

QUESTIONS AND ANSWERS _____

Spanish-Moroccan land border in Melilla – a lawless zone of automatic expulsions

Part I: EU Border Enforcement and Externalization

What is the situation at the EU external borders generally and in Spain specifically?

Barbed-wire fences; patrols at sea, in the air, and on land; expulsion and return agreements: the European Union goes to great lengths to prevent foreign nationals from crossing its borders. In a process referred to as externalization, EU Member States work closely with non-European partners to outsource their external border control, with the result that individuals seeking international protection are often pushed away from Europe.

While trying to cross the border from Morocco to the Spanish enclaves of Ceuta and Melilla, not only have many suffered serious human rights violations, but also, many individuals have lost their lives. Of those who eventually manage to enter Spanish territory via the border fences, many are immediately and collectively deported back to Morocco—a practice that has been in place since 2005. In the absence of records kept by the Spanish authorities tracking these collective expulsions, no official figures are available; however, media reports have indicated that there has been a minimum total of around 1,000 summary deportations in 2014 alone.

Where is the territorial border between Spain and Morocco located?

Melilla, along with Ceuta, is one of two permanently inhabited Spanish cities located on the African continent. Ceuta is geographically close to the city of Tangier, Morocco and the strait of Gibraltar. Melilla is further east in close proximity to the Moroccan city of Nador. Melilla's border with Morocco is

comprised of three fences in succession of 6, 3, and 6 meters in height respectively. This border-fence structure is located on Spanish territory and its supervision, including the operation of its gates, remains under the exclusive control of Spanish authorities at all times. Spain acknowledges that its territory includes the border-fence structure.

As a matter of international law, individuals are within the jurisdiction of a state from the moment they enter its territory. This applies to the case at hand: individuals are under Spanish jurisdiction once they are on or within the border-fence structure.

What is the political context around border control at Ceuta and Melilla?

The EU, Spain, and Morocco cooperate closely on border control, a partnership that grants political and economic favors to Morocco for assisting the EU with the protection of its borders from irregular entry. Through this partnership, the EU delegates the responsibility for third-country nationals in search of protection to countries at its external borders to Morocco.

Under the framework of the [European Neighborhood Policy](#), the EU and Morocco concluded a first [Action Plan in 2005](#), followed by a [second Action Plan in 2013](#). Morocco's eager participation made it the first country in the Mediterranean to progress to "Advanced Status" under the European Neighborhood Policy. In 2013, Morocco concluded a [Mobility Partnership](#) with the EU and some of its Member States, including Spain. The agreement outlines further mobility benefits for Moroccan citizens, especially in the context of travel, work, or education while at the same time encouraging "the return of Third Country Nations, in particular Sub-Saharan Africans." In addition, the Spanish–Moroccan [Readmission Agreement](#) facilitates the return of individuals who entered irregularly.

In practice however, Spain often circumvents international legal procedures and safeguards, by means of immediate, collective expulsions to Morocco without providing any individualized procedures to assess each migrant's case. The recent [Organic Law](#) on the "Protection of Public Safety" (Protección de la Seguridad Ciudadana) provides a legal basis for this practice at the terrestrial border in Ceuta and Melilla, prescribing that individuals detected while trying to cross the Ceuta or Melilla territorial borders "may be rejected in order to prevent their illegal entry into Spain" (Art. 75).

This law and its negative repercussions on human rights have sparked heavy international criticism. Moreover, it was challenged for its unconstitutionality in front of the [Spanish Constitutional Court](#); and several parties made proposals for legislative amendments (see [here](#) and [here](#)) to be negotiated and agreed in [parliament](#).

Who are the refugees and migrants at the Spanish–Moroccan border?

A wide range of people seek to cross the Spanish–Moroccan land border, most of whom are nationals of neither country and seek to reach the European continent. Faced with a lack of safe, legal channels to ask for asylum in the European Union, individuals are forced to resort to dangerous routes. Although the men and women attempting to access this border are far fewer than those who cross the central Mediterranean, their number changes in response to the severity of border-control tactics elsewhere (such as, for example, the EU–Turkey deal resulting in a rise of attempting crossings at the Spanish–Moroccan border). Many, though not all, apply for asylum.

A total of 5,952 applications for international protection were filed in Spain in 2014. Forty percent received positive decisions. According to the Spanish Interior Ministry’s [Asilo en Cifras Report](#), the majority of applications came from Syria, Ukraine, Mali, Algeria and Palestine. The number of people seeking international protection in Spain is increasing, and rose to 15,755 in 2016.

Part II: The Spanish Practice of Collective Expulsions

How do the Spanish authorities respond to attempts to cross the fences in Melilla?

The Guardia Civil, Spain’s border agents, are instructed to return intending migrants and asylum-seekers apprehended on the border-fence structure immediately to Morocco. Agents often place these individuals directly in the hands of the Moroccan police. These deportations have involved varying

degrees of violence, both on the part of Spanish guards and of the Moroccan police officers to whom the migrants are returned.

Nevertheless, both in the media and in legal proceedings, Spain has sought to shift the blame for the violence at the border onto those who attempt to cross the border, alleging without any reliable evidence that “mafia networks” launch “violent attacks” on Spain and its agents. However, the evidence indicates the contrary; Guardia Civil agents and Moroccan police officers regularly resort to violence to carry out collective deportations.

For example, a [video](#) by Asociación Pro Derechos de la Infancia from 15 October 2014, shows several members of the Guardia Civil aggressively beating a defenseless young man, who is climbing down the fence, to the point of unconsciousness, prior to his deportation back to Moroccan territory. International institutions and NGOs alike have criticized both the immediate expulsions and the heavy institutionalized violence involved—especially after the Spanish government announced its plan to give the practice a legislative basis.

The Council of Europe’s Commissioner for Human Rights, Nils Muižnieks, has on several occasions condemned the unlawful practice of the collective expulsions in the Spanish-Moroccan context. EU Home Affairs Commissioner, Cecilia Malmström, further qualified the practice as a “violation of EU legislation.” [The UN Special Rapporteur on Torture](#) and the [Council of Europe’s Committee for the Prevention of Torture](#), both highlight their concerns regarding the associated danger of ill-treatment in the hands of Moroccan security forces during and after collective expulsions.

Despite resounding condemnation at the international and regional levels, Spain continues its collective deportations undeterred.

Who has access to asylum procedures in Spain?

[Spanish authorities](#) attempt to justify expulsions in Melilla by claiming that third-country nationals in Morocco do not have to cross the land border irregularly in order to apply for international protection in Spain, pointing to the possibility of requesting asylum at the International Protection Offices installed at the Beni Enzar border crossing in Melilla.

However, the [Spanish Interior Ministry](#) only inaugurated the International Protection Offices in November 2014, nine years after the practice of

collective expulsions and systematic police violence [started](#). Most troublingly, the International Protection Offices continue to be inaccessible to Sub-Saharan asylum-seekers. These are systematically prevented from reaching the border posts by Moroccan authorities, as evidenced by this [Joint NGO Report](#). The vast majority of asylum applications registered at Beni Enzar since its establishment in 2014 have been from Syrian asylum seekers. However, even Syrian refugees have faced [increasing restrictions](#) on access to the International Protection Office.

Who has access to protection in Morocco?

Although the Spanish government asserts that Sub-Saharan third-country nationals have access to effective asylum procedures and protection in Morocco, at the time of the claim at hand (see further information below), a single UNHCR office in Rabat was tasked with implementing the 1951 Refugee Convention. In other words, Morocco lacked an effective national asylum system that was willing and able to grant international protection to those individuals entitled to such under the 1951 Refugee Convention. Further, [Morocco](#) provides no state assistance to those who have requested asylum leaving many people stranded without housing or access to most basic social service, including education and health care.

Sub-Saharan Africans bear the brunt of these policies. In response to the gravity and continuity of fundamental human-rights violations faced by Sub-Saharan Africans in Morocco, including physical abuses by the Moroccan and Spanish security forces and the community's exclusion from basic social or health-care, Doctors Without Borders [withdrew from Morocco](#) in March 2013. The implementation of a new national strategy on migration and asylum announced in September 2013 at first appeared promising, as it authorized [one-year renewable residence permits](#) for refugees as well as others who met certain criteria. But this policy was terminated in February 2015, leading to a resurgence of rights violations against Sub-Saharan Africans in particular. A collaborative paper by [two NGOs](#) in March 2015 shows alarming evidence of mass deportations and arrest.

In June 2015, Amnesty International staffers conducting a study on the human-rights situation of migrants and asylum seekers were [expelled](#) from Morocco, as they allegedly posed a threat to public order. To this day international organizations such as [Amnesty International](#) and [Human Rights Watch](#) continue to condemn the excessive violence by security forces and also

highlight numerous obstacles experienced by individuals, and in particular Sub-Saharan Africans, to access effective protection in the country.

Part III: The Complaint Against Spain Before the European Court of Human Rights

Who are the claimants?

On the night of 13 August 2014, a group of Sub-Saharan individuals reached Spanish territory by using one of the few routes available to them: scaling the fence between Morocco and the Spanish enclave of Melilla. Once they entered Spanish territory, most were stopped by the Spanish Guardia Civil within the Spanish border-fence structure. Following this incident, Spanish authorities then directly handed these individuals back to the Moroccan security forces within the fence structure. Those who did not manage to climb the fence high enough to escape the reach of the security forces, suffered particular violence. Others escaped ill-treatment by balancing atop the fences, hoping to be identified and processed in accordance with Spanish immigration law.

No one asked these men who they were, where they came from, or why they were there. Without exception, no individual assessment took place, each was handcuffed, escorted through the border-fence structure, and handed over to the Moroccan authorities. They were given no opportunity to challenge their expulsion or explain the individual circumstances of their search for international protection. It is reported that on that day, over 70 unidentified individuals were summarily expelled into Morocco. Two of the individuals concerned, N.D. from Mali and N.T. from Côte d'Ivoire, are now challenging their unlawful collective expulsion in front of the European Court of Human Rights.

What is the legal basis for the human rights complaints against Spain?

N.D. and N.T. argue their summary expulsions were in breach of the prohibition on collective expulsion contained in Protocol 4 of the European Convention on Human Rights, ratified by Spain. They also contended that, because they had no access to any administrative or legal process to challenge

their expulsion, there was a breach of their right to an effective remedy, protected under Article 13 of the European Convention.

What was the preliminary decision from the European Court of Human Rights?

In its judgment from July 2015, the European Court of Human Rights (ECtHR) decided to consider possible violations of the prohibition of collective expulsion contained in Protocol 4 of the ECHR, and Art 13 ECHR granting the right to an effective remedy. The Court considered additional allegations regarding a violation of Art 3 to be inadmissible. The Court asked Spain to answer several questions regarding the immediate expulsion of N.D. and N.T.. The preliminary decision of the Court in N.D. and N.T. v. Spain (8675/15 and 8697/15) is available [here](#), and questions submitted to the Spanish government are available [here](#). Both parties submitted further Written Observations to the Court.

What was the final judgment from the European Court of Human Rights?

In October 2017, the ECtHR found a violation of Article 4 Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) ECHR. This judgment confirms that the automatic expulsions at the Spanish-Moroccan border are unlawful. It reaffirms that the ECHR applies at borders, that its safeguards also protect migrants and that push-back practices violate the Convention.

The judgment sets an important precedent to assert the fundamental right to have rights of persons on the move across borders.

What is the current situation in and around Melilla?

Spain has [continued to fortify the border](#) at Melilla, making access to Spanish territory—and therefore the opportunity to request asylum—even harder than it was in 2014. At the same time, [as various sources have consistently reported, push-backs from Melilla in cooperation with Moroccan authorities still continue.](#)

Part IV: The ECCHR's Work on Migration

What is the objective of the ECCHR's work on migration generally and collective expulsion cases specifically?

The European Center for Constitutional and Human Rights aims to challenge the EU's externalization of border control. As EU Member States increasingly seek to transfer the onus of managing migration onto cooperating non-EU states, the human toll of exclusion and the brutality of border management are hidden from the European political landscape. Irregular migrants often find themselves especially vulnerable to human-rights violations. Their precarious legal status means they are often denied access to justice and the judicial system. ECCHR's cases seek to hold Europe accountable for the human toll of migration control—and to restore to intending migrants and asylum-seekers the right to have rights.

What is ECCHR's role in the case of N.D. and N.T. v Spain?

Despite their vulnerability and the precariousness of their situation, both in Morocco and in Spain, two members of the group that was expelled on 13 August 2014 came forward. On the initiative of ECCHR, they submitted complaints to the European Court of Human Rights. N.D. from Mali and N.T. from Côte d'Ivoire are represented by ECCHR's cooperating attorneys from Spain and Germany.

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