [48]. The main reason why it is happening like that, is the fact that seeking asylum in Ceuta or Melilla will delay their transfer to the peninsula, as their freedom of movement is restricted by the Convention Implementing the Schengen Agreement.

This practice has been condemned by various organizations [49] and judgments of Spanish courts of justice, considering that the right of free circulation through the national territory can't be prevented for persons applying for international protection because. From the moment in when their application has been accepted, they are already in a regular situation [50]. The situation is especially worrying in cases of vulnerable applicants such as women suffering from gender violence or persons persecuted for their sexual orientation, who are not transferred to the peninsula and remain in the CETI, which is not a safe place for to them. Furthermore, since the CETIs are not centers for refugees, no social interventions are provided and the process of their inclusion in the new host country is delayed.

These practices aim to discourage asylum from applying. In fact, in 2016, although the Spanish State achieved a record number of applications for international protection (15.755), there was a fall in the applications in Ceuta (220 in 2016, of 314 in 2015) and Melilla (2.440 in 2016, of 6.368 in 2015) [51]. The fact that people refuse to request it in Ceuta and Melilla in order to do it once on the continent (and in many cases not in Spain but in other European countries, although later will be returned to Spain according to the Dublin Convention [52]) is to the detriment of the person, since the delay in formulating the request for asylum after entering the country may adversely affect its approval.

With regard to the right of asylum in Morocco, as already explained in the contextualization section, the country has ratified the Geneva Convention. According to a source on the ground, it is UNHCR who registers the requests and works with the Moroccan government, yet with almost zero result. The process is long, with no official help is given, and it is easier for certain nationalities like Syria to access the international protection.

Conclusions

- The South Border is increasingly used as a route of entry to the EU: the number of people who cross has risen. Due to the greater shielding of land accesses and the lack of legal and safe routes to access Spanish and European territory, the deaths are also increasing as people attempt to cross the South Border by sea.

[48] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit

[49] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit

[50] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit

[51] Comisión Española de Ayuda al Refugiado (CEAR) (2017). Op.cit. i Comisión Española de Ayuda al Refugiado (CEAR) (2016), Informe Anual 2017: Las personas refugiadas en España y Europa: https://www.cear.es/wp-content/uploads/2016/06/Informe_CEAR_2016.pdf

[52] European Parliament and European Council (2013), Regulation (EU) No 604/2013: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32013R0604&from=ES>

- The policies of externalization of immigration; they are financed by Spain and the EU in order to allow Morocco to stop arrival of asylum seekers to the EU. Morocco can't be considered a safe country for these people, since the institutional violence towards them is systematic. Moroccan security forces carry out all types of physical violence, such as raids against settlements and neighborhoods where they live; security forces burn their properties and expel immigrants. Moreover there is evidence of bad treatments (blows, throwing stones, etc.) especially in the area close to the fences. They also arrest and send immigrants far away from the border to deter their attempt to enter European territory.
- In Nador, Tangier, Ceuta and Melilla, apart from institutional racism, we have also seen social racism towards foreigners. The media play an important role in encouraging rejection towards these people.
- There is excessive use of force and poor treatment both of people on the top or at the bottom of the fences at the Moroccan and the Spanish border side (including use of the military technology); in some cases, this can lead to serious injuries or even deaths.
- The Spanish state practices what has been known as pushbacks ("devoluciones en caliente" in Spanish language) As soon as people have managed to cross the fence and they are in Spanish territory, they are returned to Morocco. This practice is completely illegal; it violates international law: the principle of "non-refoulement", the cornerstone of the right to asylum. International law prohibits the expulsion or return of persons to a third country in which their life and liberty is not guaranteed and where there are well-founded grounds for torture, inhuman or degrading treatment or violation of their human rights. Moreover, it has been proven - that Morocco is not a safe country for immigrants. Pushbacks also violate international law regarding the protection of children (minors to whom the State is obliged to give protection, are not identified) and international protection (they are not allowed to request international protection).
- The CETIs are frequently overcrowded and the transfers of people to the peninsula are carried out discretionally and with discriminatory criteria. It is common to move people from sub-Saharan Africa to the peninsula, while people of Asian or Maghreb may stay for more than a year at CETI. People who have requested international protection in Ceuta and Melilla are not transferred either, except if they are Syrians. So, the freedom of movement is illegally restricted.

- There is an alarming lack of specific protection for people in situations of vulnerability (such as women, victims of trafficking for the purpose of sexual exploitation, LGBTI people or unaccompanied foreign minors). At the border perimeter these cases are not identified and the necessary protection is not given. Moreover, at the CETI there are no specific protocols or they are inadequate, and transfers are not agile. In the case of juvenile facilities, several abuses have been reported. All this increase gravity of the vulnerability.
- There is a serious concern regarding the extreme vulnerability of unaccompanied foreign minors. Both in Morocco (where they are totally unprotected) and in Ceuta and Melilla (where many choose to declare themselves of legal age or to live in the street due to the fact that protection system has become “undesirable”) exclusion of minors from the educational system, extinction of their residence permits after their majority of age and poor conditions at the centers have been reported. These practices aimed to discourage the arrival of minors and avoid a “pull effect”.
- With regard to the right of asylum, Morocco has not yet approved an asylum law and does not facilitate the access to this right (asylum can only be requested at the UNHCR office in Rabat, far from any border, which makes it a real chimera crossing the country without being stopped on the way). In case of obtaining the recognition of the protection, there is no state program for reception and integration, a task that falls on overwhelmed NGOs.
- The right of asylum is directly violated in Ceuta and Melilla: there is a lack of legal and safe ways to its access and the principle of “non-refoulment” is violated by rejecting people to Morocco without having given them the opportunity to seek asylum. Although there are asylum offices in the two land crossing points, it is almost impossible for people in forced displacement to access them, since immigrants must have crossed the Moroccan border, where they are rejected. It is totally impossible for people from sub-Saharan Africa to receive the permission to pass the border from the Moroccan authorities and, therefore, they are excluded of the right of asylum. Meanwhile people of Arab phenotypes can cross the border using false Moroccan documents and paying border control and security forces. For the above reasons, SOS Racism denounces that the South Border is a “selective border”, permeable to some people after payment, which fosters the human trafficking and smuggling mafias against which the Spanish government claims to fight. As CEAR denounced, it is precisely the lack of provision of legal and safe channels which promotes the mafia business [53].

[53] SOS Racismo (2017). Op.cit.

Bibliography

Asociación Harraga (2016), De niños en peligro a niños peligrosos: Una visión sobre la situación actual de los Menores Extranjeros No Acompañados:

https://drive.google.com/file/d/0B_vfw5d1jGvWRVhsMy05VmNyV1E/view

Amnistía Internacional (2006), España y Marruecos: Falla la protección de los derechos de las personas migrantes: Ceuta y Melilla un año después:

https://www.es.amnesty.org/uploads/media/Ceuta_y_Melilla_2006.pdf

Amnistía Internacional (2015), Miedo y vallas: Los planteamientos de Europa para contener a las personas refugiadas:

https://www.es.amnesty.org/uploads/media/403254415.espa_Fear_Fences-Europe_refugee_.pdf

Amnistía Internacional (2016), En tierra de nadie: La situación de las personas refugiadas y migrantes en Ceuta y Melilla:

https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla_FINAL-1.pdf

Asociación Pro Derechos de la Infancia Melilla, vídeos de denuncia a canal Vimeo: <https://vimeo.com/user12822802>

Asociación Pro-Derechos Humanos de Andalucía (APDHA) (2017), Balance Migratorio: Frontera Sur: <https://apdha.org/media/Balance-Migratorio-Frontera-Sur-2017-web.pdf>

Asociación Pro-Derechos Humanos de Andalucía (APDHA) (2017), Derechos Humanos en la Frontera Sur 2017: <https://www.apdha.org/media/informe-frontera-sur-2017-web.pdf>

Comisión Española de Ayuda al Refugiado (CEAR) (2017), Refugiados y Migrantes en España: Los muros invisibles tras la frontera sur:

<https://www.cear.es/wp-content/uploads/2018/02/INFORME-FRONTERA-SUR.pdf>

Comisión Española de Ayuda al Refugiado (CEAR) (2016), Informe Anual 2017: Las personas refugiadas en España y Europa: https://www.cear.es/wp-content/uploads/2016/06/Informe_CEAR_2016.pdf

Comisión Española de Ayuda al Refugiado (CEAR) (2017), Informe Anual 2017: Las personas refugiadas en España y Europa: <https://www.cear.es/wp-content/uploads/2017/06/Informe-Anual-CEAR-2017.pdf>

Concord Europe (2018), Asociación o condicionalidad? Supervisión de los Pactos sobre Migración y el Fondo Fiduciario de la UE para África:

<https://coordinadoraongd.org/wp-content/uploads/2018/04/EUTFReport2018-espa%C3%B1ol.pdf>

Consejo Europeo (2016), Declaración UE-Turquía, 18 marzo de 2016:

<http://www.consilium.europa.eu/es/press/press-releases/2016/03/18/eu-turkey-statement/pdf>

Human Rights Watch (2002), España y Marruecos. Callejón sin salida: Abusos cometidos por las autoridades españolas y marroquíes contra niños migrantes: <http://pantheon.hrw.org/legacy/spanish/informes/2002/spnmorc0502sp.pdf>

Human Rights Watch (2014), Abused and Expelled: Ill-treatment of Sub-Saharan African Migrants in Morocco: <https://www.hrw.org/report/2014/02/10/abused-and-expelled/ill-treatment-sub-saharan-african-migrants-morocco>

Irídia (2017), La frontera sur: Accesos terrestres: <http://ddhhfronterasur2017.org/assets/frontera-sur.pdf>

Metges Sense Fronteres (2013), Violence, Vulnerability and Migration: Trapped at the Gates of Europe. A report on the situation of sub-Saharan migrants in an irregular situation in Morocco: https://www.doctorswithoutborders.org/sites/usa/files/Trapped_at_the_Gates_of_Europe.pdf

Naciones Unidas (1951), Convención sobre el Estatuto de los Refugiados: <http://www.ohchr.org/SP/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

Naciones Unidas (1984), Convención sobre la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes: <http://www.ohchr.org/SP/ProfessionalInterest/Pages/CAT.aspx>

Organització Internacional per a les Migracions (OIM), Missing Migrants: <https://missingmigrants.iom.int/region/mediterranean>

Parlament Europeu i Consell Europeu (2013), REGLAMENTO (UE) No 604/2013: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32013R0604&from=ES>

Programa de las Naciones Unidas para el Desarrollo, Informe sobre Desarrollo Humano 2016: http://hdr.undp.org/sites/default/files/hdr_2016_report_spanish_web.pdf

Red Acoge (2014), Inmigracionalismo – Hagamos Autocrítica: medios de comunicación libres de xenofobia:

SOS Racismo (2017), Informe Anual .17: Sobre el racismo en el estado español:

Tribunal Europeo de Derechos Humanos (2017), Asunto N.D. y N.T. c. España: http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/area-internacional/tribunal-europeo-derechos/jurisprudencia-tedh/articulo-prohibicion2#Se_1288796454174_1

Created by:



With the support of:



**Agència Catalana
de Cooperació
al Desenvolupament**

**Ajuntament de
Barcelona**

