

ANBI Policy Plan

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de:border's ANBI Policy Plan

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Introduction

This policy plan consists of an overview of the statutory framework of de:border // migration justice collective (hereinafter "de:border" or "the collective") and the Articles of Association as far as ANBI rules and regulations are concerned (see Annex I), a summary of the de:border's governance and finance structure, as well as of its community agreement (see Annex II). This policy plan is envisaged to be a living document to be reviewed at least once every three-year cycle.

1. Statutory framework

de:border's Articles of Association have been incorporated on the 31st of August 2022. The Articles are attached hereto (see Annex I). The collective intends to promote public welfare and shall not make any profits.

The objectives of de:border are to pursue accountability and transformation of the systems of oppression that produce global immobility and rightlessness. The collective will do so by:

- (a) mobilising law (and against the law) to resist and challenge the structural violence of physical and other borders, including those enshrined in and perpetrated through legal systems;
- (b) engaging in political and legal interventions, embodied learning, and collaborative participatory action-research;
- (c) centering movement law/ying, critical and trauma-informed practices, and feminist leadership;
- (d) investigating and documenting acts of violence against migrants at physical and other borders;
- (e) advocating for restorative, healing and transformative justice and reparations for the systems that deny the freedom of, and dignity in, movement;
- (f) engaging in activities which are incidental to or which may be conducive to any of the foregoing in the broadest sense.

2. Governance

As per the date of incorporation, the board consists of three members:

- Ariadne Papagapitos, President;
- Jelia Sane, secretary;
- Lydia van Leeuwen, treasurer.

Members of the collective have agreed upon and signed a Community Agreement (see Annex II).

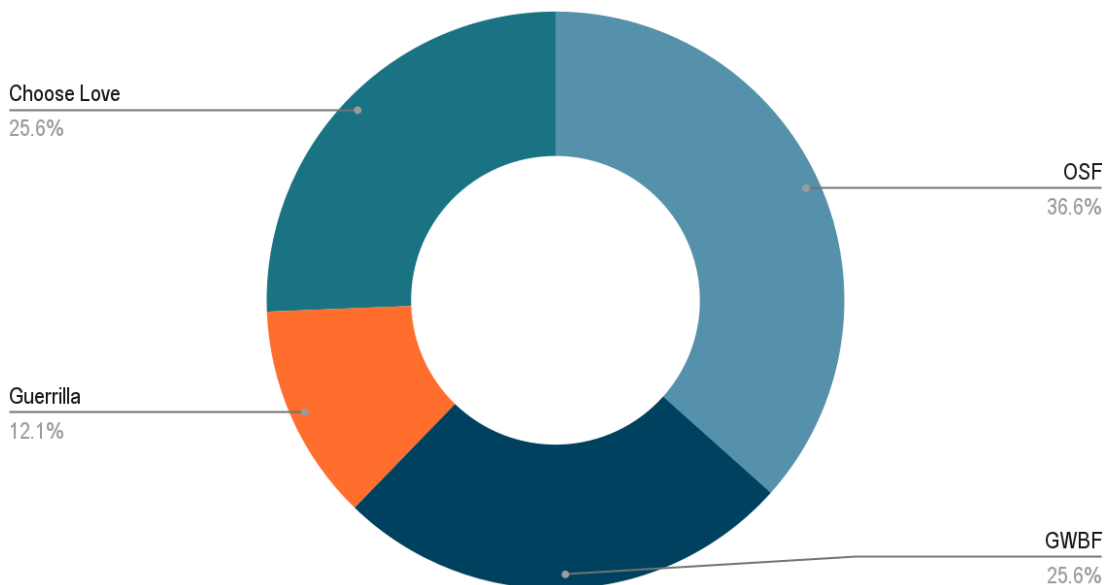
3. Financial accounts

The capital of the de:border shall be formed by:

- (a) grants and gifts;
- (b) acquisitions by way of bequest or inheritance;
- (c) payments for services rendered by the foundation;
- (d) as well as other benefits.

de:border's purpose does not include generating profits. Since its incorporation, de:border has received funding from Open Society Foundations (OSF), The Global Whole Being Fund (GWBF), the Guerrilla Foundation, and Choose Love—for a total of €123,642.

Current funding



The budget for 2023 and the projected budget 2024 are as follows:

Budget	2023	2024
Funding	€85,000	€80,000
Expenses	2023	2024 (est)
Human Resources	€53,000	€58,000
Travel & Conferences	€8,000	€6,000
Equipment	€3,500	€2,500
Other Costs	€15,000	€10,000
Total expenses	€79,500	€76,500
Net surplus/deficit	€5,500	€3,500

Any funding unspent or surplus will be reserved and utilised for future projects in line with de:|border's mission.

3.1 Remuneration policy

de:|border's remuneration policy does not ignore the economic and financial inequalities that exist within our communities—or the manner in which pay is connected to other (unequal) systems and processes. The underpinning principle of de:|border's remuneration policy is therefore:

From each according to their ability to each according to their need.

Members of de:|border will not receive remuneration for their membership in the collective. They will be remunerated for collective, case, or project activities according to a sliding scale that is agreed upon by members of the collective and the board.

Project members will be remunerated for project activities on the basis of a memorandum of understanding specifying terms and conditions of their engagement.

Board members will not receive any remuneration. They may be reimbursed for expenses incurred in the performance of their board-related duties.

Annex I: Articles of Association

DEED OF INCORPORATION

DE:BORDER // MIGRATION JUSTICE COLLECTIVE

On the thirty-first day of August two thousand and twenty-two appears before me, Martijn Michiel van der Bie, civil law notary in Amsterdam:

Diana Stepan Marukyan, candidate civil law notary, born in [REDACTED] on the [REDACTED] [REDACTED] having her office address at Parnassusweg 737, 1077 DG Amsterdam, the Netherlands, for the purpose hereof acting as attorney authorised in writing of:

- (1) Ms. Valentina Azarova, born in [REDACTED] on the [REDACTED] [REDACTED] residing at [REDACTED] holder of a [REDACTED] passport with number [REDACTED] (the "Incorporator I");
- (2) Ms. Amanda Danson Brown, born in [REDACTED] on the [REDACTED] [REDACTED] residing at [REDACTED] holder of an [REDACTED] passport with number [REDACTED] (the "Incorporator II");
- (3) Ms. Niamh Michelle Keady-Tabbal, born in [REDACTED] on the [REDACTED] [REDACTED] residing at [REDACTED] holder of an [REDACTED] passport with number [REDACTED] (the "Incorporator III");
- (4) Mx. Noemi Magugliani, born in [REDACTED] on the [REDACTED] [REDACTED] residing at [REDACTED] holder of an [REDACTED] passport with number [REDACTED] (the "Incorporator IV"); and
- (5) Ms. Violeta Moreno-Lax, born in [REDACTED] on the [REDACTED] [REDACTED] residing at [REDACTED] holder of a [REDACTED] passport with number [REDACTED] (the "Incorporator V"),

(the Incorporator I, Incorporator II, Incorporator III, Incorporator IV and the Incorporator V together the "Incorporators"). The existence of the powers of attorney appears from five documents, which are attached to this deed (annexes). The person appearing declares that the Incorporators hereby incorporate a foundation under Dutch law, which shall be governed by the following articles of association:

ARTICLES OF ASSOCIATION

Article 1. Definitions and interpretation

1.1 In these Articles of Association the following terms shall have the following meanings:

"Articles of Association" means these articles of association; "Auditor" means an auditor as referred to in section 2:393 subsection 1 of the Civil Code, or an organisation within which such auditors cooperate; "Board" means the board of the Foundation; "Board Member" means a board member of the Foundation; "Foundation" means the foundation which is governed by these Articles of Association.

1.2 In these Articles of Association references to Articles are to articles of these Articles of Association, unless otherwise specified.

Article 2. Name and seat

2.1 The name of the Foundation is: Stichting De:Border // migration justice collective.

2.2 The Foundation has its seat in Amsterdam, the Netherlands.

Article 3. Objects

3.1 The objects of the Foundation are challenging border violence and other human rights violations in the context of migration:

(a) by conducting research, advocacy and litigation on migration, borders and related structural injustices;

(b) by collaborating, in a participatory and trauma-informed manner, with affected communities, as well as civil society groups, academic and legal experts and institutions, researchers, journalists, artists, and other strategic partners;

(c) by investigating and documenting acts of border violence and human rights violations against migrants;

(d) by filing complaints with international, regional, and national judicial and quasi-judicial bodies;

(e) by providing holistic legal support to individuals on the move; and

(f) by advocating for safe, dignified migration and related accountability measures in various political and non-political forums, as well as all activities which are incidental to or which may be conducive to any of the foregoing in the broadest sense.

3.2 The Foundation shall intend to promote public welfare and shall not intend to make any profits.

Article 4. Capital

4.1 The capital of the Foundation shall be formed by:

(a) grants and gifts;

(b) acquisitions by way of bequest or inheritance;

(c) payments for services rendered by the foundation;

as well as other benefits.

4.2 Testamentary dispositions may only be accepted by the Foundation under the benefit of inventory.

- 4.3 The Foundation shall not maintain any capital in excess of the capital reasonably required in connection with the activities for the achievement of the Foundation's objects, taking into account any possible designation of gifts as contributions to the Foundation's original capital.
- 4.4 The Foundation's capital shall serve entirely to the achievement of the Foundation's objects.

Article 5. Board

- 5.1 The Board shall consist of such number of members as the Board may determine, but not less than three. If one or more Board Members are failing, then the Board shall fully retain its powers; in such case the Board shall take action to supplement its number within three months.
- 5.2 Board Members must be natural persons.

Article 6. Appointment and retirement of Board Members

- 6.1 Board Members shall be appointed by the Board.
- 6.2 A Board Member shall retire:
- (a) upon the death of the Board Member;
 - (b) upon voluntary retirement;
 - (c) upon placing under guardianship, bankruptcy of the Board Member, or the debt rescheduling arrangement natural persons being declared to apply to him;
 - (d) upon dismissal by the Board; the Board may only dismiss a Board Member for dereliction of his duties, for other important reasons or on account of any far-reaching change of circumstances as a result of which the Foundation cannot reasonably be required to maintain him as a Board Member
 - (e) upon dismissal by the court pursuant to article 2:298 of the Civil Code.
- 6.3 The Board may only adopt a resolution to dismiss a Board Member by a majority of at least two thirds of the votes cast, representing more than half of the Board Members.

Article 7. Remuneration of Board Members

The Board Members may not be granted a remuneration. The Board Members shall be reimbursed for their expenses.

Article 8. Duties, division of duties and powers of the Board

- 8.1 The Board shall be charged with the management of the Foundation. In fulfilling their duties the Board Members shall serve the interest of the Foundation and the organisation connected with it.
- 8.2 The Board may adopt rules with respect to the matters concerning the Board. The rules may not be inconsistent with the law or these Articles of Association.
- 8.3 The Board may, whether or not by rule, determine the duties with which each Board Member will be particularly charged.
- 8.4 The Board shall appoint from among its members a chairman, a secretary and a treasurer. The offices of secretary and treasurer are compatible.

- 8.5 The Board shall not be authorised to resolve to enter into agreements to acquire, dispose of and encumber registered property and to enter into agreements whereby the Foundation binds itself as surety or as joint and several debtor, warrants performance by a third party or undertakes to provide security for a debt of another person. The Board shall neither be authorised to represent the Foundation with respect to such acts.
- 8.6 The Board shall draw up an actual policy plan that provides insight into the Foundation's activities, the manner in which the Foundation raises funds, the management of the Foundation's capital and the use thereof.
- 8.7 The Board may establish committees charged with a specific task. The Board may delegate one or more of its powers to an established committee. Such a committee may also include persons outside the ranks of the Board. The committee acts on behalf of the board. Such a committee will keep the board continuously informed of its actions and decisions and will be accountable to the board in the manner determined by the board. The general board is authorized at any time to disband the committee or to appoint or remove members of the committee.

Article 9. Meetings of the Board

- 9.1 Each Board Member shall be authorised to convene a meeting of the Board.
- 9.2 A meeting of the Board shall be convened whenever a Board Member considers appropriate.
- 9.3 Board Members shall be given notice of the meeting of the Board by a Board Member.
- 9.4 Notice of a meeting of the Board shall be given by letters, sent to the addresses of the Board Members. With the consent of the Board Member, notice may be given by a readable and reproducible electronic communication to the address given by him for the purposes of such communication.
- 9.5 The notice of meeting shall mention the matters to be discussed and the place and the time of the meeting. Matters which have not been mentioned in the notice of meeting may be announced in a supplementary notice. No valid resolutions may be adopted on matters which have not been mentioned in the notice of meeting or announced in a supplementary notice with due observance of the notice period, unless all Board Members have consented to adoption of resolutions regarding those matters.
- 9.6 Notice shall be given no later than on the eighth day prior to the date of the meeting. If the notice period was shorter or if no notice was sent, no valid resolutions may be adopted, unless all Board Members have consented to the adoption of resolutions.
- 9.7 The meeting of the Board shall be presided over by the chairman of the Board, who, nevertheless, may charge another person to preside over the meeting in his place even if he himself is present at the meeting. If the chairman of the Board is absent and he has not charged another person to preside over the meeting in his place, the Board Members present at the meeting shall appoint one of them to be chairman. The secretary of the Board shall keep minutes of the proceedings at the meeting. If the secretary of the Board is absent, the chairman of the meeting shall designate the

secretary. Minutes shall be adopted and in evidence of such adoption be signed by the chairman and the secretary of the meeting.

- 9.8 The Board Members as well as the persons who are admitted by the Board Members present shall be authorised to attend the meeting.
- 9.9 A Board Member may only be represented at a meeting by another Board Member authorised in writing. The requirement of written form for the authorisation shall be met if the authorisation has been recorded electronically.
- 9.10 Each Board Member may participate in a meeting by electronic means of communication, provided that all Board Members participating in the meeting can hear each other simultaneously. A Board Member so participating shall be deemed to be present at the meeting.

Article 10. Decision-making of the Board

- 10.1 Each Board Member shall have one vote. Blank votes and invalid votes shall be regarded as not having been cast.
- 10.2 Unless these Articles of Association determine otherwise, all resolutions shall be adopted by an absolute majority of the votes cast at a meeting at which more than half of the Board Members are present or represented.
- 10.3 The chairman of the meeting of the Board shall determine the manner of voting provided, however, that if any Board Member present so requires, voting in respect of the election of persons shall take place by means of sealed, unsigned ballots.
- 10.4 In the event of a tie vote concerning the election of persons, no resolution shall have been adopted. In the event of a tie vote concerning other matters, the proposal shall have been rejected.
- 10.5 A Board Member shall not participate in the discussion and the decision-making process of the Board with regard to a matter in which he has a direct or indirect personal interest that conflicts with the interest of the Foundation and the organisation connected with it. Where, as a consequence, the Board could not adopt a resolution, the Board Member shall, however, continue to be authorised to participate in the discussion and decision-making process and the resolution shall be adopted by the Board with a written record of the considerations underlying the resolution.
- 10.6 The Board may adopt resolutions without holding a meeting, provided that all Board Members have consented to this manner of adopting resolutions and the votes are cast in writing or by electronic means. Articles 10.1, 10.2, 10.4 and 10.5 shall apply by analogy to the adoption of resolutions by the Board without holding a meeting.

Article 11. Representation

The Board shall have the power to represent the Foundation. The power to represent the Foundation shall, in addition to the power of the Board, only be vested in two Board Members jointly.

Article 12. Failing or prevention from acting of Board Members

- 12.1 In the event that a Board Member is failing or is prevented from acting, the duties and powers of that Board Member shall temporarily be exercised by the remaining Board Members or the only remaining Board Member, unless the Board designates or has designated one or more persons for that purpose. In the event that all Board Members is failing or is prevented from acting, the duties and powers of the Board Members shall temporarily be exercised by one or more persons designated for that purpose by the Board.
- 12.2 A Board Member shall be deemed to be prevented from acting if he has been suspended, if he is temporarily unable to exercise his duties and powers as a consequence of illness, leave or any other cause or if he is inaccessible during at least five consecutive days, or such other period as the Board may determine. Furthermore, a Board Member shall be deemed to be prevented from acting if he has notified the Foundation in writing that he is prevented from acting for a specified period, stating the reason. The requirement of written form for the notification shall be met if the notification has been recorded electronically.

Article 13. Financial year

The Foundation's financial year shall coincide with the calendar year.

Article 14. Records, balance sheet and state of income and expenditure

- 14.1 The Board shall keep such records of the financial position of the Foundation and of all matters related to the activities of the Foundation in accordance with the requirements arising out of these activities and shall keep the related books, documents and other data carriers in such way that the rights and obligations of the Foundation are known at all times.
- 14.2 Annually, within six months of the end of the financial year, the Board shall prepare a balance sheet and a state of income and expenditure of the Foundation and shall put these in writing, without prejudice to sections 2:299a and 2:300 of the Civil Code.
- 14.3 The Board shall keep the books, records and other data carriers referred to in Articles 14.1 and 14.2 for a period of seven years.

Article 15. Auditor

- 15.1 The Foundation may give an assignment to an Auditor to audit the balance sheet and the state of income and expenditure, without prejudice to title 2.9 of the civil code.
- 15.2 The Board shall be authorised to give the assignment.
- 15.3 The Auditor shall report on his audit to the Board and shall issue a certificate containing its results.

Article 16. Amendment of these Articles of Association

- 16.1 The Board shall be authorised to amend these Articles of Association.
- 16.2 The Board may only adopt a resolution to amend these Articles of Association by unanimous vote at a meeting at which all Board Members are present or represented. If not all Board Members were present or represented, a new meeting may be convened

at which the resolution to amend these Articles of Association may be adopted irrespective of the number of Board Members present or represented at the meeting, provided by unanimous vote. The new meeting shall be held ultimately on the thirtieth day after the day of the original meeting. The notice for the new meeting shall state that a resolution may be adopted and the reasons thereof, irrespective of the number of Board Members present or represented at the meeting.

16.3 The amendment of these Articles of Association shall be effected by notarial deed. Each Board Member individually shall be authorised to have such notarial deed executed.

Article 17. Dissolution and liquidation

17.1 The Board shall be authorised to dissolve the Foundation.

17.2 Article 16.2 shall apply by analogy to a resolution to dissolve the Foundation.

17.3 If the Foundation is dissolved pursuant to a resolution of the Board, its assets shall be liquidated by the Board Members, if and to the extent that the Board shall not resolve otherwise.

17.4 The liquidation shall take place with due observance of the relevant provisions of title 2.1 of the Civil Code. During the liquidation period these Articles of Association shall, to the extent possible, remain in full force.

17.5 The surplus liquidation balance of the Foundation shall be transferred to a public benefit organisation within the meaning of the General State Taxes Act designated by the Board.

17.6 After the Foundation has ceased to exist, its books, records and other data carriers shall remain in the custody of the person designated for that purpose by the liquidators for a period of seven years.

Article 18. Transitional provision

The Foundation's first financial year ends on the thirty-first day of December two thousand twenty-two. This Article 18 shall lapse after expiry of the first financial year.

FINAL DECLARATIONS

Finally, the person appearing declares that for the time being there shall be three Board Members; for the first time the following persons are appointed Board Member:

- (i) Ms. Ariadne Papagapitos, born on the [REDACTED] as president;
- (ii) Ms. Jelia Sane, born on the [REDACTED] as secretary; and
- (iii) Ms. Lydia van Leeuwen, born on the [REDACTED] as treasurer.

The person appearing is known to me, civil law notary. In witness whereof this deed is executed in Amsterdam on the date first mentioned in the head of this deed. After having conveyed the contents of this deed and having given an explanation thereto to the person appearing, she declared that she has taken note of the contents of this deed and agrees

de:borde // migration justice collective

with the same. Thereupon, immediately after limited reading of this deed, it is signed by the person appearing and by me, civil law notary.

Annex II: Community Agreement

*** This community agreement is deeply inspired and guided by the praxis of [Emergent Justice Collective](#), and extensively draws on the language of their community agreement. ***

All members of and contributors to de:border // migration justice collective commit to:

1. Embodying the values and principles that underpin our collective, including non-discrimination, non-oppression, do-no-harm, inclusiveness, solidarity, restorative and transformative justice, and a responsible and self-accountable, trauma-informed practice.
2. Prioritising collective care and nourishing our relationships as the foundation of our collective and of all our thinking, knowledge production and practice.
3. Building relationships and avoiding assumptions. We commit to communicating personal boundaries clearly to one another and respecting those that others have communicated, while holding space for the fact that setting boundaries is not something everyone can do easily. We are committed to a process of inquiry about each other's boundaries generally and with respect to certain situations as we move through them.
4. Engaging with one another with radical transparency, honesty and vulnerability, as well as through [non-violent communication](#). We will hold space for one another and aim to show up authentically and intentionally. We will hold ourselves and each other accountable when judgments and/or conflict arise, or when we witness a reproduction of a violent and oppressive structure in each other's thinking or acting.
5. Being present, reliable and available. We will communicate clearly and in a timely manner when one is (temporarily) unable to be present, reliable and/or available, and we will receive such communication with compassion and understanding.
6. Recognising each others' contributions to the collective and creating a safer space where members feel comfortable sharing feelings, tensions, and thoughts.
7. Recognising that we are all fallible and that we can all make mistakes and cause harm. We will engage in conflict with honesty, empathy and compassion, appreciating that conflict is relational and can be transformative and an opportunity to deepen and strengthen relationships.
8. Upholding integrity in all aspects of our work. We are committed to doing our utmost with the personal and material resources available to us to ensure that our research and legal praxis is participatory, transparent and accountable, and that no work is misappropriated or misrepresented.

Report of activities

Our ongoing strategic litigation cases and other legal interventions and advocacy date back to 2017. This report of activities covers the period from 2017 until 2024.

Cases and legal interventions

EU externalisation and orchestration in the Central Mediterranean and Libya

1. *S.S. and Ors v Italy*: Extraterritorial policies of 'contactless control'

Filed in May 2018 with the European Court of Human Rights on behalf of 17 survivors of a 130-person shipwreck off of Libya, the case asserts Italy's 'contactless control' and 'functional jurisdiction' over Libyan actors implementing the EU and its Member States' refoulement and containment regime in the central Mediterranean. The EU and its Member States' informal migration cooperation frameworks have perpetuated systemic harms, mass and structural violences against migrants, and sought to obfuscate the responsibilities of European actors for externalisation and remote management of violent interceptions, illegal returns, and secret detention.

The case, based on a [reconstruction](#) of the events by Forensic Oceanography, was filed in partnership with the [Association for Juridical Studies on Immigration](#) (ASGI), and [launched](#) at a press conference at the Associazione della Stampa Estera on 8 May 2018. In June 2019, the case was [communicated](#) to the Italian government. It remains pending before the Court.

2. *S.D.G. v Italy*: Privatised 'pushbacks' and human rights abuses

Filed in December 2019 with the UN Human Rights Committee, *SDG v Italy* challenges so-called 'privatised pushbacks'—in which states engage commercial ships to intercept and return migrants to unsafe locations in disregard of various legal obligations, including human rights law. The complaint argued that, despite being located outside of any territory effectively controlled by Italy, the claimant's rights were "[affected by \[Italy's\] military or other activities in a direct and reasonably foreseeable manner](#)", so as to trigger Italy's responsibility under the 'impact model' of jurisdiction (outlined in the Human Rights Committee's [General Comment No 36](#)).

Since the complaint was declared inadmissible in September 2020, ASGI submitted an access to records request to the Italian State Council with a view to filing an extra-contractual damages civil claim. In April 2024, however, the Italian State Council refused our request to access records related to the 'pushback'. In light of this refusal, we are currently considering, together with ASGI, resubmitting the case to the UN Human Rights Committee.

'Pushbacks' as enforced disappearances

3. *F.A.A. v Greece*: Illegal expulsions and enforced disappearance at Evros

Filed in November 2020, and registered and communicated to Greece in November 2021, this is the first submission to the Human Rights Committee regarding Greece's systemic policy of collective and summary expulsion of racialised persons at Evros. In 2016, 21-year-old Fady was living in Germany with refugee status when his 11-year-old brother fled Syria to escape ISIS and seek international protection, and disappeared while crossing the Evros River into Greece. When Fady flew to Greece to look for his missing brother, he was racially profiled and abducted by Greek police who illicitly seized his German residency and refugee documents and placed him in incommunicado detention without any official record or paper trail. Greek border forces and commandos in balaclavas forcibly transported him and others in a dinghy across the Evros River, in the presence of German-speaking Frontex officers. Following this 'pushback', Fady experienced cardiac arrest, leading to heart surgery and prolonged treatment.

FAA v Greece is the first case brought before the UN Human Rights Committee about the racialising state violence of collective summary expulsions, or 'pushbacks', from Greece. This is one of a few cases pending before the Committee on 'pushbacks' at Europe's borders. It is the second case, after that brought against Croatia ([represented by the European Centre for Constitutional and Human Rights](#)), to argue that the racist state violence of borders is a form of enforced disappearance.

On 14 November 2023, the complaint was considered 'procedurally ready' for examination by the Committee, to be scheduled for its upcoming sessions. It remains pending to this date.

Aegean 'driftbacks': Abduction, abandonment, and endangerment

4. *G.R.J. v Greece*: Abductions and torture in the Aegean

G.R.J. v Greece was submitted to the European Court of Human Rights in March 2021 on behalf of G.R.J., an unaccompanied minor who was abducted, illegally detained and expelled to Turkey by Greek officials through life-endangering abandonment at sea. The case challenges Greece's systematic policy of 'driftbacks'—the abandonment of asylum-seekers, refugees and migrants in non-navigable life rafts in the Aegean Sea—as a form of torture that exposes migrants to refoulement and is a violation of the right to life. The case is part of a group of cases challenging 'pushbacks' taking place at Greece's borders, and is the first case to be brought before the Court by an unaccompanied minor who was clandestinely abducted, detained and expelled by Greek officials, without any paper trail or means of recourse.

The European Court of Human Rights has scheduled a [Chamber hearing](#) for this case, to be held on 4 June 2024.

5. *A.A.J. and H.J. v Greece*: Abductions and Torture in the Aegean

A.A.J. and H.J. v Greece challenges Greece's abductions and expulsions of asylum seekers in the Aegean Sea. The case was submitted to the European Court of Human Rights in May 2021 on behalf of two Guinean brothers who were illegally expelled to Turkey—forced onto a raft and abandoned at sea at night, after arriving on Lesbos to seek asylum. The case challenges Greece's systematic policy of 'pushbacks', and more specifically of 'drift-backs'—a term coined by the research agency [Forensic Architecture](#) in reference to the

abandonment of asylum-seekers, refugees and migrants at sea in non-navigable life rafts in the Aegean Sea. The case argues that the practice exposes migrants to refoulement, amounts to torture, and constitute a serious violations of the right to life.

The case remains pending before the European Court of Human Rights and a hearing has not (yet) been scheduled.

Financialised migration control: Bureaucratisation and irresponsibility for refoulement and border violence

6. European Court of Auditors complaint and European Parliament petition challenging the EU orchestration of refoulement and containment to Libya

Two interventions—before the European Court of Auditors (ECA) and the European Parliament's Petitions Committee (PETI)—make up the first set of challenges to legally expose and challenge the structures of the EU's externalisation, orchestration, and financialisation of migration control in the Central Mediterranean. The complaints—filed together with ASGI and ARCI, and supported by a coalition of 13 human rights groups—scrutinise the host of violations of EU and international law resulting from the EU's financialised cooperation with the Italian-Libyan architecture of refoulement to and containment in Libya.

The legal interventions include (i) a third-party submission to ECA, in the form of a 'complaint', and (ii) a Parliamentary Petition to the PETI committee based on the ECA 'complaint' (both published in full, see 'Case documents'). The legal course of action and arguments are based on expert guidance and an expert opinion submitted alongside the complaints (see 'Case documents'), provided by three academics—Professor Philippe Dann (PhD, Humboldt University), Michael Riegner (PhD, then Humboldt University) and Lena Zagst (then Hamburg University).

Following a PETI committee hearing on 26 January 2023, the petition remains 'open' until ECA's investigation is concluded.

7. Complaint to the European Ombudsman against the European Commission for wrongful inaction concerning EU-funded pushbacks at the EU's external borders in Greece

Submitted to the European Ombudsman on 24 July 2023—together with Legal Centre Lesvos, Mobile Info Team, HIAS and Equal Rights Beyond Borders—the complaint challenges the legality of the European Commission's material and other forms of support to Greece's border enforcement operations and infrastructure of illegal expulsions ('pushbacks') at Greece's Evros river and Aegean sea borders. Based on investigations by Lena Karamanidou (PhD), Border Violence Monitoring Network, Lighthouse Reports, and Forensic Architecture, and expert legal opinion, the complaint demonstrates and articulates the Commission's failure to respond to Greece's misuse and mismanagement of EU funds used in support of systemic breaches of EU and international law.

The complaint extensively demonstrates how, since at least 2018, EU funds—especially through ISF—are being allocated, mismanaged and misused by Greek authorities.

Additionally, it highlights how these funds are, both directly and indirectly, contributing to serious and systemic breaches of EU law at the EU's external border in Greece. Since the Commission knew this for years and yet failed to take appropriate enforcement actions to restrict or suspend funding, the complainants argue that it is responsible for maladministration.

On 15 November 2023, the European Ombudsman sent questions to the Commission, with a request for response by 15 February 2024. The response remains pending.

Containment and abandonment at the EU-Belarus border

8. Complaints before Latvia's public prosecutor for torture, inhuman detention, and refoulement in Latvia-Belarus borderlands

The violence along the EU-Belarus border is emblematic of the EU's "lawless laws" of migration control (Jolkina et al), given the scale of EU law breaches that the Commission and other EU actors have persistently failed to respond to. It is also of course exemplary of the differential treatment at other parts of the EU border in Poland. The majority of those who spent up to 7 months contained in the forest by Latvian forces and turned back by Belarus authorities come from Kurdish and Yazidi communities in Iraq.

de:border began supporting the Belarussian strategic litigation group Respect, Protect, Fulfill (RPF) in early 2022. RPF has several other cases against Latvia pending before the ECtHR, but these are the first complaints to be filed domestically. The aim is to conduct legal advocacy at the EU level and expectedly (following domestic investigative failures) bring these cases to the ECtHR.

9. A.R. v Latvia, A.Z. v Latvia, and S.A. v Latvia: Torture, life endangerment, and refoulement in Latvia-Belarus borderlands

Between October 2022 and March 2023, A.R., A.Z., and S.A. filed individual complaints with the Latvian Prosecutor General, asking it to open criminal investigations into their ill-treatment. All three complaints were dismissed, and no criminal investigations were initiated domestically. In absence of any other domestic remedy, A.R., A.Z., and S.A. are resorting to the European Court of Human Rights. These three complaints have been filed between November 2023 and January 2024 with the European Court of Human Rights, and they concern the treatment that the applicants have endured, at the hands of Latvian authorities, at the Latvia-Belarus border respectively between October 2021 and April 2022 (A.R.), December 2021 and February 2022 (A.Z.), and August 2021 and April 2022 (S.A.).

Research

Transformative and decolonial migration justice and reparations

1. Enforced Disappearances, Necro-Violence, and Posthumous Politics (of Reappearance) in Europe's Borderlands

Following decades of migrant-led struggles to resist and counter the mass killing and disappearance of migrants, particularly throughout the Americas, the UN Committee on Enforced Disappearances adopted a General Comment on enforced disappearances in the migration context in September 2023, providing guidance on the application of the Convention to 'pushbacks' and bordering regimes of endangerment, abandonment, and non-protection as extreme forms of group-based repression tantamount to torture that remove persons from recognition and protection of the law.

As a framework and (counter)narrative lens, the category of enforced disappearances offers an opening for rupturing the im/possibilities of state juridical justice and recentring no-borders visions of migration justice for migrant and bordering communities living with the dead, including through reparative truth and healing. By prefiguring transnational infrastructures for postmortem care and family-facing systems that recognise, accompany and support them in their search for loved ones, the politico-legal framework of enforced disappearances promotes systemic responses to the structural and authoritarian violences at/of borders. Such processes can begin to account for and respond to the causes of border deaths and the repression of truth(s) through necroviolence and post-mortem uncare, that deny the very deaths and 'last rights' of those killed by borders, including the collectivised rights for them to be searched for and identified.

The project aims to create and hold space for co-visioning and co-creation of critical political-legal strategies and interventions that centre collective truth-telling and healing and promote transformative posthumous struggles against the racist state violence of borders.

Movement lawyering and the violence of the laws of borders

2. 'Strategic litigation' against border violence as resistance: The im/possibilities of reclaiming the law

Legal actions against border violence targeting migrants before judicial, quasi-judicial and non-judicial bodies have increased significantly in recent years across the world. The increase in (strategic) litigation has mirrored the expansion of, and developments in, States' border control practices enacted outside of, as well as through, the law. Yet, justice struggles—in particular those situated within the "non-profit justice complex"—have often invisibilised, exceptionalised and irresponsibilised the structural and historical conditions at the root of intersecting forms of violence: in hyperlegalised bordering regimes, the "master's tools" make only "narrow perimeters of change possible and allowable" ([Lorde](#)). In these conditions of im/possibility, legal interventions have often reproduced the "tangled and expansive web of relationships through which carceral logics and practices operate" ([Massaro & Boyce](#)).

This project's first ideation—supported by a British Academy/Leverhulme Small Research Grant. *Reclaiming the law: A global mapping of (strategic) litigation against border violence* (SRG23\230576)—aims to map legal mobilisation, including 'strategic litigation', on the violence of borders through a pilot database of legal interventions at domestic, regional, and international levels. In this part of the project, we seek to evaluate the trajectories of cases, including their cross-fertilisation between different jurisdictional levels, to offer insights into the ways in which such interventions could reclaim law as a means of harm reduction.

Moving beyond the critique of law, this project centres transformative approaches to justice and accountability, as well as 'movement law', which is grounded in solidarity and engagement with social movements as methods ([Akbar, Ashar & Simonson](#)). By engaging in a self-reflexive community-based inquiry, centring relational and transformative justice—'no justice, just us'—as part of an affective politics of rehearsal of freedoms ([Gilmore](#)), the project hopes to prefigure new ways and approaches of resisting the im/possibilities and violences of laws and legal processes in the here and now and to nurture everyday debordering praxes.