

The endless path: women's footprints along the *southern border*

REPORT FROM THE HUMAN RIGHTS
OBSERVATION ASSIGNMENT
(Melilla, July 4-11 2014)



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CEA(R) EUSKADI

Comisión de **Ayuda**
al **Refugiado** en Euskadi

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This report was drawn up by Patricia Bárcena and Leire Lasa, Euskadi Refugee Aid Commission (CEAR-Euskadi) within the framework of the project: *The endless path: women's footprints on the southern border.*

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Comisión de Ayuda
al Refugiado en Euskadi



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Thanks to the human rights organisations for their tireless work defending life on the border and spending time with us during this visit.

Thanks to the public institutions and the College of Lawyers for welcoming us and answering our questions.

And finally, our most sincere thanks to Marie, Charlotte and Prisca who shared a fragment of their lives with us, from both sides of the border. And thanks to the thousands of women who, like them, face a daily struggle to survive on the road with its female-oriented, cross-border violence. And they do this with courage and dignity. We hope that this work, raising its voice alongside thousands of others to demand that human rights are respected along the southern border, helps to bring to light the urgent need for protection measures for refugee women and we call on public institutions to take decisive steps in this respect.

"The black women's critique of history has not only involved us in coming to terms with 'absences'; we have also been outraged by the ways in which it has made us visible, when it has chosen to see us".

Hazel V. Carby

"People flee from violence and are returned to it. They are refugees and immigrants that are often also pursued by the very States that should be protecting them. The context is increasingly tough and the violence recurring. We need to find out about it and fight it".

Living without Fear. CEAR-Euskadi

Melilla is a "sort of miniature Europe. And its ten kilometres of railings, cameras, military uniforms, steel wires, watchtowers and barbed wire are the perfect metaphor for Brussels' policies: obsessed, armoured, wasteful and civilised. Intelligent barriers, zoom lenses, chemical irritants, spotlights and rubber bullets make it hard for the illegal immigrants to cross the border and mean that the Spanish police can intervene quickly to send them back over the other side of the fence. All this reflects the fears of a continent terrified of a nonexistent invasion".

Gabriele del Grande

(1. Introduction)

At CEAR-Euskadi, our work revolves around defending and promoting Human Rights and the full development of refugee, displaced, stateless and migrant persons who require international protection or are at risk of exclusion. We have been defending the right to asylum for over 20 years and one of our struggles along this path has been, and continues to be, achieving official protection for people who are persecuted for gender reasons.

The Human Rights Observation Assignment that ran from July 4 to 11, visited Melilla within the project entitled The endless path: women's footprints along the southern border, funded by the Bizkaia Local Government, in an attempt to shed light among Human Rights agents and public institutions on the difficulties encountered by refugee women travelling to a safe country in order

to access the right to asylum. The information that was collected through encounters and meetings with public institutions, human rights organisations and with the women themselves has given us firsthand knowledge of what thousands of them are going through as they flee via the dangerous southern border.

The Basque Parliament Commission for Human Rights, Equality and Citizen Participation, the Pedro Arrupe Human Rights Institute (Deusto University) and Ikuspegi (Basque Immigration Observatory), as well as different facets of the media accompanied CEAR-Euskadi on this visit. Once again, we would like to thank them for their participation and commitment to defending refugees' human rights.



(2. Composition)

Basque Parliament Commission for Human Rights, Equality and Citizen Participation

- Maribel Vaquero Montero (President, Euzko Abertzaleak – Basque Nationalist group)
- Diana Carolina Urrea Herrera (EH Bildu group)
- Juan Carlos Ramírez-Escudero Isusi (Euzko Abertzaleak – Basque Nationalist group)
- Andoni Iturbe (Lawyer)

Pedro Arrupe Human Rights Institute (Deusto University)

- José Ramón Intxaurbe Vitorica

Ikuspegi - Basque Immigration Observatory (University of the Basque Country)

- Maite Fouassier Zamalloa

CEAR-Euskadi

- Patricia Bárcena García (Director)
- Leire Lasa Fernández (Incidence and Social Participation Team)

(3. Meetings held)

- Public institutions.

- Government Delegation
- Temporary Immigrant Compound (CETI)
- State Law Enforcement Forces and Agencies
- Immigration and Border Brigade
- Central Unit of Illegal Immigration and Document Forging Networks (UCRIF).

- College of Lawyers.

- Human Rights Organisations.

- Melilla Human Rights Association
- CEAR
- Tangier Archbishopric Migration Delegation in Nador (Morocco)
- Movimiento por la Paz
- PRODEIN
- Jesuit Migration Service .

(4. Context)

The right to asylum is a fundamental right

Article 14 of the 1948 Universal Declaration of Human Rights establishes that “*everyone has the right to seek and enjoy in other countries asylum from persecution*”.

The cornerstone of the international asylum protection is the Geneva Convention relating to the Status of Refugees in 1951 (hereafter the Geneva Convention) and its New York Protocol from 1967. These instruments established the definition of a refugee as someone with “*well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.*”.

Spain joined the Geneva Convention in 1978.

Persecution for gender reasons and the right to asylum

From the point of view of the right to asylum, persecution can be defined as the severe, continuous or systematic infringement of human rights. Discrimination or less favourable treatment can be seen as equivalent to persecution and require international protection. We are talking about persecution for gender reasons when these human rights infringements are related to the role assigned to a person due to their gender identity (woman, man, trans or other) or due to their sexual preferences.

The current Asylum Law¹ lists persecution for reasons “*of gender or sexual orientation*”, as a cause for asylum. This formal recognition represents important progress towards equality between men and women and towards recognition of violence suffered by Lesbians, Gays, Transsexuals, Transgender and Intersexual persons (LGTTBI).

However, as opposed to what occurs with other causes of persecution (race, religion, nationality, social group and political opinions), the Asylum Law expresses that gender and sexual orientation cannot, in themselves, be the cause of persecution, but that this will depend on the “*prevailing circumstances in the country of origin*”. This conditioning, not required by the Geneva Convention, represents an additional obstacle for these people and for organisations supporting asylum procedures.

For a person to receive asylum (protection), they must experience and prove a well-founded fear. The Asylum and Refugee Office (OAR)² studies the case to check whether the person is afraid and if this fear is founded on facts that can be proven. There should be circumstances in their environment justifying their need to escape. However, these facts do not have to be the *prevailing circumstances in the country of origin*.

Human rights organisations and social collectives from many regions also state the difficulty of compiling trustworthy information on human rights infringements that are not yet fully considered and

¹ Law 12/2009, dated 30th October, regulating the right to asylum and subsidiary protection

² The Asylum and Refugee Office (OAR), attached to the Ministry of the Interior, is in charge of hearing asylum applications in Spain.

can be brushed under the carpet by state and non-state structures. Additionally, research in order to clarify what has happened and to bring the perpetrators to justice often means assuming the risk of persecution.

Reaching a safe country is an obstacle race pitted with violence

The first step to be able to enjoy asylum protection involves reaching a safe country. This means leaving your own country, crossing military borders, surviving discriminatory processing or surviving the desert, the sea and wires. Today, managing to do this means outwitting a whole union of countries that invest vast amounts of human, material and military resources in the implementation of a policy intended to prevent people from leaving their countries of origin. And if they do leave, anyone caught in transit or arriving must be returned.

Security and irregular immigration policies have led the European Union to externalise its borders through a broad military and police force that makes it hard for people needing international protection to arrive and that has turned escape into a new form of violence..

Spain, as the *southern border*, has developed a 'control system' for migratory flows, taking its jurisdiction beyond the borders of its territory, acting in international waters and in transit countries and forging agreements with countries of origin to control the people who are leaving their own coasts.

The European Agency for managing operative cooperation on the outer borders of the European Union member states (FRONTEX), patrols in international waters, detention centres in third party countries such as Mauritania or Libya, the spiked and barbed wire fences in Ceuta and Melilla, agreements for readmission, the Foreign Internment Centres (CIE) or deportation flights, are just some of the measures implemented within the framework of these policies.

This continuous, increased stiffening of migratory policies has represented, on the one hand, a considerable drop in the arrival of boats on the Spanish coasts³ and consequently 'success' for migratory control policies along the southern border. And, on



³ “During 2013, 3,237 illegal immigrants came to the Spanish coasts compared to 3,804 in 2012, representing a drop of 15%. 2013 consolidates the reverse in the rising trend of 18% recorded in 2011. If the drop in 2012 was 30%, in 2013 it fell by a further 15%. Since 2006, the entry of illegal persons via the Spanish coasts has dropped 90.7%, representing the best data from the 2001-2013 series” Source: Ministry of the Interior. Madrid, 29/04/2014.

the other hand, there has been a considerable rise in deaths and disappearances during attempts to reach European territory by obliging refugees and migrants to take increasingly longer and more dangerous routes. Fortress Europe, through compiling international newspaper articles, considers that 19,144 people died between 1988 and 2013 in their attempts to reach the European border. 8,822 of them were lost at sea.

Despite the increase in irregular entries through Ceuta and Melilla in 2013, the migratory volume along the southern border continues to be marginal compared to the entire migratory movement towards Spain. It also only represents 4% of illegal entries into the EU⁴. However, the resources used to control the border are outstanding: radar, sensors, thermal cameras, heartbeat detectors, planes, helicopters, boats, patrols⁵...

Refugee women on the southern border

The majority of the people crossing the *southern border* are men. According to the Andalusia Human Rights Association (APDHA), in 2013 only 4,11% were women, and 3,02% minors. However, their migratory path is profoundly affected by physical and sexual violence, mainly in cross-border places. Forced pregnancies and clandestine abortions are a consequence of the violence suffered.

The migratory path to Morocco involves different modes of transport that vary depending on resources and changes in the migratory routes. Many sections are covered on foot, during long days that put their lives at risk. The Tamanrasset desert (Algeria) is crossed in pick-ups or on trucks. Once in Algeria, it is common to spend time in Maghia, waiting for the best time to cross the border to Oujda (Morocco).

Research carried out by Women's Link Worldwide determined that the journey from the country of origin to Morocco can take 2 to 3 years; although some women have undertaken 8 year journeys. Morocco has become an extended stay place, as migrants wait for the right time to cross to Europe. The average stay is a year and a half; although some women stay for 7 years.

Over the last few years, migratory flows crossing the country have been feminised. This refers to increasingly young women, some minors, of fertile age, that survive in most cases as prostitutes; or women trapped in sex trade trafficking networks. However, many of them state that the ACNUR refugee status does not give them a residence or work permit and there have even been deportations (mainly on the Algerian border).

The clandestine nature of administrative irregularity leads to fear of raids and deportation, among others, and difficulties in terms of accessing health services, creating enormous invisibility. It is these women who have the least access to information on the exceptional legalisation campaign for illegal migrants that the Moroccan government set up late last year.

They cross over to Spain by boat or they swim. The main arrival points are Almeria, Motril, Cadiz, Ceuta and Melilla.

The Sex Trade

Many of these women are escaping gender persecutions such as intra-family violence, forced marriage, female genital mutilation or war and generalised violence where their bodies are used as a battle ground. This is the case of women in the D.R. Congo, Somalia, Algeria, Guinea Conakry or Ivory Coast, among others.

The journey's danger and difficulty intensifies and the majority are captured along the way by sex trafficking networks. The captors, traffickers, chiefs or connection men are the only alternative in the light of the impossibility of travelling alone.

⁴ In 2013, 6,838 persons entered Spain illegally compared to 40,304 in Italy. Source: Frontex.

⁵ Various authors. What are we doing with the borders? Akal, 2013.

Other women are captured in their countries of origin. This is mainly the case for Nigerian women. They are tricked with fake job offers. They do not know that they will have to work as prostitutes; or even knowing that, they are not aware of the exploitation conditions they will have to endure (violence, coercion, threats to their families...). The networks provide them with money, entry channels and documentation. Once in the destination countries, they have very high debts that they have to pay back through prostitution, tying them to the network. In addition, voodoo rites and traditional witchcraft are also used as tools for psychological submission.

The United Nations Office against Drugs and Crime (UNODC) estimates that around 10,000 persons, mainly women and minors, are traded every year from Nigeria to be exploited in countries in the region (Benin, Ivory Coast and Gabon), in Europe (Italy, Spain and United Kingdom) or in Gulf countries (Saudi Arabia).

The sex trade is the most severe expression of commercialisation of bodies that the capitalist and patriarchal system can offer us. It is a journey to hell and back where many women feel they do not stand a chance against the impossibility of undertaking a dignified migratory path.

According to the UN, Spain is one of the main destination and transit countries for the trafficking networks. They feed on the growing direct care and sex industries in the destination countries, mainly Europe, and specifically Spain.

The Spanish Network against Human Trafficking estimates that between 40,000 and 50,000 are sexually exploited in the country. This has become the main cause stated in asylum applications for gender reasons⁶.



⁶ Data taken from the investigation run by CEAR-Euskadi analysing asylum applications for gender reasons processed by the CEAR legal services from 2009 to 2012. The data was checked against the ACNUR, the Asylum and Refugee Office (OAR) and different organisations that work in the asylum field (Women's Link Worldwide, Helsinki Committee from Hungary and European Council for Refugees and Exiles –ECRE).

No person can be returned to any country where their life or integrity is at risk: the principle of NO RETURN

The International Right prohibits States from expelling or returning a person to the territory of any country where their life or freedom is threatened, or where they might suffer torture, inhumane or degrading treatment or other infringements of their human rights.

This prohibition appears in article 33.1⁷ of the Geneva Convention, in article 3⁸ of the European Agreement to Protect Human Rights and Fundamental Freedoms (CEDH) and in article 3.1.⁹ of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

This principle, known as *no return*, is the fundamental principle upholding the right to asylum. Not complying with this principle leaves refugees without a protection guarantee as returns or immediate expulsions take away any chance of being able to request protection. Consequently, as reiterated by ACNUR¹⁰, it must be complied with on State territory, in international waters and in transit countries and wherever the countries signing the aforementioned conventions exert their jurisdiction.

Therefore, border control measures, independently of where they take place, constitute exerting state jurisdiction that is not exempt from meeting international treaties and is obliged to guarantee them. The Spanish government is obliged to meet the no return principle in any place and at any time that its jurisdiction is exerted.

Refugees and migrants also have a series of rights and guarantees that must be respected independently of whether the person requests international protection: assistance from a lawyer and an interpreter, right to information, access to effective resources against return and the State's obligation works from figuring out how they will be treated in the destination country.

*Case of Hirsi Jamaa and others against Italy*¹¹

On 23rd February 2012, the European Court of Human Rights declared the extraterritoriality of the European Convention on Human Rights by establishing application and compulsory compliance in any space (even a ship at sea) where a State exerts its control. The sentence returns to the principle of no return, the prohibition of collective expulsions and the procedural guarantees for refugees and migrants that are essential to respect their fundamental rights.

United Nations Committee against Torture

In November 2011, the United Nations Committee against Torture condemned Spain for inhuman, cruel or degrading treatment against the Senegalese citizen Lauling Sonko who drowned on the night of 25th/26th September 2007 when he attempted to swim to the coast of Ceuta with three other people. A Civil Guard patrol intercepted them, brought them within a few metres of the Moroccan shoreline and threw them in the water, after perforating their life jackets so they did not try to cross again. Lauling Sonko did not know how to swim and asked for help. By the time one of the agents jumped into the water and brought him to the beach, it was too late. Despite repeated attempts to save his life, he could not be resuscitated.

⁷ Article 33.I (CGER): No contracting State can, by expulsion or return, in any way leave a refugee on the border of territories where his/her life or freedom is in danger for reasons of race, religion, nationality, social group or political opinions.

⁸ Article 3 (CEDH). Prohibition of torture: No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. The doctrine recognises that this precept "does not lead directly to preventing extradition. However, it is prohibited, according to the reiterated jurisprudence in this respect of the European Court of Human Rights the extradition, expulsion or relegation to a State, in which the affected person will be in danger of being exposed to inhuman or degrading torture or treatment for the legal purposes of Art. 3 of the European Convention on Human Rights" (Fischer-Lescano, A. and Löhr. T. 2007).

⁹ Article 3.I. (CAT): No Member State can expel, return or extradite a person to another State when there are well-founded reasons to believe that they would be in danger of being tortured..

¹⁰ United Nations High Commissioner for Refugees.

¹¹ STEDH (Gran (Gran Sala) 23rd February 2012. Case of Hirsi Jamaa and Others v. Italy. Appeal 27765/09. Expulsion of 200 Libyans from Italy. Collective expulsions.

All four people came from regions in conflict and, therefore, they would have been eligible for international protection. The Civil Guard performed a de facto return, immediately, without any type of administrative procedure. CEAR-Sur brought forth a criminal case that was dismissed. Meanwhile, Lauling Sonko's mother presented a statement to the United Nations Committee against Torture that was resolved on 25th November 2011. The Committee declared that the prohibition of abuse "*is absolute and its prevention should be effective and imperative*" in any territory where the authorities exert effective control, de iure or de facto, directly or indirectly, totally or partially. "*The civil guards had control over the persons on board and were therefore responsible for their integrity.*" And it concludes: "*the imposition of physical and mental suffering, made worse by the victim's particular vulnerability as a migrant [...] reaches the threshold of cruel, inhuman or degrading treatment or punishment.*"

Illegal returns and border violence

Illegal returns, known by the Spanish government by the euphemism "*immediate returns*", refer to action by the State Law Enforcement Forces and Agencies where, de facto, foreign citizens intercepted in Spanish sovereignty zones are handed over to Moroccan authorities without following the legally established procedure or meeting internationally recognised guarantees¹². This represents an infringement of the Asylum Law¹³, the Alien Act¹⁴ and ratified international human rights treaties; and this prevents refugees from accessing the international protection procedure.

The Ombudsman, the European Commissioner for Human Rights, international human rights organisations such as Amnesty International or Human Rights Watch, and numerous national organisations, movements and collectives have denounced and demanded the end of these illegal and inhuman border practices.

For years, after these 'deliveries', people were abandoned in the desert on the border with Algeria. The Moroccan authorities threatened them, abused them and occasionally fired into the air so that nobody turned back. They are currently still keeping people away from the border (people intercepted attempting to cross it and people returned illegally) but now they are left in Rabat. The abuse and attacks continue either side of the border. Local organisations have noted an increase in violence over the last few months.

The tragedy of 6th February 2014 on Tarajal beach (Ceuta), where 15 people drowned while attempting to swim to the Ceuta coast as a consequence of the Civil Guard's actions (firing rubber bullets), has turned public opinion against this systematic border practice. On 13th February, in the parliamentary commission, the Minister for the Interior admitted that, in addition to using rubber bullets as a "*containing method*", 23 people who managed to reach the beach were immediately returned to the Moroccan authorities "*applying an operative border control concept according to which the borderline falls back to the Civil Guard agents' line.*"¹⁵.

The Court of First Instance and Preliminary Investigation no. 2 in Melilla has recently opened cases to investigate what happened during the fence jump on 18th June. The case, presented by Andalucía Aco-ge, the SOS Racism Federation and PRODEIN, emerges from a video where it is possible to see how auxiliary Moroccan forces, within Spanish territory, beat an immigrant in the presence of members of the Civil Guard who do not intervene to stop the violent action. The Court considers that the fence is located in Spanish territory and, therefore, Spain is responsible for the actions that take place within it.

12 "The suppositions in which the foreign citizens that attempt to access national territory via non enabled posts and are intercepted at the border or nearby, at the most can be subject to return as regulated in article 58.3.b) LOEX." Source: Report "Immediate expulsions: When the State acts outside the law" I+D+i lusmigrante.

13 Law 12/2009, dated 30th October, regulating the right to asylum and subsidiary protection.

14 LOrganic law 4/2000, dated 11th January, on rights and freedoms for foreigners in Spain and their social integration, Royal Decree 557/2011, dated 20th April, approving its Regulation.

15 "The operative concept of border alluded to by the Minister of the Interior is a piece of fiction that lacks legal cover". Source: Report "Immediate expulsions: When the State acts outside the law" I+D+i lusmigrante.

The Report “Immediate expulsions: When the State acts outside the Law”¹⁶ concludes that “*the decision, execution and active and passive collaboration with immediate expulsions would incur criminal and disciplinary responsibility.*”

Despite all these complaints and countless pieces of documentary and audiovisual evidence, Spanish authorities continue to state that they are acting within the law and are respecting human rights on the border. Application of the Spanish-Moroccan Agreement on readmission of irregular migrants in 1992 justifies these returns, as they understand it. However, this is not above any Spanish or European rules on human rights that Spain is obliged to guarantee.

Refugees and migrants are being used as small change in the negotiations that the Spanish and Moroccan governments are holding to defend different political and economic interests. The latest events on the *southern border* are a clear example of this.



In the case of female sex trade victims, return puts their life and security at serious risk: retaliation from the network, that can also affect other members of their family (mainly for not having paid their `debt`); the real probability of being traded again; and serious ostracism, severe discrimination or punishment from the family or local community or, in some cases, by the actual authorities, due to having been a prostitute.

¹⁶ Source: Report “Immediate expulsions: When the State acts outside the law” I+D+i Iusmigrante.

(5. Conclusiones)

Infringement of access to international asylum protection

The meetings and encounters held with public institutions and local organisations unanimously considered that most people attempting to reach Europe through Melilla are fleeing from situations of serious conflict, generalised violence and severe humanitarian crises. Therefore, we are dealing with refugees.

One of the main consequences of migratory control policies is the increasing difficulty to arrive in a secure country in order to request international protection.

In 2013, only 4,502 people requested asylum in Spain, representing 1.03% of the requests processed in the EU. This figure, far from the European trend, is also laughable when compared to the 45.2 million people who have been forcibly displaced throughout the world, according to ACNUR.

That same year, 4,354 people entered Spanish territory through Ceuta and Melilla, many of them from Mali, Syria, and other countries in conflict. However, only 41 people processed their application in Melilla. In the first quarter of 2014, there were only 9, from D.R. Congo, Ivory Coast, Algeria and Syria (2 women, 5 men and 2 unaccompanied minors).

Human rights organisations state that it is not permitted to process asylum applications at the border and no information is being provided in this regard.

Consequently, both cities are paradigmatic cases of implementing strategies to reduce asylum applications in Spain. There are two main reasons:

1. **Illegal and systematic returns prevent refugees from accessing the asylum procedure.** There are no procedures at the border that give people access to international protection. In a press release from August of this year, ACNUR stated that the State should make it easier to access the territory and asylum procedures in Ceuta and Melilla.

2. **Infringement of the right to free circulation for asylum seekers in Melilla**
The meetings and encounters held unanimously considered that the very low number of asylum applications processed in Melilla is a direct consequence of the mainland access restriction for people applying for international protection declared to be eligible..

This prohibition, first applied in 2009 when the current Asylum Law came into force, represents a flagrant infringement of exercising the right to free circulation recognised in article 19 of the Constitution. The Ceuta Courts¹⁷, the Andalusia High Court of Justice¹⁸, the Ombudsman¹⁹, organisations specialised in defending the right to asylum such as CEAR, and international organisations such as

17 Sentencia 207/2013, de 16 de octubre, del Juzgado de lo Contencioso Administrativo número 1 de Ceuta.

18 The TSJA has backed this legal position, declaring the administrative measures null and void for retaining asylum seekers declared eligible in Ceuta. As an example, among many others, STSJA, Roll 398/2010, dated 25 October 2010; STSJA, roll 437/2010, dated 28 October 2010; STSJA, Roll 525/2010, dated 10 February 2011 and STSJA, Roll 527/2010, dated 13 January 2011.

19 The Ombudsman highlighted that the judicial decisions (TSJA) warned that a different interpretation would be contrary to the constitutional principles and the jurisprudence relating to restrictive interpretations of fundamental rights, covered by articles 10.2d) and 36.1 of the Asylum Law. It also highlighted that "there is no place for restrictive interpretations of fundamental rights according to the doctrine from the Constitutional Court" and that sentence 94/93 of the Constitutional Court already recognised the right to free circulation of foreigners that are in a "situation of legality"

ACNUR²⁰ and the United National Special Rapporteur on Racism, Xenophobia, Discrimination and Intolerance²¹ spoke out against this administrative measure.

However, the Government maintains this prohibition, justifying it with the exceptional character of autonomous cities in the Schengen Space²².

The restriction on the right to free circulation is driving the right to asylum in Melilla towards extinction. Refugees are deciding not to request international protection. They wait to be transferred to the mainland and when this happens, they already have an order for expulsion or return, making it enormously difficult to access the asylum procedure later on; even more so in the case of people confined in a Foreigner Internment Centre (CIE)²³, where the border procedure is applied, with far fewer guarantees of remaining in the territory. Other people choose to put their life on the line again and try to cross illegally.

Lack of protection for female sex trade victims

The province of Nador (Morocco), bordering Melilla, is a place that people pass through, a stop-off. According to organisations working in Nador, the Seluán Mountains, further away than the famous Mount Gurugú (mainly inhabited by men waiting to jump the fence), hide a total of 10 settlements, known as “family camps”, housing women, some with children in their charge. It is estimated that they house a total of 543 persons: 417 men (76,7%), 97 women (7,8%), 29 boys and girls, 5 of them unaccompanied (5,3%). They come mainly from Mali, Cameroon, Guinea Conakry and Nigeria as well as from Ghana, Senegal, D.R. Congo, Central African Republic, Ivory Coast, Gambia and Guinea Bissau.

Thanks to the information collected, the Basque Delegation has been able to prove that many women reaching Melilla via the southern border are victims of the sex trade. It has also been proven that there is an absence of detection and protection mechanisms.

To save their lives and receive protection, these women need three absolute conditions to be met: the condition of no return, detection (the possibility of being identified as sex trade victims) and access to asylum procedures.

However, on the one hand, in Melilla there are no official detection procedures and on the other hand, the Spanish government does not consider trafficking to be a cause for asylum²⁴. The Ministry of Interior²⁵ understands that this type of persecution does not fit within the Geneva Convention, but that the protection mechanism is established by article 59 bis of the Alien Act²⁶, conditioning the protection of

20 In May 2010, ACNUR set its position in this respect. “It therefore seems clear that as there is no limitation or any exclusion of asylum seekers’ (all the more taking into account the declarative nature of recognising the condition of refugee) right to freedom of circulation, this is fully applicable to them, and any delimitation of it should be derived from applying a legal ruling, independently of their geographic location.”

21 In his report dated 6th June 2013, Mutuma Ruteere demonstrated that asylum seekers in Ceuta and Melilla are worthy of special attention and lamented the differences in applying the asylum legislation between the mainland and the autonomous cities. He observed the fragility of the Spanish asylum system in both cities with some concern.

22 Point III of the Final Document of the Ratification Instrument for the agreement for Spain to join the Schengen Agreement Application Convention.

23 Non penitentiary public facilities where foreign persons in an illegal situation are held, in order to facilitate their expulsion, removing their freedom for a maximum period of 60 days. Given that not having documentation is an administrative offence, they are not considered formally to be “detention centres” but “internment centres”. They are run by the Ministry of the Interior through the Police Directorate General so, within the Spanish legal framework, they should be understood as “extensions of the police cells.” There are seven CIE in Spain. Many social organisations, institutions and international organisations have complained about their lack of transparency and the living conditions: abuse, isolation cells and infringement of fundamental rights. Among other serious situations, it has been seen that they hold women who are victims of the sex trade and other forms of violence, that are often expelled without having been informed of their right to seek asylum. The deaths of Samba Martine in the CIE at Aluche and Idrissa Diallo and Aramis Manukyan in the CIE at Zona Franca have still not been cleared up.

24 From 2009 to 2012, the CEAR legal services processed 40 asylum applications for women who were victims of the sex trade. 26 of them came from Nigeria, followed by countries such as Somalia, Cameroon, D.R. Congo, Mali or Sudan. None of them received international protection. Up to now there have only been two cases in Spain where asylum has been awarded to sex trade victims.

25 The Asylum and Refuge Office (OAR), attached to the Ministry of the Interior, is in charge of hearing asylum applications in Spain.

26 Organic Law 2/2009, dated 11th December, reforming Organic Law 4/2000, dated 11th January, on rights and freedoms of foreigners in Spain and their social integration.



Seluán Mountains (Morocco) hide more than 100 women, some of them minors, expecting to reach Europe

victims to informing and collaborating with the authorities in terms of dismantling the networks exploiting them.

The sex trade is therefore being tackled from persecution of the crime and not as a serious infringement of women's human rights. These women are being victimised twice, whilst the guilty parties go unpunished or are given easy punishments compared to the dimension of the crime they committed.

Not only is their political intention poor in terms of this real situation from a gender and Human Rights focus, but there is also a severe lack of training for the State's Law Enforcement Forces and Agencies on this issue.

What actually happens is that these women, tightly controlled by the network and, therefore, terrified of the consequences of their actions on themselves and their families back home, do not see informing as a way out of their situation and do not have real protection mechanisms.

Exploitation of female moroccan porters

Female Moroccan porters are being exploited every day on the Melilla border. Officially known as "*atypical trade*", this is slave work with no legal regulation at all. The border-crossing from the "Chinese Neighbourhood" is intended exclusively for this 'business'.

Between 6,000 and 8,000 porters come into Melilla daily from Nador; they are supplied with goods to transport back to Morocco. They carry the goods on their backs in heavy bundles that might weigh up to 100 kg and they make this journey 3 or 4 times a day, charging between 4 and 6 Euros per trip. On the whole, they are excluded women (widows, disabled, sick, 'condemned', divorced), with no resources. Consequently, they aim to make as many trips as possible every day.

These journeys take place in inhuman conditions. Local organisations have seen that occupational exploitation runs alongside police violence, paying bribes, sexual harassment, the arbitrary requisitioning of goods as well as the cold, rain or extreme heat²⁷. These crossing conditions cause accidents on a daily basis and frequent avalanches that have crushed porters to death.

This ‘transport’ of goods represents almost one third of the economy for both autonomous cities²⁸.



Overcrowding in the temporary immigrant compound (CETI)

The Temporary Immigrant Compounds are public establishments, run by the General Immigrant Integration Sub-division (Ministry of Employment and Social Security), conceived as initial reception centres and intended to grant services and basic social needs to the collective of migrants and asylum seekers arriving in the Autonomous Cities of Ceuta and Melilla²⁹.

The Melilla CETI began operating in 1999 and has 480 places. On 8th July 2014, it housed a total of 1,534 persons (971 men, 193 women and 370 minors -183 girls and 187 boys). In May the same year, there were 5 times more people living there than its official capacity, reaching almost 2,600 persons. Since then and until our visit, more than 900 people have been moved to the mainland.

²⁷ Tetuan Declaration on female porters on the Ceuta and Melilla borders. April, 2012.

²⁸ Melilla has the particularity of being outside the European Customs Union, so it can set its own tax on imported products. The limit or IPSI (Tax on production, services and importation) is a tax that gives them an advantage over direct importation from the other side of the border, where the duty is higher. This decision was made by the now Autonomous City in 1986, just shared with Ceuta after the Canary Islands joined the Customs Union in 1991. To get a better idea of the figures, Melilla has an annual budget of 250 million Euros, of which over 40 million comes via the IPSI goods importation tax. Source: El Mundo, 7th April 2013..

²⁹ As established by Royal Decree 557/2011, dated 20th April, approving the Regulation of the Organic Law 4/2000, on rights and freedoms for foreigners in Spain and their social integration, after reform by Organic Law 2/2009.

Currently, the main nationality is Syrian. The majority arrive in family groups and get into the city through border posts using fake passports.

The second group is Sub-Saharan. As we mentioned previously, women get into the city using boats and men, particularly men with no resources when they get to Morocco, climb over the fence.

The average stay stands at 280 days.

Facilities

The 480 places are divided into modules with 6 beds, 6 lockers, a desk and a table. They are currently occupied mainly by women with children and family groups, the majority being Syrian.

Tents have been set up to solve overcrowding problems, primarily housing sub-Saharan men. The bunk-beds are stacked up next to each other so there is no room for privacy or anywhere to keep personal objects, leading to theft and many conflicts.

The main building, intended to run training workshops, has also been fitted out to house residents.

There are no recreation spaces inside and the centre's surrounding area, where many families spend hours cooking and the children play, are covered in rubbish. As the Human Rights Observation Commission saw when it visited Melilla³⁰, in the month of July, Melilla City Council provides no cleaning or maintenance services in the area, obvious at first glance. This view contrasts against the carefully tended golf course, located between the CETI and the fence.

The overcrowding problems are clear: terrible living conditions, attacks and cohabitation conflicts.



Delegation entering the CETI



Women's situation

The lack of intimacy, the precariousness and saturation of the facilities are particularly serious in the case of women who are subject to attacks and sexual violence inside.

Syrian women suffer serious episodes of intra-family violence. The Centre's workers encourage the filing of complaints so the attackers can be sanctioned, but the situation is complicated and more often than not, they have no tools for action. If the man is expelled, the woman suffers retaliation from the family group, so they refuse to complain.

In the case of sub-Saharan women, there are clear signs that lead us to believe that many of them, mainly the Nigerian women, are victims of the sex trade. The networks have an iron grip on them inside. The majority declare that they have been travelling with their "*husband*". Others do not form part of the networks but they also have "*husbands*" who control their movements.

In principle, and depending on the nationality, they are not working as prostitutes in Melilla. Many of them do not know what awaits them when they arrive on the mainland. They are instructed on what they should say to the CETI staff and remain silent regarding their situation. Melilla is still a transit point to Spain and the networks "*look after their goods*".

In the CETI they have access to healthcare and they are offered psychological support, but there are enormous difficulties for staff to work with them individually. Consequently, when signs are detected, they are diverted to the mainland with a detailed report on their situation. By the time of the Basque Delegation's visit, 59 women had been moved after detecting signs of violence or trafficking. This situation contrasts against the official data, according to which

no detections of this type have been made in Melilla.

There are also serious homophobia situations (insults, harassment, attacks) against LGTTBI people.

Children's situation

The CETI provides them with schooling in the city.

Today, most of the minors at the CETI are of Syrian nationality, refugee children.

For a time, the trafficking networks used the children, mainly sub-Saharan, to make it easier to get women in. As a consequence, DNA tests were run to check family ties so the networks had to change their strategy. Currently, women get in pregnant and wait for the “*father*” in the CETI.

Transfers

Transfers to the mainland are made with authorisation from the Ministry of the Interior, on the proposal of the Ministry of Employment. They occur by order of arrival, with priority for vulnerable collectives, once the administrative processes have been followed: reviews and expulsion order³¹.

Currently, we are assured that departures are being streamlined.

Expulsions

According to the information collected, men are being expelled (Algeria, Southern Mali, Nigeria, Cameroon) but not women. These actions meet the readmission agreements that Spain has signed with third party countries. The National Police enters the CETI and moves the persons to a CIE on the mainland, awaiting their expulsion.

CETI management

Like the local organisations, the Delegation recognises the effort made by the CETI Management to manage this situation and look for better alternatives.

The Director states that with the overcrowding, administrative work overwhelms them and they are no longer capable of looking at other problem issues in depth, particularly related to violence against women. They have 15 people who work for the Ministry of Employment, as well as NGO staff. They admit that the work could be done better, but with the technical and human resources available, their management capacity is limited.

³¹ All persons leave the CETI with an expulsion order except for asylum seekers.

5. Recommendations

Respect refugee access to international asylum protection

We consider that it is urgent to develop immigration and asylum policy that respects national legislation and the international human rights treaties guaranteeing access to international protection for people who manage to reach Spain via the Autonomous City of Melilla. In this respect, we understand the following to be necessary:

- Identification of possible candidates for international protection and activation of procedures set up for this purpose.
- Guarantee legal aid in all procedures and strengthen resources for the Melilla College of Lawyers in this respect.
- Respecting the right to free circulation of all persons requesting asylum admitted for processing (access to the mainland).
- Respecting the principle of no return.

Implement protection mechanisms for female sex trade victims

Their invisibility and extreme vulnerability is particularly serious and worrying for women accessing Spanish territory via Melilla as they have undergone a migratory journey pitted with physical and sexual violence. Many of them are also controlled by sex trade networks.

The following is required to guarantee their protection:

- Recognition of the sex trade as a cause for persecution worthy of international protection. For several reasons:
 - Due to its extreme severity and exploitation conditions, the sex trade is a form of persecution.
 - Women are perceived as a social group by persecution agents and this brings about their persecution.
 - Persecution is exercised by state and non-state agents. Through its structures, the State is directly or indirectly implicated in the network activity or it is incapable of fighting this reality and protecting the victims.
 - The serious risks to their life and their integrity faced by anyone sent back to their countries of origin.
- Specific training on matters of gender and human rights for the different agents involved in the procedure, guaranteeing the detection of possible victims and making it possible to identify them and for them to access the asylum procedure.
- Immediate transfer for any woman undergoing violence or for whom there are signs of being a victim of the sex trade to specialised centres on the mainland.
- The activation of other protection mechanisms, such as subsidiary protection, authorisations for

- humanitarian reasons or exceptional circumstances, in addition to article 59 bis of the Alien Act.
- The approval of an Integral Law against the Sex Trade that is developed from a gender perspective, defending and respecting human rights, where the victims' protection is not conditioned to their collaboration with the authorities in dismantling the networks exploiting them.

Respecting female porters' human rights

Aware of the economic importance of the so-called "*atypical trade*" in the city, we advocate seeking solutions for transporting goods in such a way as to not be harmful to the women and guarantee their rights.

It is essential to back sustainable development that prioritises people and worthy employment in the area.

This would avoid thousands of women being doomed to such a cruel and inhuman job as carrying goods across borders.

Improve living conditions and reception at the temporary immigrant compound (CETI) and accelerate transfers to the mainland

Recognising the work carried out by the CETI staff, it is undeniable that overcrowding is a structural problem that must be dealt with urgently. Guaranteeing free movement of asylum seekers declared to be eligible is a measure that we understand can free up the CETI and extend FER funds³². In addition, we think it is necessary to:

- Activate humanitarian reception programmes, prioritising vulnerable women, people from countries in conflict or family groups with minors in their charge among the beneficiaries.
- Implicate the Autonomous Communities in this reception.
- Invest in improving CETI facilities and their surroundings.

End border violence (the fence)

We cannot end this report without referring to the fence and the violence that revolves around it. This violence should be immediately eradicated through specific actions:

- Immediate stop to illegal returns by means of respecting the legally established procedures, implying the transfer of persons that manage to enter the territory illegally to police dependencies and the inception of the relevant administrative file in the event of a return or expulsion, always following the principle of no return and identification of potential refugees.
- An end to the abuse and arbitrary measures that might be committed either side of the border, guaranteeing absolute respect for persons' dignity and human rights.
- Removing knives from the fence due to the proven serious risk that they imply for persons' lives and integrity, as recommended by the Ombudsman (recommendation 200/2013 dated 27th November).

Neither the state's reasons nor economic and political interests can come before respecting life and strict observance of human rights.

³² The European Refugee Fund (ERF) aims to "support and improve the effort of the Member States to improve reception conditions, apply fair and effective asylum procedures, and promote best practices in the asylum area to protect the rights of people that require international protection and allow the asylum systems in the Member States to work effectively".

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