



Analysis

Opaque and unaccountable: Frontex Operation Hera

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February 2017

Operation Hera is coordinated by the EU's external border agency Frontex and aims to stop migration along the maritime route from West Africa to the Spanish Canary Islands. According to Frontex, the operation has been a success: the scale of unauthorised maritime crossings along this route was reduced from five-digit to three-digit numbers. The *European Center for Constitutional and Human Rights* (ECCHR) focused on Operation Hera, seeking to increase transparency about border enforcement operations and to reduce the agency's unaccountability for human rights violations. Concretely, ECCHR hosted a round table on potential litigation against Frontex for human rights violations in 2016, and submitted access to documents requests on Operation Hera to Frontex.

The duration of Operation Hera exceeds all other Frontex-coordinated missions. Hera I lasted from July to October 2006, as requested by the Spanish government. Afterwards, the operation has been continuously prolonged and adjusted. While Hera I consisted of expert assistance by officials from several EU member states, subsequent operations increased aero-maritime surveillance and the organisation of joint patrols at sea. The operations are conducted based on the Spanish request for increased technical and operational assistance as stipulated in Art. 8 Frontex Council Regulation 2007/2004.

Effectively, the operations aim to intercept any detected vessel within the area of operation and divert it back to the port of departure - with the authorization and cooperation of Senegalese and Mauritanian authorities. Moreover, individuals who arrive at the Canary Islands are screened and regularly returned to the place they tried to leave.

Public knowledge on the methodologies and practices on the ground is scarce, making it very difficult to investigate the border enforcement actions and to hold the institutions involved accountable for human rights violations committed during interceptions and returns. Seeking to counteract the intransparency and unaccountability, ECCHR filed an application to Frontex in May 2016, requesting information regarding Operation Hera on the basis of Article 2 and Article 7 Regulation (EC) No 1049/2001 of 30 May 2001. Specifically, ECCHR requested the following Frontex documents:

1. Operational Plan of Joint Operation Hera for the years 2012, 2013, 2014 and 2015
2. Evaluation Reports of Joint Operation Hera for the years 2012, 2013, 2014 and 2015
3. Handbook to the Operational Plan on Joint Maritime Operations
4. Related Working Arrangements between Frontex, Spain, Senegal and Mauritania.

The documents provided were censored extensively (links are provided at the end of this article), and it was barely possible to subject the practices of the operational staff and the cooperation between Spain, Frontex and Senegal/Mauritania to further scrutiny. Frontex attempted to justify the withholding of information based on the argument that the blanked out parts contained "detailed information on the modus operandi of law enforcement officials" and that "therefore public security will be affected" if they were published.

In order to counteract this rationale, ECCHR submitted a confirmatory application in July 2016, requesting access to the redacted parts of the documents. Frontex minimally widened access in response to the confirmatory application, but continued to conceal significant information on operation Hera. The following paragraphs summarize the most important points in the non-redacted parts of the documents provided.

Operation Hera is led and coordinated by the International Coordination Center (ICC) in the host country of the operation (Spain) in cooperation with Frontex. The ICC has links to all operational assets involved. The militarized patrolling of the national waters of the relevant countries (Morocco, Senegal and Mauritania) and the high sea are the backbone of the operation and seek to intercept arrivals before they reach the Canary Islands. The aim of reducing arrivals was enforced by employing aerial, maritime and terrestrial assets.

Operation Hera advances the externalisation of border control through cooperation with third countries. In order to be able to operate within the territorial waters of Senegal and Mauritania, Spain settled bilateral agreements with both states which permit the deployment and operation of assets by Spain and other states participating in Operation Hera. Moreover, Spain has pushed for a number of policies concerning "irregular migration" in Morocco, Senegal, Mali and Mauritania, such as repatriation agreements, fishing bans and restrictions on selling plastic containers which can be used to carry fuel for boats.

The precise content of the screening activities conducted before the return of migrants and refugees intercepted at sea remains unclear. "In view of returning the third country national to his/her country of origin, or to a country wanting to admit him/her" the screening officers within operation Hera are merely establishing "assumptions" on the nationality of the undocumented person. Interpreters are only involved if deemed "necessary" and "available". Based on the documents provided, it is not possible to assert whether these procedures and their implementation are in violation of European and/or international human rights law, and to hold those responsible to account.

Frontex's approach to transparency and accountability is evinced again in section 12.10 of the Handbook to the Operational Plan entitled "List of potential fundamental rights violations within Frontex activities". The whole section (including the headline) is completely redacted and could only be uncovered because the index lists the section. The argument that the publication of this section would affect public security seems particularly inappropriate in the context of human rights violations.

In conclusion, the partial concealment of border enforcement procedures underlines the inherent structural accountability and transparency deficits of Frontex specifically and EU agencies in general. Frontex redacted significant parts of the documents provided, including information on potential human rights violations. The provided documents do not give information on the methodologies of the operation in order to ascertain whether Frontex and the involved member states violate national, European and international human rights provisions.

Nevertheless, border enforcement operations in the region continue. The significance of the maritime route towards the Canary Islands re-emerged in 2015, after border security measures at the Spanish-Moroccan borders of Ceuta and Melilla were yet again reinforced.

Documents provided by Frontex (pdfs)

[Handbook to the Operational Plan – Joint Maritime Operations](#)

[Operational Plan – EPN Hera 2012](#) and [Annexes](#)

[Operational Plan - Joint Operation EPN Hera 2013](#) and [Annexes](#)

[Operational Plan \(Main Part\) - Joint Operation EPN Hera 2014](#) and [Annexes](#)

[Operational Plan \(Main Part\) – Joint Operation EPN Hera 2015](#) and [Annexes](#)

[Evaluation Report – JO EPN Hera 2012](#)

[Evaluation Report – JO EPN Hera 2013](#)

[Evaluation Report – JO EPN Hera 2014](#)

[Evaluation Report – JO EPN Hera 2015](#)

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