



Analysis

Human rights violations at Spain's southern border: steps towards restoring legality

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December 2017

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1. Introduction

In mid-August 2014, a group of around 80 people attempted to enter Melilla, a Spanish enclave in North Africa, by climbing the three razor-wire topped fences that divide the territory from Morocco. The majority remained balanced atop a fence for around nine hours while some held onto their perches for up to 16 hours, “despite the suffocating heat and the lack of food and water,” as one news report noted at the time. [1] But regardless of how long they held on, as soon as they came down from the fence they were all returned to Morocco by officers from Spain’s *Guardia Civil*.

Two of the men who were on the fence that day (known only as N.D. and N.T.) subsequently brought legal proceedings against the Spanish government with the assistance of the *European Center for Constitutional and Human Rights*. [2] The complaint to the European Court of Human Rights asserted that:

“they were refouled to Morocco where they risked ill-treatment contrary to Article 3 without any effective remedy, contrary to Article 13. In addition they assert that they were victims of collective expulsion contrary to Article 4 Protocol 4, and rely on Article 13 as they were unable to be identified as asylum seekers, to assert their individual circumstances and to challenge their immediate deportation to Morocco and the risk of abuse in that State before the Spanish authorities, by means of an appeal with suspensive effect.” [3]

Although the Article 3 claim was dismissed by the Court, the other complaints were accepted, and on 3 October the Court found that the Spanish government had indeed violated the prohibition on the collective expulsion of aliens (Article 4 of Protocol No. 4 to the European Convention on Human Rights) and the right to an effective domestic remedy (Article 13 of the Convention). As highlighted in the Court’s press release:

“The Court observed that it was undisputed that N.D. and N.T., who were under the exclusive and continuous control of the Spanish authorities, had been expelled and sent back to Morocco against their wishes. This clearly amounted to “expulsion” for the purposes of Article 4 of Protocol No. 4.”

Furthermore:

“...the Court considered that the applicants had been deprived of any remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests prior to their expulsion... the Court concluded that there had been a violation of Article 13 of the Convention taken together with Article 4 of Protocol No. 4 to the Convention.”

[1] ‘Entregados a Marruecos unos 80 inmigrantes encaramados durante horas a la valla de Melilla’, RTVE, 13 August 2014, <http://www.rtve.es/noticias/20140813/cientos-inmigrantes-protagonizan-nuevo-intento-entrar-melilla/991960.shtml>

[2] ‘ECtHR judgment on case of N.D. and N.T. vs Spain’, ECCHR, https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/migration/melilla/articles/melilla-17oct3.html

[3] ‘The immediate return to Morocco of sub-Saharan migrants who were attempting to enter Spanish territory in Melilla amounted to a collective expulsion of foreign nationals, in breach of the Convention’, ECHR press release, 3 October 2017, <http://statewatch.org/news/2017/oct/echr-judgment-N.D-and-N.T-v-Spain-%20immediate-return-to-Morocco-from-Melilla.pdf>

The Court's ruling, which ordered the Spanish government to pay €5,000 to each of the complainants, reflects what human rights activists, international observers, journalists, campaigners, politicians, lawyers and even Spanish judges have been saying for years – that the Spanish practice of pushbacks at the border known as “hot returns” (*devoluciones en caliente*) is illegal and must be halted. Two other cases dealing with similar episodes are currently pending before the ECHR. [4]

The government's initial response to the October ruling was to claim that N.D. and N.T., along with all the other people who attempt to scale the fences in Ceuta and Melilla, should simply go to one of the offices located at the nearest border crossing in order to apply for asylum. However, the events in the ECHR case took place in 2014 and the offices at the frontier were not opened until 2015. Furthermore, it has been repeatedly demonstrated – despite the government's claims – that the offices are inaccessible for the vast majority of people who wish to request international protection, as they lie beyond a document checkpoint. [5] The government subsequently declared its intention to appeal the ECHR judgment, following a vote in the lower house of the Spanish parliament (the senate) that decided against a change to the law that would have halted the practice of “hot returns”. [6]

The Spanish government is supported in its stance by the EU. Dimitris Avramopoulos, the home affairs and migration Commissioner, said in August 2015 that “if those who are subject of immediate return have – both in law and in practice – the possibility to submit a possible request for protection at an easily accessible border crossing point,” then the Commission has no grounds to launch infringement proceedings against Spain for failing to comply with the EU asylum *acquis*. [7] Mr Avramopoulos has not visited Ceuta or Melilla (neither did his predecessor, Cecilia Malmström). Had either of them done so they may have seen how the Spanish government's statements are meaningless. On the other hand, given the millions of euros in EU funding that has gone towards reinforcing the Spanish border [8] and the way in which Spain's southern frontier has served as a “laboratory” for border control practices elsewhere in the EU, [9] it may not be in the interests of the Commission to highlight the reality of the situation.

It is thus left to human rights activists, journalists and others to point out the consistent legal and human rights violations that take place at Spain's southern borders. In March this year a

[4] Doumbe Nnabuchi v. Spain, application no. 19420/15, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Doumbe%20Nnabuchi%22%2C%22itemid%22:%5B%22001-159932%22%5D%7D>; Balde and Abel v Spain, application no. 20351/17, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2220351/17%22%2C%22itemid%22:%5B%22001-175346%22%5D%7D>

[5] ‘La mentira de Zoido sobre las devoluciones en caliente y las solicitudes de asilo’, *Público*, 10 October 2017, <http://www.publico.es/sociedad/mentira-zoido-devoluciones-caliente-solicitudes-asilo.html>

[6] ‘Spanish governing party refuses to abolish “hot returns” ruled illegal by ECHR’, *Statewatch News Online*, 10 November 2017, <http://statewatch.org/news/2017/nov/spain-returns.htm>

[7] ‘Answer given by Mr Avramopoulos on behalf of the Commission’, parliamentary question E-012297/2015, 25 November 2015, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-012287&language=EN>

[8] See section 2.3, ‘Reinforcing the fortress’ in ‘Market forces: the development of the EU security-industrial complex’, *Statewatch/TNI*, 31 August 2017, <http://statewatch.org/marketforces/> and ‘New report provides an “x-ray” of the public funding and private companies in Spain's “migration control industry”’, *Statewatch News Online*, 23 November 2017, <http://www.statewatch.org/news/2017/nov/es-eu-border-funds.htm>

[9] Allesandro Lanni, ‘A political laboratory: how Spain closed the borders to refugees’, *Open Migration*, 28 February 2016, <http://openmigration.org/en/analyses/a-political-laboratory-how-spain-closed-the-borders-to-refugees/>; ‘AIDA reports on Italy, Malta and Spain – Southern borders a laboratory for deflection policies’, *ECRE*, 3 March 2017, <https://www.ecre.org/aida-reports-on-italy-malta-and-spain-southern-borders-a-laboratory-for-deflection-policies/>

coalition of Spanish organisations – *Irídia* (a legal centre), *Fotomovimiento* (a photojournalists' collective) and *Novact* (a peace-building organisation) – released the latest in the long line of reports looking at state policy and practice in Ceuta and Melilla. The report, entitled '*Frontera Sur – accesos terrestres*' ('Southern Border – land crossing points') was published through a [website primarily designed to impart the report's findings through film](#).

Not content with simply reporting on the situation, the organisations behind the report also produced a manifesto that sets out a number of straightforward legal and policy steps that would allow the restoration of legality at Spain's southern border and the introduction of migration and border control policies more respectful of human rights. While the Spanish government, with the backing of the EU, is determined to continue its illegal practices, there are numerous activists, politicians, campaigners and others across Spain who are working to ensure that proposals such as those included in the manifesto are implemented. Given the recent increase in the number of people arriving on Spanish territory, this is particularly urgent [10] – and it only by implementing such measures that legality will be restored at Spain's southern borders and the human rights of those travelling to Europe will be respected.

What follows in the section below is an edited translation [11] of the text from the eight sections of the report's website, which provide basic information and context to the situation that is explored in more depth in the videos produced by the coalition. A translation of the manifesto is included in section 3 (it can [also be found online](#)). The manifesto is [open for signatures](#).

2. The southern border: terrestrial crossing points

i. The Southern Border, context (*Frontera Sur, contexto*)

The Southern Border

The autonomous cities of Ceuta and Melilla are both located in the north of Africa, 382 kilometres apart. These two cities, together with the regions of Tangiers and Nador, are where the majority of the migrant and refugee population trying to reach Europe – whether by land or by sea – can be found.

Ceuta and Melilla

The city of Ceuta has some 85,000 official inhabitants and occupies an area of 19 square kilometres. It is ringed by an 8 kilometre fence. Melilla has around 84,000 inhabitants within an area of 12 square kilometres, which is surrounded by a fence 12 kilometres in length. There is a heavy presence of security forces in both cities. There are also a surprisingly high number of street names and statues of generals dating from the Franco era.

The border crossings

[10] UNHCR, 'Spain', accessed 27 November 2017, <http://data2.unhcr.org/en/situations/mediterranean/location/5226>

[11] The primary difference is that the term "migrant persons" has been replaced with "migrants and refugees" where appropriate.

Between Melilla and Morocco there is an international border crossing known as Beni Ensar, for use by anyone who does not possess an entry permit based on the neighbourhood agreement between Spain and Morocco. Ceuta has an international border crossings known as Tarajal. It usually takes between two and five hours to cross these frontiers, particularly if crossing by car in the busiest periods. In Melilla there are three further crossings for people from the region and a similar crossing has recently been set up in Ceuta a few metres from the international crossing points.

Racisms

Black African people living in Nador are subject to high levels of institutional and social racism. There is the threat of being detained by the police as well as the threat of physical and verbal aggression from the police and the local population. The threat has become reality on numerous occasions. In and around Tangiers, while there is strong racism and there have been violent episodes provoked by the police and sections of the population, black Africans can circulate with less risk in both urban and rural areas.

ii. Morocco (*Marruecos*)

Life in the camps (Nador)

In 2014 a police operation dismantled the Gurugú migrants' and refugees' encampment, which was the biggest camp at that time. Nowadays around 3,000 people live in some 20 encampments in the mountains surrounding Nador. Some encampments are focused on the wait prior to crossing by boat, while Gurugú is the step before scaling the Melilla fence. The conditions are characterised by extreme poverty and the Moroccan government causes numerous difficulties that inhibit the work of organisations that seek to support people living in the camps.

Life in the camps (Tangiers)

In the mountains close to Ceuta await those who plan to try scaling the fence. However, the longest waiting period before trying to enter Ceuta (whether via the fence or across the sea) happens in precarious encampments that exist on the outskirts of Tangiers. Some of them can be found close to the neighbourhood of Boukhalef, whose population is predominantly made up of migrants.

Women in the camps

Approximately 30% of the people who inhabit the camps are women. The majority are waiting to be able to cross the border by boat; there are very few who try to enter via the fence. Organisations working in the encampments have collected testimonies of sexual violence against women on the migratory route, and have also met women who have been trafficked. It has also been established that, depending on the age of their children, women can remain for far longer periods in the encampments than men.

Police raids and violence

Police interventions in the camps are constant. According to first-hand accounts, such raids usually involve the burning of tents and personal belongings, physical aggression from the police, and detention, following which people are taken to locations in Morocco but far from the north. Many injuries occur during these raids as people flee from the police. Local organisations have reported systematic cases of torture and maltreatment against the migrant and refugee population.

iii. Fences (*Vallas*)

The fence

The border apparatus is made up of a fence three metres high on the Moroccan side, covered in razor wire. It is followed by a ditch a number of metres wide. Just after it is the first Spanish fence, six metres high and inclined in such a way as to make climbing it more difficult, equipped with at least two lines of razor wire and an anti-climb mesh. It is followed by an array of steel cables and a second, three-metre-high, inclined fence. The final fence is straight and six metres tall.

Police violence at the fence

At the border apparatus numerous situations have arisen involving violence on the part of the state security bodies and forces. There have been situations in which unjustified acts of aggression have taken place, as well as interventions that have provoked falls and situations in which Moroccan forces have been permitted to attack people within the Spanish perimeter. However, no official registry exists of said situations and they have not been adequately investigated by the judicial and administrative authorities.

Illegal “hot returns”

Through the reform of the Law on Citizen Security [*Ley de Seguridad Ciudadana*], the Spanish government modified the law on foreigners so that immediate pushbacks at the borders (*devoluciones en caliente* or hot returns) are permitted. Nevertheless, this rule is contrary to international human rights law with regard to returns, as well as asylum and the protection of children.

Injuries caused by the fence

Organisations that work in the Moroccan zone as well as those working in Ceuta and Melilla indicate that many people suffer serious injuries as a consequence of their crossing or attempted crossing of the aggressive fencing apparatus, such as deep cuts, fractures, and serious muscular injuries. People are also frequently injured by the aggressive actions of the Moroccan and Spanish police.

iv. Detention centres (*CETI*)

Immigrants’ Temporary Stay Centres (*Centros de Estancia Temporal de Inmigrantes, CETIs*)

Various national and international organisations have denounced the fact that, on the one hand, the EU Directive on reception conditions has not been transposed and that it is not

applied in the CETIs. On the other, they have denounced the lack of rules that regulate their internal functioning, which generates situations of arbitrariness and legal uncertainty.

Lack of specific protection mechanisms

In the CETIs there are no specific protection mechanisms. Women that have been victims of trafficking have found themselves on occasion living together in the centre with their trafficker; neither are there mechanisms for LGTBIQ+ persons. Furthermore, the rooms in the centres are organised by nationalities, without taking into account the conflicts that sometimes exist between different communities of the same country.

Sanctions regimes

In the CETIs there is no sanctioning procedure. The sanctions applied to people within the centres are taken in a discretionary manner by the centres' functionaries and private security staff. Frequently the sanctions result in expulsion from the CETIs for an indeterminate period of time.

Overcrowding in the CETIs

The systematic overcrowding in the CETIs makes practically impossible any early identification of and individual response to the particular needs of each person. In October 2016, there were 979 people in the CETI of Melilla (with a capacity of 796 places), and 631 people in the CETI of Ceuta (with 521 places). In December 2016 the centre in Ceuta came to have more than 1200 people inside it.

v. Asylum (*Asilo*)

Asylum from the CETI

The government, employing the special regime that Ceuta and Melilla have in relation to the EU's Schengen Agreement, do not permit the transit of asylum-seekers to the Spanish mainland. The only exception is for people from Syria – as of 2016, after a series of protests, their waiting times have been reduced. The wait in the CETI is longer for those who request asylum than for those who do not. This discourages asylum requests and as a consequence, increases both the possibility of people arriving on the mainland in an irregular situation and expulsion to their country of origin.

Ceuta's and Melilla's asylum offices

After pressure from the international community the government opened asylum offices at the border crossings in 2015. However, people from sub-Saharan African countries are impeded from accessing said offices. Various organisations have highlighted these blocks as well as aggressive acts and detentions carried out by the Moroccan police against those who approach the border crossings. The only remaining option is thus to try to jump the fence in order to access Spanish territory.

The situation for Syrian people at the southern border

The typical route by which Syrian citizens enter Spanish territory is, according to various organisations, the rental or purchase of Moroccan passports, together with bribes to

intermediaries so that the Moroccan police provide access, with prices that can reach approximately €1000-3000 per person.

vi. Unaccompanied minors (*Menores no acompañadas*)

Unaccompanied minors

For years, local and international organisations have denounced the particularly vulnerable situation for unaccompanied minors and their mistreatment by both the police and functionaries of reception centres, as well as the return of minors to Moroccan territory.

Unaccompanied minors' centres

According to the association *Harraga*, 92% of unaccompanied minors that passed through a minors' centre in 2016 indicated that violent situations were their motive for wanting to leave. Psychological and physical punishments, overcrowding and bad hygienic conditions are normal in the centres.

Unaccompanied minors in the street

Unaccompanied minors living in the street face police violence and social exclusion on a daily basis. A quarter of them say they have been expelled towards Moroccan territory at least once after a police raid. Furthermore, the harsh conditions of life that they face often lead to situations of begging or drug addiction.

Regularisation processes

When unaccompanied minors reach the legal age of adulthood, many of them remain in irregular administrative situations after leaving the guardianship system. With their cards/documents extinguished or outdated, they can be expelled from the country and in many occasions they fall into irregular situation before they are able to cross to the mainland.

vii. Porters (*Porteadoras*)

Porters

It is calculated that approximately 50,000 cross-border workers cross the frontiers between Morocco and Ceuta and Melilla every day. Amongst them are porters: women who transport bundles of up to 80kg from Spanish territory towards Morocco. They are, for the most part, Moroccan women of between 35 and 60 years old, earning a salary that oscillates between three and five euros per bundle. The impossibility of accessing social security and the prevalence of police abuses reflect just one aspect of the daily reality of these women.

Border structures

In Melilla, the porters enter principally by the *Barrio Chino* (Chinese neighbourhood) crossing although they also pass through the Farhana crossing. In Ceuta, the transport of goods is carried out through Tarajal or via the Biutz crossing (also known as the jail or the tunnel, now closed). One of the principle causes of rights violations suffered by the porters is the physical structure of the crossings, that makes their transit more difficult, produces tense situations, pile-ups and even avalanches of the bundles and the people carrying them.

Police violence

Police violence on both sides of the border is one of the recurring complaints from the porters as much as it is from other people who work in the zone. It is normal for bundles to be torn, searched and/or seized, and for the porters to suffer situations of verbal and physical violence. The management of the crossings requires dialogue and mediation – yet the work is undertaken by police who are unprepared for it.

Damage and physical violence

The situation for porters at the borders has even led to physical injuries, including avalanches that have led to peoples' deaths. In 2008, Safia Azizi died in the *Barrio Chino* crossing in Melilla and in 2009, Busrha and Zhona were crushed and asphyxiated in an avalanche at the Tarajal crossing in Ceuta. The porters also insist that there have been other, undocumented deaths.

viii. Repression (*Represión*)

A state of exception for rights defenders

We tried to take a photo of Melilla from mount 'Gurugú'. Minutes later we were intercepted, after eight hours of being tailed, by two cars and a motorbike of the Moroccan police that obliged us to show them the images we had taken and to delete them, even menacing us with detention. This was just one example of the repression that exists at the southern border.

Repression in Ceuta and Melilla

Organisations and activists that work in Ceuta and Melilla have repeatedly denounced the difficulty of defending human rights due to the police repression that they suffer: fines imposed based on the Law on Citizen Security (which allows the imposition of fines for various acts on an administrative, rather than criminal, basis); threats; acts of aggression and constant persecution; confiscation of cameras and audio-visual material; and false accusations.

Repression in Morocco

It is practically impossible to complain to the Moroccan authorities about the rights violations suffered by the migrant population in the country due to the control, threats and police monitoring that activists and organisations suffer. There are numerous journalists and human rights defenders that, after being subjected to stringent controls and receiving intimidatory warnings, have been expelled from Moroccan territory.

3. Manifiesto: we must restore legality at the southern border

The southern border is a space in which the legal system applies only in an exceptional manner and where rights violations are systematic. We must begin an accumulation of forces from civil society in order to achieve, through a multilevel strategy of social mobilisation and coordinated political impact, the re-establishment of legality at the southern border. This process has to be framed within another, wider one, that will allow us to

generate a paradigm shift from existing migration policies to others more respectful of the human rights of migrant persons.

To re-establish legality at the southern border, with regard to both the land border crossing points and to the territories of Ceuta and Melilla, it is urgent that the Spanish government and parliament take the following 10 measures:

1. Parliament must repeal the final provision of Law 4/2015 on Citizen Security (which legalises “hot returns”, i.e. pushbacks). Likewise, the government must stop carrying out “hot returns” and respect international law.
2. The government must remove the elements of the Ceuta and Melilla fences that cause physical injury, and negotiate with Morocco to do the same with the fence areas.
3. The government must suspend cooperation with Morocco on matters of migration control until Morocco respects the human rights of migrant persons.
4. Returns of migrant persons to Morocco must cease, in respect of the principle of *non-refoulement*, due to the systematic cruel, inhuman or degrading treatment to which they are subjected there.
5. The government must establish safe and legal routes so that migrant persons, as well as potential asylum-seekers, can safely access Spanish territory. In particular:
 1. It must call upon the Moroccan government to give migrant persons access to the border crossing points of Ceuta and Melilla.
 2. There must be a relaxation of visa requirements for African countries.
 3. It must be made possible to request asylum in Spanish embassies.
6. The government must adapt the CETIs to the standards determined by EU directives on asylum, and speed up the administrative procedures so that migrant persons – whether they request asylum or not – are in the autonomous territories for the minimum time necessary, thus avoiding overcrowding of the CETIs and immediately guaranteeing the freedom of movement of those persons who request asylum.
7. Following a dialogue with specialised organisations, the government must establish adequate mechanisms to guarantee the protection of women in Ceuta and Melilla who may be victims of trafficking. Likewise, the government must establish adequate mechanisms for LGBTQI+ (lesbian, gay, bisexual, transgender, queer/questioning, intersex, +) people.
8. The central government and the governments of the autonomous cities of Ceuta and Melilla must implement the necessary measures to avoid minors living in the streets of Melilla, with no exceptions. To this end it is essential that they exercise strict control over the treatment meted out in the minors’ centres, that they transfer many of the minors to centres on the Spanish mainland and that they guarantee with maximum speed the documentation of minors once they reach 18 years of age, at which time protection policies should be applied in order to guarantee their full development and their social and economic rights.
9. The government must carry out the necessary architectural reforms to ensure that the border crossing points used by porters are adapted to ensure the safety of people and the respect of human rights; they must establish clear and public protocols for the management of “atypical” trade; and must ensure that the management of the phenomenon is not exclusively undertaken by the police and is, in any case, respectful of human rights. To this end, it is indispensable that new mechanisms of control are established.

10. The government must guarantee respect for the rights of freedom of the press, association, assembly and demonstration in Ceuta and Melilla, as well as ensuring that social intervention work is carried out in a suitable manner.

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Statewatch is the research and education arm of a UK registered charity and is funded by grant-making trusts and donations from individuals.

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