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Under the High Patronage of:

H.E. Mr. Adama Dieng, AU Special Envoy on the Prevention of Genocide and Other Mass Atrocities

Accountability for Crimes Against Migrants

International Criminal Responsibility for Aiding
and Abetting Crimes Against Humanity

Side Event to the 58th Session of the UN Human Rights Council

Background Paper

For several years, human rights defenders and legal experts have advocated for accountability for aiding and abetting the massive and systematic violations committed against migrants as crimes against humanity. This includes the atrocities committed against migrant victims of illegal refoulement, mass expulsions, and illegal interceptions at sea or across land borders.

The systematic provision of means, equipment, supplies, aerial surveillance, and intelligence used to intercept migrants—who are then subjected to grave violations—gives rise to individual criminal responsibility under international law as crimes against humanity when carried out pursuant to or in furtherance of a State or organisational policy.

In essence, in addition to the direct human rights abuses attributable to Frontex operations and the coastguards or navies of EU Member States, international law also holds senior European policymakers accountable for facilitating the support provided to armed militias and security forces involved in migrant interceptions, illegal refoulement, mass expulsions, deportations, and the transfer of migrants to detention facilities, including the crimes against humanity committed after their capture.

National jurisdictions bear primary responsibility for investigating and prosecuting these crimes under international law, yet this is clearly not happening. This opens the door for the International Criminal Court (ICC) to step in, as relevant national authorities are unwilling or unable to conduct genuine investigations and prosecutions. On 28 April 2022, the ICC Prosecutor, in a report to the UN Security Council, explicitly acknowledged that crimes against humanity committed against migrants in Libya fall within the ICC's jurisdiction under UNSC Resolution 1970 (2011) and are subject to prosecution by his office. European officials, as nationals of State Parties to the Rome Statute are subject to ICC jurisdiction. In addition, crimes committed on the territory of Libya, fall under the jurisdiction of the ICC based on UN Security Council referral of the situation in Libya. The link to the ongoing armed conflict is satisfied by the way profiteering from migrant management directly contributes to the war efforts of various militias, while the resulting instability creates an enabling environment for atrocities.

The primary objective of aiding and abetting these atrocities might be migration control rather than the commission of the atrocities themselves, but this does not absolve decision-makers from individual criminal liability when the support provided significantly contributes to the crimes. The provision of equipment, money, intelligence, and surveillance also has the very purpose of providing “human raw materials” of the atrocities, namely the migrants themselves.

The findings of the Independent Fact-Finding Mission on Libya (FFM), presented to the UN Human Rights Council on 23 March 2023, are unequivocal. As succinctly summarised by the FFM at the 27 March 2023 press conference in respect of the EU and Member States: “[t]he point is that the support given has aided and abetted the commission of the crimes.” After issuing its 2023 report, the FFM's mandate—which had previously been renewed annually with strong support from EU Member States—was not extended by the Human Rights Council.

Senior European officials cannot plausibly claim ignorance of these violations, as they are well-documented in numerous authoritative reports from the United Nations, including the Office of the High Commissioner for Human Rights, UN Special Rapporteurs, the FFM, various NGOs, and internal EU reports, such as those from the European Ombudsman.

Given the overwhelming evidence, European officials are fully aware of their role in supporting violations against migrants. Yet, they have continued to fund, equip, and provide operational support through multiple budget cycles. Their complicity is further underscored by EU-led awareness campaigns in countries of origin, which warn potential migrants about the risks they face at the hands of torturers, murderers, and rapists —part of the EU broader “migration prevention” strategy.

On a wider policy level, the externalisation of border management —outsourced “atrocities for profit,” commissioned and funded by Europe — is no longer the purview of a few extremist political actors sponsoring violations by non-State armed groups. It has become official EU policy, celebrated as a model defining relations between the EU and countries in the Eastern and Southern Mediterranean. What was once the “Libya model” has now become the “Tunisia model.” In July 2023, the EU signed a Memorandum of Understanding (MoU) with Tunisia, providing 1 billion euros, including over 100 million euros earmarked for “migration management.” This has directly resulted in massive human rights violations against migrants.

These violations are not incidental — they are inherent in EU-supported migration control operations. They include arbitrary arrests and detentions, collective expulsions, and deliberate abandonment in desert regions, leaving migrants stranded without food, water, or shelter. Despite reliable reports documenting these atrocities, senior EU officials continue to defend the EU-Tunisia MoU as a potential blueprint for future agreement. This includes deals with Egypt, where the EU has recently transferred another 1 billion Euro to the government of President Abdel Fattah El-Sisi, despite widespread human rights abuses in the country.

At this crucial juncture, as the dehumanisation of migrants and the normalisation of atrocities increase, impunity must end. This side-event at the 58th Session of the UN Human Rights Council delivers a clear message: actions have consequences. The systematic provision of means, equipment, supplies, aerial surveillance, and intelligence used to intercept migrants and subject them to grave abuses gives rise to individual criminal responsibility under international law, as crimes against humanity. Senior European officials who enable crimes against humanity must be held accountable.

The upcoming Report from the Global Commission on Modern Slavery and Human Trafficking will present comprehensive findings and recommendations to tackle the global challenges of modern slavery and human trafficking, highlighting the rise in these crimes, driven by factors such as forced displacement due to conflict.

The UN Human Rights Council offers the appropriate forum to spotlight these issues. It is essential to bring together survivors, legal experts, and like-minded human rights activists to address the individual criminal liability of those European officials most responsible for aiding and abetting crimes against humanity.

Objectives

Exposing Systemic Violations Against Migrants: to highlight the atrocities faced by migrants in countries such as Libya and Tunisia, driven by European policies and supported by European resources, which facilitate and exacerbate these abuses.

Promoting Policy Reform: to show the extent to which agreements between the EU and North African countries contribute to human rights violations and breaches of international law, while advocating for a fundamental shift in EU migration policies to prioritise human rights protection.

Highlighting European Officials' Responsibility: to examine the individual criminal liability of European decision and policy makers for facilitating crimes against humanity against migrants.

Strengthening Calls for Justice: To offer a platform for survivors, human rights defenders, and legal experts to demand increased scrutiny and accountability, addressing the ongoing impunity within EU migration policies.