

From Sea to Prison: Borders Without End

(1st quarterly report 2024)

1. Context and Data

The year unfolds along predictable lines. Italy, this time in cooperation with the EU, signed a new agreement with Egypt, amounting to 7.4 billion euros: the most economically significant deal of its kind. Of these funds, 200 million will be invested in the fight against "human smuggling". The government's efforts do not end here. Meloni is seeking to form a "global alliance" against smugglers, as she proposed at the US White House and plans to discuss at the G7 summit in June. But what is the true impact of "the global war against smugglers"?

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The year is unfolding along predictable lines. The Meloni government is preaching to anyone who will listen to close the borders and criminalize the facilitation of freedom of movement. After the agreements established with Tunisia, Italy's systematic efforts to externalize the border have turned towards Egypt, in line with the government's neo-colonial "Mattei Plan". This time in collaboration with the EU, Italy signed a new agreement, this time a Memorandum of Understanding with Egypt, for the amount of 7.4 billion euro: the most economically significant deal of its kind. Of these funds, 200 million are set to be invested in fighting people 'smuggling', among other 'migration management' tasks. In other words, to continually block and punish people's movement through, and out of, Al Sisi's Egypt, known for its authoritarian rule, political homicides and kidnappings, from which many Egyptians also attempt to escape – not to mention those trying to flee besieged Palestine.

The government's efforts do not end here: Meloni's colorful announcement of wanting to hunt down migrant boat drivers across the "whole terraqueous globe" even followed her to the White House, with a proposal to the Democratic president of the United States to establish "a global alliance against human smugglers", to put an end to "illegal migrations", especially in Africa – an intention she said she will discuss further during the G7 summit set to take place this June in Southern Italy.

But what is the true impact of “the global war against smugglers”? Let’s look at the numbers shared by the Italian police’s annual report for their inhouse magazine *Polizia Moderna*. In 2023 – they claim– they issued “restrictive measures” against “425 boat drivers, smugglers and facilitators in the context of the “fight against illegal immigration and human trafficking”. In our monitoring of news articles and trials, however, we counted ‘only’ 177 arrests after disembarkation in 2023. Can we have been so far off?

Last year, reporting on arrests in 2022, *Polizia Moderna* wrote that “in the context of the fight against irregular immigration and human trafficking” they had taken “147 restrictive measures, and arrested 226 boat drivers”, for a total of 373 people (we had counted 264 arrests in our media monitoring). Almost simultaneously, the head of the national Anti-crime unit (DAC) announced that 253 boat drivers and 94 smugglers had been arrested in 2022, for a total of 347 people. At the beginning of 2024, the Minister of the Interior claimed that over 2022 and 2023 a total of “550 boat drivers” had been arrested – which would therefore lead us to believe that about 200 arrests were made in 2023.

Aside from the apparent incoherence of these statements, a result of the different criminological categories guiding the figures, we cannot but notice the vagueness of the new category proposed in the latest issue of *Polizia Moderna*. If this category includes everyone who has been accused of Article 12 (aiding and abetting illegal immigration), as we assume it does, then this number would also include European activists, and anyone who facilitated entry, for example by land and air routes, and possibly even corrupt state bureaucrats and police officers, as well as an undefined number of people accused of human trafficking. It thus becomes extremely difficult to comment on any change in the number of arrests specifically for boat drivers. This vagueness seems to derive from the police’s desire to inflate their numbers, even while our own monitoring has not revealed any increase in the number of arrests in Italy.

However, as we will see in the following paragraphs, for those who are actually arrested here in Italy the situation has worsened considerably. This has been due to the introduction of dystopian new laws whether the increase in the minimum sentencing for people accused after shipwrecks or other fatal maritime accidents; or the worsening repression in prison, and the attempt to introduce the crime of revolt in prisons and in detention centers (already harshly punished by other laws) and the additional attempt to criminalize “passive resistance to compliance with orders”. This form of punishment for rebelling against punishment is already inscribed into the plan for the new detention center for people rescued at sea which the

government has started to build in Albania; already an abhorrent project to the core, it was recently announced that the center will include a prison wing.

Although the latest developments paint an increasingly repressive, carceral picture, we draw strength from the people who continue to resist, even when so many odds are stacked against them, crossing borders and facing down every cog of this repressive system. Their courage and determination is what inspires us to continue our common struggle.

2. Monetary sentences: criminalization without end

We have often criticized the exaggerated sentences that Article 12 of the Italian Immigration Act inflicts on captains simply for having driven a boat, sentences that can amount to up to thirty years of prison and that, with the 'Cutro' decree, have reached new levels.

Along with the carceral punishment, Article 12 also establishes extremely high *monetary* penalties, inflicted on people through a crude arithmetic calculation – each person transported equals 15,000 Euros of fine. The way the law is written leaves no room for a judge's discretion. We know and support people with fines of **200,000** Euros, who should consider themselves lucky – because for many others the fines are around **2,000,000 Euros**. The most exorbitant fine that we know pertains to a Syrian captain currently living in Puglia, **sentenced to pay 14,000,000 Euros**.

Faced with years in prison, the monetary fines are often ignored. They don't represent an immediate problem and, what's more, everyone knows (including the judge and the prosecution) that these vast sums will never be paid, due to the simple fact that it would be objectively impossible for nearly anyone, especially someone who has just arrived in Italy.

Unfortunately, however, the monetary fines **aren't just numbers** written at the end of a sentence. If someone manages to see the end of their hellish journey through prison, and has been released, has avoided the detention center or passed through it, has managed to get documents and even a job – i.e. someone who, despite their sentencing, has managed to finally return to normal life and to a bureaucratic status of existence – well then they will have to account for the monetary fines. The Italian state literally sends them the bill, even years later.

In this period we have seen orders for payment arrive even 6 years after sentencing. The tax office demands payment of the entire sum within a few days, equivalent to thousands and sometimes millions of Euros. And if, as it is almost inevitable, you can't pay? Aside from being able to seize a part of your wages (which can only mean that this process will continue for your entire life, in order to pay off the fine), the procedure also establishes that after a number of attempts to recover the requested sum, the prosecutor can ask the parole judge to convert the monetary fine into monitored parole, an extremely restrictive measure that, among other things,

requires that a person does not leave the boundaries of their municipality, and that they sign at the police station every day.

This is a further demonstration of a process of deprivation of personal freedoms and of criminalization without end, for people sentenced for Article 12. Together with lawyers from our network, we are currently developing defense strategies that can at least limit the damage of these fines, and allow people to leave their convictions behind them and, once and for all, truly look towards the future without these looming shadows.

3. Trials Underway

We are currently following the legal cases of over 100 people accused or sentenced for facilitating irregular immigration, more than half of whom are in prison. To protect their privacy – always through respect for their own wishes and following the advice of their lawyers – it is not often that we are able to make the details of their cases public. That said, below we describe a series of situations that either have already been made public, or that the prisoners themselves have allowed us to share.

Maysoon Majidi and other female captains

The imprisonment of Maysoon Majidi, an Iranian-Kurdish activist accused of having driven the boat she arrived on at the end of 2023, has been picked up by the newspapers and has rightfully been met with solidarity among a wide range of political groups, from local activists (e.g. the Medusa Collective at the University of Calabria) to international NGOs (Amnesty International, HANA). Just 2 months before this, another Iranian woman, Marjan Jamali, was arrested. Her name was clumsily transcribed by the police as Maryam Qaderi, and when they arrested her they also separated her from her young child, a fact that obviously has affected her greatly, as she explained in a letter to us. The trials against both Maysoon and Marjan are still in the preliminary phases, and they remain in pre-trial detention.

The three Sudanese captains in Naples

Another case that we want to focus on is that of the three Sudanese men arrested in August 2023 following the disembarkation of an NGO ship that had rescued their boat. We are in written contact with them, and are working alongside their lawyers and the Legal Clinic at the Rome 3 university, who are supporting the lawyers' activity. As happens so often, one of the most evident problems in terms of the violation of a right to defense has been the absence of interpreters, especially for Dinka, the defendants' mother tongue. The result has been that they have written to us about their huge difficulty in understanding what's going on with their trial. The initial trial is slowly proceeding, while facing a thousand obstacles, and the three accused are still detained in prison. Over the last few days, however, the combined efforts of the support network in Naples has managed to have the judge concede house arrest for them.

Three Palestinians in Catania

One year has passed since three prisoners, originally from Gaza and arrested for article 12 on arrival in Italy, undertook a hunger strike in the prison in Catania, in order to profess their innocence. Today they have finally been released from prison and are currently under house arrest thanks to a local church, on condition they wear an electronic tag. But their trial continues, and the possibility that they will be found guilty is still very real. We are following the hearings closely and collaborating with their lawyers. At the same time, we have been in touch with them by letter, and we used to be in phone contact with some of their relatives; horrendously, due to the devastation wrought across the Gaza strip by the genocidal acts of Israel, these family members are currently missing.

The Cutro Five

Just over a year has passed since the shipwreck in Cutro, where the Italian authorities' systematic violation of their obligation to rescue boats in distress at sea led to the death of 105 people. Although culpability for this massacre should be sought among state authorities, which close borders and leave people to die at sea, in the days following the massacre Meloni's government announced a series of anti-migrant laws, including harsher criminalization of boat captains. We worked together with other lawyers and activists in ARCI to produce a document that summarizes the official complaint regarding omission of rescue, the political and practical demands made by the survivors and relatives of the victims, and the trial against the five survivors accused of being the boat drivers.

Shortly before the anniversary of the massacre, Gun Ufuk – a 26-year-old Turkish citizen who was the mechanic on board the *Summer Love* – was sentenced in a shortened trial to 20 years in prison, and to pay a fine of 3 million Euros. He has also been sentenced to pay damages to the offended parties, including to the Italian government. In his statement in court, Gun spoke about the death of his friend Bayram, the captain who died with his ship (another victim of Frontex and the Italian customs police's criminal failure to initiate a rescue operation) and how he had to swim to shore to save himself. The full trial continues against Khalid, Hussain and Sami, who have written to us about the difficulties in prison; Khalid even had to rescue another prisoner who tried to commit suicide. On May 7th a third trial will begin against a fifth man, Mohamed, who has again chosen a shortened trial; after nearly a year in prison, his father has finally heard news about him. We are also waiting to hear about the closure of the investigations being carried out by the Antimafia unit in Catanzaro – even though, like the other trials, this is simply distracting time and energy from the more important accusations regarding the responsibilities of Frontex and Italy.

Cases of Article 12 bis

We are following two trials underway in which the detainees (2 people on trial in Reggio Calabria and 7 in Locri) are accused of Article 12 bis ("Death or wounds caused as a

consequence of crimes relating to illegal immigration”), the new crime introduced by the ‘Cutro’ decree in March 2023. Unfortunately, the judges in both trials have already ruled that the constitutional complaints raised were not admissible. We are in touch with some of the prisoners in both trials, who are facing a minimum sentencing of 8 years and 6 months imprisonment, twice that established for analogous cases prior to the introduction of the new crime. We are in touch with them by letter, and are also in contact with their relatives in Europe and in Africa, in order to update them and provide them with some support and courage while they await sentencing.

Request to re-open the case against the ‘Libyan footballers’

There are many stories of struggle to tell, both of victories and defeats. Among these we want to bring attention back to the story of the 8 young men imprisoned in August 2015 after having survived a maritime disaster known as the ‘Ferragosto massacre’, i.e. the ‘Libyan footballers’. Sentenced to 20 and 30 years in prison at the age of only 18-19 years, the 8 men continue the fight to demonstrate their innocence. In January, some of them – through their lawyers – presented a request for a retrial, the first trial having been marked by imprecisions and errors at every level. We hope that that the request will be accepted, and that the criteria that determined their decade behind bars will be re-evaluated. In the meantime, those of them with whom we’re in contact are still awaiting an update about their possible extradition to Libya. As one of them told us: “I’d say that finally something would be going well for us, after 8 years and 4 months of cruel injustice. It’s true, prisons [in Libya] are harsh, with 50 people in cells that can take only 4 people, and there is torture, no school or work... but all of this would be tolerable if in the end I could see and embrace my family once more, believe me.”

From Sea to Prison to the Detention Centre, and back to start

In our last report we wrote about M., a Tunisian captain whose prison sentence was set to end in April. We must say with a heavy heart that, after 3 years of pen-friendship, including 2 years of supporting a request for house arrest and trying to facilitate the conditions that would allow him to access freedom after concluding his prison sentence, M. was taken directly from prison to the detention center, where they made him renege on his asylum request. M. never managed to communicate with us directly in this phase, because the calls he made from the phone booth in the detention center in Caltanissetta were inaudible to us; he did however manage to speak to his cousin (who is now free, and in Italy). M. said he couldn’t take one more day of detention, that he’d lost all hope of starting over in Italy, and that the detention center was even worse than the prison where he had spent the past 5 years. He has now arrived in Tunisia. Who would have thought that M., in his attempt to leave behind him an authoritarian regime immersed in a deep political and economic crisis, would have found himself in an equally dangerous context: the Italian ‘justice’ system.

Victories

In this desolate landscape of prison and persecution, we nevertheless manage to celebrate some victories every now and again, often after years of work by legal teams and a community of solidarity. Momodou Jallow, originally from Guinea, arrested in 2017 and sentenced to 4 years and 8 months in prison (as well as 2 million Euros in fines) was found not guilty at the Appeals court in Catania, with a very strong sentence that recognizes the state of necessity. He is now living in freedom with his wife, who has managed to join him from Africa. Similarly, Shami Mohamed, a Syrian refugee arrested in Roccella in 2022 and initially sentenced to 4 years and 6 months imprisonment, was found not guilty by the Appeals court in Reggio Calabria, following a request made by the prosecution themselves. We would also like to note the exoneration of three Gambian citizens on trial in Ragusa, two of whom by argument of the state of necessity, and the third for not having committed any illicit conduct. Sticking with Ragusa, the judge for preliminary investigations there also closed a case against two Somali citizens rescued by a Maersk commercial vessel, again a case from 2017.

4. The transnational network

Sea taxis

On Friday the 19th of April what was possibly the longest preliminary hearings in the history of Italy finally came to an end. The hearings were against three search and rescue NGOs, including the crew of the *Iuventa*, which had been accused – among other things – of facilitating illegal immigration. After the Italian state spent millions of euros in fudged investigations, the prosecution tried to save face and ask the preliminary judge (GIP) to dismiss everyone on the basis of the “good faith” with which the defendants had acted. The Judge, however, recognized the defense’s arguments and dismissed the trial because the conduct simply did not amount to a crime. This is a significant distinction, which establishes important precedent for future cases. The trial – and the investigations on which it’s been based – provided fuel for a racist political narrative which contributed to the election, just a year later, of populist and far-right parties, which referred to NGO ships as “sea taxis” and “friends to the traffickers”. After years of criminalizing migrants as smugglers, the same crime was used against European activists at sea, upturning their lives and blocking their search and rescue operations, leaving more people to die at sea.

We hope that the judiciary’s next step will be to open investigations into the political incentives that fueled these proceedings, which have absurdly been closed 5 years after the defense had originally petitioned for their dismissal. Most importantly, we call for the struggle to continue for the freedom of everyone accused and incarcerated for having defied the border regime, for all those who are facing equally Kafkaian, long, politicized trials.

We would like to take the opportunity to acknowledge the importance of the work carried out by *Iuventa Crew* in never forgetting the captains of these other boats; we would also like to

acknowledge the great work carried out by the defense lawyers in trying to deconstruct art. 12 on a juridical level, and that of the European Center of Constitutional and Human Rights (ECCHR), in monitoring the trial and drawing attention to the case; finally, we want to note the work of the wonderful solidarity network that has developed around this struggle.

Libia, Malta, Greece

People on the move leaving Libya can end up in prison not only in Italy, but across Europe. Just last month in the UK, Ibrahima Bah, a young Senegalese man, was sentenced to 9 years in prison for having been forced to drive a boat across the Channel. Captain Support UK is supporting him as they wait for the result of the appeal.

In Malta, there will be another preliminary hearing in the trial against the “El Hiblu 3”, three teenagers from West Africa who were arrested in 2019 after having allegedly blocked their own illegal refoulement to Libya, along with that of the other people with whom they were traveling. In May, the judge will make an important decision on territorial jurisdiction, as the contested facts occurred in Libyan and international waters. Next month in Greece there will also be new hearing dates in the trial against the 9 Egyptian citizens who were accused after the massacre in which 500 people who had departed from Libya perished, after the fishing boat on which they were traveling sank due to mistakes in the Greek Coast Guard’s “rescue operation”. The solidarity network has launched a fundraiser for their defense. Still in Greece, on the 23rd of April a first hearing was held in the appeal trial of Homayoun Sabetara, an Iranian refugee who was arrested in 2021 for having allegedly driven across the border between Turkey and Greece. He has been in prison since, while his daughters in Germany and supporters across Europe campaign against his 18-year sentence. You can keep updated on these and other campaigns on the new website of Captain Support, the transnational network which we are also part of.

An Italian tour

The Oscar-nominated film “Io Capitano” has been an important starting point for conversations, in Italy and beyond, that shed some light on the persecution of people on the move who are identified as boat drivers. The film has been screened by activists in Milan (with *Sea Watch* and Christian Agbor, the president of the *Foreigners’ Association in Padova*, who was criminalized years ago), in Rome at *Spin time*, with the *Legal Clinic of Roma 3 University*, and in Caserta, at the ‘Mamadou Sy’ social center; we also wrote an opinion piece on the film for the *New York Times*. Over recent months we also contributed to several activist radio programmes, including Radio Onda Rossa (along with Captain Support and other activists across Italy), Radio Melting Pot (in the special episode on Cutro) and Radio Onda d’Urto (with activists and lawyers from Iuventa).

We would like to thank Saving Humans USA for supporting us over this last period, as well as the lawyers who reported cases to us, the many activists who write letters to prisoners, translating their words and contacting their families.

'From Sea to Prison'

A project by Arci Porco Rosso and borderline-europe

Cover picture: activists from the Captain Support Network in front of the Court of Trapani, on 19 April 2024.