# Launching of the CED’s first General Comment on “Enforced Disappearances in the Context of Migration”

# *Euro-Med Human Rights Monitor’s Statement*

# Introduction

The Euro-Mediterranean Human Rights Monitor welcomes the invitation and the opportunity to provide the Committee on Enforced Disappearances with our view on the vital topic of enforced disappearances in the context of migration.

Today we deliver a picture on the Mediterranean area, where we work and where the European migration framework *prevails* over both shores of the sea. A system where states meet migration flows from the Global South through a state of exception in which border security is more important than fundamental rights, military authority is expanded into the civic sphere, and the laws that protect individual liberties are suspended around the person of the migrant.

# Context and Recommendations

We observed a systematic pattern of the European Union serially condoning and overlooking the unlawful practices occurring in its Member States causing the deaths and disappearances of migrants, including physical pushbacks and detention in off-record secret facilities. We noted that Europe often rewarded these states with further European funding for border management and, in the cases of Croatia, Bulgaria and Romania, with fully joining the Schengen area and its benefits.

We therefore recommend that the EU explicitly condemns the use of such illegal practices that increase the risks of enforced disappearance for migrants; prohibits land and sea pushbacks and secret detention as these practices remove the individual from the protection of the law as well as the public eye; and fulfil the obligation to ensure effective access to the asylum procedure.

The current EU migratory architecture in *all* its dimensions fundamentally relies on the dehumanizing border governance tactics in order to reduce and discourage arrivals from the Global South, even spilling over its territory. The external dimension of the EU migration and asylum policy too replicates the same patterns of benefits in exchange of migration containment, with little consideration for fundamental rights.

The European Border and Coast Guard Agency (Frontex) has been involved in hundreds of pushbacks in the last years but both its budget and powers continued to grow alarmingly. The EU itself persisted in providing financial and material support to border management projects in Turkey, Libya and Niger despite their detrimental effect on migrants’ lives. In Libya, people on the move intercepted at sea by the so-called Libyan Coast Guard or directly trapped at the border after their journey across the desert are systematically taken to undisclosed locations, detained without legal counsel and subjected to the worst forms of tortures.

We urge the EU to cease to reward actors it cooperates with for their inhuman and brutal ways of reducing so-called irregular migration flows to Europe, including through the deprivation of liberty of migrants wishing to reach the European soil and the concealment of their fate or whereabouts.

We highlight that the smuggling networks profit from the lack of safe and legal opportunities to access Europe, while Europe frame its restrictions against people on the move as a war against human trafficking and migrant smuggling without actually developing legal migration channels and safe pathways to protection. Resettlement is currently one of the few legal entry channels available but so far this year the majority of EU member states have not resettle a single refugee. This hugely wasted opportunity shows how much the legal pathways to enter and settle in Europe are not considered.

We believe it is unreasonable for the EU to condemn irregular means of entry when these are the only means available for accessing the asylum process and the European territory. EU policies focusing on deterring entry heighten the risk of migrants’ becoming victims of human rights violations, including disappearance.

Therefore we recommend the EU to foster regular and safe pathways from the Global South in line with the objectives of the Global Compact on Migration; to increase efforts to counter *any* form of exploitation or trafficking in persons; to end impunity for smuggling networks and to ensure smuggled migrants are not criminalized.

# Conclusions

To conclude, while the EU has engaged in voluntary and programmatic responsibility-sharing commitments at the global level through the UN Global Compact on Refugees, in practice it continues to normalize pushbacks and institutionalize containment and externalization in third States where the risk of enforced disappearance is tremendously high.

Since the Central Mediterranean is both the main migratory route into the EU and [the world’s deadliest](https://www.iom.int/news/deadliest-quarter-migrants-central-mediterranean-2017) known migration route, the European Union should conduct contextual analysis on the structural failures of its migration and asylum system.

The growing disappearance of migrants on their way to Europe, under the guise of border enforcement, is in fact *racialized state violence*. Migrants do not simply “go missing”, they are subjected to enforced disappearances through a variety of tools designed to put them at risk and prevent their arrival. This is why the term “disappeared” is particularly useful, it shifts the blame to States for their abusive migratory policies, rather than on the person’s forced choice of taking dangerous routes – that, again, are the only ones available.

Within the available legal tools to hold governments accountable for the systematic violations of migrants and refugees’ rights, the legal prohibition of enforced disappearances has particular potential, as it illustrates *the political aspect* of this crime. Linking migration to an “illegality framework” contextualizes border deaths as a kind of foreseeable consequence and punishment, so that the thousands of racialized persons dying and disappearing at Europe’s borders do not seem like tailored tragedies we can and must avoid.

We therefore call on EU and its Member States to make enforced disappearance, either committed by state agents or armed non-state actors, within Europe or through European complicity, criminal under national law and punishable by appropriate penalties which take into account the extreme seriousness of this crime.