**QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS VIOLATIONS AT INTERNATIONAL BORDERS: TRENDS, PREVENTION AND ACCOUNTABILITY.**

**Submission by Save the Children on child rights violations at international borders in Spain.**

Save the Children is hereby submitting input regarding child rights violations at international borders. Contributions have been collected in Italy, Greece, Spain, Bosnia and Herzegovina and Serbia by Save the Children representatives. The submission is not intended to be exhaustive.

The Special Rapporteur is particularly interested in receiving inputs on any or all of the following issues:

**1. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021.**

N/A

**2. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.**

In May 2021, more than 8.000 people entered the Autonomous City of Ceuta from Morocco, between them, around 1.000 children. During the uncontrolled entry, episodes of unlawful push-back of children[[1]](#footnote-1) were reported and filmed by media[[2]](#footnote-2) and denounced[[3]](#footnote-3) by civil society[[4]](#footnote-4) and public institutions. In one particular case, the testimony of a 16 year old teenager of Moroccan nationality[[5]](#footnote-5) was interviewed after being pushed back.

Spanish Foreigners Law includes a reference to the possibility to “reject” at the Ceuta and Melilla land borders, which was introduced by the Law on Citizens Security in 2015. In November 2020, a ruling[[6]](#footnote-6) by the Spanish Constitutional Court, following the ECHR ruling on the ND and NT case (*reference in question n. 4 of present questionnaire*) decided on the constitutionality of pushbacks who try to enter Spanish territory by crossing the border fence in Spain’s North African exclave cities, Ceuta and Melilla. The ruling decided that the Law is not contrary to the Spanish Constitution, due to the fact that it contains reference to international obligations. In this sense, in accordance with the Spanish Constitution, the court ruled that pushbacks can be realized only: a) applied to individual entries b) with full judicial control c) under compliance with international obligations. The Court made clear that provisions adopted must *be carried out with the guarantees recognized for foreign persons by the international norms, agreements and treaties signed by Spain and comply in a real and effective way with international human rights standards that have to ensure full respect for the guarantees derived from the dignity of the person. Moreover, security forces must pay special attention to particularly vulnerable categories of people.*

Nonetheless, Spain has never adopted a procedure for identifying vulnerable people at borders, and in particular minors. Due to this, minors have been seen being pushed back without any guarantees, and the Spanish Ombudsman[[7]](#footnote-7) and the Ceuta’s minor’s prosecutor opened investigations[[8]](#footnote-8) to clarify the actions taken by police guards and military forces that operated during the inflow. The prosecutor in charge of the case[[9]](#footnote-9) stated that the procedures carried out were not unlawful because there was no guarantee the person was a minor, “Al haberse producido el rechazo sumario en frontera del inmigrante resulta de todo punto imposible la realización de las pruebas osométricas necesarias para que el médico forense pueda emitir informe acerca de la edad aproximada del extranjero indocumentado” (in English: “since the *rejection* of the immigrant was carried out at the border, it was completely impossible to carry out the bone - tests necessary for the forensic doctor to issue a report about the approximate age of the undocumented alien”)[[10]](#footnote-10).

Following their entry, on august 13th, 45 of the children who had entered unaccompanied the city in May were in fact subjected to unlawful collective expulsions in Ceuta on 13 August 2021 carried out by the Ministry of Home Affairs and the Territorial Governmental delegation in Ceuta (Delegación de Gobeirno).

These procedures were implemented without the compliance of Spanish law, which establishes that children return can only take place when: 1) are in the child’s best interest, 2) safe integration of the children in their home country is guaranteed, 3) the return is fully voluntary, and 4) the children are heard. Therefore, it is essential that authorities assess each child’s best interest after their arrival and determine a lasting solution best suited to their needs and well-being. This is a procedure under a clearly defined, mandatory legal framework, such as 1989’s Convention on the Rights of the Child, EU’s Directive 2008/115/EC on returning, Spain’s Ley Orgánica 4/2000 and its Reglamento. [[11]](#footnote-11)

At the time of the expulsions, neither the minors protection system nor the minors prosecutor were informed of any procedure involving them, and children were handled to border guards within a completely informal and unlawful procedure of de-facto return, as judicial investigations found out. Civil society organizations in Spain denounced the unlawfulness of the expulsion[[12]](#footnote-12). Due to the unlawfulness of the operation[[13]](#footnote-13), denounced by Spanish Ombudsman[[14]](#footnote-14) expulsions were stopped by judicial power in Ceuta[[15]](#footnote-15) and the CRC[[16]](#footnote-16) also asked for precautionary measures for children. Accordingly to over than 600 interviews done by Save the Children to migrant children arrived, 98,6 per cent of them[[17]](#footnote-17) have expressed their willingness to not return to Morocco. 1 in 3 children interviewed have experienced physical violence and abuse in their home country and 23 per cent of them would be capable of receiving international protection. The expulsion without procedure of 2 minors subject to judicial precautionary measures was also reported later by the NGO Fundación Raíces[[18]](#footnote-18)

On February 2022, two courts of Ceuta ruled the procedures carried out to return children as unlawful. The rulings conclude that no action was taken in accordance with current legislation and that the return of the children "violates the right to physical integrity and morals of minors”.

The two judgments[[19]](#footnote-19) state how the best interests of the minor must be guaranteed at all times face to the possibility of being left in a "situation of abandonment or helplessness" once they are repatriated: "Not only any of the procedural steps have been omitted, they have all omitted."

To comply with the sentences, the necessary measures should be adopted so that the 55 kids who were finally returned illegally can return. The judgment of the dispute also requires Delegation de gobierno - Government representation in Ceuta- to cease any action aimed at continuing with the unlawful returns.

**3. Please provide information on how the "safe third country" concept is applied and if there is any "safe third country" list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.**

N/A

**4. Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.**

We are not aware of significant progress made in developing an independent border monitoring mechanism at the national level . Episodes reported in the former questions show not only the inexistence of an independent border monitoring mechanism, but also the need to establish one to ensure international standards for refugee and child rights are respected at borders.

1. <https://twitter.com/savechildrenes/status/1394698346544209924> [↑](#footnote-ref-1)
2. [Un joven inmigrante, entre sollozos, a un militar español: "¡Traten de entendernos" - YouTube](https://www.youtube.com/watch?v=5s4yBLpivFo) and <https://twitter.com/la_ser/status/1394670050234273796> [↑](#footnote-ref-2)
3. <https://twitter.com/SaveChildrenEs/status/1426836198383833089> [↑](#footnote-ref-3)
4. <https://cadenaser.com/ser/2021/05/28/tribunales/1622210944_425130.html> [↑](#footnote-ref-4)
5. <https://cadenaser.com/ser/2021/05/19/sociedad/1621451778_186256.html> [↑](#footnote-ref-5)
6. Available at : <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-16819> [↑](#footnote-ref-6)
7. <https://www.defensordelpueblo.es/resoluciones/actuacion-de-los-agentes-relativa-a-la-devolucion-de-un-menor-extranjero/> [↑](#footnote-ref-7)
8. <https://elpais.com/espana/2021-05-28/la-fiscalia-de-ceuta-investiga-las-devoluciones-en-caliente-de-menores-durante-la-crisis-fronteriza.html> [↑](#footnote-ref-8)
9. Nº Procedimiento 0000016/2021 [↑](#footnote-ref-9)
10. <https://www.publico.es/politica/fiscalia-ceuta-archiva-investigacion-devolucion-marruecos-menor-mayo.html> [↑](#footnote-ref-10)
11. <https://www.savethechildren.es/notasprensa/las-organizaciones-de-defensa-de-los-derechos-de-la-infancia-unicef-save-children-y-la> [↑](#footnote-ref-11)
12. <http://www.fundacionraices.org/?p=3243> [↑](#footnote-ref-12)
13. <https://www.savethechildren.es/notasprensa/ceuta-mas-de-25-ong-solicitan-pedro-sanchez-la-suspension-inmediata-de-las> [↑](#footnote-ref-13)
14. <https://www.defensordelpueblo.es/resoluciones/devolucion-sin-procedimiento-de-menores-extranjeros-no-acompanados-en-ceuta/> [↑](#footnote-ref-14)
15. <https://www.publico.es/politica/juzgado-ceuta-paraliza-72-horas-repatriaciones-menores.html> [↑](#footnote-ref-15)
16. <http://ceutatv.com/art/38682/andalucia-acoge-gentium-y-save-the-children-llevan-las-devoluciones-a-la-onu> [↑](#footnote-ref-16)
17. <https://www.savethechildren.es/notasprensa/ceuta-save-children-insiste-en-que-casi-todos-los-ninos-y-ninas-migrantes-entrevistados> [↑](#footnote-ref-17)
18. <http://www.fundacionraices.org/?p=3399> [↑](#footnote-ref-18)
19. <https://cadenaser.com/2022/02/17/los-menores-marroquies-repatriados-en-ceuta-deben-volver-a-espana/> [↑](#footnote-ref-19)