

PRESS RELEASE

Complaint filed with UN body over Italy's role in privatised push-backs to Libya resulting in migrant abuse

Embargoed until 12PM Central European Time on December 18, 2019, International Migrants Day.

Today (18/12/19), the [Global Legal Action Network \(GLAN\)](#) filed a complaint against Italy with the UN Human Rights Committee on behalf of an individual whose journey from Libya was intercepted in the high seas by the Panamanian merchant vessel, the *Nivin*. The complaint is the first to tackle the phenomenon of “privatized push-backs”, whereby EU coastal States engage commercial ships to return refugees and other persons in need of protection back to unsafe locations in contravention of their human rights obligations.

In the afternoon of November 7, 2018, the Italian Maritime Rescue Coordination Centre (MRCC) instructed the *Nivin* to rescue a distressed migrant boat and to liaise with the infamous Libyan Coast Guard (LYCG). The LYCG then directed the *Nivin* towards Libya, where the captured passengers staged a stand-off, resisting their illegal debarkation. Libyan security forces violently removed from the vessel after 10 days using tear gas and rubber as well as live bullets. The claimant was shot in the leg and was arbitrarily detained, interrogated, beaten, subjected to forced labour and denied treatment for months.

The legal submission made use of evidence in a report compiled by [Forensic Oceanography](#), part of the Forensic Architecture agency based at Goldsmiths, University of London with Charles Heller as lead investigator. The report, published today, combined the analysis of multiple sources of evidence to offer a detailed reconstruction of the incident. It demonstrates that privatized push-backs have risen sharply since June 2018. The result is that seafarers are being used by states seeking to circumvent their obligations towards refugees.

The lawyers argue that Italy and other states are breaching their obligations under international law by using private merchant vessels as an instrument of *refoulement* – the returning of refugees to where they will suffer persecution and torture. By relinquishing its responsibility to offer a port of safety, Italy violated its human rights obligations, including under the International Covenant on Civil and Political Rights, and the Convention Against Torture.

Dr Gearóid Ó Cuinn, Director of GLAN, said: “What we are witnessing is a worrying trend where the rescue of desperate people at sea is being out-sourced to ill-equipped and untrained merchant ships. It has become clear that this is a recipe for certain abuse. Our legal complaint is targeting Italy’s attempt to abdicate its responsibilities by privatising the push back of migrants to a nightmare environment in Libya.”

Charles Heller, co-founder of the Forensic Oceanography project, added: “We call upon Italy and the EU to immediately end their policy of refoulement by proxy, and cease implementing it either via the LYCG or merchant ships. Rescue activities must be used to save lives, not as a cover-up for border control. Italy should further end the criminalisation of rescue NGOs, whose humanitarian activities are partly filling the lethal rescue gap left by states.”

According to GLAN legal researcher Noemi Magugliani who led the drafting of the complaint (of the Irish Centre for Human Rights, National University of Ireland Galway), “The criminalisation of humanitarian organisations and the parallel retreat of EU rescue assets from the Mediterranean have created a vacuum, which the Libyan Coast Guard is not capable of - nor suitable to - fill. In this situation, the Italian authorities have subcontracted their human rights violations to private actors in an attempt to avoid accountability. Yet, these remain human rights violations for which Italy is responsible.”

Dr Itamar Mann of GLAN’s legal action committee, explained that “by employing merchant vessels to exercise illegal border enforcement, Italy has interfered in maritime transportation. An important byproduct of our work on this case will hopefully also be a more secure environment for shipping companies: they will no longer be exposed to the economic and moral costs of serving as floating Italian detention facilities.”

The case breaks new ground as it calls attention to the ways in which merchant vessels are being implicated in border violence. Seafarers are increasingly being compelled to take responsibility for migrants and make risky choices of their own – choices that may lead them to act illegally and result in deaths not to mention bearing the costs of imposing border control. GLAN’s legal action is part of a broader effort to highlight and reaffirm the responsibilities of states around migrant rescue and to reveal the human rights implications of privatizing their response.

Background

In May 2018, Forensic Oceanography published its [Mare Clausum](#) report, which demonstrates that Italy and the EU have implemented since 2016 a two-pronged strategy aimed at stemming migration across the central Mediterranean. The strategy aimed to oust rescue NGOs from the Mediterranean, on the one hand, and outsource border control to the Libyan Coast Guard on the other by providing material, technical, and political support. The role of the EU and Italy in creation and maintenance of the Libyan Coast Guard is decisive as demonstrated in the [SS v Italy](#) case that [GLAN](#) filed in May 2018 in partnership with Forensic Oceanography.

This strategy has been accompanied by the progressive retreat from the Mediterranean of the EU, which narrowed the geographical scope of its missions and increasingly deployed assets that are not equipped to perform search and rescue activities. In this scenario, the only actor left at sea alongside the Libyan Coast Guard is merchant vessels. Due to the inability or unwillingness of the Libyan Coast Guard to perform duties related to search and rescue, merchant ships were called upon to contribute to filling this gap.

During the beginning of the so-called ‘migration crisis,’ they had already taken up this crucial role: Between 2013 and 2015, merchant vessels conducted several “privatized rescue operations” coordinated by the Italian Coast Guard, which resulted in either the transfer of passengers onto Italian or EU ships (which would then disembark them in Italy), or with the direct disembarkation from the merchant ships themselves in Italian ports.

Between June 2018 and June 2019, a total of 13 privatized push-back attempts were recorded, a list that is most probably incomplete, as indicated by Forensic Oceanography. Much of this is related to the implementation of the [Mare Clausum](#) strategy, exacerbated by the so-called “closed ports” policy in Italy, which prevented ships that carried out rescue operations to enter Italian territorial waters to disembark rescuees.

All of these developments have placed merchant ships in a difficult situation with shipmasters left with the choice of either complying with the instructions of the state actors coordinating a push-back or obeying their duties under international law with regard to migrants’ rights. The case of the *Nivin* exemplifies this situation where delegated rescue also serves as a mode of border control.

Notes to editor

Press conference in Geneva

Time: 12pm, December 18th 2018 (International Migrants Day); Location: Auditorium 2, Maison de la Paix, [The Graduate Institute](#), Geneva. Participants: Charles Heller, Goldsmiths, University of London, co-founder of the *Forensic Oceanography* project; Noemi Magugliani, Dr Violeta Moreno-Lax and Dr Gearóid Ó Cuinn, Global Legal Action Network; Julien Raickman, Médecins Sans Frontières (MSF) Head of Mission in Libya. Moderated by: Vincent Chetail, Professor of International Law and Director of the Global Migration Centre.

The Global Legal Action Network (GLAN) is a non-profit organisation made up of legal practitioners, academics and investigative journalists that pursues innovative legal actions across borders, challenging states and other powerful actors involved with human rights violations. GLAN's has offices in the UK (London) and Ireland (Galway). Contact: Dr Gearóid Ó Cuinn (Director) | gocuinn@glanlaw.org | +447521203427 | Noemi Magugliani (Legal Officer) | noemi.magugliani@gmail.com | +3538634515175 | [@glan_law](#) | www.glanlaw.org.

Forensic Oceanography is a project affiliated with the Forensic Architecture research agency at Goldsmiths, University of London. Since 2011, Forensic Oceanography has used forensic techniques and cartography to critically investigate the political, spatial and aesthetic conditions that have led to the death of large numbers of migrants across the Mediterranean over the last 30 years. info@forensic-architecture.org | p.wilton@gold.ac.uk