



# PREVENTING MIGRATION: DETERRENCE AND REPRESSION

## July 2023

Europe's migration policy is characterised by a doctrine known as the "pull factor", targeting anything that might attract undesirables from so-called third countries. And making this known to discourage applications.

Everything is geared towards strategies of dissuasion to limit entry and residence in the territory of the European Union (EU), with countries using the legal, administrative or military-police arsenal at their disposal to this end, which does not prevent them from accusing each other of laxity or, more rarely, of failing to respect human rights.

The main targets, often on a racist basis, are people who try to cross borders, who are threatened, hunted down or even accused of trafficking in human beings and convicted, even though they are simply helping each other. But also, by the same token, those who come to their aid and, where appropriate, their organisations, whatever their motivation.

Frequently described as criminals in reference to the hated figure of the "smuggler", singled out if not punished, they are the subject of a multifaceted assault, the imagination of the forces of repression being limitless. Faced with the misuse of the law against them, some French associations have ironically coined the notion of "solidarity crime".

These moral (and sometimes even criminal) condemnations have even been aimed at government policy. Italy, which was once accused of creating creating a pull factor (Operation *Mare Nostrum*, 2013-2014), has since multiplied the number of measures that hinder mobility. The Cutro decree law (May 2023) increases the penalties for anyone who "promotes, directs, organises, finances or carries out the transport of foreigners" and introduces an offence of "death and injury caused by the smuggling of illegal migrants".

# When Europe fights migration and mutual aid

On 16 December 1999 in Tampere, the European Council affirmed its determination to “to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants”. On 19 June 2000, 58 Chinese “stowaways” were found suffocated to death in a lorry in Dover. The police and the press accused a “highly organised network of smugglers”. This was a golden opportunity for the European authorities to stress the importance of combating “smugglers”, rather than blaming the closure of their borders.

Soon bolstered by the United Nations “Palermo Convention” of December 2000 “against transnational crime” and its Protocols on “trafficking in persons” and “smuggling of migrants by land, sea and air”, the EU adopted the Directive of 28 November 2002 “defining the facilitation of unauthorised entry, transit and residence”. The directive makes it a criminal offence to aid entry for any purpose - with Member States free not to do so in the case of “humanitarian aid” - and to aid residence “for financial gain”. On the same date, the framework decision “on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence” was also adopted. Together they form the “package of measures on

smugglers”. Numerous examples demonstrate that, far from protecting the victims, these measures are inspired solely by the desire to deter people deemed undesirable and those who provide them with assistance or help.

Although associations, particularly sea rescue organisations, are often in the sights of politicians who accuse them of “playing into the hands of smugglers”, or even of being their accomplices, it is above all people on the move who bear the brunt of this repressive policy. A report by the European platform PICUM shows that in 2022, people were criminalised for driving a boat, activating the GPS on a mobile phone in a boat in distress or resisting pushbacks. Most of the incidents took place in Greece and Italy, but also in Romania and the Netherlands. For its part, the British Home Office announced in January 2021 that in six months it had jailed 11 people who had just crossed the English Channel, adding this warning on Twitter: “If you are prepared to take the helm, you should expect to be arrested and prosecuted.”

In many Member States, people who show solidarity have long been subjected to harassment and intimidation by the police, as well as prosecution and even conviction by the courts, even when they are protecting an established right

such as the right to seek asylum or simple shelter. This is the case in France and Belgium, where the authorities have also developed the habit of invoking various other offences: contempt, rebellion or violence against the police, defamation, breaches of the town planning code or even the highway code, and so on.

The figure of the “smuggler” has become more widespread, and is now used to designate anyone who is motivated by a principle of solidarity in the face of the many distresses of migration in a hostile environment. The term is also used to describe anyone who derives a financial benefit from his or her action in a limited way and without any criminal intent, either to ensure his or her subsistence or to cover the costs of his or her own journey.

In its “renewed EU action plan against migrant smuggling for the years 2021-2025”, the Commission makes cooperation with so-called third countries a pillar of its policy through “mutually beneficial partnerships on migration”. This “cooperation” is not new, and experience has shown that, far from tackling “criminal networks”, it leads to strong repression of mutual assistance, not to mention its harmful effects on certain economic sectors of the country, as is the case in Niger.

## Ceuta and Melilla borders: criminalisation and anti-Black racism

Residues of the Spanish colonial empire, the territories of Ceuta and Melilla in northern Morocco are the only land borders between Europe and Africa. An illustration of the racism of migration policies, the double border control carried out by Moroccan and Spanish military personnel is based on racial profiling.

People on the move from North Africa and the Middle East can try to approach these borders on foot and access the asylum offices there. But this is impossible for Black people, who are hounded and harassed daily by the Moroccan military. The externalized European border control here takes the form of a “hunt for the black man”, in the words of a Guinean and a Nigerian met in Nador in 2015, who noted that “the fate of Black people is different”, considering that “the border is a racist system”. In fact, only people from Central, West and East Africa can be found in the camps in the forests of northern Morocco. Forced to hide and “bestialised”, as they put it, they have developed individual

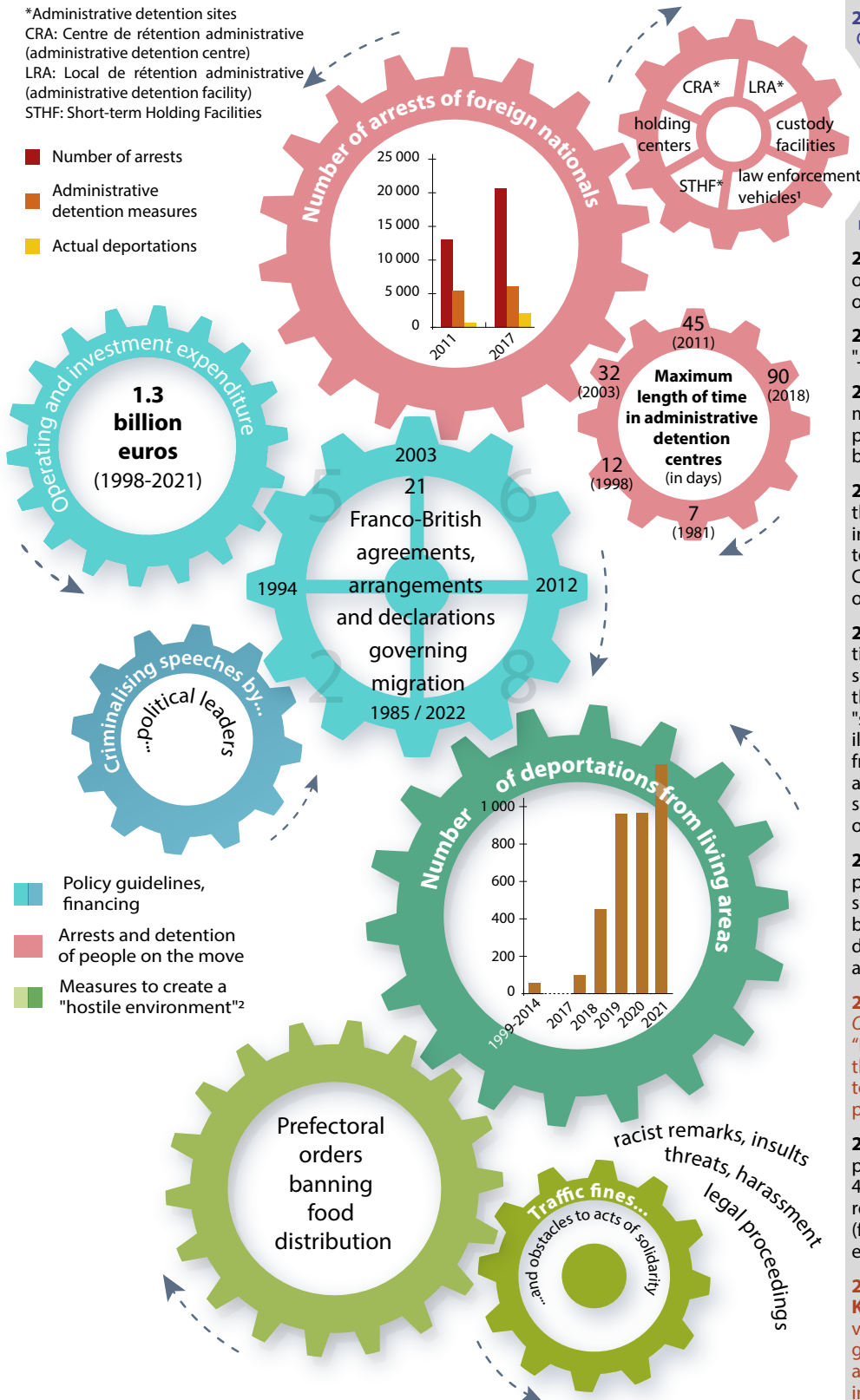
and collective tactics, including crossing the Ceuta and Melilla fences, and for this they are set up as threats, abused and sometimes criminally convicted. More than 150 survivors of the massacre perpetrated by Moroccan and Spanish forces at the gates of Melilla on 24 June 2022 have been imprisoned.

Since the 1990s, the production of a black male figure of the migratory danger has legitimised and trivialised practices of repression that are lethal at these borders. It is rooted in two racist social orders, the Spanish-European and the Moroccan-Maghrebin, whose alliance constructs a racialised and criminalised category of undesirables, associating a skin colour - black - with a status of illegality. The overexposure of Black people to violence and death, combined with the persistent impunity of those responsible, reveals the centrality of negrophobia in the control of migration at Europe’s borders.

# The criminalisation of migration in Calais

\*Administrative detention sites  
 CRA: Centre de rétention administrative (administrative detention centre)  
 LRA: Local de rétention administrative (administrative detention facility)  
 STHF: Short-term Holding Facilities

- Number of arrests
- Administrative detention measures
- Actual deportations



**2000:** United Nations Convention against Transnational Crime (known as the "Palermo Convention").

**2002:** European Directive "defining the facilitation of unauthorised entry, transit and residence".

**2002 (December):** Closure of the Sangatte camp, which opened in September 1999.

**2003:** Start of the Pashtun "Jungle" in Calais.

**2009-2014:** The *No Border* movement introduces a policy of sheltering people by opening squats.

**2015 (March):** Opening of the Jules Ferry centre and installation of the shanty town on the outskirts of Calais (eviction at the end of 2016).

**2017-2022:** The administrative court in Lille suspends several orders, ruling that the Calais town council is "seriously and manifestly illegally infringing the freedom to come and go" and going against "the satisfaction by migrants of vital basic needs".

**2020 (29 September):** 800 people on the move are surrounded and forced to board buses chartered to disperse them (one example among many).

**2021 (January):** The *Home Office* announces on Twitter: "If you are prepared to take the helm, you should expect to be arrested and prosecuted".

**2021 (24 November):** 27 people aged between 7 and 46 drown while trying to reach the United Kingdom (from 1999 to July 2023: 367 exiles died).

**2022 (December) (United Kingdom):** The High Court validates the British government's plan to deport asylum seekers who arrived in the UK without authorization to Rwanda.

**2023 (29 June):** Court of Appeal ruling that the memorandum of understanding with Rwanda is illegal<sup>3</sup>.

<sup>1</sup> As a result of the many transfers to other CRAs in France, the hours of deprivation of liberty in vehicles (lorries, planes, etc.) are considerable.

<sup>2</sup> "Create a hostile environment": expression first used by Theresa May in 2012, when she was Home Secretary (Home Office/United Kingdom).

<sup>3</sup> The appeal judges overturned the decisions that Rwanda was a "safe third country" and warned that deportations would be unlawful until the "deficiencies in [its] asylum processes are corrected". The UK government will then take the case to the Supreme Court: the Home Office having been given the green light in July 2023 to challenge the decision declaring the policy unlawful in the UK's highest court.

Sources : Pierre Menzildjian (2022), *Littoral Nord-Ouest de la France. Frontière franco-britannique*, 15 p. ; Pierre Bonnevalle (2022), *L'État français et la gestion de la présence des personnes exilées dans la frontière franco-britannique : harceler, expulser, et disperser. Rapport d'enquête sur 30 ans de fabrique de politique de dissuasion*, 316 p.

# The Mediterranean, an emblematic area for the criminalisation of migration and its facilitation

In the Mediterranean, Western and Southern states are criminalising those who exercise their right to mobility and/or facilitate it despite the rules that impede it. While these actors are repressed differently depending on the racist and sexist bias of State agents, it is all means of moving and resisting the obstacles posed by states and the violence of the border regime that are targeted for opprobrium and prosecution.

In Greece, the arrest and pre-trial detention of people on the move is almost systematic. Between 2014 and 2019, more than 8,000 of them were arrested for “migrant smuggling”, the second most common reason for imprisonment in the country, and at least 1,374 in 2022. A statistical analysis of the proceedings conducted that year is terrifying: on average, eight months in pre-trial detention, 37-minute trials and 46-year prison sentences.

Mediterranean states also punish many activities: waiting in a house or forest for the moment to cross the border, being in possession of the Alarmphone emergency number, providing any service (accommodation, food or transport) to someone on the move, organising a CommemorAction, etc. This cynicism knows no bounds: bereaved parents are also criminalised. In 2020, after his 5-year-old son drowned, N., a survivor, was imprisoned in Greece and prosecuted for endangering the lives of others and abandoning his child, facing up to 10 years’ imprisonment, before being

acquitted in 2022. On 6 September 2022, in response to an action of commemoration and protest by the families of people who disappeared and died in Tunisia, the special envoy of the United Nations High Commissioner for Refugees for the western and central Mediterranean declared: “*These same mothers had no problem encouraging or financing their children to embark on these perilous journeys. As in Senegal, symbolically prosecuting parents for endangering their children could bring about serious changes in attitudes towards these deadly journeys.*”

In Italy, the multiple decree laws against immigration, the misuse of anti-mafia tools, and the relentless attack on people on the move as well as search and rescue NGOs at sea have been steadily increasing since 2017.

In its proposal for a “Pact on Migration and Asylum” in 2020, the European Commission downplays the EU’s failure to provide rescue services, the obvious cause of the intervention of NGOs, which it proposes to monitor more closely to “*prevent migrant smuggling or human trafficking networks [...] from taking advantage of rescue operations*”. The governments’ strategy is clear: to place the responsibility for the violence of the border regime on people on the move themselves, their families and anyone who facilitates their mobility.

Combating this strategy means developing new narratives by looking at criminalised practices as a whole rather

than separating the cases of people on the move who drive boats from those of rescue sailors. The aim is to avoid reproducing a Eurocentric approach that distinguishes between the criminalisation of solidarity and the criminalisation of people on the move, and systematically takes offence at the former while leaving the latter in doubt. Without denying the other forms of violence, including interpersonal violence, that punctuate migratory routes in the Mediterranean, all forms of criminalisation of migration and its facilitation should be denounced, independently of a binary logic that sets innocent solidarity fighters against guilty “smugglers”.

Making these links between the different forms of criminalisation on either side of the Mediterranean visible makes it possible to put forward a different discourse on freedom of movement and its facilitation, and to create new forms of solidarity. High-profile campaigns by European activists, such as the one launched after the proceedings against the NGO and the crew of the *Luventa* in 2017, can become platforms of support for racialised people criminalised in Europe (*Free the El-Hiblu 3*, in support of three teenagers prosecuted in Malta in 2019 for refusing to be deported to Libya; *Free the Samos 2*, in Greece, for two Afghan men accused of child endangerment and illegal trafficking), or in Morocco (following the massacre of 24 June 2022 on the border between Melilla and Nador), to continue to support the project of a “Mediterranean as common”.

The bibliography is available on the Migreurop website: [www.migreurop.org](http://www.migreurop.org) in the “Publications / Briefs” section. <https://migreurop.org/article3213.html>

**migreurop**

Migreurop is a Euro-African network of human rights associations, activists and researchers. Its aim is to identify, publicise and denounce the consequences of European migration policies at every stage of the exile process: obstacles to mobility, the closure of borders, formal and informal detention, various forms of deportation, and the externalisation of migration control and asylum by European states.

The network thus contributes to the defence of the fundamental rights of people on the move (including the right to “*leave any country, including one’s own*”) and to promote freedom of movement and settlement.

**www.migreurop.org**

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