



STOP THE INHUMANITY AT EUROPE'S BORDERS!

Campaign guidance note

Introduction

This document offers guidance to supporters of a campaign that aims to end the brutality experienced by refugees, asylum seekers and other migrants who are trying to reach Europe. It calls on states to halt the cruel and illegal practices that endanger the lives of people on the move, bring shame to Europe's democratic institutions, and call into question the values that the region claims to espouse.

The campaign is based on a Collective Demand (CD), to be launched in January 2024. The CD has now been signed by more than 50 civil society organisations with a wide range of relevant experience and expertise throughout the region.

The sections below offer signatory organisations guidance in relation to some of the questions that might be raised with respect to the campaign as a whole and the specific elements of the CD.

While the interests and activities of signatory organisations may not relate to all of the demands set out in the CD, those organisations are united in their call for people on the move to be treated in a humane manner.

Why is the campaign necessary?

Throughout the world, refugees, asylum seekers and other migrants are being treated in cruel and illegal ways. Some European states are systematically violating the rights of people attempting to escape from persecution, armed conflict, disasters, and deprivation.

At Europe's borders, such people are confronted with the constant threat of destitution, detention, exploitation, physical violence and disregard of their

fundamental rights. In the worst cases, their lives have been lost, both at sea and on land. Such abuses must stop, and people on the move must be treated in a decent, humane and civilized manner.

Pushbacks

The CD calls on European states to immediately desist from pushbacks and expulsions on land and at sea. For the purpose of this campaign, pushbacks are defined as situations in which the authorities or agents of a state or inter-state agency forcibly prevent migrants from accessing the territory of the country they are trying to reach, without regard to the negative consequences for those people in terms of their safety, dignity and the violation of their human rights.

Pushbacks are a fundamental breach of the ‘non-refoulement’ principle, a key element of international law that bars people from being returned to any country where they may face persecution, and requires individual determinations to be made to identify those who should benefit from this principle.

Any action that forces a person to return to a country they have left, without giving them the opportunity to explain why they should not be sent back there, constitutes a violation of this essential principle. At the same time, pushbacks represent a direct threat to the lives of people who are on the move, especially when they take place on the high seas, in remote border areas and when they are undertaken by poorly trained security personnel and militia forces.

Detention

The campaign points out that arbitrary detention of people on the move inevitably subjects them to additional hardships, stress and trauma. Detention might be necessary as a last resort and in very specific circumstances, as long as it is time limited, the conditions of detention are humane and are in accordance with international standards.

The campaign points out that there are many workable alternatives to detention and calls on states to make use of them. The campaign draws special attention to the need for states and other actors to desist from the incarceration of especially vulnerable people, including children, the elderly, those with physical and mental disabilities, as well as those in need of medical attention.

Rescue at sea

The campaign calls on states to ensure that people engaged in maritime movements can be rescued at sea and swiftly transferred to safe locations where their needs for protection and assistance can be identified and met. The campaign also urges states to facilitate the activities of search-and-rescue NGOs and to remove any restrictions that have been placed upon them, such as the obligation to disembark passengers in locations that are a long distance from their place of rescue.

International law, notably the Law of the Sea, requires ships' captains to rescue those in danger on the sea. It is totally unacceptable that governments seek to prevent any ship from carrying out such rescues, and equally unacceptable for governments to deny the right of those rescued to disembark at a safe port.

All European states have an obligation to respect the right to seek asylum, and they should therefore re-introduce the state-led search-and-rescue operations that have been discontinued in recent years, and support rather than obstruct the operations of search-and-rescue NGOs in the Mediterranean.

Inter-state border control agreements

When border control agreements between European and non-European states cause refugees and other migrants to be treated in a manner that violates their human rights, such agreements must be terminated. Relevant international organizations, including UNHCR and IOM, must have full access to, and be allowed to support, all those in need of protection and assistance in non-European countries.

It is unacceptable for the European Union to provide operational support and intelligence to the militia-linked Libyan 'coast guard', enabling it to intercept and return people at sea to Libya, where they are incarcerated in both official and informal detention centres and routinely subjected to torture, modern forms of slavery and sexual abuse.

Such agreements flout the obligations of all EU states to abide by international refugee and human rights law and to refrain from actions that cause anybody to experience cruel and inhumane treatment. The campaign also calls upon European states to cancel existing agreements and desist from reaching new ones which enable asylum seekers to be transferred to or held in states outside

Europe for the purpose of status determination and/or long-term settlement, especially when they are detained in dire conditions.

The campaign is also concerned by the extent to which European states are reintroducing and reinforcing border controls within the region, reversing the earlier gains made with respect to freedom of movement. While states have a legitimate interest in the security of their frontiers, experience has demonstrated that abuses and human rights violations are likely to occur when border controls are strengthened and militarized with the specific intention of excluding people who are in need of protection.

Redress and compensation for state-inflicted harm

As well as calling on European states to refrain from any practice that violates the rights of people on the move and that inflicts harm upon them, the campaign calls on governments to provide such victims and their families with appropriate forms of legal redress and material compensation.

Harmful incidents involving the death, injury, criminalization and incarceration of people on the move must be investigated by an appropriate and independent judicial authority. Government ministers and officials responsible for such abuses must be held to account for their actions, so that the victims of such harms can have access to justice.

The campaign is aware of a number of recent cases in which refugees and other migrants who have been detained or had their personal possessions confiscated have successfully claimed legal redress and financial compensation in national courts. Governments and non-governmental organizations should facilitate and support such initiatives, in accordance with the opportunities provided by the legal framework that exists in different European countries. Given the limited knowledge and jurisprudence that exists in relation to this issue, the campaign will endeavour to undertake further research on the matter and place its findings in the public domain.

The campaign relates primarily to the rights and well-being of refugees and other migrants. At the same time, the campaign deplores the criminalization and prosecution of civil society organizations and private individuals who provide support to such people. It recognizes that there is a moral obligation to protect

the rights and meet the needs of people in distress and rejects the notion that this obligation can be disregarded on the basis of national legislation.

Safe routes

The campaign is convinced that the threats, dangers and harmful practices experienced by people who are trying to enter Europe by sea or by land could be substantially mitigated by the establishment of safe, legal and organized routes. It therefore calls on states and other relevant stakeholders to explore the potential and modalities for such routes to be established, including state and community-sponsored resettlement and evacuation programmes, as well as family reunion, labour mobility and educational scholarship initiatives. Such routes to Europe are urgently needed, not only to eliminate the risks with which people are confronted during their journey to the region, but also to support their reception and settlement in the post-arrival phase.

The campaign is heartened to witness the growing interest in safe routes among European and other states but draws attention to the fact that such initiatives are generally small in scale and have often been established on a ‘pilot project’ basis, with no guarantee as to their expansion or continuation. Every effort must now be made to incorporate the establishment of safe routes into the refugee, asylum and migration policies of European states.

The campaign recognizes that the establishment of safe routes, especially if they are modest in scale, will not avert the need for some people to undertake irregular and dangerous journeys to Europe. The campaign consequently draws attention to the need for states to maintain systems and procedures that will enable the cases of people arriving in this way to be determined in a fair and effective manner. Every effort must be made to avert a situation in which states deem asylum applications to be ‘inadmissible’ because the individuals concerned have arrived in an irregular manner and have consequently jumped the safe route queue.

Human smuggling and trafficking

The campaign condemns the harmful and exploitative practices of many smugglers and traffickers. At the same time it recognizes that the phenomenon

of human smuggling has expanded because states have closed their borders to the victims of persecution and armed conflict, have failed to provide them with safe and legal routes to Europe, and have also closed many opportunities for short-term visits to Europe that were previously available to people from other continents.

While states have promoted the notion that human smuggling and trafficking are invariably organized by large, transnational and highly profitable criminal gangs, the campaign recognizes that irregular cross-border movements of people often involve agents of the state, including corrupt government officials, border guards, police and military personnel. The campaign also deplores the extent to which politicians and the media use the notions of smuggling and trafficking interchangeably and calls upon them to respect the legal definitions of these phenomena, as specified in the Palermo Protocols.

The campaign deplores the abuses and human rights violations committed by the individuals and groups of people responsible for smuggling and trafficking. At the same time, it is convinced that their activities are the natural consequence of a situation in which many thousands of people are obliged to cross borders by armed conflict, persecution, climate change and destitution, but are deprived of the ability to do so in a legal manner. Efforts to disrupt the smuggling and trafficking industries are unlikely to succeed in the absence of safe and dignified migration options and comprehensive plans of action to eliminate the drivers of displacement.

Please address any enquiries concerning this note or the campaign in general to contact@against-inhumanity.org

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