

Welcoming people fleeing their countries

28.08.2021

"Refugees are people fleeing conflict and persecution. Their status and protection are defined by international law, and they should not be expelled or returned to situations where their lives and freedoms would be at risk.

This is how UNHCR defines refugees on its website.

Six days ago, a boat with 41 people arrived at Isla de la Tierra, under Spanish sovereignty; 20 women, three of them pregnant and six children. Many of these women asked for urgent international protection when the Spanish authorities arrived on the island. The response to these requests was a tear gas attack. Hours later they were expelled to Morocco with no knowledge of their exact whereabouts among their contacts. Two days ago, the fate of these people was still unknown.

In recent weeks we have witnessed the deportation of minors who had arrived in Ceuta several months ago. They were children fleeing their homes because their lives and liberties were at risk. Many were expelled without being heard and had their rights violated. Lawyers and activists succeeded in stopping these illegal deportations.

At the same time, Afghanistan is again in the media spotlight following the arrival of the Taliban in Kabul, taking de facto control of the whole country. Thousands of people have been fleeing ever since. Social networks have been filled with messages of support and solidarity. Politicians are also showing their support for the people who are fleeing and opening the doors of their countries to welcome them.

At this point we cannot stop asking ourselves, is it that the lives of all people are not worth the same? Is it that some people deserve to be heard and welcomed with dignity more than others? Have we normalised the arrival of people to our country through the Southern Border to such an extent that their lives no longer matter? Focusing on the media spotlight as if the reality around us were not true (young people sleeping and living badly on the streets or in industrial warehouses, 4 and 5 months waiting list to enter a public shelter, segregated shelters for certain nationalities, etc), lets us see the type of people who form the government of the Spanish state, of Europe and of the cities where we live.

We demand [#legalpathways](#) and [#safereception](#) conditions for ALL people who arrive, and have arrived in our country fleeing places where their lives and freedoms were at risk, and not only those of the media-friendly nationalities of the moment.

To describe the undescrivable

12.08.2022

"This is my stress, this is my life, this is who I am," said Mohammed as he described his painting. He had not hesitated for a second to take the paper and fill it with lines and

spots of different colours. Besides the result, watching him paint was hypnotic. The strokes seemed to be ready in his mind before his hand had even laid them on the white background. His body was suddenly only the instrument that expressed the intelligibility of the thoughts ruminating in his mind.

Such an extremely hostile environment is a barrier to a young person's emotional development. Surviving another day is the only goal. Getting food, not thinking too much, and every night taking the gamble to sneak onto a ferry on what they call "doing risky", risking, indeed, beatings and fatal accidents.

The European dream becomes a nightmare once they set foot on Spanish soil. Time stands still, there is no growth, no development, nothing beyond learning to cope with the despair of being locked up, despised and mistreated. There is no childhood or adolescence because they cannot afford it. They are alone, full of cuts from the barbed wire, marks from being hit by police batons, from punches, sprains. However, they are brave despite their fear, they have no other choice, they organise themselves to sleep in shacks they build hidden around the city, they share strategies and contacts of people who can help them. But everything they want, is out of their control. They are victims of racist policies that only puts obstacles in their way.

What do they do with this suffering? Communicating is not so easy. They might talk to each other, or they might hide their emotions as a form of self-protection. The language barrier creates a distance between us and them, but even if it didn't, words would fall short.

However, the body always speaks and lets out what cannot be verbalised. **Art** is a way of communicating without concepts, without terms, without the objectivity of oral language. Art is not made with the aim of being understood, but to channel the inner maelstrom of emotions.

We began to bring painting materials to our meetings with the guys on the beach, and suddenly many of them began to speak through colours. They painted, like Mohammed, their own minds, they painted what they missed, like their homes or their football team, they painted what they most wanted, the ferry, a plane, they painted what they wanted, without rules.

Some of them moved away to escape the noise while they painted, or so that no one could see what they wanted to paint. There was silence among those who worked absorbed in their papers. There was the calm of doing something just for the pleasure of doing it.

The times on the beach are strategic for maintaining direct contact with them, making quick cures, answering doubts about their administrative processes or lending them a mobile phone with which they can call their families. But these times are also spaces for leisure, for disconnection, where they can play ball, board games, jumping rope or, now, painting. In short, the kind of activities that kids their age should be able to do carefree.

Mohammed painted, in a matter of minutes, what he has not been able to convey in words for as long as we have known him. And thanks to his representation, we can get an idea of what he wanted to tell us.

There is still a lot to fight for people on the move to have a dignified life, but while we dedicate ourselves to constantly reporting these human rights violations, we also enjoy seeing how these moments are small patches in the mental health of the young people we work with on a daily basis.

UNLAWFUL DOESN'T MEAN RIGHTLESS

UNLAWFUL DOESN'T MEAN RIGHTLESS

2.08.2021

Last week [El Faro de Melilla](#) wrote that four people had been illegally expelled from Melilla, after having entered Spanish territory through the city's North Dock.

According to information from the Moroccan Association of Human Rights ([AMDH](#)) of Nador, the Spanish authorities have intercepted four young people, two of them minors, of Moroccan origin in Spanish territory. They transferred them later to the border perimeter to force their return into Moroccan territory where, according to the AMDH, they have been detained for 24 hours by the Moroccan forces.

Pretty arrogantly, the *Delegación de Gobierno* justifies its actions by referring to the decision of the European Court of Human Rights (ECHR) of February last year and "invites" the associations that believe that certain human rights have been violated to file a complaint against its agents. Easy, isn't it?

Trying not to be blinded by anger, frustration and concern for these people, we want to reflect (perhaps prior to such an invitation to file a complaint) on what this return and the response of the Spanish authorities to the public opinion entails. Ethically it would be easy to answer why Spain's action is not correct (once again), but there are also very strong legal arguments that support this position.

First of all, pushbacks are [a violation of both fundamental rights recognized in the Spanish Constitution](#), as well as in international law, which includes, among others, **the non-refoulement principle**, an absolute and non-derogable principle that prevents returning an individual to a territory where his or her life or freedom would be in danger.

Moreover, such refoulement is a potential act of **torture**. The European Committee for the Prevention of Torture (CPT) states in a [report](#) addressed to the Spanish government in 2014: *"taking into account the risk of abuse inflicted by members of the Moroccan auxiliary forces on irregular migrants returned to Morocco, the CPT recommends that the Spanish authorities ensure that no person is handed over to them."*

The decision of the ECHR that according to the *Delegación de Gobierno* supports executing pushbacks needs to be nuanced. Although the Grand Chamber of the ECHR put the legitimate right of defense of the Spanish State before the respect of the human rights of the sub-Saharan migrants returned in the heat of the moment (and this has been [discussed by numerous jurists and human rights organisations](#)), this judgment is not a blank check for the Spanish forces to return people at the border with impunity. Neither the nationality of the returnees nor the way of attempting to enter the country coincides in last week's case with that of the sentence, so it seems difficult to apply it to cases such as swimming entries.

Of course, the judgment does not include the possibility of returning persons appearing or claiming to be **minors and/or asylum or subsidiary protection seekers**, which, moreover, contravenes international child protection and international protection law, respectively.

In addition, [the Grand Chamber takes for granted the argument that the migrants did not exhaust all options before jumping the fence](#) **without assessing that these options, in practice, do not exist**. It is evident that this argument has lost all its value since Morocco totally closed the border crossings with Ceuta and Melilla in March 2020, making it absolutely impossible for people trying to reach Spain through these cities to have been able to access "other channels" of legal entry.

Despite the "legalisation" of the concept of **rejection at the border**, performed by Law 4/2015 (known as the *Ley Mordaza*, or Gag Law), it's good to know that [this concept has its origin in the idea of "flexible border", implemented by the former Minister of Interior Fernandez Diaz \(Partido Popular - People's Party\)](#). The idea of a flexible border implies that Spanish soil doesn't begin at the foot of the Spanish-Moroccan fence, but that its beginning would be linked to the imaginary line formed by the agents of the *Guardía Civil*, so that migrants would not have entered Spain despite crossing the border fences. This imaginative attempt to circumvent the law has had, unfortunately, not only a legal embodiment in the aforementioned law, but this provision has also been endorsed by the Constitutional Court (although with very important nuances, which we point out below).

This legislative setback in terms of Human Rights cannot and should not be used by the Spanish government to reject any person who has entered Spanish territory through the cities of Ceuta and Melilla ([as our colleagues from No Name Kitchen in Ceuta have been reporting over the last months](#)). In fact, one could question the application of both the provision of the law and the decision of the constitution to this specific case, since they are cases in which third country nationals intend to enter Spanish territory by **swimming** (and not overcoming the border containment elements, i.e., the fence), since in such a situation **there are no such containment elements**, they have not jumped any fence.

Finally, the ruling of the Constitutional Court very clearly states [the need to ensure that these border rejections are carried out with three guarantees: individualized application, preservation of full judicial control and compliance with international obligations on asylum and human rights](#). However, these guarantees are difficult to ensure in situations of rejection at the border, as stated by Judge María Luisa Balaguer Callejón in her dissenting opinion to the judgment, where she points out that the provision of *"paying special attention to the categories of particularly vulnerable persons is clearly insufficient since it is not explained how compliance with these obligations can be made effective in the absence of a procedure developed with minimum essential guarantees"*, highlighting the *"ignorance of the situations experienced at the southern border"* of her colleagues in this judgment.

In conclusion, it can only be maintained that the **return** and transfer *ipso facto* to the Moroccan authorities that was carried out last week by the Spanish Civil Guard, **without the slightest intention of carrying out the required individualised examination of the migrants (including two minors) and without any kind of procedure**, once they were in Spanish territory, **lacks legal support and is a breach of the most essential rules of international human rights law**. It is another example of the intensification of migration control in Europe that we are witnessing in Ceuta and Melilla, where the rights of migrants are being subjected to serious violations.