

PERMANENT PEOPLES' TRIBUNAL

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Final Document on the sessions on the violation of human rights of migrants and refugee people

Brussels - European Parliament, 9th April 2019

The panel of judges:

Bridget Anderson (UK), Perfecto Andrés Ibáñez (Spain), Luciana Castellina (Italy), Mireille Fanon Mendes France (France), Franco Ippolito (Italy), Claire-Marie Lievens (Belgium), Luis Moita (Portugal), Patricia Orejudo (Spain),
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1. The framework

The substance of the indictment submitted by a very broad network of movements and organisations, working for many years at the European level in diverse areas concerning migration, to the Permanent Peoples' Tribunal (PPT), requesting it to promote judicial sessions according to the PPT Statute, may be summarised as follows:

a) The refugee and migrant people are victims of the most heinous and systematic violations of their fundamental rights (to life, to dignity, to work, to health, to seek a future...) being perpetrated by the European Union and its Member States, in an environment of total impunity of the responsible actors, and through policies designed to punish any social actors that, individually and collectively, perform practices of solidarity;

b) The right to migration has always been acknowledged as a constituent part of the history of peoples, but it is now being tragically denied and has become the expression of a neo-colonial politics, that rejects the very existence and identity of the refugee and migrant people, transversal in terms of origins and causes, and as the product of a globalization rooted in a development model based on economic, environmental, of security and wars strategies, which make migration a long-term phenomenon which cannot be contrasted with pushback or containment operations.

The PPT – which has been actively engaged for over 40 years upholding both current international law as well as the Universal Declaration of the Rights of Peoples – has recognized in the dramatic events suffered by refugees and migrants on the borders and within the European countries, a resurgence of a situation, already examined and judged in many previous sessions, and agreed to entertain the request by embarking on a formal procedure to investigate and assess crimes and responsibilities and propose actions to be taken.

Consistently with the statutory mandate of the PPT, which is not primarily to judge crimes but to promote innovative right categories and practices, the procedure has entailed convening sessions to gather evidence of the various aspects of a situation which, while highly complex, is tragically consistent in its substance and diversified in the forms it takes. The venues and the themes of these sessions (Barcelona, July 2017; Palermo, December 2017; Paris, January 2018; Barcelona, July 2018 and London, November 2018) offer a comprehensive map of the approach, the scope and the specific nature of the investigations, the complementarity of its findings with regard both to the factual documentation and to the eyewitness testimonies, as well as the types of crimes being committed, and the liability for their commission.

At the end of each of these sessions, the panels of judges of the PPT, representing different context, as well as professionals and cultural backgrounds, delivered detailed decisions, with regard to the specific facts and to the reasons and conclusions adopted.¹

The essential elements of the process are also summarized, with a richness of information which reflect the general strategy and the field practices in the different context of the evidences submitted to the attention of the PPT, in the documents prepared for this concluding event by the movements which have promoted and accompanied the work of the PPT, carefully update to focus on the processes of criminalization of the civil society, as well as on the spaces characterized by the absence of rights where the gender and minor targeted violence finds their most dramatic expressions.

2. Assessment and decisions of the PPT sessions

2.1 All the sessions of the Tribunal examining violations of migrants and refugees' rights have heard numerous similarities in the treatment meted out to migrants despite the different specific situations in each country. One main fact that has emerged is that what is often called a migrant crisis is, in reality, a profound crisis within the European Union which has been shown to have arisen in every country of the Union in one way or another.

From the Palermo session onwards the contradiction in the European Union and its Member States clearly emerged: on the one hand, they proclaim the universality, indivisibility and interdependence of fundamental rights, and the other hand, they are adopting policies which ignore or violate these refugees and migrants' rights. The right to migrate, *ius migrandi*, which was used to justify the conquest of America, is now being denied to the people migrating from the global South to the global North. The right to come and go, enshrined in article 12.2 of the International Covenant on Civil and Political Rights, and the right to work, provided by article 6 of the International Covenant on Economic, Social and Cultural Rights are in reality being denied by closing Europe's borders.

Migration is an existential and political act. *Ius migrandi* should be accompanied by the duty to receive migrants, but this duty clashes with State sovereignty over their territorial domain. To affirm their sovereignty, States are detaining migrants on their borders, ready to violate their human rights. The sole purpose of European policy is to block immigration. This policy of closing Europe's borders, whose prosperity has been created based on an economic system of plundering the resources of the global South cannot be considered legitimate or politically justifiable until the European Union commits to adopting another global economic model which will permit the development of the countries from which the migrants are fleeing of necessity, knowingly risking death by

¹<http://permanentpeopletribunal.org/45-session-on-the-violation-of-human-rights-of-migrants-and-refugee-people-2017-2018/?lang=en>

drowning in the Mediterranean when faced with the certainty of starving to death in their own countries.

In this context, hospitality has been turned on its head, and transformed into hostility. Proof that European policy is designed solely and exclusively to block immigration is the absence of any arrangements or provisions to guarantee legal and safe entry conditions, while clearly aware of the fact that migration is a structural phenomenon that cannot be addressed by raising physical or legal walls.

The European Union's immigration and asylum policies, based on agreements concluded between individual EU Member States and third countries, constitute the denial of the fundamental rights of individuals and of the migrant people, denying them their human dignity and defining them as illegals and considering any action to rescue and assist them at sea to be illegal.

The decision to withdraw the Frontex and Eunafor Med vessels helps to broaden Libyan coastguard operations in international waters, blocking migrants on their way to Europe, putting their lives and their physical integrity in jeopardy, and taking them back to camps in Libya where they fall prey to financial extortion, torture, and inhuman and degrading treatment.

Since the conclusion of the 2 February 2017 memorandum between Italy and Libya, the work of the police and the military in Libya, in Libyan and international waters, and of the many tribal militias and the so-called "Libyan coastguards", have resulted in deaths, deportations, disappearances, arbitrary imprisonment, torture, rape, enslavement and – more generally – the persecution of the migrant people: a crime against humanity.

By its conduct under the provisions and by implementing this memorandum, Italy and its representatives are acknowledging total liability for the actions of the Libyan forces against migrants, both at sea and on Libyan territory.

In the wake of the agreements concluded with the Libyan coastguards and in the course of coordinating their work, the episodes of aggression against the NGOs engaged in search and rescue operations in the Mediterranean also stand as proof of the liability of the Italian government, perhaps also in association with the European agencies operating in the same context.

Banning and pushing back the NGO ships from the Mediterranean, which has also been imposed by the Italian government's mandatory "code of conduct", has considerably weakened the migrant search and rescue operations at sea and increased the number of victims.

2.2. The Paris Session showed that the *non refoulement* principle, intended to guarantee the protection of people fleeing their country for whatever reason, was being frequently violated in metropolitan France, Mayotte, in Italy with regard to Libya, and Spain with regard to Ceuta and Melilla, giving rise to state liability. The March 2016 Turkey-EU accord made it possible to return to Turkey any "irregular" migrant arriving on the Greek islands. Turkey was rewarded for this with 6 billion euro which were used to increase the forces deployed there (coastguards, border guards) and to detain more than 3 million refugees.

The right to asylum is being constantly whittled down or circumvented by a variety of measures, such as the blanket requirement of a visa, the establishment of hotspots on Europe's borders (Greece, Italy), the permanent establishment of what can only be called human beings' sorting centres, and the introduction of border controls with the excuse of combating terrorism. Asylum applications are almost routinely construed as playing for time or fraudulent, and subject to a priority procedure, to afford less protection. References to such pseudo-legal notions as "internal asylum", "first asylum country", "safe third country", or "safe countries of origin" are all obstacles raised to refuse recognition of refugee status.

2.3. The Sessions of Barcelona and London have focused their testimonies and provided solid documentation to the PPT more specifically on the situation of migrants and refugees in the real institutional, working, cultural contexts of each of the countries. The denial of freedom of movement deprives migrants from another right: the right of freedom from arbitrary detention. All the European countries have adopted legislation authorising the right to detain foreigners for period ranging from a few days to "indefinitely" which may be for several months, sometimes with no legal basis. It is a settled fact that inhumane acts – deprivation of liberty, murder, enslavement, forced disappearances – have been committed as part of a generalised or systematic attack specifically or deliberately targeting the civilian population of migrants.

A specifically important element emerged and extensively documented for its implications in the London Session has been the openly declared governmental policy targeted to create in UK a "hostile environment" for migrants and refugees. Such strategy coincides broadly with the policies and the practices of all the European countries, where the manifestations of discrimination, xenophobia, racism, inhumanity have become daily and growing realities.

The EU and Member State leaders including France, and their agents, are accomplices in the commission of these crimes against humanity, by providing substantial assistance to the state or non-state authors of these crimes, in full knowledge of the facts, which therefore renders them criminally liable pursuant to article 25 of the Rome Statute.

Prosecuting those who express solidarity with migrants or refugees both in France and in other EU countries, violates the rights of those who champion the rights proclaimed by the United Nations.

The struggles of migrants must be incorporated into the struggles of marginalised citizens, where women have an important role to play. What is bad for you is bad for me. Racism against migrants becomes racism against citizens, misogyny against citizens and migrants. More than legal instruments, what we need now is unity, equality, solidarity, and workers' rights.

3. Europe and the people of migrants and refugees

3.1. The comprehensively argued grounds on which the PPT judgments have been reached call for two fundamental considerations which, while apparently attracting broad

agreement, do not appear to have been borne in mind when laying down policies and practices for dealing with people arriving in Europe: a) human history, for better or for worse, has always seen migrations that have often been occasions and causes of the most atrocious wars and conflicts; b) the European Union was originally founded to combat and overcome the causes and factors of the many wars that have caused bloodshed in Europe, to fight against every kind of nationalism and racism, and to solemnly declare that genocide, concentration camps, oppression and race discrimination could “*never again*” occur.

Europe, based as it is on Constitutions and Charters, the civilised Europe that acknowledges the equal dignity of all people and human rights, the welcoming Europe, a haven of protection, cannot therefore become a Fortress Europe by raising physical or legal walls without betraying itself and losing its identity and its very “soul”. And this applies particularly, as the relevant United Nations Agency has recently documented, when it is faced with worldwide population shifts currently involving more than 70 million people, including 25 million refugees, who are even being hosted by small and poor countries – with only a tiny percentage heading for Europe, which is the world’s wealthiest and best-structured continent.

No country, except the USA under the Trump administration, is adopting such a rigid anti-immigration policy as the EU Member States, which are going so far as to actually deny the right to asylum, making it difficult and often impossible, for asylum seekers to submit their applications and at all events preventing judicial oversight over the rejection of asylum applications by the administrative authorities.

Not having any legal and safe channels for reaching Europe, many refugees and migrants are induced to attempt crossing by sea using boats provided by traffickers working in collusion with the Libyan militias, who are cashing in on these needy people. This is transforming the Mediterranean Sea from a crossroads of civilisations to an immense graveyard where tens of thousands of people, hoping to reach what they imagine to be a place of welcome and solidarity, have drowned or been lost at sea.

A whole range of causes have produced these outcomes, of which the most decisive has been the “externalisation” of Europe’s southern borders, accompanied by the offer of billions of euros to the Turkish dictatorial regime to close down the Balkans route, and to the Libyan militias to block African migrants using unprecedented violence and without any oversight whatsoever, as is constantly being reported by the United Nations High Commissioner for Refugees, which never tires of denouncing to the whole world the atrocities of every kind that are being perpetrated against migrants and asylum-seekers, including vast numbers of women and children, in the detention camps.

Even when no specific individuals have been personally identified as the authors of the tens of thousands of deaths and other victims to satisfy the necessary level of evidence required under criminal law, they are the foreseeable and foreseen product of “system crimes” according to the definition adopted by the PPT to categorise the tragic effects of economic policies and decisions that sacrifice fundamental rights. Tragedies that – as the

United Nations High Commissioner for Refugees said on 22 March this year – “*have indelibly shamed our continent*”, recalling that “*in 2018 six people were drowned every day in the Mediterranean*”. This is a percentage increase running parallel to the increased restrictions imposed on rescue operations, by criminalising the work of the NGOs, mainly by the Italian government which obstinately insists on the reliability of the Libyan authorities who, according to recent statements issued by the Ministry of Home Affairs, “*guarantee respect for the human rights of migrants thanks to the presence of the OIM*”. These are grave and unacceptable statements that paint a false picture of the true situation as the most responsible European authorities, and the OIM, know perfectly well, and deliberately ignore the recent statements issued by the United Nations High Commissioner for Refugees that, in Libya “*a population of refugees and migrants are living in terrible conditions, many of them detained in holding centres which are among the most dreadful*” he has ever visited in his long experience in dealing with humanitarian affairs.

3.2. It is illegal to transform Europe into a fortress by closing ports and borders and refusing to rescue and assist those in need, because it violates binding International law and is unlawful because adopted using measures issued without any discussion and approval of the European Parliament and the national Parliaments.

It is above all unconscionable and unjust with regard, first of all, to the rights and needs of people who have set out on a harrowing journey, not on a whim or for their amusement, but out of necessity, fleeing from war, devastation, famine or environmental disasters, often caused or aggravated by the policies and economic decisions of the western European economic system and lifestyles.

It is a decision that not only causes enormous distress, but it is also to no avail, as we know from history and demography. Never before, in the course of millennia, have structural migrations of peoples been effectively prevented by physical or legal obstacles. Closed-door policies not only cause death and suffering to refugees and migrants, they also cause the European population to adopt rigid identity postures, and xenophobic and racist attitudes; in a short space of time, they may seem to have the backing of public opinion, but this is illusory and bound to come to nothing because these policies are incapable of addressing structural phenomena, but on the contrary, prove counter-productive because they prevent or delay any possible reasonable ways of handling the problems which inevitably emerge when these diversities meet.

And it is also an uncivil policy that militates against the interests of Europe for economic and demographic reasons. Migration flows cannot be governed, which is the most we can realistically hope to achieve, by means of violence and repression, which if foolishly pursued can only degenerate and lead to further conflicts which will be even more difficult to govern.

3.3. The PPT recognizes the unlawfulness of concluding international agreements in a simplified form between the EU Member States and third States (Turkey, Libya, Sudan, Niger), because it removes major decisions from public debate, from the competence of

the European Parliament and the national Parliaments, and from judicial oversight, such that this practice must be considered to be radically contrary to European Union law. More especially, since these are often labelled “development cooperation agreements” they conceal their real legal nature, which is to govern the unacceptable trade-off between money and people, by delegating the blocking of the Union’s external borders to third countries, which we know from daily experience provide no guarantees whatsoever, that they will respect the most elementary human rights.

Such practices are gradually undermining the rule of constitutional law, which is always dangerous but all the more so when applied to migration, which is an irreversible phenomenon in a world where capital, goods and information are increasingly in movement, and it is unthinkable that human beings are the only exception. This process is inevitably bound to radically change our increasingly more multi-ethnic societies, which are obliged by the facts of history today to revise the very concept of citizenship, instituted in Europe to ensure peoples’ rights and freedoms, but now being used as a demarcation line to deny not only “citizenship” rights but also the human rights vested in every person regardless of the jurisdiction to which they belong.

All the most distinguished legal, social and political opinions examined by the judges of the PPT sessions have made it clear that structural policies and interventions are needed to prevent the causes that are driving migration, in order to prevent people being forced to flee from their own countries driven by persecution, war, poverty, and the effects of climate change. Only the adoption of measures of this kind, coupled with policies to receive and integrate refugees would appear to be truly consistent with the thinking underlying and the purposes enshrined in the Charters of fundamental rights adopted in Europe.

The structural character of migration and the unprecedented suffering being inflicted today on the migrant people are specific, concrete and symbolic indicators of the absolute urgency of restoring subjective priority to peoples and persons, shorn of any populist logic and goals, in a global world of states, fully taking on board the whole dimension of the values and the indications set out in the Universal Declaration of the Rights of Peoples (the Algiers Charter, 4 July 1976).

The right to life, to personal and collective dignity, personal freedom and health may never, under any circumstances, be sacrificed under the pretext of security, which is often only being used as a means of gleaning electoral support.

The PPT is fully aware of the fact that it is not enough to appeal to the law to handle such complex phenomena, which has to be done by politics which is responsible for guaranteeing and taking responsibility for the interests of the people. Those tasked with adopting political decisions must certainly bear in mind the magnitude of migration movements and cannot ignore the widespread fears running throughout European societies, or the complexity involved in implementing procedures to integrate migrants and refugees.

However, if politics is to be keep faith with the pledges of peace and respect for the dignity of people and peoples solemnly enshrined in international law (from the United Nations Charter to the EU Convention on Human Rights) it must come up with solutions which are solidly grounded in law both to guarantee the rights of refugees and migrants and clearly set out the substance and the image of European democratic society.

Politics must, under all circumstances, respect the fundamental rights of people and peoples, for the guarantee of fundamental rights is a sacrosanct borderline for everyone, including lawmakers and governments, who must ensure that these needs are being met, and offer perspectives and solutions which, while fully respecting the dignity and equality of all men and women, make human rights and the aspiration to peaceful coexistence between different people, a reality.

4. Conclusions and recommendations

Based on its findings and judgments, the PPT has concluded that taken together, the immigration and asylum policies and practices of the EU and its Member States constitute a total denial of the fundamental rights of people and migrants, and are veritable crimes against humanity: even though they may not be personally ascribable to individual perpetrators according to commonly agreed criminal law definitions they must be recognised as “system crimes”.

This definition requires the European Union to take responsibility for simultaneously changing its economic and asylum and migration policies and regulations, on a strictly interactive basis, and to adopt public and transparent procedures for concluding treaties and conventions, fully involving the European Parliament. Secondly, being system crimes does not relieve the EU and each of its Member States of their specific liability for failure to comply with the obligation to offer assistance, for complicity in murder, torture and inhumane and degrading treatment, and for the other serious violations of human rights resulting from by pushback.

The PPT is adamant that, in order to be effective and rational, every necessary and rational measure to regulate migration and reallocate the migrants must be taken by the European Union as such, since individual Member States tend to pander to sovereigntist tendencies and fuel fear and public sentiment caused or aggravated by the lack of effective reception policies, whereas only the Union itself can adopt and sustain a raft of policies to deal with the root causes of migration, and ensure compatibility between the rights of those already living in the European countries and the rights of the migrants, particularly with regard to the right to asylum, opening communities to foreign residents, appreciating the value of cultural diversity, taking care of vulnerable people, and humanising social relations.

It is urgently necessary to impose a moratorium on all the agreements which, like the EU-Turkey and Italy-Libya agreements, lack any public oversight and render the parties

jointly liable for violations of the fundamental human rights of migrants. These agreements must be radically renegotiated and amended.

Consistently with the positions adopted by the relevant United Nations Agencies, the PPT deems it essential to put an end to any hostilities and criminalization against the NGOs engaged in rescuing shipwrecked persons and migrants in difficulty. To ensure compliance with the duty to protect paramount human rights, any measures designed to obstruct any individual and collective actions by civil society solidarity organisations, in any way whatsoever, must also be suspended. And decisive action must be taken to counter any practices that fuel xenophobia and hatred and create a hostile environment.

The PPT's sessions have been convened as a forum for listening to the migrant and refugee people, and they have also given voice to the grief caused to families of the countless, and nameless, dead and missing persons. The institution of an international observatory, independent and organised with the widest participation of the families, with the mandate of the recuperation, whenever possible, of the bodies of the victims and, in any case, of the reconstruction of the identity of the disappeared would be a minimal token response to the right to be remembered, to truth, and to grieve, which is an essential component part of all human civilisations.

According to the tradition of the PPT, this document is first of all the voice of the victims and of their families and communities. It represents however also the voice of the hundreds of organizations, which together with the countless testimonies, have been the true protagonists of the process opened in Barcelona in July 2017: they did not simply share the sufferings of the victims, but have declared their willingness and readiness to continue their active solidarity with those who choose Europe as the place where their legitimate life projects could become a reality.

The PPT has presented today the results of its work to the highest institution of democratic representativeness of the Europe of the Rights, with the wish that they could be received as a contribution to the activities of the Parliament emerging from the forthcoming elections.

It has become dramatically urgent to give an identity and visibility to the migrant people, as one way of sensitising our collective awareness of the close linkage between the fundamental rights of migrants and refugees, and the future of our democracy.

Annex

Session on the Human Rights of Migrants and Refugee Peoples

9 April 2019 9.00 to 13.00

**EUROPEAN PARLIAMENT, BRUSSELS
ROOM ASP 1G2**

Programme

09:00 – 09:45 Welcoming words and introduction

MEP Gabi Zimmer, President of GUE/NGL

MEP Claude Moraes (S&D), Chair of the Committee for Civil Liberties, Justice and Home Affairs

Jille Belisario, Transnational Migrant Platform-Europe

Braulio Moro, France Amérique Latine (FAL)

Simona Fraudatario, Gianni Tognoni, Permanent Peoples' Tribunal

09:45 - 11:15 Report and perspectives of the PPT deliberations

The PPT Session on migrants and refugee people

Philippe Texier, President of the Permanent Peoples' Tribunal

Legal strategies for Italian and European responsibility

Antonello Ciervo, Chiara Favilli, Luca Maserà (Asgi)

Policies of criminalisation, conscription and marginalisation

Frances Webber, Human Rights lawyer and Vice-Chair of the Institute of Race Relations

Crimes of the system: a vacuum in international law

Perfecto Andrés Ibáñez, member of the Permanent Peoples' Tribunal

Looking forward: concluding Declaration and comments by the panel of judges

Bridget Anderson, Luciana Castellina, Mireille Fanon Mendes France, Claire-Marie

Lievens, Patricia Orejudo

11:15 - 11:40 Citizens' networks as example of "civil disobedience"

Moderator: MEP Ana Miranda (GREENS-EFA)

Adham Darawsha, Councilor for CultureS and Democratic Participation, City of Palermo

Miguel Roldan, fire fighter - case of criminalisation of solidarity.

**11 :40- 12:40 Interventions of participant parliamentarians and social movements:
Going Forward to political action**

Moderators: Brid Brennan (TNI) and MEP Miguel Urbán (GUE/NGL)

12:40 – 13 :00: Conclusions

Franco Ippolito, on the behalf of the Permanent Peoples' Tribunal

Federico Pacheco, La Via Campesina

MEP Marie-Christine Vergiat, member of the Subcommittee for Human Rights

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the Permanent Peoples' Tribunal**

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