

Echoes 14 - “Evacuation not Externalization”

Three years ago, in October 2021, “evacuation now” was the main slogan of the historic sit-in led by Refugees in Libya, when they demonstrated for 100 days in front of UNHCR’s office in Tripoli. The network born from that protest in the meanwhile is also organizing across Europe. Evacuation remains a central demand, along with accountability and policy change, for this important self-organized movement within the broader collective struggle for the right to move for everyone. “Evacuation not Externalization” is the title of an event from and with Refugees in Libya in October in Berlin. The campaign is challenging the repressive and right wing rollback all over Europe and beyond, underlining what Medico International formulated recently: “Europe’s shift to the right began with migration policy. And it must end there too.”

In 2024:

- 49,308 people have arrived to Italy and Malta by sea (UNHCR figures as of 29 September)
- 10,098 people were rescued by the civil fleet from 190 boats in distress (CMRCC figures until June September 30)
- 759 people are reported dead or missing on the Central Mediterranean Route (UNHCR figures as of October 2)
- 17,632 people were intercepted and returned to Libya by the EU-supported so-called Libyan Coast Guard (IOM figures as of september 28)

Latest political dvpts

Authoritarian tendency in the Italian chaos

On the eve of the commemorations, institutional and otherwise, of the shipwreck of 3rd October 2013, dozens of boats are arriving in Lampedusa: some recovered by military assets, some rescued by the civilian fleet’s sailboats, others on their own. Within a few hours, over 800 women, men and children crowded the hotspot. In July, August and September, almost 24,000 people landed in Italy. A wave that does not stop, that will not stop despite the ferocious efforts made by European institutions and the Italian government to strengthen the capacity of militias and regimes to detain or reject in Egypt, Libya, Tunisia and Algeria.

In the same hours in Rome, the Meloni government continues to produce new decree-laws: yet another “Security Decree n.1660” is being debated in parliament, while the approval of the “Flows Decree” is imminent. The first one generally represents a strong limitation of the right to demonstrate, with new offences and severe punishments that hit forms of struggle practised and shared by thousands of people, such as picketing in front of factories, offices and schools, or road and rail blockades. The second affects people on the move once again, reducing the possibilities of obtaining international protection and instead expanding the legal spaces for the detention and deportation of migrants; more brutality in line with European policies.

This, by now explicit, authoritarian tendency does not spare the civilian fleet: in the first decree there is a rule that strengthens the punishment of Masters of those ships that “disobey or resist national warships”, in particular the patrol boats of the Guardia di Finanza engaged in “law enforcement operations against illegal immigration”; in the second there is a rule that directly targets the activity of airborne civilian reconnaissance. But the war also continues in the ports. This is demonstrated by the recent examples of attacks, both in the form of the “Piantedosi Decree” and the technical-bureaucratic measures against Geo Barents, Sea-Watch-5 and Mare Jonio. For Mediterranea’s ship, a 10-and-a-half-hour inspection by the “anti-NGO team” of the Italian flag authorities ended with the withdrawal of the Safety Certificate required to

sail, if the rescue equipment on deck was not disembarked. For MSF's ship, at the same time in Genoa, a 60-day administrative detention was applied, prelude to confiscation, and an instrumental "Port State Control" inspection that would in any case stop the vessel. In its case as for Sea-Watch, Piantedosi's motivation is only one: not to have obeyed the criminal orders of the so-called Libyan coast guard. But the qualitative leap is clear: for the civil fleet, the authoritarian tendency means the transition from the attempt to "obstruct" to the goal of "stopping." For ever.

This appears to be the extreme right-wing government's response to the "Italian chaos", in tune with the rising "black tide" in Europe. An Italian chaos made up of a long series of failures for the government's own racist anti-immigrant policy. In fact, the new decrees and the attacks on the civil fleet coincide with a particularly unhappy summer for Meloni and her Interior and Transport ministers: while the landings resume in Lampedusa and Calabria, at the Palermo court for the Open Arms case in August 2019, the prosecutors - after an indictment that put the entire "closed ports" policy under accusation - demand six years in prison for Salvini. While Piantedosi gets bogged down without being able to make the Italy-Albania agreement operational (by now there is no date for the opening of the camps), the Sicilian judges declare illegitimate the detentions of 95 per cent of the people who have been locked up in the new centres of Porto Empedocle and Modica-Pozzallo. Not to mention the new rulings in Rome recognising the rights of people deported to Libya, denouncing the complicity of the Italian state.

So: if the authoritarian trend is now very clear, equally evident is the difficulty in imposing it. Not only in the contested space of migration and borders. But the vast dimensions of the attack on rights and freedoms now open the space for new and broader social alliances. In Italian society, many are realising that a right denied to people on the move is the premise for denying the rights of all: the growing solidarity around the case of Maysoon and Marjan, the Kurdish-Iranian women and activists criminalised as "smugglers", and more generally the attention paid to the situation of all "boat drivers" is proving this. If no one can feel safe in the face of the government's attack, many are now willing to mobilise against it

2nd October 2024

Mediterranea Saving Humans

Civilfleet rescue - Protocol of a last-minute rescue

Alarm Phone Team from Hanau, on shift during the night from 16 to 17 July 2024

It is around 11 p.m and we are getting ready for the night shift, which will start at midnight. Five cases are open. A sixth appears, a bit after midnight. A relative is missing a friend who set out from Algeria to Sardinia by boat. In addition, there is a so-called Evros case, where people have been held for days at the border river between Turkey and Greece. And three boats in Libya, but these are 'cold cases' because contact was lost hours ago. The team who was on shift before us suspects two interceptions and one arrival in Lampedusa - which we will be able to confirm during the night.

During the shift handover at 00:03, the Alarm Phone rings. The only case with direct contact to the people on the boat that night. The number of the case is AP0900. This is the 900th emergency in which the Alarm Phone is involved in 2024. 21 people on a fiberglass boat, who were already reported to Alarm Phone during the day by a relative. The relative gave us the number of the satellite phone on board. At around 8 p.m., the previous shift was able to establish a first direct contact and to get a GPS position, which was in the Maltese zone, around 60 nautical miles from Lampedusa.

At 8:34 p.m., the shift sent a first SOS email to the coast guards in Italy and Malta. "The people on the boat urgently ask for help" reads the email. A rescue vessel from Lampedusa could be on the scene in three hours. But for many years, the practice has been different: there is most of the time no response to SOS emails, no information shared during the phone calls with Rome and Valletta, and it is foreseeable that no

coast guard will react. The failure to provide assistance has become a political normality, which permanently and consciously allows people to die. Will this be the case again tonight?

The surveillance planes of Sea Watch and Pilote Volontaire were in the copy of the SOS email. Seabird reports that they spotted a boat in the vicinity of the indicated position at 21:00. However, the small aircrafts are not equipped for night flights and therefore could not observe anything further.

With the email, two civilian rescue ships that were operational at the time were also informed: Sea Eye and Nadir. Sea Eye was too far away from the given GPS position, but Nadir was only a few hours away. The sailing boat replied that it was heading to the case and could be on scene four hours later. Over the next few hours, the evening shift received four more GPS positions and sent new SOS emails to the coast guards and the civilian rescue ships. Again, there was no response from the official authorities in Rome and Malta.

Between 00:03 and 01:24, we had multiple contacts with the relative on land and directly with the boat. The people on the phone sounded desperate. They said that water was entering the boat, that the engine was no longer working and that they were afraid their boat would sink. They repeatedly asked for help.

At 00:37, it seemed to us that there was no longer any engine noise, but also that the water sounded very close. People on the boat said "We are into [sic] the sea" for the first time. Nevertheless, they remained focused and we explained to them that a rescue boat is on its way, but will take another 1-2 hours to arrive, and that we would need their exact position every 30 minutes, otherwise, no one will be able to find them in the middle of the night.

They understood, but were concerned that their satellite phone credit would run out. We reassured them and explained that we could keep an eye on the credit and top it up. Keeping in touch was crucial in the following hours. After a few technical explanations, they then managed to send us a new position by SMS at 1:24 a.m. An SMS position is usually reliable and accurate. At 1:26 a.m., we immediately sent another SOS email with the updated location, which allowed Nadir to adjust their course.

However, 30 minutes later, we were unable to reach the boat as agreed. We were worried because the people on the boat clearly understood how important contact would be in this phase. We wondered, "Why can't we reach them?" Nadir reported at around 2:00 a.m. that they would still need about 25 minutes to reach the last given position. We tried to reach the boat every five minutes, without success. At 2:46 a.m., we receive the terrible message from Nadir in the form of a mayday relay: 'BOAT SUNK. ALL PEOPLE IN THE WATER.'

We had feared it. The weather was not particularly bad, but the boat had been drifting for several hours, which affected stability. In the background of the phone calls, with a voice that was surprisingly calm, we had repeatedly heard noises of water and sometimes frantic to panicked cries for help. Now the boat had really sunk. And that was certainly the reason why we could no longer reach the boat. We waited anxiously for new messages from Nadir. How many people would they be able to find and save in the middle of the night? How many of the 21 passengers had already drowned or drifted away? The worst case had occurred.

One hour later, which seemed like an eternity, we received this incredible message from Nadir: "21 on Nadir. They confirmed they were 21. All were in the water. There was no boat when we arrived."

We could hardly believe it and had tears in our eyes. We thanked the Nadir crew for their great commitment and immediately informed the relative, who had been very worried in the meantime and who could hardly believe it either. All 21 people were rescued in the middle of the night, after the people had already spent up to an hour in the water. We later learned that some of those rescued suffered from burns from the petrol-saltwater mixture and some from burns from jellyfish stings. But no one was critically injured. Everyone had

survived.

The people had no lifejackets, but they had some tubes and empty cans, around which they bravely held together in three groups in the water. One person had managed to protect his mobile phone in plastic from the water and used it to give light signals when the Nadir appeared in their vicinity. No long search was necessary, the Civilfleet rescue came literally at the last minute.

Forced to disappear

Drifting and disappearing. The Atlantic route.

So far, this section of Echoes has focused in particular on the Central Mediterranean route, because that is where most of the civilian SAR fleet has operated since 2014.

Without going into detail here on the geographical evolution of civil fleet involvement and deployment, it is possible to observe how the nerve center of search and rescue operations on the part of NGOs has gradually been located on the most dangerous and deadly route: the Central Mediterranean. The initial deployment in the Aegean and Eastern Mediterranean (due in particular to the conflict in Syria) has been reduced due to the decrease in passages, and at the same time "neutralized" by the criminalization of solidarity and the monopolization of intervention by the Greek and Turkish authorities, who (with the active participation of Frontex) are attempting to lock down a cramped maritime space where the territorial waters of the two countries touch each other without a solution of continuity.

The positioning in the Central Mediterranean of the civil fleet, and its persistence despite years of obstructionism and accusations, threats and criminalization, is increasingly necessary today, not only because of the retreat of the state actors and the pre-eminence of aerial surveillance (mainly carried out by Frontex); but also because of the gradual outsourcing of maritime surveillance to Libya and Tunisia, with the creation of SAR zones of competence which, instead of extending the rescue zones, lock down these areas, further delegitimizing the presence of NGOs and creating the conditions for violations and crimes which have already been extensively documented and denounced.

These evolutions are also reflected in the number of bodies arriving on the Maltese or Italian coasts, which has dropped significantly since 2018, except when shipwrecks take place close to European coasts (Cutro, Pylos, Roccella and many others) and where the authorities cannot evade their obligations and the victims become irrefutable evidence. At the same time the number of shipwrecks or disappearances has increased in international waters and close to the Tunisian and Libyan coasts (as demonstrated by the figures supplied by the Tunisian authorities and the dramatic situation in the Sfax region, with an exponential increase in the number of victims and unidentified bodies occupying morgues and cemeteries).

As repeatedly denounced by the civil society, an increasing number of shipwrecks and disappearances remain "invisible", and not taken into consideration by international organizations or covered by media outlets, because they take place away from surveillance zones, but also away from zones where NGOs intervene as a priority, or can intervene. The central-eastern Mediterranean (between the Ionian Sea and Crete) and the central-western Mediterranean (between the Balearic Islands and Sardinia) remain mainly "remote" surveillance zones, but also zones where Salvamento Marítimo, a Spanish public institution responsible for maritime security, were prohibited from conducting monitoring and search operations without receiving distress alerts. This is a consequence of the militarisation of Search and Rescue operations by the Spanish government makes it impossible to account for the number of possible shipwrecks and disappearances.

They can be classified as "minor" routes, but at the same time the number of victims in the Alboran Sea [has risen](#) significantly since 2023, and the number of people who left Algeria and disappeared between the Balearic islands and Sardinia remains undetermined. And the Pylos, Roccella and Cutro tragedies occurred along an east-west route. On those routes, most of the requests from families looking for a missing relative

remain unanswered. And it is probably on these routes that the involvement of families and loved ones in the search is even more important.

The point here is not to measure the direct impact of control and security logic on the evolution of the different routes, but rather to question the reasons and conditions that make disappearances even less visible, and family searches even more difficult. The Atlantic route to the Canaries, where the gap between the number of victims (according to families and loved ones) and the number of bodies recovered (according to the media and authorities) provides an interesting case study to better understand those challenges.

The Canaries and the Atlantic

According to local organizations, the first case of documented shipwreck in the Canaries dates back to 1999: on July 24, the bodies of nine young people were found on the Playa de la Señora in Fuerteventura (source: Association Entre Mares). The number of cases has increased over the years, in the midst of almost general indifference, despite the mobilization of local civil society actors and the gradual activation of a procedure for managing the bodies of victims on the various Spanish islands (there is little information on the management of bodies found at sea or on beaches by the Moroccan authorities).

This procedure has often been limited to recovering bodies that have arrived on beaches by chance, collecting the remains of people who have died on board boats arriving on the islands, and to burying the bodies with little regard for the names of the victims, or family tracing. In Spain, the rate of identification of people who have died in migration is higher for Moroccan nationals, also thanks to the ability of families and civil society to activate the system, but remains very low for West African populations on the Canary Islands route

Without going into the details of how the identification system works, and how many people have been identified in recent years in the Canaries (see [Counting the dead - ICRC report](#)), the most concerning point here is the gap between the number of missing persons (according to families and civil society actors) and the number of "cases" registered by the authorities:

- The Caminando Fronteras association reports 4808 victims on the Canaries route between January and June 2024, with a significant number of boats which are missing (whose shipwreck could never be confirmed). The estimated number of victims in 2023 is 6618. The number of victims since 1999 remains difficult to estimate.

- In contrast, IOM's Missing Migrant project, which refers only to "official" cases, often corroborated by bodies found or testimonies, speaks of 4828 victims between 2014 and 2024 (including 3534 by drowning) and 959 for the year 2023 (which testifies to an exponential increase in victims in recent years).

This huge gap suggests how little consideration is given to both the searches of family members and the counter-counting work done by activists and civil society actors. But it also tells us that families and witnesses do not turn to the authorities, whom they generally do not trust, to report a disappearance, and rarely to seek help.

If we compare the data for 2023, 5659 people are missing without being taken into account by official actors. 5659 disappearances which are a concern only for their families or loved ones, and the civil society actors who are trying to support them in their impossible search. While military border control systems (which could intercept boats in difficulty) are deployed in particular close to the Moroccan and Spanish coasts, search and rescue zones south of the Canaries (notably Cape Verde and Senegal) open up such vast expanses of ocean that any search operation for a boat not tracked by GPS is simply impossible. It should be added that SAR competencies in the area have areas of overlap (of intervention and responsibility) and are still subject to negotiation. The evolution/extension of the Moroccan SAR zone can be interpreted as an evolution of the policies of externalization of mobility control, as happened for Libya and Tunisia in the Mediterranean.

The disappearance here is thus associated with an oceanic drift that probably have taken hundreds of lives. The past few months, bodies of missing persons have been found in a boat shipwrecked on the shores of Cape Verde, and other boats have been washing up on the beaches of Brazil and the Dominican Republic. It had already happened in 2021, off the island of Tobago, when a fisherman discovered a boat carrying the bodies of 14 young people. It had probably happened before. But now it's happening more and more often. These are isolated cases, but they point to a scenario that is terrifying in its scope, and to the probable fate of hundreds of people who left with unseaworthy boats from the coasts of Senegal and Mauritania.

The Canary route is becoming an immense zone, where searches are almost impossible and rescues extremely complicated. The only option today is to prevent these drifts and to structure an effective state search and rescue mechanism that would intervene near the coast lines and along the potential drift paths.

Identification, research, anticipation

For bodies found on the other side of the Atlantic (as for those found in the Canary Islands and elsewhere), forensic operations can be carried out to try to identify the victims, through fragmented cooperation between international organizations, national authorities, Interpol and civil society actors. If the authorities are committed to determining the identity of the deceased, sometimes it is enough to locate information they were carrying with them/on them to find clues to their names, and sometimes also to reconstitute the group of people present on the boat. In many cases, the direct involvement of families and loved ones is necessary, to provide information and details of the voyage.

Between 2021 and 2023, the ICRC in Paris and the Institut national des sciences appliquées (Insa-Lyon) have developed a tool that should enable the mapping of networks of people and the changing composition of groups on the move. Called SCAN (for "Share, Compile and Analyse"), it has already been used to reconstitute the list of victims of several events on the Canaries route, thanks in particular to the help of survivors whose testimonies are becoming fundamental, and to connections with civil society actors able to receive alerts from families and loved ones. For the time being, this analysis of complex networks is a tool that works retrospectively, and should facilitate forensic work based on the recovery of the bodies of people who died during migration.

However, more work needs to be done to anticipate the risk of these deadly drifts: on the one hand, by trying to strengthen the ability of people on the move to call for help, in line with the practices already developed in the Mediterranean by the Alarm Phone network (providing information about safety at sea, informing about the importance to have a satellite phone to be able to reach the SAR authorities...), and which need to be adapted to a much more complex geographical area; and, on the other hand, by reinforcing the ability of families and loved ones informed of disasters to launch rapid alerts, and by building and reinforcing secure and protected connections between the various actors, including assets that would be able to activate effective searches in the area.

From a technical point of view, this may seem feasible, but for the time being it remains difficult to change the paradigm of migration policies, which today remains essentially focused on the security dimension and the criminalization of people on the move, and which should accept as a priority the need to intervene and deploy its resources to save lives at sea, and to work to prevent the systematic disappearance of hundreds of people in the Atlantic Ocean.

By Filippo Furri

Legal fragment

Analysis of the Crotone case - Andreina de Leo

The Humanity 1 Case: Libyan Authorities Cannot Perform Rescue Operations

Andreina De Leo

On June 27, 2024, the civil court in Crotone ruled that the detention of the rescue ship *Humanity 1* operated by the NGO SOS Humanity was unlawful. The *Humanity 1*, had been detained by Italian authorities on 4 March 2024 for allegedly disobeying orders by the so-called Libyan Coast Guard, violating Article 1, paragraph 2-bis, of Law 15/2023, known as the Piantedosi Law. The former Decree 1/2023, converted into law since February 2023, contains a number of provisions that, in effect, create unjustified conditions and hinder search and rescue operations carried out by NGOs. Non-compliance results in detentions of the ships, fines and might even result in vessel seizure.

Among other requirements, it requires NGO vessels that have carried out a rescue operation in the Central Mediterranean to reach the assigned port of disembarkation "without delay" for the completion of the rescue operation. However, such an imposition risks hindering an effective search and rescue by these vessels. In particular, there is a risk that in order to comply with the instructions of the competent Italian authorities after having carried out an initial rescue, ships may be forced to disregard other reports of boats in distress in the same area, even though they may be able to carry out further rescues and are obliged to rescue under international law.

The Piantedosi law is part of Italy's strategy to systematically obstruct rescue operations by NGOs in the Mediterranean through legal and administrative harassment that goes hand in hand with a relentless [smear campaign](#). This trend began in 2017, in the aftermath of the conclusion of a [Memorandum of Understanding](#) (MoU) between Italy and Libya, designed to limit departures from Libya. The MoU commits Libyan authorities to intercept migrants at sea and return them to Libya in exchange for training and substantial funding coming from both the Italian and the EU budget. Despite legal [cases](#) being dismissed or ending in acquittal, the crackdown on NGOs continues, and has been joined by other abusive practices such as the so-called "[closed port policy](#)" (2018-2019) for which the then-Interior Minister Salvini is currently under [trial](#), and more recently, the [selective disembarkation](#) strategy, as well as the distant port policy and the prohibition of carrying out multiple rescues, strongly [condemned](#) by the Council of Europe's Commissioner for Human Rights.

Judicial authorities keep casting doubts on the legality of such criminalisation attempts. Among other [rulings](#) of the same line, the decision of the Court of Crotone constitutes the latest checkmate against the Italian policy. By finding the detention order of *Humanity 1* illegitimate, the Court once again clarified that Libya is not a place of safety for people rescued from distress, as foreseen in international maritime law foresees. A port of disembarkation cannot be considered safe if rescued individuals are unable to enjoy their fundamental rights, including effective access to international protection. In this context, the Court stated: (1) that the activities performed by the so-called Libyan Coast Guard cannot be classified as rescue measures due to the undisputed and documented evidence of Libyan personnel being armed and firing shots; (2) that Libya itself cannot be considered a Place of Safety (PoS) for disembarkation because of the serious and systemic violations of fundamental rights against migrants and refugees; and (3) that this remains valid regardless of the MoU signed between Italy and Libya to cooperate on migration management, as this arrangement does not exempt either party from their obligations under international law. The Court thus concluded that any operation carried out by the so-called Libyan Coast Guard cannot be regarded as a rescue operation, as required by international standards.

The judgment is particularly important because it does not only focus on the situation of migrants and refugees in Libya where they are systematically subjected to torture, slavery, arbitrary detention, and chain deportations, among others serious [violations](#) of their fundamental rights, but it also puts emphasis on the

so-called Libyan Coast Guard. Other rulings, including from the [Court of Cassation](#), had already made it clear that Libya is not a place of safety, and that collaborating with the so-called Libyan Coast Guard to return people on the move to Libya is unlawful. However, by putting emphasis on the modalities in which the so-called Libyan Coast Guard conducts its operations, the reasoning of the court of Crotona undermines the rhetoric employed by the Italian government and the European Commission to justify the provision of funding to Libyan authorities.

Funding to Libya has been repeatedly justified by stating that there is no money being channeled to the detention centers where migrants are subject to inhuman and degrading treatments, that Italian authorities do not directly hand out migrants to the so-called Libyan Coast Guard (see statement of Piantedosi: [here](#)), and that funding is provided only to “save lives at sea”, coming with “specific trainings for human rights” and “third party monitoring”, going as far as claiming that there is lack of “evidence pointing to human rights violations” in EU-funded projects in Libya (see recent answers to parliamentary questions: [here](#) and [here](#)). By making it crystal clear that the so-called Libyan Coast Guard cannot perform SAR operations, the Court of Crotona unequivocally rejected the idea that enhancing its capabilities can pursue a legitimate humanitarian aim, that is saving lives at sea. This very important decision strengthens the legal and political [battleground](#) against the provision of funding to Libyan border management authorities, and it will help contesting any future administrative sanction based on refusal to comply with the orders of the so-called Libyan Coast Guard. Yet, it rests to be seen if it will be [enough](#) to bring about a change of policy and lead to the suspension of cooperation and funding altogether.

Criminalisation

The Kinsa case: freedom of movement vs Fortress Europe

Inés Marco - Kinsa campaign

For the first time, after more than 20 years without being amended, European laws criminalising the “*facilitation of unauthorised migration*” are probably about to be changed. What we do not yet know is in which direction. While activists for the freedom of movement are working to ensure that these laws stop imprisoning people on the move, and recently achieved a landmark victory by bringing the Kinsa case before the European Court of Justice, European institutions are intensifying efforts to punish freedom of movement even harshly.

In the upcoming months we will see what the balance of power is. **The changes to the facilitation laws will largely define not only the fate of the thousands of people on the move who are being imprisoned each year on these charges, but more broadly the ease with which state authorities can violate the fundamental rights of people on the move at Fortress Europe's borders.**

Facilitation laws: an instrument of European migration necropolitics

Although on paper facilitation laws seek to criminalise “smugglers”, in practice they end up mainly imprisoning people on the move themselves. Accused of steering boats or vehicles during border crossings, but also for operating GPS on the vehicle or making emergency calls in case of distress, thousands of people on the move are accused and incarcerated in the EU every year. The same laws have also been used to criminalise activists and organisations working in border areas to defend people’s rights.

International law, notably the UN Smuggling of Migrants Protocol and the Refugee Convention, indicate that neither people seeking safety themselves or their families, nor humanitarian actors, should be the target of facilitation laws. As a tool to prevent the criminalisation of these groups, they require facilitation to occur in exchange for a financial or material benefit (FOMB) to be considered a crime. Contrary to international law, the Facilitators' Package, which in 2002 introduced the crime of 'facilitation of unauthorized migration' in

Europe, lacks provisions to exempt migrants, their families, or humanitarian actors from criminal liability. It also does not require financial or material benefit (FOMB) as a necessary element to consider facilitation as a crime. European legislation only includes a timid mention of the humanitarian clause, which member states can adopt on a voluntary basis.

The devastating consequences of facilitation laws have been met with criticism and resistance from activists and human rights organisations for years. **Some of these groups have gone beyond pointing out the problems related to the exclusion of particular groups from criminalisation, directly supporting the people affected and putting forward new narratives that understand the facilitation of irregular migration as an essential activity in guaranteeing the rights of people on the move.** After more than 20 years since the Facilitators' Package was introduced, the arrival of the Kinsa case at the European Court of Justice has given rise to some optimism. For the first time, these laws are now under review in EU's highest court, in what could be a historic step for the movement towards the decriminalisation of facilitation.

The Kinsa case: a summary

The case

In May 2023, lawyer Francesca Cancellaro requested a preliminary ruling from the European Court of Justice in the trial against O.B. in the court of Bologna (Italy). O.B. is a woman of Congolese origin who arrived in Bologna by air to Italy together with her daughter and niece, both minors. O.B. was accused of 'facilitating the unauthorised entry' of the girls, after which she was arrested and separated from them. Unfortunately, O.B.'s case is one of thousands of cases every year in which European countries criminalizes facilitation, devastating the life of those seeking safety. But the case against O.B., known as the Kinsa case (formerly the Kinsasha case), is the first one that managed to confront the illegality and illegitimacy of facilitation laws. On 17 July 2023 the Court of Bologna requested in the context of the Kinsa case a preliminary ruling from the CJEU on the validity and interpretation of the EU Facilitators' Package, as well as of the Italian law implementing it, Article 12 of the Consolidated Immigration Act.

The arguments

In the arguments submitted to the CJEU, Cancellaro questions the validity of the two pillars of the Facilitators' Package:

- (i) the obligation to criminalise the facilitation of entry without requiring a profit motive as a constituent element of the offence,
- (ii) the fact that it does not oblige EU Member States to apply a "humanitarian exception", but leaves it to the discretion of the Member States.

In addition to the direct consequences on those criminalised, Cancellaro argues that the risk of criminal sanctions for supporting migrants has a 'chilling' or 'deterrent effect' on activists and organisations. In a context of systematic institutional violence against people on the move at borders, a reduction of support for activists and organisations, which often involves safeguarding fundamental rights such as rescue, food, medical or legal assistance, jeopardises fundamental rights.

Therefore, Cancellaro argues that both pillars of the Facilitators' Package entail the structural violation of the fundamental rights of people on the move and their supporters as enshrined in the European Charter of Human Rights, such as the right to life (Article 2 ECHR), physical integrity (Article 3 ECHR), asylum (Article 18), family life (Article 7), personal liberty (Article 6) or property (Article 17). **In short, this structural conflict is a reflection of the permanent contradiction between human rights and the protection of national borders in which, as Cancellaro explains, the former must prevail.**

The hearing

The hearing before the Grand Chamber of the CJEU, where the parties concerned presented their arguments, took place on 18 June. In addition to Cancellaro, representatives of the Italian and Hungarian governments, as well as the European Commission and the Council participated. **The hearing of the Kinsa case at the Grand Chamber was irrefutable proof of the impossibility of defending the legitimacy and legality of the European facilitation laws.** None of the parties dared to argue the inherent conflict raised by Cancellaro, but instead sought shortcuts to escape the substantive debate. An analysis of the hearing, including a response to each of the positions presented by the parties, can be found in [Zirulia \(2024a\)](#).^[1]

The European Commission proposed an interpretation of the laws that seemed tailor-made for the Kinsa case. Without justifying the basis for its position, the Commission proposed an interpretation of the current Facilitators' Package according to which the act of facilitating requires a relationship of otherness/thirdness between the facilitator and the facilitated person. Thus, they argued that O.B. should not have been charged with facilitating the unauthorised entry of her minor daughter and niece, although there is no basis to support this interpretation of the current Facilitators' Package.

The Hungarian government and the Council argued that the role of European legislation is to set minimum standards, while the obligation for laws to be in accordance with the European Charter of Human Rights lies in the hands of national legislators. A consideration contested by Zirulia (2024a).

The Italian government, whose role was the most complex, since its national laws were being called into question, was unable and unwilling to defend itself. Its representative merely indicated that Italian facilitation laws follow the direction set by the Facilitators' Package. He pointed out that although the humanitarian clauses are voluntary, Italy decided to implement them (forgetting to mention that this clause is not applicable for the facilitation of entry, but only for residence and transit). He added that Italy already has mechanisms in place to exempt certain groups from being criminalised regardless of the humanitarian clause, such as the notion of 'state of necessity' in article 54 of the Penal Code (without mentioning that this claim can only be applied during the trial, which does not avoid the negative consequences of being prosecuted, as the case of O.B. demonstrates.).

Next steps

The outcome of the Kinsa case will be known in the coming months. While the Advocate General of the CJEU will present his opinion on 5 November 2024, the final judgment of the CJEU is expected by the end of 2024/beginning of 2025. The possible outcomes are manifold. The CJEU could validate the laws, i.e. endorse them as in conformity with the EU Charter of Fundamental Rights. But it could also declare the laws invalid or invalidate specific provisions of the laws. Lastly, the court could propose a specific interpretation of the laws. It seems clear that in both scenarios the outcome of the case will have consequences for the review of the Facilitators' package currently underway at the European institutions.

Fortress Europe reacts

Authors such as [Mitsilegas \(2024\)](#)^[2] or [Zirulia \(2024b\)](#)^[3] argue that the landing of the Kinsa case at the CJEU increased the pressure on the European institutions to present a proposal of modification to the Facilitators' Package. In November 2023, the European Commission presented its proposal for amendment and in May 2024 the European Council published its redraft. The positions of both European institutions can be analysed with reference to the two pillars highlighted in the Kinsa case:

(i) on the 'humanitarian clause':

The Commission proposal provides for fewer safeguards against criminalisation of humanitarian assistance and solidarity than the current Facilitators' Package, moving references to possible humanitarian clauses from the legally binding text to the non-binding one. On the contrary, the Council's proposal suggests the introduction of a mandatory humanitarian clause in article 3, as it 'could provide more clarity and legal certainty about the distinction between facilitation of unauthorised migration and humanitarian assistance'.

(i) on the FOMB as a constituent element of the offence:

While the Commission's proposal did not explicitly exempt people on the move or their family members, it included a tricky mention of the financial or material benefit (FOMB). Indeed, while the FOMB was included in the definition of the offence, the proposal states that this will not be a necessary requirement in case of a 'high probability of causing serious harm' to a person. If on the one hand the fact that the offence of 'serious harm' is not clearly defined leaves a wide margin for interpretation, on the other hand the very same conditions of border crossings (often in overcrowded and unseaworthy vessels) could be considered as a potential risk of harm to travellers. The Commission's proposal therefore entailed a high exposure to criminalisation for people on the move.

If the Commission's proposal regarding FOMB appeared to be tricky and incomplete, the redraft presented by the European Council, published on 31 May 2024, left no room for doubt. The Council removed the reference to the FOMB as an element of the facilitation offence and the existence of the FOMB would only be considered as an aggravating circumstance. Ultimately, the Council proposes to maintain a definition of facilitation similar to that of the current Facilitators' Package.

It is revealing to take a look at the main argument on which the Council relies to reject the introduction of material benefit (FOMB) as an element of the facilitation offence. The Council explained in detail during the hearing of the Kinsa case in the CJEU how, already in the negotiations of the Package in the 2000s, it was agreed to omit the mention of the FOMB, in order to make it possible to prosecute 'smugglers'. **On the grounds that it is difficult to prove that there has been an economic benefit, and arguing that the strategy of the "smugglers" would be to claim that they themselves were asylum seekers in order to avoid prosecution, the Council refused to include exemption clauses or the existence of the FOMB in the definition of the offence.** The same arguments are still used today.

It's astounding that the only argument in support of the European institutions' position to continue criminalising migrants and their families, remaining contrary to international law, is the difficulty of obtaining incriminating evidence. It's shocking to think that these laws have controlled the lives of thousands for over 20 years. Sadly, the systematic violation of the fundamental rights of people on the move is the rule rather than the exception.

On the crossroad

There are still many elements to be determined in the coming months. While the opinion issued by the European Court of Justice in the Kinsa case will affect the final outcome, the European Parliament has not started work on the proposal and an agreement should be reached in the so-called triad negotiations, which include the European Commission, Council and Parliament. However, with the information available so far, **it seems far more likely that a binding humanitarian clause will be adopted than the inclusion of safeguard clauses for people on the move and their families**

Although a courageous decision by the Court could yet turn the tide, this first impression of an asymmetry between the willingness to protect white activists over people on the move is not surprising. It is just another expression of Europe's deep racist and colonial foundations. Something that involves us all. As we know, mobilisation in solidarity with white activists has been far greater than in the cases of people on the move, despite the fact that it is the migrants themselves who are most affected, as well as the only ones to be convicted and imprisoned.

But changes don't come from the institutions, but through political power from below. Facilitation laws have been shattering lives for more than 20 years and have been used to remove witnesses of state violence against people attempting to cross borders and to deter those who stand in solidarity with them. In the coming months we have the opportunity to organise ourselves to dismantle them. It is time to give it visibility, to put the consequences and perspectives of people on the move at the centre and to remember that migration is a right, so facilitating it should be an obligation.

[1] Stefano Zirulia (2024a) "The 'délit de solidarité' before the Grand Chamber of the EU Court of Justice Reflections in the Aftermath of the Kinsa Case Hearing (C-460/23)" <https://eulawlive.com/op-ed-the-delit-de-solidarite-before-the-grand-chamber-of-the-eu-court-of-justice-reflections-in-the-aftermath-of-the-kinsa-case-hearing-c-460-23/>

[2] Valsamis Mitsilegas (2024) "Reforming the 'Facilitators' Package' through the Kinsa litigation: Legality, Effectiveness and taking International Law into account" <https://rivista.eurojus.it/reforming-the-facilitators-package-through-the-kinsa-litigation-legality-effectiveness-and-taking-international-law-into-account/>

[3] Stefano Zirulia (2024) "Les enfants de la Clarée: why the Facilitators package is incompatible with the Charter of Fundamental Rights" <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2024/09/les-enfants-de-la-claree-why-facilitators-package>

Next Hearing on 6th of November - Free the El Hiblu 3

On November 6 2024, the El Hiblu 3 are due back in court in Valletta. After five and half years, the farcical trial against Abdalla, Amara, and Kader, three young human rights defenders, continues and they remain in limbo as they struggle for their freedom. We invite friends in Malta and beyond to join us in Valletta on November 6 to show their solidarity. And we continue to call on the authorities to drop the charges. #Freethe3

The criminalisation of freedom of movement: a course and a podcast series

Authors: Deanna, Camille, Aila and Anna (Feminist Autonomous Centre for research)

Over the past years, within our no-border networks, including the Captain Support Network, borderline europe, Watch and Med Alarm Phone, the Iuventa crew, the Ragazzi Baye Fall, Sportello Sans Papiers of Arci Porco Rosso, and more recently the Maldusa Project, borderline europe and many others, we've been discussing the relationship between struggles against borders, the illegalization of people on the move, and the criminalization of any form of facilitation to freedom of movement.

During a workshop held in Palermo back in fall 2022, a consensus emerged on the need to create materials to counter the discourses of 'smuggling' and 'trafficking' that mobilise public support for criminalisation of people on the move, and other forms of border violence.

As a result we, at the Feminist Autonomous Centre for research, **designed an [online community course](#)** to address multiple implications of the politics of criminalisation of facilitation, such as the discursive, political,

and legal implications. In particular, the course addressed how the process and continuum of criminalisation is not only a tool of incarceration, but also an attempt to depoliticise struggles against borders, as well as to weaken any form of migrant self-organisation and solidarity.

The presentations and discussions that took place during the course were recorded, and are now available in the form of a podcast series titled 'The Criminalisation of Freedom of Movement, which comprises 7 episodes, each addressing criminalisation as well as resistance to it, from a different perspective.

Central to these conversations is the relationship between border abolition and wider struggles for prison abolition. Struggles against borders and against prisons, in our view, cannot be separated, as borders and prison are deeply entangled.

Like prisons, borders confine and immobilise people. Like prisons, borders punish people and they keep them stuck in geographical and temporal limbo. Like prisons, borders are violent and they kill people, they expose people to premature death and organised abandonment. Like prisons, borders are built to create racist apartheid and racialised segregation, to control racialised people's freedom and to create the conditions for exploitation. Like prisons, borders aim to make some lives unlivable.

For both prisons and borders, the violence they exercise is legitimised by claiming that it deters people from committing actions against state-imposed laws and norms, or actions against state-imposed borders. But, like for prisons, border violence does not actually have this deterrence effect. Their violence does not stop people from moving. And it does not stop people from defying borders and state-imposed laws. People do not stop defying borders and transgressing laws because of the fear of the violence that they might face. As much as they do not have a deterrence function, borders like prisons do not have only repressive functions. Rather than stopping people's movements and freedom, they aim at creating docile, silent, fearful and dependent subjectivities that can be easily exploited and controlled, thereby repressing any form of political action against state-imposed laws, norms or borders.

Moreover, like prisons, the border regime does not stop at the border. They police, they enforce controls, they surveil every aspect of our lives. They are both productive or specific social relationships, of subjectivities and categories in our society. Indeed, they shape our lives, bodies and feelings well before and after they are crossed. They create subjectivities, narratives, hierarchies and practices that we internalise and embody in our every relationships. This perspective is important to understand how resistance can be multiplied and extended to all these aspects of life.

In this way, borders are not just like prisons. They're not just similar institutions: borders need prisons. They need criminalization. They need imprisonment and punishment in the form of deportations, pushbacks, or camps. Borders also create new prisons, be they punitive or 'humanitarian', spatial or temporal. For these reasons, we argue that prisons and borders need one another and are co-constitutive.

As Maryama Omar powerfully explains (in an extract from [de Verbranders podcast](#)) that opens our podcast series, the border regime created thousands of prisons around their body, it criminalised and made illegal every aspect of her life. Her very existence has been illegalized before and after she arrived in the Netherlands. But again, as Maryama explains, like prisons, borders do not work. They do not stop people's movements. They do not stop resistance. They do not silence people's struggles for freedom.

This brings us back to key slogans that inform our movements, and that the course started with: *no borders, no one is illegal, freedom of movement for all*.

Often, these slogans, as well as the abolition of borders and prisons are seen as just abstract ideas that do not have materiality in the real struggles of our lives. In this course and related podcast, we discussed how they constitute everyday practices, how they are created in everyday relationships, beyond slogans. We

claim that for the abolition of borders and prisons it is also necessary to undertake an intersectional, transfeminist perspective, to understand how the violence they exercise is structural and institutional, as well as gendered and racialised.

From this perspective, we cannot stop by rescuing people at sea. We need to think about how borders are really present in all our social relationships. It also means to abandon narratives that place people in categories that cage them, as well as the language and logic of punishments and carceral institutions on the one hand, or charity and humanitarianism, on the other.

As an alternative, and in addition to the wonderful work we are all already doing, we need to keep creating alternative and transformative communities that are based on love, mutual care and freedom.

We thank all the people who participated in the course, either by contributing to the roundtables, or by participating in the conversations and discussions. We also thank all the no border groups that are part of the struggles against criminalisation, and with whom we co-created new languages, narratives and knowledges over the past years.

All podcast episodes, course materials, syllabus and readings can be downloaded from the fac research website:

<https://feministresearch.org/podcasts/>

The podcast is also available on Spotify: <https://open.spotify.com/show/224L5XOvWVvMD2LdKC6v8Lw>

New Campaign from medico international against the Criminalisation of Migration

„...Defending the right to freedom of movement is one, perhaps the central task in the struggle against global authoritarianism...“

Last month, Medico, the medical aid and human rights organization based in Frankfurt, started the promotion for a Freedom of Movement Fund, which is dedicated to support criminalized people on the move. In the opening event on 10th of September 2024 the backlash on asylum and human rights in Europe and the recent wave of racist agitation in Germany was outlined as the background and challenge for the new campaign. Tsafirir Cohen, director of medico, stated in his introductory speech: “Defending the right to freedom of movement is one, perhaps the central task in the fight against global authoritarianism. At its core, it is also about defending a democratic Europe based on the universalism of human rights. The fact that one risks moving on the fringes of legality with such a cause is a sign of these authoritarian times. But we have an obligation to resist, in my opinion. It is a matter of principled solidarity.“ Afterwards several activists from Greece (Legal Centre Lesbos and Free Homayoun campaign) and Italy (Captain Support Network and Maldusa) shared their concrete experiences of solidarity with people on the move, who have been accused and imprisoned...

From the call for the new Freedom of Movement Fund: “How often is it claimed that the shift to the right in Europe can be stopped if migration is combated and the continent is sealed off? Borders are militarised, laws are tightened and the right to asylum is undermined. The European elections have once again shown that this does not work. Right-wing parties are being strengthened and encouraged. It is time to take a stand against this and support those who are paying the price for this false logic. Europe's shift to the right began with migration policy. And it must end there too.

At Europe's external borders, people are not only stopped, pushed back, arrested or demoralised in camps. They are also increasingly being put on trial and imprisoned. Their crime: The search for protection, a life in

peace or a new beginning and, in doing so, helping each other. The sentence: often several years in prison - sometimes even for life. The criminalisation of refugees is on the rise across Europe. In Greece, refugees are now the second largest group of prison inmates. They are accused of helping people cross the border. Convictions are also repeatedly handed down in Italy, Spain and along the Balkan route.

Everyone has the right to live in dignity and peace - the right to escape intolerable living conditions and seek protection. If Europe's governments disregard this right, it is up to us to stand by those seeking protection and assert their rights.

With the Freedom of Movement Fund, we support people who are unlawfully imprisoned or forced to defend themselves on the fringes of Europe. We finance legal costs, provide support in everyday life and raise awareness through public campaigns - because migration is not a crime. This practical solidarity from below has to be expanded and strengthened...."

More about the new campaign: <https://www.medico.de/en/freedom-of-movement>

Amplifying voices

From Tripoli to Berlin!

Refugees in Libya and supporting organizations invited for a two-day event in the German capital

After a first convergence in January 2024 in Bologna and a second one in Rome in the beginning of June, a third two-day event by and with Refugees in Libya will take place in October 2024 in Berlin. A public event on Friday the 18th will be followed by a series of workshops the next day.

Evacuation, not Externalisation! The Right to Move against an EU for the Few!

Illegal push- and pull backs, arbitrary detention, enslavement, sexual violence, and deaths at sea and on land: these are just some of the serious crimes and human rights violations people on the move face in Libya, Tunisia and the Mediterranean. These crimes are not only well-known in Europe, but EU migration policies directly contribute to them. Non-Europeans often have no option but to resort to dangerous sea crossings for lack of safe and legal pathways to seek protection. But rather than address this, European states concentrate their efforts on border fortification, frequently at the expense of human rights, striking deals with dictators in Libya and Tunisia to externalize border management, while simultaneously restricting and criminalizing life-saving sea rescue operations.

"Evacuation now" was the main slogan of the historic sit-in led by Refugees in Libya ('RiL') in October 2021, when they protested for 100 days in front of UNHCR's office in Tripoli. Three years later, the network born from that protest is also organizing across Europe. Evacuation remains a central demand, along with accountability and policy change, for this important self-organized movement within the broader collective struggle to ensure the right to move for everyone.

On 18 October 2024, representatives from RiL and other organizations in solidarity with them will discuss the current situation in Libya and Tunisia. We will collectively think through possibilities and challenges to advance the movement's aims through political, legal and practical interventions. Our goal is to build strong solidarity structures and campaigns to support the rights of people on the move through North Africa and the Mediterranean.

The event will start at 18:30 with inputs from RiL, a German Member of Parliament, the European Center for Constitutional and Human Rights and the Civil Fleet, followed by an open discussion.

Afterwards, from 20:30 to 21:30, guests are warmly invited to continue the conversation at a small reception, where they can also view a mobile exhibition about the Refugees in Libya movement.

Mobilisations

11 October 2024: 10 years of Alarm Phone

„...We have built a transnational and multilingual collective that is committed to stay at the side of people who enact their right to move...“

To mark the 10th anniversary of its foundation, the Alarm Phone will organise in October 2024 an assembly and public activities in the city of its southernmost member group: in Dakar in Senegal. In the weeks that follow, public events will be organised also in several cities in the north. Alarm Phone will also publish a 10 years booklet, from which we document here the introductory text:

“The Alarm Phone turns ten years old. For 3,650 days and nights, we have been on shift. During these shifts, we were alerted to over 8,000 boats from all corners of the Mediterranean Sea, the Atlantic region or the English Channel, directly by the travelers or their relatives and friends. This means, on average, at least two distress cases reached us every single day over the past ten years. Some days we were on stand-by, with no call coming in. On other days, twenty or more boats called us from the sea.

When the idea for the Alarm Phone was born after the shipwreck of 11 October 2013, and when we launched it after extensive preparations a year later, nobody could have imagined such scale and intensity of need and engagement.

During our shifts, we witness time and again how voices on the other side of the phone line become desperate and panicked, or how they fall silent and the contact breaks. We experience nearly daily how relatives contact us, asking us about boats that have disappeared. Over the past ten years, death at sea has become our companion. Many times, facing such cruelty by the murderous border regime, we feel helpless anger.

At the same time, we realise again and again how we can often accompany boats and empower autonomous landings in Europe. Days and nights of communication with the people on board, in various languages, ultimately leading to their safe arrival. Or, in other cases, how receiving information from the boats in distress, and forwarding it to the civil fleet, can contribute in decisive ways to successful rescues.

Over the years, our activist hotline has grown. By now, we are more than 300 activists, and our network is composed of a very diverse noborder crowd. Our members have various backgrounds and face different living conditions and realities. We live in dozens of places all over Europe as well as North- and West-Africa. We have built a transnational and multilingual collective that is committed to stay at the side of people who enact their right to move.

Some have left our network. Many could no longer stand repeatedly experiencing traumatic situations during shift work and decided it was time to leave. Others have taken a break and then returned. While we have thus faced continuous fluctuations in our network, we have nonetheless grown and consolidated over time.

The Alarm Phone learns from direct experiences of crossing the sea and subverting borders by some of our members or our friends. Due to our relationships with members of communities on the move, we also learn from their lived experiences and struggles, as well as their tenacity to overcome violent borders in the search for a better life. We thus, first and foremost, want to thank those who move determinedly across borders for your trust when reaching out to us via the phone.

We know that we have become, and will continue to be, a disruptive force, challenging the inhumane border regime. We have pushed authorities into unwanted rescue activities, when they would have chosen to leave people to die. Our disruption has become amplified through the many collaborations we engage in, with other noborder activists, NGOs operating at sea and on land, with lawyers, journalists, some compassionate politicians even. Collectively, we try to prevent every illegal pushback and seek to make every person in distress count.

Currently, we face a harshening wave of racism, authoritarianism and inhumanity – all over Europe as well as in North Africa and elsewhere. We have to fear that the border regime will become even more brutal in the years to come. We can only struggle on in a broad alliance of progressive forces. Thus, our second 'thank you' goes out to all networks and actors with whom we have cooperated over the past decade. All those who are part of the civil fleet, who send rescue ships and airplanes to find people in distress, and all others with whom we share the fight for safe passage and global justice.

For our tenth anniversary, we publish this book, which is the fifth of its kind. In it, we share articles, analyses, interviews, and poems. We offer an account of how the Alarm Phone started and how it developed. We highlight the struggles against criminalization and the struggles for memory in the form of CommemorActions, alongside families and friends of the missing. We present sister projects of our network and show maps, graphics, and photos. Together, these fragments speak for our common perspective: We will continue with our solidarity on the routes and build and extend infrastructures for freedom of movement.

Never forget, never give up! This is and will remain our motto in our struggle for freedom of movement and equal rights for everybody. We will not give up the hope for a future, in which our archive of violence against people on the move will serve as the basis for a systematic interrogation and condemnation of state crimes against humanity, as the basis for demands of accountability and compensation.

As Alarm Phone, we will move on in contested spaces and we will follow the tenacity of people on the move as a transnational nodal point of a network that undermines and overcomes a racist and exploitative system of global segregation.

No border lasts forever. Solidarity will win.

Request to the ICC Prosecutor to investigate Crimes against Humanity in Tunisia: Attacks on black African migrants

On 24 September 2024, a request was submitted to the International Criminal Court (ICC) by lawyers acting for family members of detained Tunisian opposition politicians **Rached Ghannouchi, Said Ferjani, Ghazi Chaouachi, Chaima Issa, Nouredine Bhiri, and Ridha Belhaj** (who was killed in a protest). The Applicants are represented by a legal team led by Rodney Dixon KC, Temple Garden Chambers, London and The Hague. They are asking the ICC urgently to investigate the heightened attacks on black African migrants in Tunisia, which have resulted in widespread deaths and severe mistreatment, and the mass crackdown on the democratic opposition movement to Kais Saied's regime. Tunisia is a State Party of the ICC and the Court has jurisdiction over the alleged crimes being perpetrated by the current regime.

Since dissolving parliament in March 2022 Kais Saied has been systematically suppressing all political opposition and civil society. In parallel, his regime has brutally targeted black Tunisians and sub-Saharan black migrants. Several of his political opponents remain arbitrarily detained on fabricated charges and endure ill-treatment in detention, often denied access to lawyers. And yet, Saied is now seeking a new five-year term in the presidential election scheduled for 6 October 2024. Of the 17 candidates who declared their intention to run for the presidency, 14 were either arrested or disqualified on questionable grounds, including Ghazi Chaouachi who was banned from standing. In early September at the official start of the presidential campaign season, dozens of members of Tunisia's largest opposition party were arrested

during an unprecedented campaign of raids. The Independent High Authority for Elections (Instance Supérieure Indépendante pour les Élections, ISIE), which is now under the control of the President since 2022, has approved only 3 candidates in total including Kais Saied.

The request filed today highlights all of these recent violations. It builds on the first complaint submitted on 5 October 2023 to the ICC by the legal team requesting an investigation into the alleged crimes committed by Kais Saied and his Ministers against those detained and against black Tunisians and migrants. In light of the recent escalation of violence against migrants, and fresh evidence obtained by the legal team from migrants themselves, a new request has been submitted to the ICC. Rodney Dixon KC stated that “*The new evidence shows that black African migrants are facing brutal and heartless treatment at the hands of the Tunisian authorities. The ICC has the jurisdiction to investigate these alleged crimes against humanity and should act with the full force of international law to protect those most vulnerable*”.

In particular, since September 2023, deportations to desert areas have been carried out on irregular basis and on a significant scale and continue to this day. Countless migrants report similar experiences of arbitrary arrest on land or at sea followed by collective expulsion to desert regions along the border with Algeria and Libya, while being beaten, mistreated, and suffering psychological abuse. Conditions in the desert are dire, with temperatures reaching around 40°C and no access to water or food, which has caused the deaths of several migrants.

On 9 July 2024, the United Nations High Commissioner for Human Rights Volker Türk revealed the recent discovery of a mass grave in the desert at the Libyan-Tunisian border, stating that between April 2023 and March 2024, 2400 people died or went missing trying to cross the Mediterranean Sea. Recent evidence also suggests that the situation for Black migrants expelled by the Tunisian authorities from major cities like Sfax, and not deported to the border, continues rapidly to deteriorate. Migrants live in camps in remote areas under inhumane conditions lacking adequate housing, food and humanitarian assistance. Several sources have also confirmed the destruction of the camps by the Tunisian authorities who have set fire to tents and attacked migrants.

Significantly, the ICC is conducting investigations in Libya for similar crimes perpetrated against black African migrants. Given the rising gravity of the situation in Tunisia, it is essential that it is examined in the same way. The two investigations would go hand in hand and complement each other. An investigation in Tunisia would address issues such as the deportation of migrants into the desert at the Libyan–Tunisian border and cover the entire route along which migrants are forced, which extends beyond Libya and into Tunisia, often to Mediterranean coast.

Elyes Chaouachi, the son of Ghazi Chaouchi who is the Former Secretary General of the Social Democratic Political Party Attayar and a political prisoner, stated : “ *In Tunisia, the pillars of democracy and human rights are under siege, as autocracy, racism, antisemitism and hate speech rise unchecked. We urge the ICC and the international community to take a stand— support humanity, uphold justice, and restore dignity. Our voices for freedom and equality must not go unheard* ”.

Kaouther Ferjani, the daughter of imprisoned Ennahda Party member Said Ferjani, added: “*We urge the ICC to investigate the crimes currently being committed in Tunisia against Black African migrants as well as the crackdown on freedoms through the arbitrary arrests of politicians, civil society, journalists, human rights activists and lawyers. As the president continues to jail his opponents while seizing the judiciary, we have been left with no option but to seek justice outside of Tunisia*”.

A press event was held on **Tuesday 24 September 2024 at Temple Garden Chambers in The Hague** (Netherlands) to discuss the ICC case for Tunisia, gathering families of detained Tunisian politicians; David Yambio (Refugee Human Rights Defender, Co-founder of Refugees in Libya); Black Tunisians and migrants who have personally experienced mistreatment by Tunisian authorities; and lawyers representing those detained in Tunisia.

Joint Statement: Tunisia is Not a Place of Safety for People Rescued at Sea

In view of the rampant human rights violations against migrants, asylum seekers, and refugees in Tunisia, especially those who are Black; Tunisia's lack of an asylum system; the Tunisian government's crackdown on civil society, judicial independence, and the media; and the impossibility of fairly and individually determining nationalities or assessing the protection needs of migrants and asylum seekers while at sea, it is clear that Tunisia is not a safe place for the disembarkation of people intercepted or rescued at sea. The ongoing cooperation between the European Union (EU), EU member states, and Tunisia on migration control which includes reliance on the possibility to disembark people rescued or intercepted at sea in Tunisia – similar to previous cooperation with Libya – is contributing to human rights violations.

European policies to externalize border management to Tunisia are supporting security authorities who are [committing serious violations](#). They are also obstructing people's rights to leave any country and to seek asylum, containing refugees and migrants in countries where their human rights are at risk. Moreover, disembarkation in Tunisia can endanger individuals and expose them to serious harm, and further puts refugees and migrants at high risk of collective expulsion to Libya and Algeria, which can violate the principle of non-refoulement. The establishment on 19 June 2024 of the Tunisian Search and Rescue Region (SRR), [called for and supported](#) by the European Commission, risks becoming another tool to violate people's rights rather than a legitimate fulfillment of the responsibility to protect safety at sea. Mirroring its cooperation with Libya, the EU and its member states' engagement with Tunisia may have the effect of normalizing serious violations against people seeking protection and undermining the integrity of the international search and rescue system by twisting it to serve migration control purposes. ^[OBJ]

As humanitarian and human rights organizations, we call on the EU and its member states to terminate their cooperation on migration control with Tunisian authorities responsible for serious human rights violations at sea and in Tunisia. Search and rescue NGOs and commercial ships should not be instructed to disembark anyone in Tunisia.

Widespread and repeated violations of human rights

Findings from Tunisian and international organizations, as well as UN bodies, over the past two years indicate that Tunisia cannot be considered a 'Place of Safety', as defined by the 1979 SAR Convention, the Maritime Safety Committee (MSC) and UN bodies, for people intercepted or rescued at sea, most notably Black people.

Despite being party to the 1951 UN Refugee Convention, Tunisia has no national asylum law or system. People who enter, stay in, or exit the country irregularly are criminalized by law. [Following interceptions at sea](#) or after [arbitrary arrests](#) on Tunisian territory, Tunisian authorities have repeatedly abandoned refugees, asylum seekers, and migrants in the Tunisian desert or remote border regions with Libya and Algeria. These practices can amount to unlawful collective expulsions, demonstrate a total disregard for refugees' and migrants' right to life, and may violate the principle of non-refoulement. People expelled face the risk of serious human rights violations in Libya and [onward expulsions from Algeria to Niger](#). According to reports citing [information from the UN](#), Tunisian security forces have notably rounded up people presumed to be irregular migrants on land and directly transferred them to Libyan authorities, who subsequently subjected them to arbitrary detention, forced labour, extortion, torture and other ill-treatment, and unlawful killings.

According to the accounts of refugees, migrants and asylum seekers documented by Amnesty International, Human Rights Watch, [OMCT](#), and [Alarm Phone](#), Tunisian authorities at sea have committed abuses and put lives at risk during boat interceptions – including by high-speed manoeuvres threatening to capsize the boats, physical violence, firing tear gas at close range, and colliding with the boats – followed by a failure to systematically ensure individualized assessments of protection needs at disembarkation. Tunisian authorities have also subjected refugees, asylum seekers and migrants to torture and other ill-treatment in the contexts of disembarkations, detention, or collective expulsions.

At the same time, several international and local organizations, human rights defenders and lawyers have reported an alarming deterioration of civil liberties and fundamental rights in Tunisia, impacting both the migrant population and Tunisian citizens.. Since 2021, the country has witnessed a significant [rollback](#) of human rights, characterized by a dismantling of institutional safeguards for their protection, an [erosion](#) of judicial independence and a [clampdown](#) on freedom of expression, association and peaceful assembly. The disembarkation in Tunisia of Tunisian nationals intercepted or rescued at sea, which could include people fleeing persecution, torture or other serious harm and intending to seek asylum abroad, could effectively deny the right to seek asylum to those in need of international protection.

The European Union's complicity in human rights abuses

Despite the documented human rights violations by Tunisian authorities, the EU and its member states have stepped up their support for Kais Saïed's administration. Through the Memorandum of Understanding signed in July 2023, the EU promised Tunisia 1 billion Euros, including 105 million EUR dedicated to border and migration management, effectively in exchange for preventing sea departures towards Europe, which includes people in need of protection. With the implementation of a Tunisian Search and Rescue Region (SRR), the Tunisian government has met a long-standing priority set by the EU. While on the one hand this represents a formal step towards the fulfillment of Tunisia's responsibility to protect life at sea, the reality is that European Rescue Coordination Centers (RCC) will now refer boats in distress within the Tunisian SRR to the Tunisian RCC, reinforcing a gradual disengagement of EU actors in favor of actors with a poor human rights record.

By supporting an increased role for the Tunisian Coast Guard (National Guard) – without any human rights benchmarks or monitoring system in place, nor arrangements to ensure that rescued people are disembarked in a place of safety which cannot be Tunisia – the EU is contributing to a risk of further serious human rights violations at sea and in Tunisia against refugees and migrants and people at risk of persecution in the country.

Humanitarian space for search and rescue (SAR) NGOs will also be further curtailed, if European RCCs instruct SAR NGOs to liaise with the newly established Tunisian MRCC for disembarkation, which they may refuse to respect the principle of non-refoulement. The UN refugee agency, UNHCR, has [noted](#) that vessels at sea are not the appropriate place for determining protection needs. Under international maritime law, states have the primary responsibility for coordinating rescues within their SRRs and for arranging disembarkation in a place of safety, which may be another state.

European support of human rights violations must end

These developments follow the pattern witnessed in Libya since 2016. In addition to material, technical and political support, the EU and Italy supported the establishment of a Libyan SRR and MRCC, thus leading to a transfer of SAR responsibility to the Libyan Coast Guard and increased pullbacks and disembarkations in Libya, all while being aware that this would expose refugees and migrants to a serious risk of horrific and deadly violations in Libya. Both the Italian government and EU institutions have not only continued this cooperation, but sought to extend it to other countries, including in Tunisia.

We therefore urge the EU and its member states to:

- Call on Tunisian authorities to end human rights violations against refugees, asylum seekers, and migrants, including urgently with regards to life-threatening and unlawful collective expulsions.
- Call on Tunisian authorities to end the crackdown on civil society.
- Ensure that SAR NGOs and commercial ships are not instructed to disembark people they rescue at sea in Tunisia, given the risks of human rights violations there, and given that fair individual assessments concerning these risks cannot be made at sea. Tunisia cannot be considered a place of safety for people rescued at sea under applicable international law.

- Terminate financial and technical support to Tunisian authorities responsible for serious human rights violations in relation to border and migration control.

15 Years Network Welcome to Europe

15 Years in Solidarity with People on the Move - September 2024

In September 2009, in the middle of a noborder struggle on the greek island of Lesbos, the network Welcome to Europe was born. *Nowadays, the network consists of approximately 20 activists from 10 European countries, working on making reliable and independent information available for people on the move, building on the contributions of active friends and collectives from both sides of the Mediterranean Sea.* Within the last 15 years we have experienced a lot of ups and downs in the fight for freedom of movement. We also lived through more or less active times with and through our network activities and the web guide <https://w2eu.info/>.

However, we are still and again very convinced of the necessity of a continuous provision of independent information for refugees and migrants coming and crossing Europe and beyond. We will continue to give access to counseling and useful contacts to self-organize and to support people on the move.

Since years Europe has constantly developed more and more repressive migration policies. Determent and criminalization of flight and migration remain the dominant narratives in governments, in relevant parts of European societies and in mainstream medias nearly everywhere. For the coming years we will most likely have to expect a further brutalization of the border regime.

We will never forget and never forgive the permanent racist violence of deportations and exclusion, the ongoing pull- and pushbacks and the left to die practices on sea and on land. We will continue to document, to accuse and to resist against all forms of these state and deadly border crimes.

We perceive Welcome to Europe as one long-term element of a wider and increasing transnational network of solidarity. Recognizing and following the tenacity of the movements of migration, we promote the concept to build and to extend infrastructures for freedom of movement.

We will go on to welcome all people on the move in their difficult trip and we wish all of them a successful journey - because freedom of movement is everybody's right!

<https://w2eu.info/en/articles/15-years-statement>