

Lawyering for Change 2022 conference

FULL REPORT

Workshop session : Defending migrants' rights in the Mediterranean by strengthening North-South collaborations

Workshop Wednesday October 12th 2 PM - 3.20 PM

Speakers :

- **Giorgia Linardi** - Advocacy officer and legal advisor, Seawatch (Italia)
- **Diletta Agresta** – Project coordinator, Associazione per gli Studi Giuridici sull'Immigrazione (Italia)
- **Sara Prestianni** – Researcher and migration programme officer, Euromed Rights (Belgium)
- **Sami Adouani** – Member of the governing board of the Forum Tunisien pour les Droits Economiques et Sociaux (Tunisia)

Moderation by **Zeineb Mrouki** - Programme coordinator, Avocats Sans Frontières (Tunisia)

1. What is an externalization policy ? What are its consequences ? : the European Union case

Sara Prestianni's intervention: The European outsourcing policies in the central Mediterranean Region consist of negotiating with the countries of origin or transit to delegate border control to them. These policies have two main goals : to limit departures from third countries; and to implement repatriations. This externalization is not new. It began in the 2000s with Morocco, then Libya, but has intensified since 2015 with Turkey, to whom the European Union has given 6 billion euros to limit the displacement of populations from Syria and Pakistan.

In November of the same year, the European Union created its trust fund for Africa. Through this financial tool, 5 billion euros was negotiated and taken from development funds that are outside the control of the European Parliament. The main beneficiary of this trust fund was Niger, a laboratory where different projects on security, terrorism and migration are being carried out. Libya is another interesting example of cooperation between the European Member States and the European Commission. Through a trust fund, Member States, including Italia, have made agreements with third states. Since 2017, around 24 thousand migrants have been captured by the « Libyan coastguards », trained by the Italian authorities. This phenomenon is a « refoulement by proxy » meaning that Italy, by training the Libyan coastguards, makes them responsible for these refoulements in Libya.

The examples of Niger and Libya both illustrate the externalization policies applied by the European countries. However, this externalization does not meet the European Union's objectives of limiting arrivals, it only shifts migratory flows to other countries and increasingly dangerous routes.

Another externalization policy is the « Pact on Migration and Asylum » introduced by the European Commission in September 2020. The external dimension is the pillar of the European policy on migration and asylum.

Another European fund has been created, which provides a financial support of 10 billion euros. This fund has negative conditions for third countries: if these third countries do not accept the conditions set by the Union (such as the repatriation of their own nationals), they would be deprived of it.

How can we act on this tendency? We need to act between North and South by collecting data, reporting these violations, training and educating; to work with lawyers for strategic litigation; to approach other bodies such as the African Court, the CDO; and to advocate properly on the opacity of European Funds.

2. The consequences of the externalization policies in Tunisia

Zeineb's intervention : Tunisia has always stated that it is not a destination country, but only a country of transit, and that it does not intend to be the port/hot spot of Europe.

Sami Adouani's intervention: Tunisia is a country of arrival, transit and departure. Despite its democratic process that began with the revolution in 2011, the judicial framework on migration remains the same. There is a predominance of security policies in the region. The European strategy started with the migration shock in Syria then with the war in Libya. The statements of Italy and Europe wanted to make of Tunisia a safe country and therefore the perfect candidate to become the platform for the displacement of individuals in the Mediterranean region. This balance of power is to the advantage of the European Union and to the disadvantage of migrants, Tunisians and sub-Saharan living or transiting through Tunisia.

Security cooperation between Northern and Southern countries fuels an authoritarian policy which affects African countries in terms of freedom of movement, thus restricting the movement of their citizens.

In recent years, we have seen a steady increase of departures from Tunisia, an increase of victims and border militarization. Most people arrive in Tunisia on airline visas and continue their journey to Europe. Tunisia has tightened its security policies and blocked most people at sea. Many boats leaving Libya are captured by the Tunisian authorities. Whereas previously, departures were limited to a few cities, there is now a wider distribution throughout the country, which illustrates the failure of the country's security policies.

These policies are based on denial. Tunisian institutions react by tolerating foreigners' presence but without guaranteeing them an access to their rights. Tunisia therefore leaves thousands of people in a legal and administrative vacuum, unable to access services which creates a breeding ground for social tensions and xenophobia.

European technical and financial support to Tunisia, which has no protection mechanism, leads to a situation where migrants and displaced persons are abandoned and in difficulty to the UNHCR to process asylum applications.

Advocacy between North and South seems necessary to raise awareness.

3. The consequences of externalization policies in Libya

Giorgia Linardi's intervention: key humanitarian issues encountered by Médecins Sans Frontières in Libya are:

- **The arbitrary detention** of migrants in inhumane conditions;
- **Insecurity of migrant communities** in Libya, exacerbated by exploitation, abductions, arrests and lack of security because of their legal status in the country;
- **Inadequate humanitarian response** due to limited access to the country, awareness of migrants in the community and in detention, the relationship between donors (e.g. European Union), non directly linked to migration policies.
- The **limited legal paths** to get out of Libya, leaving migrants trapped in a protection deadlock;
- **The cycle of abuse**, with the European Union supporting the Libyan authorities to facilitate forced repatriations as part of its externalization policy.

Since 2017, there has been an institutionalization of the failure of rescue at sea and its criminalization. Indeed, more than 20 criminal investigations have been opened by Italian prosecutors with the main charges being: helping and abetting illegal immigration, representation of criminal association; application of the anti-mafia investigation to NGOs.

Faced with this situation, European Member States and the European Union have their share of responsibility. Indeed, these States fail to rescue migrants at sea, delay their interventions and facilitate collective refoulements by proxy. The European Union, on the other hand, supports financially and logistically Libyan coastguards, reduces its institutional presence at sea and instead replaces it with aerial monitoring to facilitate interceptions and refoulements by Libya.

We are faced with policies that provide no solution, violate international law, fuel the cycle of abuse and create a protection deadlock.

In the face of this, we must :

- Adopt a broader perspective of the central Mediterranean route. Libya and Tunisia can no longer be considered unrelated;
- Take a regional approach by monitoring the dynamics of border crossings between Libya and Tunisia: land border crossings, sea interceptions, withdrawal dynamics, voluntary returns to Libya;
- Support civil society interventions against criminalization.

4. The strategic litigation as an instrument for joint action between Northern and Southern actors to assert rights

Diletta Agresta's intervention : ASGI's (Associazione per gli Studi Giuridici sull'Immigrazione (Association for judicial studies on Migration)) action is based on the assumption that the exercise of rights is only possible through access to the territory and identifies freedom of movement as the main condition for the exercise of the right to international protection. This means that all policies aimed at blocking and creating channels of forced mobility have the effect of excluding any asylum seeker from international protection.

Within the framework of the Oruka project, we are trying to analyze the impact of different policy instruments of externalization and control of the mobility on the right to movement of individuals including, repatriation agreements, the use of funds to strengthen border controls, and the control of intra-African mobility.

In recent years, we have been working on the creation of a transitional network of associations, lawyers, jurists, academics from both sides of the Mediterranean to jointly analyze the scope of European policies to control mobility and then to jointly structure strategic litigation action before national, regional and international courts.

Last year, we filed a complaint against Italia and Libya before ECOWAS (Economic Community of West African States) for violations of articles 2 and 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) due to their support for assisted voluntary return or assisted humanitarian repatriation programmes for victims of trafficking. Voluntary repatriations by Libya can be defined as a « disguised expulsion » of individuals who would be entitled to forms of protection given the lack of alternatives and the situation of subjection to which women are subjected in Libya. Repatriation exposes them to the risk of re-trafficking.

In a focus group with Nigerien lawyers and associations, we started to think about the way externalization policies affected freedom of movement in the ECOWAS free movement zone. We then studied the 36 Niger's law of 2015 adopted by the Republic under the pressure of the European Union, on migrant smuggling. The joint reflection and work enabled us to lay the groundwork for an appeal before ECOWAS on which a group composed of ASGI, NULAI, OCMT, AME and Nigerien lawyers is working, with the support of Alarm Phone Sahara.

5. What recommendations to ensure the rights of migrants and persons in movement

By the end of the workshop session, several recommendations were made:

- To fight against discrimination, xenophobia and structural racism;
- To fight against police brutality against migrants and refugees and to systematically file a complaint to stop it;
- To adopt a circular approach to migration and to abandon policies based on security approaches;
- To challenge the security policy lobbies that benefit from the EU's security approach;
- To act on the European Union's accountability for funding authoritarian border management regimes that can strengthen the security apparatus responsible for Human Rights violations;
- Adopt a rhetorical strategy in favor of the right to mobility.