

# Saving Grace:

## State and Social Attacks on Migrants and Human Rights Defenders in Italy

Caterina Aiena



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Authors: Caterina Aiena

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## Foreword

In Italy, the 'others' do not have an easy life. The profound economic crisis of the state, the advance of xenophobic right-wing movements, the overuse of violent language by politicians, the political isolation in the management of the refugee crisis within the European Union, has constituted an explosive mixture which has increased the general imbalance of society, and encouraged moral breakdown and barbarization.

Italy is and continues to be a racist country as long as most of the national institutions are racist or complicit in racist policies. In this sense, the management of the refugee crisis by the Italian authorities and the EU is particularly revealing. What we are seeing is an old and well-known game of political football being played by states in which their political interests end up prevailing over the common respect for the rule of law and the safeguarding of human rights. The ever-growing direct and indirect engagement with the Libyan authorities must be seen within the wider context of the action undertaken by the Council of Europe/EU Member states which led progressively to a gradual reduction until exhaustion of EU vessels' rescue capacity and, at the same time, an extremely limited ability of NGOs to fill the Search and Rescue (SAR) gap left by member states. Suffice it to say that no naval assets have been deployed during the last EU Operation Sophia in 2019.<sup>1</sup>

Not surprisingly, the UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, Agnes Callamard, has pointed to the ethically questionable 'European dark web of collusion', consisting of 'a systemic and industrial design of a modern form of slavery and human trafficking that traps migrants in a vicious circle of more control, more danger, and more dependence on facilitators to escape life-threatening perils'.<sup>2</sup> The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, overtly condemned those 'deliberate State policies and practices of exposing migrants to torture or ill-treatment which amount to complicity or other participation in crimes against humanity'.<sup>3</sup> The harsh accusations launched against the EU states consist of the fact that, implicitly or explicitly, they tolerate the risk of migrants' deaths or torture as a necessary part of an effective control of the 'entry policies' based on deterrence, militarization and extraterritoriality in Libya, a country which has become 'the new marketplace for the trafficking of human beings'.<sup>4</sup>

Racism, like bigotry, is encountered in most societies, and Italy is no exception. The growing criminalization of NGOs, the adoption by Italy of its controversial Code of Conduct for NGOs, the repeated cases of confiscation of NGO vessels and administrative sanctions, the ongoing bi-lateral agreements which Italy individually set up with the Libyan authorities as part of their national migration policy, are all actions responding to the same

racist logics. And what is worse, unlike in their manifestos, left and right parties do not seem to find themselves in a confrontational position as expected, especially when coming to terms with this situation. Indeed many of the actions above had been initiated by the Italian left party and subsequently tightened up under the former far-right Minister of Interior Salvini, who has unquestionably fueled a more racialized political discourse. Interestingly, whereas at a political level there has been a funneling of both right and left parties' positions into the same racist securitarian propaganda, at the level of society we are seeing an extremely marked polarization of opinions dividing politicians, communities, and even families and individuals.

Italy is a country imbued with racism in which violent racist language has increasingly become a way to express identity. Many politicians legitimize, stimulate and give space to violent expressions of hatred, not just in language but also content: xenophobia, racism, misogyny, discrimination, denial of rights and dignity, incitement to physical violence, brutality and even death has become the new normal on the web and in public spaces. Hundreds of thousands of people are relentlessly incited to contempt and violence towards the 'others' in order to gain electoral support. A particularly striking case at the time of writing is the brutal killing of a 21-year-old Cape-Verdean immigrant, Willy Monteiro Duarte, on the outskirts of Rome. Brutally beaten to death by a gang with sympathies for the far right and strong anti-migrant sentiment, the killers' relatives reportedly justified the killing on the basis that it was 'only the murder of an immigrant'.<sup>5</sup> A former member of the local board of the League, and sympathizer of Matteo Salvini's party, published a video on his social channel in which he affirmed: "Many Italians are massacred every day by Mao Mao (immigrants). For me you are always an immigrant because you are black and in Italy there are no black people. You are Italian if you are white". The message was echoed in a private users' account in which he said people should rejoice in the killing of 'a chimpanzee' and called the murderers 'his heroes'.

The rise of racialisation – Islamophobia, anti-black, anti-Roma, etc. and their general collapse into pervasive anti-'migrant' discourse – otherises huge swathes of the Italian population regardless of whether they are refugees, long-term residents or Italian citizens.

The rise of nativist discourse has happened across Europe, and in this regard Italy is not exceptional. However, the impact of that discourse, unfiltered, on Italian policy is examined in this report with specific regard to the experience of migrants recently arrived in Italy, to whom a duty of care is owed by the state.

Against this depressing backdrop, Palermo stands out with a high level of mobilization and a strong civil organizations' engagement against Salvini's propaganda. This report also overviews the fieldwork of an IHRC team who travelled to Sicily, primarily Palermo, and spoke with groups and activists working to support migrants and push back against a state fomenting and riding a tide of anti-migrant hatred.

There is much to learn and heed from these findings, for the Italian state and its local authorities, the European Union and its institutions but also civil society and the governments and authorities of other states. Things must change. Let them change for the better.

## Introduction

The once triumphant ethos of a united Europe with open internal borders as the stronghold of the liberal, social democratic values in the continent is everywhere in retreat, because of an ever-growing Euro-scepticism which is increasingly gaining momentum. Be it cause or effect, the perception of an overwhelming 'wave' of migrants coming from North Africa and the Middle East across European borders, massively propagated through the media and by various populist politicians, represents one of the major challenges the European project is facing today.

Britain voted to leave the European Union in 2016. During the campaign, a number of racist, xenophobic and Islamophobic comments were made by politicians and campaigners, blaming the EU for 'migration' to the UK. Despite increased migration in the 2000s facilitated by EU internal border changes and the arrival of migrants from Eastern Europe, the narrative quickly took on a wider flavour of targeting asylum seekers and settled communities of many generations, including and especially Muslim Communities.<sup>6</sup> These various types of racism and xenophobia were not new but took on increasingly interchangeable narratives, with 'migrant' becoming synonymous with East European nationalities, Muslims, Roma, African and Caribbean communities, and even Jews.

This type of discursive overlap is not unique to the UK<sup>7</sup>. During the Brexit negotiations, the then Foreign Secretary Boris Johnson declared that the U.K. must 'take back control of our laws, of our borders and of our cash'.<sup>8</sup> In Germany, the once seemingly rock-solid government of Angela Merkel struggled to form a government after federal elections in September 2017, partly owing to what was perceived as her overly generous reception of migrants into the country, and the so-called 'Islamisation of Germany as a result, a narrative promulgated by the far-right wing party Alternative for Germany resulting in them gaining a foothold in the national Bundestag and becoming the largest opposition party in parliament<sup>9</sup>. The authoritarian Viktor Orbán easily won re-election in Hungary in April 2018 on a platform that was anti-migration, anti-European Union, and anti-Semitic<sup>10</sup>. And, in Italy, after the general elections of March 2018, the centre-left coalition was soundly defeated by the two populist, Euro-sceptic, and anti-migrant parties: the League of Matteo Salvini and the Five Star Movement of Luigi Di Maio. Salvini is on record calling for a 'mass cleansing, street by street, neighbourhood by neighbourhood, of migrants', whereas Di Maio's party calls to put an end to the 'business of migration'.<sup>11</sup>

While migration is not anything new, it is on the rise. People are forced to migrate for an array of reasons, particularly war and conflicts; persecution in the homeland; environmental degradation and consequential extreme poverty. Climate change is considered a main driver

of population displacement and migration. Indeed, environmental migrants, including economic migrants, are expected to rise from 200 million to 1 billion by 2050, according to UN forecasts<sup>12</sup>. However, while there is a greater number of people on the move, the options for regular movement have remained limited, leading to clandestine and often very dangerous and risky journeys. Since 2000, over 75,000 people have perished on cross-border migration routes worldwide, whereas from 2013 to date over 20,300 fatalities have been recorded on the Mediterranean route, 82% of whom drowned trying to traverse the Central Mediterranean route<sup>13</sup>.

Due to the peninsula's geographical position and close proximity to the North African coast, the Central Mediterranean route has become gradually more prominent than others. Once known as "Mare Nostrum" (literally 'Our Sea') to express the Roman conception of the Mediterranean as a common economic, cultural and political space, the Mediterranean today has become a firm and fatal dividing line between the rich "North" and the poor "South". In 2015, 1,600 fatalities in the Mediterranean were recorded in only four months; in 2016, 5,100 out of 8,000 migrants who died worldwide drowned in the Mediterranean; in 2018, it was estimated that out of every 100 people crossing the sea five died from drowning, the highest percentage in comparison to fatalities in the same year in other countries; Greece (one fatality every 300 people), Spain (1.2 for every 100 people). As of the month of November 2020, 945 migrants had died while crossing the Mediterranean Sea, of whom 720 perished on the central route of the Mediterranean (71%). According to the Missing Migrants Project (IOM), of 2,076 migrant fatalities recorded worldwide in 2020, the Mediterranean route is the region with most fatalities in absolute numbers (945, almost 35% thereof).<sup>14</sup> Numbers of migrant arrivals in Italy in 2020 show that the phenomenon is still on the rise, with almost three times more arriving than in 2019.<sup>15</sup>

The Mediterranean route has thus attained the dubious distinction of 'the deadliest route in the world'. The principal destination for sea crossings, boats and rafts are the southernmost Italian territories, the Pelagie Islands. These islands are 113 km from Tunisia, 167 km from Libya and 207 km from Sicily. The proximity between these islands and the African mainland has caused people smuggling organisations to employ makeshift boats and rafts that are hardly seaworthy and generally filled way above capacity. Official reports list boats, including rubber dinghies, filled up to two or three times nominal capacity.

**Sadly, these figures seem to be only the tip of the iceberg. The available data from the UN Refugee Agency (UNHRC) and International Organization for Migration (IOM) in fact exclude deaths that occur in immigration detention facilities or in refugee camps, or after deportation to a migrant's homeland, as well as deaths more loosely connected with migrants' irregular status, such as those resulting from**

**labour exploitation. Therefore, there remains a significant gap in knowledge of the real data, as many deaths are never registered or, when deaths occur at sea, many of the deceased may not be recovered nor all the shipwrecks reported. In addition, the involvement of criminal actors, border guards, and others in the process of irregular migration might make survivors fearful of reporting deaths, and some deaths may even be actively covered up.<sup>16</sup>**

The mainstreaming of far-right and populist propaganda feeding the public debate is profoundly self-serving and masks deeper problems affecting the country. By echoing the refrain of an imminent ‘invasion of savages’<sup>17</sup> and the ‘lucrative business of migration’<sup>18</sup> on the part of NGOs, the media and the populist establishment seem increasingly prone to scapegoating migrants to explain wider problems: the political and social crisis of Italian democracy and the EU; the pervasive corruption at all levels of public life; the never-ending economic instability. In this context, NGOs have been increasingly targeted by punitive measures by the political elite and smear campaigns by traditional and social media, often labelled as ‘the pull factors’ or ‘the sea taxis’ for inadvertently encouraging more migrants to attempt the dangerous sea crossing through the guarantee that they will be rescued in the middle of the Mediterranean. Yet, the figures show a different reality.

As evidence of that, the end of the Italian maritime rescue operation called Mare Nostrum did not lead to a decrease in the flows of migrants in 2014; to the contrary the number of migrants on boats that departed the Libyan coast increased seeing over 33,000 arrivals by May 2015 compared to just over 26,000 in the same period in 2014. Therefore, the large increase in flows through the Mediterranean is more likely to have been caused by push factors, as the many instances of conflicts in Libya, Syrian Arab Republic, Iraq, Central African Republic, and South Sudan and Eritrea would suggest.

Indisputably, migratory flows have proved to be dynamic and highly adaptable to shifting patterns: as Libya became more dangerous, boat departures from Egypt increased; as controls increased in the Sinai, smugglers moved into other parts of Egypt; as Spain becomes more elusive for migrants on the Western Mediterranean route, more migrants move to Libya to make the journey across the Mediterranean. The dynamism of the flows therefore demonstrates that efforts to curtail the flows usually just moves them elsewhere. Yet, despite the grave situation for migrants in Libya<sup>19</sup>, the inflows into Libya have not ceased. This suggests that migrants who continue to travel to Libya are potentially motivated by push factors that are much stronger than the pull factors.

*What this report is about*

This report seeks to:

- (I) lay out the operation and operationalisation of racism in political discourse and policy in Italy with specific reference to what has been dubbed the ‘migrant crisis’<sup>20</sup> accelerated by but not caused by the mass migrations that took place in and around 2015. This report seeks to expose both the perniciousness of the narratives employed, their utilisation of anti-Muslim and other racist and xenophobic tropes that now attach not simply to migrant, and other minoritised communities, but also activists and civil society working either in sea rescues (in full concordance with international law) through the prism of the Domination Hate Model of Intercultural Relations (DHMIR)<sup>21</sup> and the Counternarratives to Islamophobia project (CIK)<sup>22</sup>;
- (II) underline the legal responsibilities and framework that past and current Italian governments should have been working in and highlight the repeated violations of such;
- (III) overview the findings of fieldwork and survey work by IHRC with Italian civil society organisations working in the field in order to present recommendations to civil society, the Italian government, relevant local and national authorities, media and law enforcement institutions and the EU, on what needs to happen to restore civility into the national and regional conversation, uphold international law and states’ obligations under it and ameliorate the situation of refugees and other minoritised groups.

# I. Background on Italy

## A) A DEMOGRAPHIC OVERVIEW

As of 2020, there are approximately 5.3 million foreign national residents in Italy, representing 8.9% of the whole country's population. African and Asian immigrants rank as the second and the third groups in terms of place of origin (approx. 20-22% each) compared to European migrants who are by far the largest group of immigrants (over 50%). This available data excludes foreign nationals who have subsequently acquired Italian nationality; legal immigrants without a residence, i.e migrants who have a regular permit but are not recorded at any municipal registry office, including refugees<sup>23</sup>. To this, a total of pending asylum seekers and illegal immigrants, whose numbers are the most difficult to determine, must be added. According to the ISMU Foundation, non-resident migrants represent 966 thousand units, bringing the total of foreign nationals to 6.3 million, that is 10% of the total population.<sup>24</sup>

Analysing the most prominent countries of origin, we see a discrepancy between figures in the rest of Italy and those recorded in Sicily. As of 2019, statistics read as following:

ITALY			SICILY		
Rank	Country of Origin	Percentage	Rank	Country of Origin	Percentage
1	Morocco	8.0%	1	Tunisia	10.4%
2	China	5.7%	2	Morocco	7.7%
3	Philippines	3.2%	3	Sri Lanka	6.8%
4	India	3.0%	4	Bangladesh	4.5%
5	Bangladesh	2.7%	5	China	3.7%
6	Egypt	2.4%	6	Philippines	2.7%
7	Pakistan	2.3%	7	Nigeria	2.4%
8	Nigeria	2.2%	8	Gambia	2.0%
9	Senegal	2.1%	9	Senegal	1.8%
10	Sri Lanka	2.1%	10	Mauritius	1.3%
11	Tunisia	1.8%	11	India	1.0%

Table 1: Compared Composition of foreign-born population in 2019, source Lenius



The distribution of the foreign-born population is largely uneven in Italy: 57.5% of immigrants live in the northern part of the country (the most economically developed area), 25.4% in the central one, while only 17.3% live in the southern regions. In April 2020, Lombardy was the region in Italy hosting the largest share of immigrants (22%). Sicily is the second hosting region in the southern cluster (4%), and the second region on a national scale recording the highest growth rate (3.6%) in terms of number of immigrants<sup>25</sup>.

Despite the aim of the Italian authorities to achieve a more equitable geographical distribution of reception facilities, to date Sicily continues to host the largest number of unaccompanied and separated children (UASC), peaking at 38% of the total number of UASC registered in 2018 (almost 70,000) arriving in Italy by sea<sup>26</sup>. The significant presence of UASC (7,272 in June 2019) and the growing number of UASC who have turned 18 (around 60,000 over the last five years) have highlighted the need to better understand the measures and opportunities for the protection and social inclusion of this specific group in their transition to adulthood<sup>27</sup>.

## **B) THE SOCIOPOLITICAL LANDSCAPE**

Immigration continues to be a contentious issue in Italy and remains on top of a political agenda often dominated by anti-migrant sentiment and a paranoid political rhetoric. Far from being an isolated case, over the past three years the far-right-wing parties have gained ground especially as a result of their stands against immigration in thirteen of the EU Member states, doubling from 12.5% in January 2013 to 25% today. Latest polling data does show, however, that the trend is highly concentrated in a few countries rather than representing a broad-based movement across the continent; much anti-migrant-driven sentiment happens in Germany, where the AFD grabbed 13% in 2017; in Italy, where the League Party got over 38% of votes in the European election of 2019; and in Poland, where the Law and Justice Party won 38% of votes in October 2015<sup>28</sup>.

Accordingly, a recent PEW Research Centre survey (2018) warned that majorities in Greece (82%), Hungary (72%), Italy (71%) and Germany (58%) said that fewer immigrants or no immigrants at all should be allowed to move to their countries<sup>29</sup>. Remarkably, the research elaborated a measurement of what has been called the Nationalist, anti-Immigrant and anti-religious Minority sentiment (NIM), extended to Muslims and Jews. On a 10-point scale, where the score is in direct relation to the percentage of nationalist, anti-immigrant and anti-religious minority comments, Italy came in top (38%)<sup>30</sup>.



Figure 1: NIM Score in 2017, source Pew Research Centre

Italians' perception of migration is far removed from reality. According to the Eurobarometer of 2018, almost half of Italians consider immigration as the main problem at the national level; one out of two believes that there are more illegal immigrants than those legally staying. Moreover, the estimated proportion of immigrants according to the majority of Italians is four times greater than the actual figures. This comes as a confirmation of the results shown in 'The Pyramid of Hate' report by the Italian Parliamentary Committee Jo Cox on Hate, Intolerance, Xenophobia and Racism, according to which Italy is the least well-informed country in the world with respect to immigration. Indeed, the majority thinks that immigrants living in Italy make up 30% of the population (the true figure is 8%), and that Muslims make up 20%, whereas the real figure is 4%<sup>31</sup>.

From varying reports and studies, there have emerged persistent underlying socio-political divides as drivers of anti-migrant and anti-minorities' sentiments. On the one hand, young people who are well educated, or with experience abroad, or who are economically secure, seem to be more reluctant to develop hostile attitudes towards the 'others', whatever cluster they belong to. On the other hand, those who are older, or less educated, or more economically vulnerable appear more responsive to nationalist propaganda<sup>32</sup>. Therefore, lack of familiarity or acquaintance, long lasting economic crisis and scarce education seem to become the breeding ground for the rise of xenophobic and populist parties who, in their turn, perpetuate and exploit social discontent in order to gain political support. Indeed, according to the 2018 Eurobarometer report, Italians who have lower levels of education

and those who often have problems paying their bills gave an overestimation of the proportion of immigrants within the country's borders<sup>33</sup>.

Deterioration in the tone of public discourse led by far-right parties in Italy is not new. Representatives of far-right parties and movements frequently use inflammatory or derogatory language in speeches against migrants or minorities through scornful narratives labelling migrants as a burden on national welfare, or more inclined to criminality, or 'job-stealers' taking work away from Italians.<sup>34</sup> This can include Islamophobic hate speech<sup>35</sup>.

**In January 2020, during a political campaign for the regional election in Emilia Romagna, the former interior minister and the League leader Salvini opted to employ shock tactics to shore up the vote. In widely-circulated videos, Salvini - surrounded by cameras and a neighbourhood resident - rings an apartment building buzzer. When a person answers, Salvini says he's heard that drugs are sold there and asks whether her son was a drug pusher. After being hung up on, Salvini asks the crowd around him, "That was him? He's Tunisian?" In the video Salvini buzzed the residence a second time, saying he wanted to "restore your family's good name because someone says that you and your son deal drugs."**

**The alleged pusher, 17 sought legal advice from a local lawyer who set up a campaign against hate speech for possible legal action. "I'm not a drug dealer. I play football. In a few months I'm going to be a father," said the young man in a video posted on La Repubblica news, who said he was born in Italy to Tunisian parents.<sup>36</sup>**

Paradigmatic in this sense is the rise of the Northern League party during the period between the national election in 2013 and the European election in 2019, in which the political campaign against refugees and migrants played a considerable role. In the general election of 2018, for the first time in history the League obtained 17% of votes at national level thanks to its better performance in the poorer southern regions of the country, traditionally antagonistic to the party. But this was only the start. The League's success accelerated during the European election of 2019 peaking at an unprecedented 34% in just six months. Only five years before, in 2013, the League's support barely reached 4%, as clearly shown in the figure below.

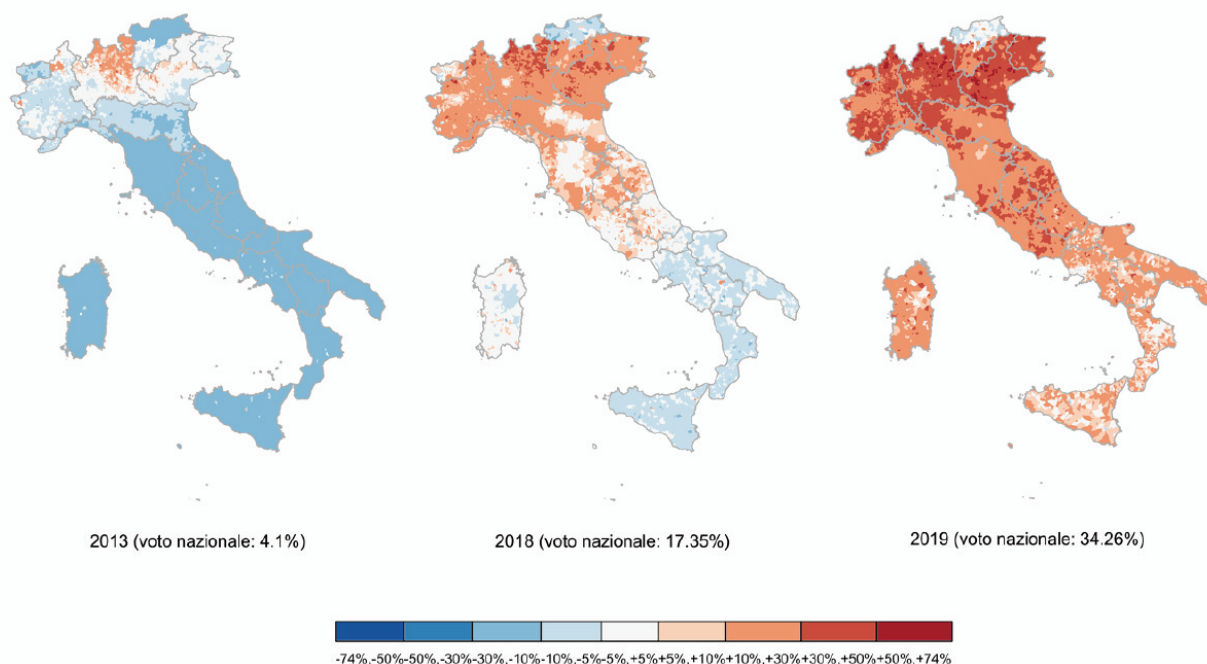


Figure 2: Increased reach of League across time, source Youtrend

Thus, one set of NGO workers, in a project in a town away from disembarkation points testify to the shift in local discourse and the polarization therein:

*Even if the local people are quite open to diversity and used to welcome migrants, the truth is that the general situation of these small towns is already – and has become more and more - problematic in terms of financial stability, job stability, or even having better employment and development prospects. As the situation has worsened, the response from the local people towards migrants has changed in two ways; firstly, by confirming and reinforcing the sentiment of hosting them according to the narrative “we are both poor, we should help each other”; secondly by expressing social discomfort according to the “we have nothing to offer, go back to your country” mode.*

From Interview 2 (IHRC, 2019)

The reason behind this successful political trajectory is partially due to the ever-growing role played by social media that becomes the megaphone of the incendiary tones used by political parties during the campaign, and a facilitator of the spreading of fake-news.

Various reports (COSPE, Carta di Roma, UN Interregional Crime and Justice Research Institute) have demonstrated an alarming relationship between the expansion of hate speech in social fora and instances of stereotyping, manipulation, misrepresentation of migrants in the Italian media.<sup>37</sup>

Over the course of 2017 and 2018 in Italy, far-right-wing groups promoted myths or “fake news” about migration, amplified by ad-hoc online campaigns, social media, online petitions and videos, which led to an exponential rise in the number of racist websites. Instead of pseudoscientific theories of racial inferiority, they focus exclusively on the purportedly negative qualities of immigrants’ through the dissemination of fake news and so-called “post-truth” reporting, which tends to appeal to emotions and personal opinions ahead of factual reality. A case in point is the so-called “The Beast”, a computer system created by the League, which has ‘few equals in Europe in intercepting people’s desires and needs and entering their heads in the most subliminal and imperceptible way’<sup>38</sup>. It operates through an algorithm which scientifically analyses thousands and thousands of the best-performing posts and tweets as well as gathers data on what kind of people have interacted with those posts. Then, messages and keywords are put together, ready to be spread on Facebook, proliferated through trolls, robots or piloted troublemakers. Thanks to this algorithm, the League’s leader Salvini appears always in tune with public opinion and prevailing moods. In fact, Salvini’s posts and videos’ goals are threefold: firstly to immediately occupy the media space; secondly, to polarise the whole discussion around “pro-Salvini and anti-Salvini” arguments; lastly, to launch strong messages provoking “negative feelings” - anger, fear and aggression - so as to “lower the guard” of those who listen.

## II. THE MIGRATORY FLOWS

Libya is still the most common departure point, but boat departures from Egypt and Turkey have significantly increased. Of the migrants who reached Italy by sea in 2018, 54 percent had departed from Libya, compared to 90 percent in 2017.<sup>39</sup> The main flows into Libya remained even after the revolution, yet a number of newer routes into and out of Libya emerged. Specifically, there were flows out of Libya into Egypt and flows between Tunisia and Libya in both directions. The main boat departure points from Libya are beachheads 50km to the east and west of Tripoli, around Zwarah, Zawiya, Tripoli and increasingly from Benghazi.

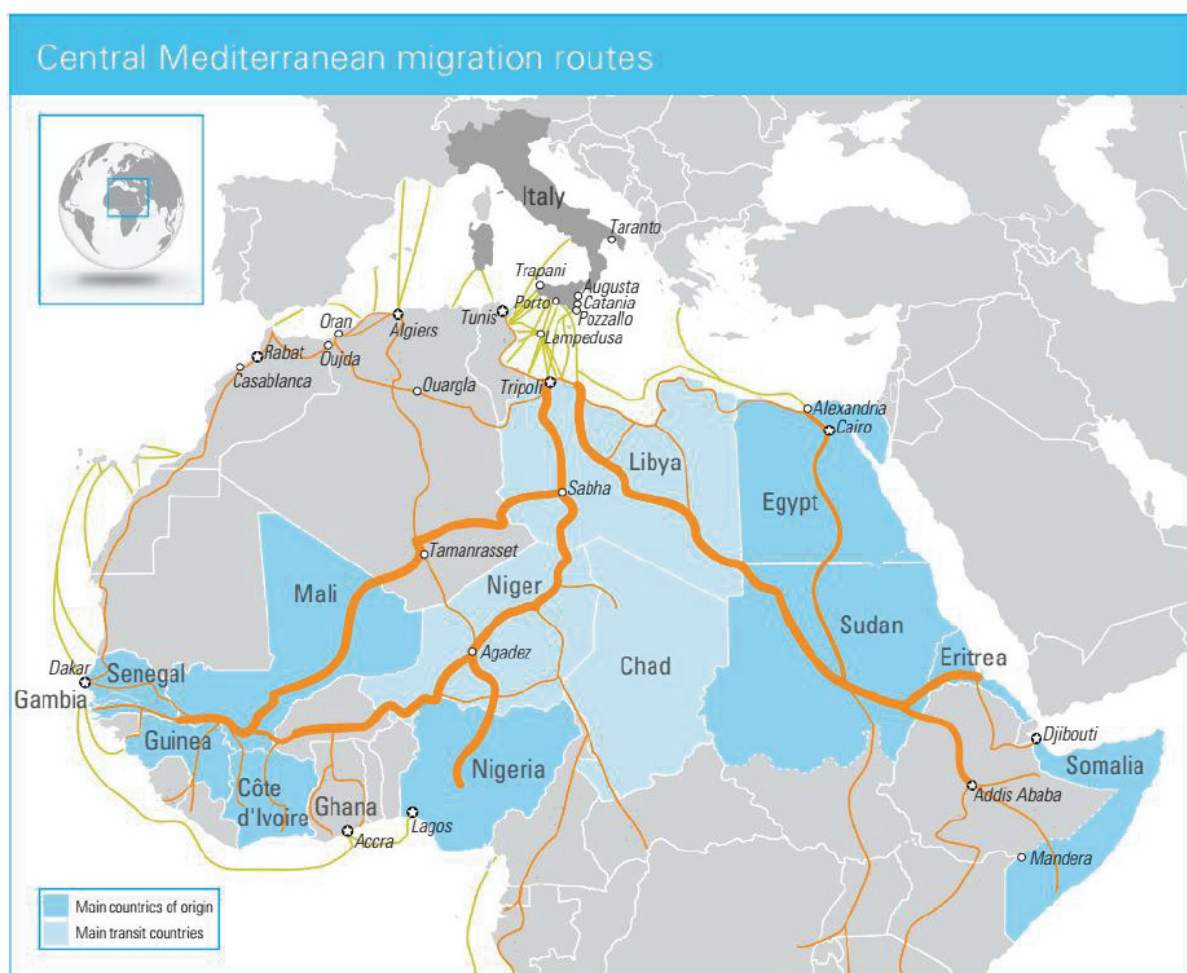
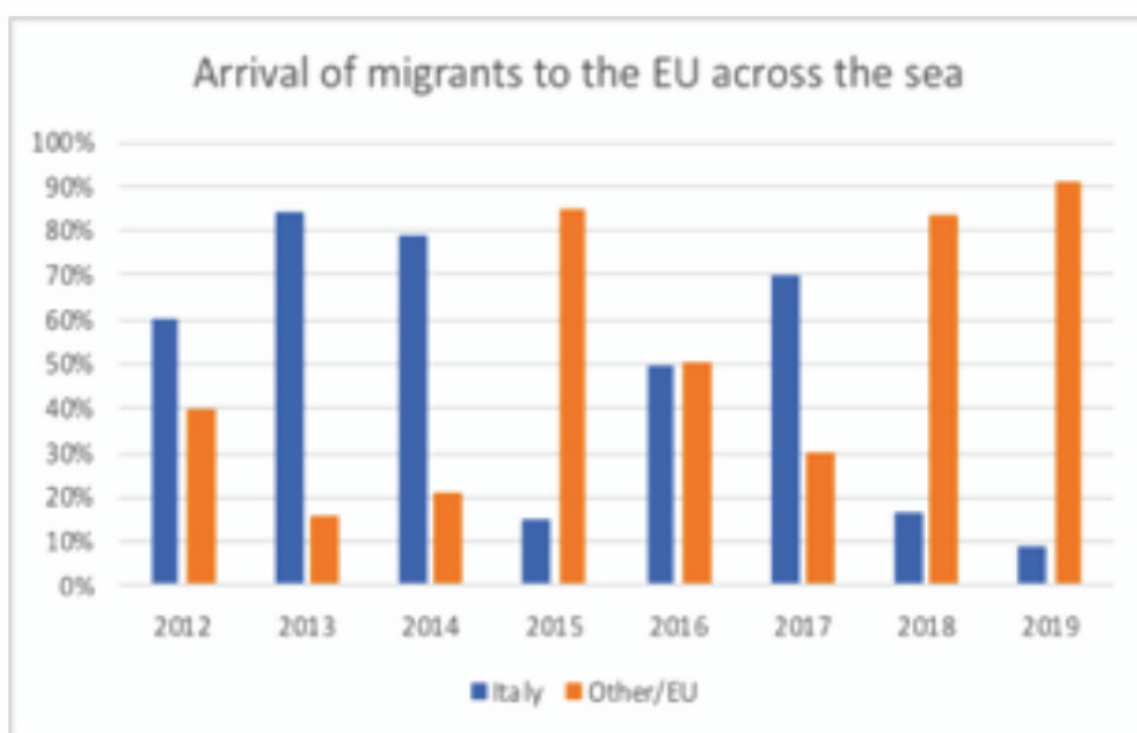


Figure 3: Central Mediterranean Migration Route, source UNICEF

## A) BACKGROUND FIGURES

Between 2013 and November 2020, Italy took in over 740,000 migrants, mainly from sub-Saharan Africa<sup>40</sup>. Italy, and, in particular, its southern island of Lampedusa, received hundreds of thousands of Africans and Middle-Easterners transported by smugglers and NGOs operating along the ungoverned coast of the failed state of Libya. Of those, almost 81,851 were unaccompanied minors.<sup>41</sup>

As a result of succeeding political agreements between the countries, particularly as for the Italy-Libya deal in 2015 and 2017 and the EU-Turkey deal in 2016, the Mediterranean migratory flows toward the southern European countries have followed a “tap-locking” pattern. This is shown in the table below:



**Figure 4: Arrival of migrants to the EU between 2012-2019**

The first switch in crossing was recorded in 2016 due to the controversial EU-Turkey agreement made to control the migratory flow towards the Greek islands that had peaked at one million in the preceding year. The crux of the deal was that every person arriving irregularly (i.e. by boat, without official permission or passage) to the Greek islands would be returned to Turkey. In exchange, Turkey would benefit from €3 billion of European funds, rising to €6 billion over the years, plus a number of political gestures, such as the revival of EU accession talks, visa-free travel for Turkish nationals and customs union reform. Also, to European states, the deal was particularly beneficial: it externalised their borders and reduced the number of refugees arriving in their countries. However, it had deleterious

effects for thousands of refugees who have been abandoned in inappropriate and hostile living conditions, with little access to sufficient physical, psychological and legal support.

As a result of the wiping out of the arrivals to the Greek coast, the migratory flux transferred to the new route in the Central Mediterranean Sea. Based on the available estimates, in 2016-2017 arrivals to Greek coastlines plummeted by 80%, whereas the uptake of refugee arrivals on Italy's coastline started increasing again. This prompted a second change in 2018 to the Memorandum of Understanding of 2017 on curbing migration signed by Libya's representatives and the then Italian Interior Minister and former spymaster Marco Minniti, under the leftist government. With the aim of curbing migrant flow through the Central Mediterranean route, the deal opened a joint operation with Libyan armed militias responsible to control migrant smuggling. Not surprisingly, 80% of the Libyan Coast Guard have been recruited from the same militias and incorporated into the public guard units<sup>42</sup>.

Across the years, the agreement was renewed by right and left-wing governments. In this regard, no change in the migration policies occurred across the left-right political spectrum, despite the opposition of numerous associations and a call by the Council of Europe Commissioner for Human Rights. According to the new agreement of 2020, Italy undertook to financially support the Libyan Coast Guard for search and rescue activities at sea and in the desert, in the form of training courses and equipment supplies<sup>43</sup>. From the start of the arrangement, Italy has equipped Libya with naval units, supplied and financed the rehabilitation of several patrol boats and ensured the presence in Tripoli of an Italian naval unit (composed by the Tremiti Ship, Capri Ship and Caprera Ship). The Capri and Caprera ships coordinate the interception of boats in the sea with the Libyan authorities<sup>44</sup>.

Looking at the death toll, the deadly impact on migrants appears even more appalling; from 2013 to date, over 20,000 migrants have died in the waters of the Mediterranean Sea. Of these, according to the IOM Missing Migrants Project, nearly 2,172 were children reported dead or missing since 2014. In particular, the trip to Italy is the most dangerous: two thirds of the dead and missing in the Mediterranean were headed for Italy. The year 2018 in particular was the most fatal: 5.3% out of 100 people who had tried to reach the Italian coast did not make it, compared to 2.5% in 2016 and higher than other countries, as for instance Greece (one death out of every 300 people) and Spain (1.2 out of 100). While the number of migrants dying at sea dropped after 2018 in absolute terms, the death ratio along the Central Mediterranean route increased from 2.6% in 2017 to 3.5% in 2018 and, up to 10% in April 2019<sup>45</sup>. That is to say, if fewer people died in their attempt to cross the sea, more of them perished elsewhere along the journey.

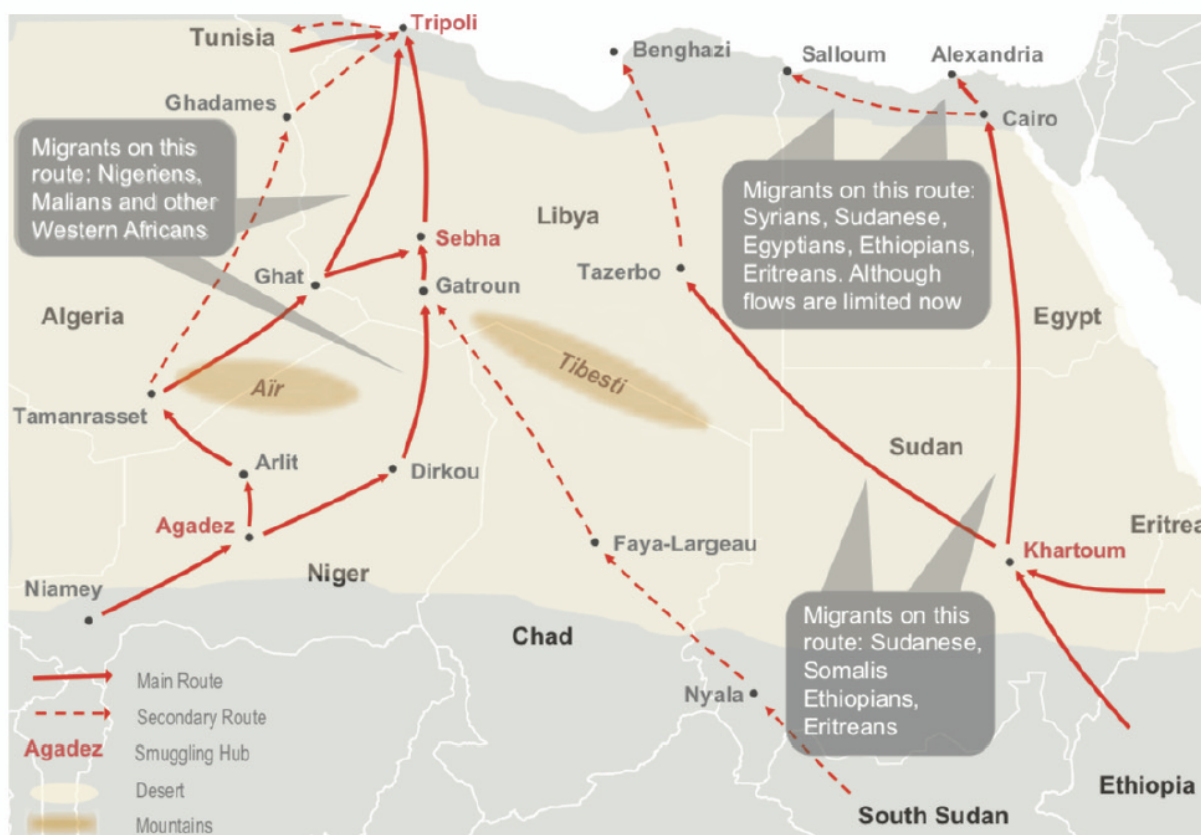
These are approximate data as not all shipwrecks are reported in the press, especially those occurring near the Libyan coast. The actual data could therefore be worse if we consider also the people who died in detention camps and while crossing the desert. The



ever-changing routes, the shift towards longer and more dangerous routes to evade the intensified anti-immigration patrols, coordinated by the European Frontex Agency since 2006 and outsourced to the transit countries, firstly Turkey, Egypt, Algeria, Morocco, Mauritania and Senegal, seem to confirm this proposition. Among the dead, there are the victims of collective deportations carried out by the governments of Tripoli, Algiers and Rabat, accustomed for years - according to reports in the press - to abandoning groups of hundreds of people in border areas in the middle of the desert.

## **B) THE SMUGGLERS AND THE ITALIAN 'AL-BIJA AFFAIR'**

Migration flows in the Mediterranean give rise to an illicit turnover of hundreds of millions of euros per year. Travel prices vary from border to border, ranging between \$500 and \$2,000, paid in dollars or euros. Although there are car journeys organised by the migrants themselves, most departures are controlled by and paid to local networks of the Nigerian or Sudanese mafias. At the base of the system there are the so-called recruiters (or connection men), usually compatriots of migrants residing in their areas of origin, who 'sell' their contacts to Libyan or Moroccan smugglers who then organise the last stretch of the journey to the embarkation point. The sea crossing is then arranged by the passeurs, translatable to "trafficker", often affiliated to the Libyan militias in cooperation with the Libyan Coast Guard. Only rarely, highly educated people manage to reach their departure countries on their own, dealing directly with the passeurs contacted by their relatives already settled in Europe. The payment of the trip is made to Nigeria and Sudanese organised criminal networks, while the Libyan smugglers will make their pound of flesh by blackmailing the migrants' families whose relatives they torture in the detention centres.



**Figure 5: Routes to North Africa on the Central Mediterranean Route, source IOM**

According to survivors, the second cycle of the exploitation starts there with migrants brutally tortured, and ends with the sea crossing organised by the smugglers. The main strategy used by the human traffickers during their crossings consists of choosing one of the migrants on board as the ‘boatman’ during the final stage of the crossing, often under pain of torture or death. It is common practice for the human traffickers to escort migrants in the boat until they reach international waters. After that, they trans-ship to return home leaving the migrants alone with the “presumed boatman” who takes the control of the boat until they reach land. The presumed boatman usually receives a few hours’ instruction before the crossing, but has been tortured and brainwashed for months beforehand (Anonymous, personal communication, 2019). The employment of overfilled boats and rafts in precarious conditions has led to several tragic accidents at sea, as in 2007, 2009, 2011, 2013 and 2015. Thereafter, the smuggling organisations have changed their tactics and accidents have become harder to document: instead of escorting the boat for the whole duration of the crossing until the Sicilian coastlines, the smugglers now aim just to exit Libyan territorial waters and then rely on rescue operations from passing mercantile vessels, NGOs and Italian and Maltese coastguards and militaries.

Italian authorities have played a dishonourable role in this sordid business. As a matter of fact, through the repeated Italian-Libyan deals over the years, the Italian governments have managed to assure 'political investiture' to these militias in a number of ways. To start with, at the time of Berlusconi and Gaddafi's rule, the then Italian government made itself complicit in funding the construction of two detention camps in Kufrah and Gharyan<sup>46</sup>. Since the agreement of 2017 to support the formation of the national Libyan Coast Guard, the Italian government has preferred to turn a blind eye to the incorporation of militiamen into the body, which the Government of National Accord (GNA) of Al-Sarraj in Tripoli needed as intermediaries to ensure the control of the coastal lands of Zuwara, Sabatha and Zuwaya, the three main coastal smuggling hubs<sup>47</sup>. Indeed, after the fall of Libyan leader Muammar Gaddafi in 2011, these armed gangs have become increasingly powerful and have gradually filled the power vacuum as rival governments compete for control across the country. These local armed militia – Anas Dabbashi (Sabratha), 48 Brigade (Sabratha) and Al-Nasr (Zawiya)– have in fact turned human trafficking into a profitable industry, making it more efficient but more brutal. The complicity between militias and the coastguard has been well documented, especially in the areas of Zawiya and Sabratha.

Accounts of this complicit include allegations of collusion between the Dabbashi militia (which reportedly, has for years been heavily involved in human trafficking and fuel smuggling in Sabratha area) running the external security of the Italian oil giant Eni's Mellitah Oil & Gas compound. Other allegations and reports include those of the most powerful militia in the Zawiya area, the Kashlaf's brigade being in charge of escorting the rubber boats in exchange for toll payments. They are protected by the Coast Guard chief Abdurrahman Al Milad Aka (known as al-Bija), the alleged leader of the local trade in human beings and trafficking of diesel and gasoline worth a reported ten million euros per month. He works under the protection of Mohamed Khushlaf, the head of the security department of Zawiya's refinery. Their modus operandi is a payoff in cash in return for navy equipment to their militias as gatekeepers of migrants during crossings and technical support to the Libyan Department for Combating Illegal Migration (DCIM) controlling the detention centres in the area, the same centres where refugees and migrants are arbitrarily held and routinely exposed to ill-treatment. Smugglers who don't pay a cut of their earnings to Al Bija, find their boats intercepted by his own 'coast guard', who can steal the boat engines, leaving the refugee-laden boats stranded at sea, or bring them back to the Al Nasser Detention Centre controlled by Al Bija's tribe, the Abu Hamyra. The business is cited in the UN report of 2017<sup>48</sup>.

The relationship between Al-Bija and the Italian authorities found itself in the firing line in 2017, when journalistic investigations by Nancy Porsia and Nello Scavo reported that the human trafficker was officially invited to Italy as representative of the Libyan National Guard, to 'study' the reception system and negotiate with Italian authorities. Put lately under police protection due to al-Bija's barely-disguised death threats, the two journalists shed light on the connection between whom they called the 'necessary criminal' and the

Italian politicians turning a blind eye to the crimes committed in the name of their respective domestic interests.<sup>49</sup> Both investigations captured the attention of the ICC and UN Security Council Committee which in 2018 approved the addition of Al-Bija and other smugglers affiliated to his militia to the list of individuals subject to an assets freeze and travel ban<sup>50</sup>. Several witnesses in criminal investigations have stated they were picked up at sea by armed men on a Coast Guard ship called *Tallil* (used by al-Bilad) and taken to the al-Nasr detention centre, where they were reportedly held in brutal conditions and subjected to beatings.

## C) THE DOUBLE-SIDED ATTACKS ON THE RESCUERS

On the occasion of the Informal Meeting of the Justice and Home Affairs Ministers, held on 6th July 2017 in Tallinn, the EU's Interior Ministers welcomed the initiative of the Italian authorities to ensure that NGO vessels involved in Search and Rescue (SAR) activities operate within, and abide by, a set of clear rules, in the form of a code of conduct to be urgently finalised by the Italian authorities, in consultation with the Commission and in cooperation with the relevant stakeholders, including the NGOs themselves. The Italian initiative was also included in the "Action Plan on measures to support Italy, to reduce pressure along the Central Mediterranean route and increase solidarity" submitted by the European Commission.

A failure to comply would result in safety inspections, additional extra certification, or even being refused "disembarkations in national ports in non-emergency situations," meaning the rescue ships would have to divert to ports in other countries. The most significant rules included<sup>51</sup>:

- A) except in situations of imminent danger, not to enter the territorial waters of Libya;
- B) never to switch off the Automatic Identification System (AIS) and LRIT transponders if they are installed on the ship;
- C) not to signal human traffickers with flares or radio to coordinate with them when to send out their dinghies;
- D) not to transfer those rescued onto other vessels;
- E) commit to carrying a policeman to travel on board whenever requested in order to identify and prosecute human traffickers among the migrants;

NGOs were divided in accepting the code of conduct. NGOs including MSF, Sea-Watch, Sea-Eye, Jugend Rettet, SOS Méditerranée, refused to sign a new code of conduct, whereas MOAS, Proactiva Open Arms and Save the Children agreed to the conditions. However, the code came under criticism from Human Rights Watch and Amnesty International who said it could lead to a decrease in the efficiency and capacity of the search and rescue response and an increase in the number of deaths. The code was also severely criticised by ASGI (Association for Legal Studies on Immigration), which published a position paper on the issue<sup>52</sup>. The rebel NGOs refusing the code underscored the fact that the proposed code seemed to criminalise the search and rescue operations, especially following the statement by many populist leaders who accused NGOs of working with human smugglers, a charge which the charities deny and for which the evidence remains outstanding.

As a result, the Mediterranean Sea has become as dangerous for the rescuers as it is for the rescued. In May 2017, video footage showed an attempt of ramming by the Libyan navy against a NGO rescue ship, the Sea-Watch, during a return operation. The incident, in which a patrol vessel of the Libyan navy nearly collided into the NGO boat as it tried to escort the refugee boats back to Libya, was documented by Sea-Watch staff<sup>53</sup>. The same month, MSF reported that when the NGO was completing a rescue operation and boarding 20 migrants, the Libyan Guard started firing in the air<sup>54</sup>. It was not the first time the Libyan Guards have opened fire near or at rescuers. The previous MSF ship, the Bourbon Argos, found itself raked with gunfire, while unidentified Libyan gunmen boarded the ship, plunging the staff into panic for two hours<sup>55</sup>. Also, the Mission Lifeline's team reported being attacked by the Libyan coast guard vessel that fired shots and boarded the ship, demanding the return of migrants. Recently, in November 2019, the Sea-Eye rescue was threatened by the Libyans who positioned themselves between the Alan Kurdi ship and the rubber boat to stop rescue efforts. According to the report, the Libyan militia threatened the captain via radio, aiming their boat's mounted guns at the ship. The situation further escalated when warning shots were fired into the air and at people in the water<sup>56</sup>.

Following the incidents, MSF decided to suspend their rescue activities on board the Prudence ship in protest against the restrictions and repeated threats by the Libyan "Coast Guard". In December 2018, SOS Méditerranée was forced to end operations of the Aquarius rescue ship. This came after attacks by EU states that stripped the vessel of its registration and produced criminal accusations against the team. The same year, Save the Children, who signed the code of conduct, was forced to pause its search and rescue operations as a result of allegations raised by the Libyan Navy and the Italian government that it was providing an incentive for smugglers to send migrants on flimsy overcrowded boats in the belief that they will be rescued at sea.

At the time of writing, the organisations active in the Mediterranean are nine, operating 12 rescue boats, among which two are flagged in Italy. They are:

1. **Doctors Without Borders (MSF, flagged in Italy).** An international organisation based in Italy. It was active with three ships, the Italian-flagged Vos Prudence, Argos, Dignity I, currently inactive. It was also on board the SOS Méditerranée ship, the Aquarius. The crew is made up of MSF operators.
2. **SOS Méditerranée.** It is an international, Italian-French-German humanitarian association. It has two ships currently in port, the Aquarius and the Ocean Viking, respectively flagged in Gibraltar and Norway. The crew is made up of operators and volunteers, in partnership with MSF.
3. **Save the Children, (flagged in Italy).** The organisation is present in 125 countries around the world, including Italy. In the Mediterranean it had the Italian-flagged ship Vos Hestia, currently stopped. The crew was made up of MSF operators.
4. **Migrant Offshore Aid Station (MOAS).** Founded in Malta in 2014, it had one ship, the Phoenix, flagged in Belize, currently stopped. The crew was made up of operators and volunteers of Emergency and Red Cross
5. **Proactiva Open Arms.** This is a Spanish organisation active in search and rescue operations with three ships, but only two are currently operating: the Astral and Open Arms, both flagged in Spain. The crew is made up of operators and volunteers.
6. **Jugend Rettet:** A German NGO, present in the Mediterranean with one ship, the Juventa, flagged in the Netherlands. Seized on allegation of cooperation with migrant smugglers, the NGO is not presently active in search and rescue activity.
7. **Life Boat:** German NGO with one ship, the Minden. The crew is made up of volunteers. It ceased operations in 2019.
8. **Sea Watch:** A German organisation supported by the Evangelical Church with four ships. Only one, the Sea Watch 4, is currently operating in partnership with DWB and United4Rescue. The crew is made up of volunteers. It runs two small planes, the Moonbird and the Seabird, which fly over the stretch of sea between Italy and Libya in search of boats in difficulty. The latter works in cooperation with the Swiss NGO Humanitarian Pilots Initiative
9. **Sea Eye:** This German organisation, in cooperation with Proem-aid, has three ships, the Sea-Eye, the Alan Kurdi and Seefuchs, all flagged in Germany. The Alan Kurdi is in port temporarily, the others are no longer operating.

10. **Mediterranea Saving Humans.** An Italian NGO operating the Mare Jonio and one other vessel, the Alex, both Italian flagged. It gets support from Sea Watch.
11. **Mission Lifeline.** A German NGO with three ships, but due to confiscation it is not currently operating. A new ship called Rise Above is expected to be operating soon.
12. **Resqship.** Only engaged in monitoring and observation activities in SAR zones using the ship Josepha which is currently not operating.
13. **Humanitarian Maritime Rescue Association (SMH),** which has one ship involved, the Aita Mari, unable to resume their life saving mission in the aftermath of inspections conducted by Italian authorities.
14. **Resq-People-saving-people.** The newest organisation on the scene which will be soon operating with the ship, flagged in Italy.
15. **The MV Louise Michel.** A vessel bought with proceeds from the sale of street artist Banksy's artwork, started in August 2020 by rescuing more than 200 people.

In addition, since 2018 the French NGO Pilotes Volontaires has been flying over the stretch of sea between Italy and Libya with a small single-engine plane, the Colibrì, to report any boats in difficulty.

### III. THE RESCUE OPERATION AT SEA: THE EU LEGAL FRAMEWORK

The migrants who enter the EU are a mixed group composed of refugees, asylum seekers, climate migrants and economic migrants. Generally speaking, under EU and international laws, protection is granted to those migrants who qualify as refugees due to a well-founded fear of persecution. In addition to this, a subsidiary protection status can be granted to those who would face a real risk of suffering serious harm if returned to his/her country of origin. Unprotected by the law remain the so-called economic migrants, i.e. migrants who don't escape from imminent dangers in their countries or from wars, but attempt to cross the sea in order to improve their life conditions<sup>57</sup>.

The fundamental right to asylum has its roots in the 1951 Convention Relating to the Status of Refugees, the 1948 Universal Declaration of Human Rights and the 1953 European Convention on Human Rights and Fundamental Freedoms (ECHR). The EU Members, as members of the Council of Europe, are bound by the Council of Europe treaties and the case law of the European Court of Human Rights (ECtHR). Even though there is no right to asylum as such under the latter, the ECtHR has dealt with a large number of cases involving asylum seekers whose human rights have been violated—for example, for maltreatment while being kept in detention centres or in reception facilities. In this regard, the ECtHR is competent to judge human rights violations committed by state parties of the European Conventions, including provisions such as the prohibition of inhuman or degrading treatment (art. 3), prohibition of collective expulsions (art. 4 of Protocol 4), right to liberty and security (art. 5), right to respect of family and private life (art. 8), and right to an effective remedy (art. 13). Contextually, the ECtHR has found against several Member States for violating the EU's legal regime on refugees on issues of detention, status of reception facilities, and lack of legal remedies. Greece, in particular, was found by the ECtHR to have “serious deficiencies” in its asylum system and Member States are prohibited from sending refugees back to Greece, as the first country of entry, in compliance with the Dublin Regulation.

At the EU level, the assignment of asylum is regulated by the Common European Asylum System (CEAS), set up in 1999 in the wake of the adoption of the Schengen Agreement of 1985 on the elimination of internal border controls, with the purpose of unifying minimum standards related to asylum. Therefore, the current legal bases of the CEAS are found in the Treaty on the Functioning of the European Union (TFEU) and the EU Charter of Fundamental Rights. It is composed of several directives and regulations that guarantee a set of common standards and require stronger cooperation by EU Members to ensure that asylum seekers are treated fairly and equally wherever they apply<sup>58</sup>. The EU



member states are legally bound by the rulings of the Court of Justice of the European Union (CJEU), which must ensure the correct interpretation and application of asylum law and determine the infringement proceedings against those Member States who fail to comply with obligations laid down in EU asylum law. In particular, the CJEU is required to ensure the application of the Charter of Fundamental Rights of the EU, which establishes the right to asylum (art. 18) and provides for the prohibition of torture and inhuman or degrading treatment or punishment (art. 4); the right to protection in the event of removal, expulsion, or extradition (art. 19); rights of the child (art. 24); the right to good administration (art. 41); and the right to an effective remedy and a fair trial (art. 47).

## **A) THE NON-REFOULEMENT PRINCIPLE AT SEA: A CONFLICT OF LAWS**

Embedded in the right to asylum is the so-called non-refoulement principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be likely to be persecuted or be in danger. Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on certain category of persons, non-refoulement refers to the generic repatriation of people, including refugees into war zones and other disaster locales.

In general, the principle of non-refoulement has been protected in many conventions, particularly in article 33 of the Geneva Convention and art. 18 and 19 of the Charter of Fundamental Rights of the European Union<sup>59</sup>. The non-refoulement principle is also incorporated into EU primary law, the Treaty on the Functioning of the European Union (art. 78, TFEU)<sup>60</sup>. According to legal standards, in order to grant asylum protection, a causal link must exist between the well-founded fear of persecution on the grounds of one's race, religion, nationality, political opinion, or membership in a particular social group and the acts of persecution. These acts of persecution may take a variety of forms, such as physical or mental violence, sexual violence and, in the case of a minor, they may also include acts of a gender-specific or child-specific nature. When an applicant does not otherwise qualify for refugee status, but still would face a real risk of suffering serious harm if returned to his/her country of origin, he/she is entitled to apply for humanitarian protection. The qualification for this subsidiary protection includes the risk of facing the death penalty or execution, torture or other inhuman or degrading treatment or punishment, or a serious and individualised threat to minors due to violence in the case of internal armed conflict.

While migrants' rights are clearly defined when on land, the same cannot be said for those rescued at sea. This is particularly true in the case of the pushbacks carried out in the Central Mediterranean, whereby the adequate protection of the human rights of the rescued is consistent with maritime law on the one hand, and human rights and refugee law on the other. As for the former, search and rescue operations comply with the oldest maritime

obligations whereby states parties are bound to take action to preserve life at sea regardless of the persons' nationality, legal status, or any other circumstance in which they are found. The centrality of the protection of the right to life at sea is evident from the United Nations Convention on the Law of the Sea of 1982 (UNCLOS)<sup>61</sup>, the International Convention for the Safety of Life at Sea of 1974 (SOLAS)<sup>62</sup>, and the International Convention on Maritime Search and Rescue of 1979 (SAR)<sup>63</sup>. In addition, this duty is part of international customary law; people who are at sea consider the duty to rescue people in distress to be a long-standing humanitarian maritime tradition, not just a legal obligation. To date, all the Mediterranean coastal states involved in rescue operations have ratified such conventions, with the only exception of Malta, which has not accepted the 2004 amendments allowing the disembarkation of persons found in distress at sea.

Every search and rescue operation may start or be presented as an ordinary EU maritime border surveillance operation under the Schengen Borders Code to prevent illegal entry to any of the EU member states<sup>64</sup>. Yet, to make it more complicated, the two types of operations are intrinsically linked; an operation may start out as a border control activity and become a search and rescue event a few hours later. Here the conflict between the two legal norms; individuals in boats seeking to enter the territorial waters and borders of the EU Members are protected by international maritime law but at the same time rejected by EU border surveillance laws preventing illegal immigration at EU borders. Thus, the main question is whether fundamental rights guidance on disembarkation should also be applicable when the border control operations involve rescue activities at sea. Under maritime law, such disembarkation must happen 'in the nearest place of safety', which is a place "with minimum further deviation from the ship's intended voyage"<sup>65</sup>, and where survivors' safety of life is no longer threatened, where their basic needs such as food, shelter and medical needs can be met, and from where transportation arrangements can be made for survivors' next or final destination. For those intercepted at high sea, the absence of clear disembarkation rules and the different interpretations of what is the nearest place of safety not only creates friction between EU Member States, it also increases the risk that migrants are disembarked in ports in which their lives and freedom are at risk<sup>66</sup>.

Certainly, the purported 'nearest place of safety' cannot include Libya. Indeed, numerous reports by UN bodies and NGOs consistently evidence the fact that migrants returned to Libya are routinely, arbitrarily and indefinitely deprived of their liberty by being thrown into Libyan detention centres, where they are subjected to torture or inhuman or degrading treatment, or subjected to other abuse, including rape, and slavery. In a landmark case, *Hirsi Jamaa and Others v. Italy*, in which the Italian Coast Guard intercepted a boat carrying 200 people on the high seas, but within Malta's search and rescue area, the ECtHR also concluded that Libya was not a safe place. In this case the migrants were returned to Libya by Italian authorities without having an opportunity to apply for asylum and, on these grounds, the ECtHR found against Italy for exposing them to ill and degrading treatment after their forced return. The underlying concept emerged

from the ECtHR's case law is that the special nature of maritime law does not mean it can be used as a legal no-man's land, where individuals are not covered by a legal system capable of affording them the enjoyment of the rights protected by the conventions which member states have undertaken to secure to everyone within their respective jurisdictions.

Similarly, the same scenario seems to repeat in the case *S.S. and Others v. Italy* in 2019. The case relates to the interception of a migrant dinghy, carrying a group of around 150 persons, found in distress in the Mediterranean Sea by the Libyan Coast Guard and the Italian authorities. The operation resulted in human rights violations of at least 20 people while 47 others were forced to return to Libya<sup>67</sup>. Unlike the case before, where the Italian authorities were directly involved in the return of migrants to Libya, in the latter case they were merely supporting the Libyan authorities through practical means. Accordingly, the Court's ruling on this case affirmed the principle whereby EU Member States must respect the principle of non-refoulement not only during border control but also in rescue operations, insofar as individuals in boats fall within the jurisdiction of a Member State of the Council of Europe as long as that Member State exercises control over them on the high seas, even if these happen in SAR zones out of their competence or no asylum claim has been lodged.

In particular, the ECtHR has affirmed that the Italian authorities, who exercised continuous de jure and de facto control over the applicants during the operation, knew or should have known that, as irregular migrants, the applicants could run a real risk of being exposed to ill-treatment in Libya, including detention in inhuman conditions, torture, poor hygiene and lack of appropriate medical care. They should also have known that there were insufficient guarantees in Libya protecting them from a subsequent refoulement to their countries of origin, due to the lack of any asylum procedure and the impossibility for the Libyan authorities to recognise their refugee status.

Therefore, there are three core fundamental rights violated by states authorities during the pushbacks. The first is the treatment of the persons turned back within the limits allowed under Article 3 of the ECHR, which prohibits torture, inhuman and degrading treatment or punishment. The second issue is the prohibition of collective expulsions of aliens, as maintained in Article 4 of Protocol to the ECHR as well as in Article 19 of the EU Charter of Fundamental Rights. The purpose of this provision is to prevent states from removing aliens without examining their personal circumstances or giving them an opportunity to contest the removal measure. ECtHR clarified that the prohibition of collective expulsions also applies to measures taken on the high seas, which either keeps migrants from reaching the borders of the state or pushes them back to another country. Finally, the third violation relates to the principle of the 'indirect refoulement', which extends the prohibition on the return to the country of origin to third countries from where there is a risk of onward movement.

To conclude, the International Criminal Court is currently investigating whether crimes against migrants from Libya can fall within the jurisdiction of the Court as crimes against humanity or war crimes. Formally, the Rome Statute does not embrace cases of human trafficking, being tasked 'only' with prosecuting individuals for the gravest international crimes – genocide, crimes against humanity and war crimes. These nevertheless include constitutive elements that are often linked to human trafficking, such as enslavement, imprisonment, torture, rape and sexual slavery. In this regard, the ICC's Office of the Prosecutor (OTP) has affirmed to follow with concern the situation of migrants transiting Libya or detained in both official and unofficial detention centres, and that 'it is considering the feasibility of bringing such cases before the Court'<sup>68</sup>.

### **i) Rescue Operational Rules**

Under international maritime law, every coastal state is required to take certain steps to ensure effective search and rescue operations<sup>69</sup>. This includes setting up a Rescue Coordination Centre (RCC), which must be able to effectively implement the coordination of rescue operations in its own Search and Rescue Region (SRR)<sup>70</sup>. States declare search and rescue zones individually, and these can clearly overlap as in the case of the central Mediterranean, where the large Maltese SAR zone ranges from Tunisia to south of Crete, including the Italian islands of Lampedusa and Linosa. This continuously leads to dispute between Italy and Malta as to whether the nearest 'safe port' to disembark rescued migrants is Lampedusa, which is geographically closer, or Malta, in whose search and rescue region migrants have often been found.

It has also been the case that when a Maltese vessel approaches a boat carrying migrants, navy officers ask migrants if they want to disembark to Malta or whether they prefer to continue on to Italy. Occasionally, migrants reported that they have been dissuaded by rescue officers from going to Malta on account of the Maltese mandatory detention policy. In these cases, the official procedure is to 'shadow' their boat and, if needed, provide assistance for the onward journey until the boat enters the search and rescue area of Italy, remaining on the scene until the Italian authorities arrive. According to migrants' accounts, Armed Forces of Malta (AFM) officials have also offered help in repairing a broken engine or provided fuel to continue the onward trip to Italy.



Figure 6: SAR regions in the Central Mediterranean, IMO

According to the law of the sea, the RCC must “initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea”<sup>71</sup>. Normally, it would fall on the RCC in whose area the incident takes place to take responsibility for the coordination of the rescue operation. Yet, the role of the RCC is not limited to its own SRR; an RCC may also receive distress calls or requests from assistance in relation to incidents occurring outside its own area of control until the competent authority takes over. This responsibility entails ensuring that the rescue is carried out safely and in compliance with the relevant maritime rules, in a manner consistent with human rights law and refugee law. This is what happens frequently in the Central Mediterranean, where the RCC in Rome often receive distress calls from vessels sailing within the Libyan SRR, an important strip repeatedly used for irregular crossings under the control of the Libyan authorities since 2018, following a period of suspension due to the outbreak of the civil war in 2011.

The European Court of Human Rights ruled on February 2020 in the *Hirsi Jamaa and Others v. Italy* case that Italy violated human rights principles by spurning African migrants and asylum-seekers on the high seas.

The case concerned 24 Somali and Eritrean migrants travelling from Libya who had been intercepted in 2009 with 200 others at sea by the Italian authorities and forced to return to Libya, their point of departure. Returning them to Libya without examining their case exposed them to collective expulsion and human rights abuses.

**The Court's judgment found such removals operating outside national territory constituted collective expulsion. Therefore, even when individuals are intercepted in international waters, government authorities are obliged to abide by international human rights law governing the right to asylum. Anybody they intercept must have access to an individualised procedure as well as remedies to challenge the decision to return them to their country of departure.**

**Amnesty International intervened as third party in the case, jointly with the AIRE Centre and the Fédération internationale des ligues des droits de l'Homme (FIDH).**

Notoriously, following the *Hirsi Jamaa* case in 2012, the modality of migration control at sea has witnessed a marked change.<sup>72</sup> Thereafter, the EU had to find allies in Libya capable of intercepting migrants on the high seas without direct engagement from Europeans who would be subjected to international legal scrutiny. The plan to find a proxy took off in the summer of 2017 as a result of the Italian-Libya agreement, despite the fact that European courts and the UN's refugee and migration agencies agree that Libya is not a safe country. At that time Libya, in the middle of a civil war, had no centralised coast guard and no capacity to manage its own search and rescue area. For this reason, Rome and Brussels jointly started providing support to form the new coast guards by helping to recruit them from the militias and smugglers. In this way, the Italian government adopted strategies that increasingly involved 'contactless' measures, causing increasing interceptions and returns by the so-called Libyan Coast Guards operating as its proxy to intercept migrants, with the support of the Joint Rescue Coordination Centre (JRCC) and Italian staff and equipment. The fact that the JRCC in Tripoli is most of the time found unresponsive to distress calls or to the request of transferring coordination responsibility or that, when occasionally it assumed the coordination of the rescue operations, this has invariably led to the disembarkation of intercepted persons in Libya, unavoidably raises questions on its real rescue capacity, or whether the requirement of disembarkation in a place of safety under maritime law and human rights laws is met. Even when coordination responsibility is not formally or explicitly transferred to the Tripoli JRCC, issues may arise as in cases where merchants' or NGO vessels contacting the Rome MRCC in relation to distress situations have sometimes been told to contact the Tripoli JRCC instead.

## **B) THE COLLAPSE OF THE DUBLIN SYSTEM**

In recent years, Europe has had to respond to the most severe migratory challenge since the end of the Second World War. The Dublin regime, originally established by the Dublin Convention on 15 June 1990, was the first measure put in place to accommodate asylum claims. In 2003, the Dublin Convention was replaced by the Dublin II Regulation, and successively amended by the Dublin III Regulation in 2013. The Dublin III Regulation has been in force since 1 January 2014, binding on Member States, Norway, Iceland, Liechtenstein, and Switzerland (art. 3)<sup>73</sup>.

The Dublin system remains the key structural problem of CEAS. Originally, the Dublin system was not designed with a view to ensuring the sharing of responsibility by Member states on accommodating migratory flows; rather, its main purpose from the very beginning was to assign responsibility for processing an asylum application to a single Member State. Generally speaking, the current Dublin III Regulation lays down the criteria and ways to determine which EU Member is responsible for reviewing an application for international protection lodged by a third-country national or a stateless person seeking international protection under the Geneva Convention and the EU Qualification Directive within the European Union. It identifies the EU country responsible for examining an asylum application, by using a hierarchy of criteria such as family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry. In practice, however, the most frequently applied criterion is irregular entry, meaning that the Member State through which the asylum-seeker first entered the EU is responsible for examining his or her asylum claim.

Outsourcing of asylum was also covered in the regulations, consisting in the relocation of the reception and accommodation of asylum seekers in places near the borders of the EU or in countries outside the EU, from which asylum seekers originally come or through which they pass. After an attempted relocation of asylum procedures in centres on the boundaries of the EU, these policies have resulted in a proliferation of exile camps in and around the European Union, a pressure on neighbouring countries to develop systems that consider applications for asylum in their territories, and a radicalisation of anti-migratory policies in neighbouring countries and within the borders of the European Union. The externalisation of border control has raised fierce criticism from humanitarian organisations and experts who believe that this measure infringes upon the international and human rights standards set out for the protection of migrants.

The increased influx of migrants towards borders, the harsher conditions in reception facilities and the vagueness of standards for assessing asylum applications all prompted the EU to reform CEAS, especially at the urging of the Southern European countries on which the Dublin system has placed an undue burden under the notorious first-country-of-arrival rule. According to this rule, a Member State is enabled to return an asylum seeker

to the first-entry Member State where he or she transited (so-called readmission)<sup>74</sup>. This provision was to put pressure on border states, so that they would exercise better control over the external borders of the EU. The effect of this measure was a greater number of asylum applications in border states (Greece, Slovakia, Italy or Malta) and in some cases, the expulsion of asylum applicants to neighbouring countries, where the system of recognition of refugee status is often faulty<sup>75</sup>. Additionally, the Dublin system indirectly impacted the Schengen system of passport-free travel throughout Europe which is already on the verge of collapse because of temporary border controls reinstated by a number of EU Members States.

Following repeated protests by the frontline countries (Italy, Greece and to a lesser extent Malta and Spain) due to an unprecedented influx of migrants, a first attempt at reform occurred in September 2015, when the EU Justice and Home Affairs Council adopted a temporary relocation plan for a total of 160,000 migrants to the benefit of Italy and Greece<sup>76</sup>. The relocation plan introduced for the first time a mandatory distribution scheme based on the following proportional criteria: 40% on the size of the jurisdiction's population, 40% on GDP, 10% on past acceptance of asylum applications, and 10% on unemployment rate. Czech Republic, Hungary, Poland and Slovakia fiercely opposed the compulsory quotas and denounced these as a clear infringement of national sovereignty. On December 2, 2015, Slovakia and Hungary initiated legal action before the ECJ, declaring the EU's mandatory quota invalid. In April of this year, the ECJ held that “by refusing to comply with the temporary mechanism for the relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under European Union law<sup>77</sup>.

Clearly, the introduction of a mandatory quota for all EU countries remains a bone of contention among EU countries. As clearly stated in its resolution of 12 April 2016, the European Parliament is at the forefront of this battle, envisaging the need for an overhaul of the Dublin system through a holistic approach with the aim of: removing the criterion of the first-country-of-arrival rule; establishing a central collection of applications and central allocation management at Union level – viewing each asylum-seeker as someone seeking asylum in the Union as a whole and not in an individual Member State and lastly, establishing certain thresholds for Member States in relation to the number of arrivals, which could conceivably help in deterring secondary movements<sup>78</sup>.

Instead of the fundamental overhaul of the Dublin regime as suggested by the EU Parliament, the EU Commission proposed to streamline and supplement the current rules with corrective moves. That is, while keeping unchanged the existing criterion of the first-country-of-arrival rule, an automated management system would be automatically triggered when a Member State is under disproportionate asylum pressure measurable against a ‘reference share’, a fair share in the relocation system calculated based on the GDP and the size of the population of a Member State. As opposed to a permanent normalised



central system of management of the asylum application, functioning in times of normal migratory flows as well as in times of crisis, the EC proposal aims at setting a fairness mechanism of emergency nature to be triggered exclusively in the event of emergency situations. In support of this, a 'solidarity contribution' per Member State would be made<sup>79</sup>.

The Commission adopted its Proposal for a Regulation on May 2016, to recast the Dublin III Regulation, in accordance with the ordinary legislative procedure, by calling the relevant EP Committee (LIBE) to report on the issue and propose a regulation draft<sup>80</sup>. The LIBE report reached a point of synthesis between the two different approaches. It laid down common grounds for a 'permanent and automatic relocation mechanism, with no threshold' in lieu of the previous "fall-back-criterion". Applicants would be split into two groups: those who already have an established genuine link to a specific Member state (such as family reunification, prior residence or studies) shall be relocated to these member states; those whose lack such links shall be relocated through the so-called 'corrective allocation system', allowing the applicant to choose between the four member states which have received the lowest amount of applicants in relation to a 'fair share', to calculate on the base of the GDP and population. As the 'lowest amount' member states will constantly be changing, it will not be possible for an applicant to know which four member states will be in the frame when deciding to seek protection in Europe. This mechanism has been envisaged to ensure that larger and wealthier countries will have a larger share than smaller and less wealthy countries, and to reduce the risk of secondary movements.

**Secondary movements occur when refugees or asylum-seekers move from the country in which they first arrived to seek protection or for permanent resettlement elsewhere. While most asylum-seekers seek protection in countries close to their countries of origin, some are compelled or choose to move (often in an irregular manner) onwards from or through countries in which they had, or could have sought, international protection, to other countries where they may request such protection.**

**Such secondary or onward movements are often done in an irregular manner, that is 'without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation'.**

**The current Common European Asylum System aims at limiting secondary movements of applicants for international protection between EU Member States. However, the mass inflow of asylum-seekers to Europe in recent years has shown that the system is faulty and contains legal ambiguities, often leading to acrimonious disputes among EU Member states.**

Importantly, the LIBE Committee's report introduced the 'groups' innovation allowing applicants to register as groups of up to 30 people. Registering as a group does not give applicants a right to seek protection in a specific country, as in the case for example of someone with family ties. Rather, it gives applicants that have formed close bonds either before leaving their home country or during the journey, to remain together and be transferred to the same Member State. Lastly, registration remains at the hands of the member states of first entry. For this reason, in order to ensure that member states are incentivised to follow the rules, coercive measures are suggested towards either frontline member states refusing to register applicants or those refusing to accept relocation of applicants to their territory. For the former, these include suspending the relocation system from their countries, for the latter limits on their access to EU-funds.

A year later, on 6 November 2017, the European Parliament confirmed a mandate for inter-institutional negotiations with the Council on the basis of the report adopted by the LIBE committee on 19 October of the same year. Although the Parliament has been ready since November 2017 to enter negotiations on an overhaul of the Dublin system, the negotiations have failed to make progress as EU governments cannot reach agreement at the Council<sup>81</sup>. The failure to reform the Regulation is an obvious indication of the disaggregating and nationalistic pulsion running across the EU, resolving in favour of a more generalised hostility toward migrants. More importantly, the populist and right-wing wind blowing over Europe in recent years has contributed to fostering the belief that migration flows are massive and inherently corrosive of the national tissue. Consequently, EU member states are pursuing further tightening of border controls and the progressive externalisation of asylum responsibilities to third countries. These measures have knocked Dublin off the top of the list of priorities in the ongoing reform of the Common European Asylum System (CEAS). The underlying logic is that there is not really a need for a permanent distribution model of asylum responsibility if asylum claims are kept outside Europe.

**The incapacity of developing a common political solution based on the principles of solidarity becomes the gateway to the collapse of the EU, whereas the violation of international rules on asylum poses the moral question over the EU incapacity to embrace the very principles upon which it has been founded, especially if we consider that the 100,000 migrants crossing into the Union annually is negligible in relation to the total 500 million population of the EU<sup>82</sup>.**

## IV. THE ITALIAN RECEPTION SYSTEM FOR MIGRANTS: NOT ALL IS LOST

As of May 2020, 85,700 migrants are accommodated in reception centres in Italy, currently regulated by the first Salvini Decree Law 113/2018 that represented a decisive point in the context of management of the reception of migrants<sup>83</sup>.

The real rationale behind the Salvini decrees and integration reform is to implement a restriction (funnel approach) towards disembarkation in parallel with the restriction of the migrants' rights of residence, and subsequently to transfer migrants from Level 1 Centres (first reception) to Level 2 Centres (like SPRAR) until exhaustion. By limiting the right of residence and the right to apply for ID cards, the decree will de facto impede migrants who could be beneficiaries of humanitarian international protection from being accepted in the Level 2 centres (SPRAR).

The effects are twofold: migrants who could already have obtained international protection before the promulgation of the decrees will be all moved from Centre 1 to Centre 2; at the same time, those who arrive after the decrees won't be able to apply for residence and ID without which they cannot be accepted by the SPRAR. So, there will be a transitional period in which the international protection beneficiaries will be hosted by SPRAR until the exhaustion of the beneficiaries, whereas the new migrants will be dispersed and left with no choice but to live on the streets. (Anonymous activist at SPRAR Centers, interview 2019)

Originally, the official Protection System for Asylum Seekers and Refugees and for migrants with humanitarian status (SPRAR system) was founded in 2002 in response to the EU Reception and Asylum Procedures Directives<sup>84</sup>. It was conceived as a decentralised multi-level governance system based on the cooperation of actors in the policy-making processes at the vertical and horizontal levels. On the vertical dimension, the coordination

of the system was in the hands of the Ministry of Interior (the national level) together with the international organisations (the supranational level) and the representation of municipalities (local level). Municipalities were expected to mobilise from the bottom-up by participating in the annual calls for projects. On the horizontal dimension, the municipalities had the key role of ensuring coordination with NGOs and other public and non-public actors engaged in the asylum issue<sup>85</sup>. Along with them, there existed the emergency reception system made up of large-sized temporary centres managed directly by the Prefectures, i.e., the local branches of the Ministry of Interior in each province.

With the transposition of the EU Reception Directive, the two-pronged governance of reception already in existence since the 1990's was definitely institutionalised. On the one hand, there was the SPRAR system presented on paper as the most preferable solution for asylum seekers but with scarce hosting availability; on the other hand, there were the emergency reception centres directly managed by the Prefectures, that were de facto perceived as the solution at hand whenever the SPRAR centres became overcrowded. Since then, the reception system in Italy has been based on several types of facilities: government reception centres, temporary facilities and the SPRAR network. Due to their different functions, they have different organizational models, cost breakdown and hosting times. Before Salvini's last decree, they were:

1. CPSA (Government Centres of First Assistance and Reception): used for providing first identification and medical aid in case of large inflows. Accordingly, as migrants are entitled to claim for asylum or not, they must be successively transferred to first reception centres.
2. CARA and CDA (respectively Government Centres for Asylum Applicants and Government Reception Centres): used by asylum seekers awaiting a decision on their asylum application which is supposed to come in 20-35 days. These centres were directly managed by the Ministry of Interior through the Prefectures, which usually outsourced the provision of services to non-public organisations on the basis of calls for tender (among the main organisations running CARA in Italy: Italian Red Cross, *La Misericordia*, Caritas, etc.). They had to ensure basic services like board and lodging, health services, legal and psychological assistance, linguistic interpreters. The largest CARA centre was in Mineo in Sicily.
3. SPRAR (Central Service of the System for Protection of Asylum Seekers and Refugees): they were the second-level reception centres, run by the local municipalities and funded through the National Fund for asylum services by the Ministry of the Interior. They accommodated both ordinary and vulnerable categories, such as unaccompanied minors and physically or mentally disabled persons.

4. CAS (Extraordinary Reception Centres): they were temporary facilities in operation when the SPRAR were overcrowded under the prefectures' lead. Whereas SPRAR centres were able to fulfil high reception standards in small-sized facilities, the CAS were much more heterogeneous in terms of size and quality of services.

5. HOTSPOT: they have been introduced by transposition of the EU recast Reception Directive (Directive 2013/33/EU). Located at the ports of arrival, they were coordinated by the Ministry of the Interior with the support of Frontex, EASO, IOM, EUROPOL, UNHCR and liaison officials of other Member States. They provided for a first health screening, the pre-identification, photo identification, the start-up of procedures for reception or procedures for repatriation. Currently, four ports have already been identified: Taranto, Pozzallo, Messina, Trapani and the Island of Lampedusa, 4 out of 5 in Sicily.

6. CPR (Immigration Detention Centres for Return, former CIE, i.e. Centres of Identification and Expulsion): set up and managed by the prefectures in charge of identification, the validation of detention and subsequent measures for expulsion, they were de facto detention centres for migrants.

The first Salvini Decree 113/2018 has brought drastic changes to the design of the Italian reception system, which had been articulated in different phases under the Reception Decree (LD 142/2015): 1) a phase of first aid and assistance; 2) a first reception phase in governmental centres; 3) a second-line reception phase. The 2018 reform transformed the second-line reception system known as SPRAR into the so-called SIPROIMI, the System of Protection for Beneficiaries of Protection and Unaccompanied Minors, open only to those who qualify for international protection or "special permits" for six months, to be extended for further six months under certain circumstances assessed on a case-by-case basis<sup>86</sup>. Therefore, the law has drawn a clear division between the reception system for asylum seekers and the one for beneficiaries of international protection, becoming in all respects two parallel systems. They are now articulated as follows:

1) First aid and assistance operations at the centres of disembarkation, mainly CPSA. Created in 2006 for the purposes of first aid and identification, they are now essentially operating as Hotspots.

2) First reception operations in collective centres or in centres to be established by specific Ministerial decrees. These may include centres previously known as governmental centres for accommodation of asylum seekers: CARA, CDA, or Temporary Emergency Reception Centres, the CAS. When reception is provided in CAS, it is limited to the time strictly necessary for the transfer of the applicant in the first reception centres.

The law has de facto created a subaltern system for asylum seekers in as much as it bars them from accessing the second-line reception phase (SIPROIMI) and the relative integration services aimed to complete a process of emancipation and a sustainable life plan. Unlike the SPRAR/SIPROIMI, available only for minors and humanitarian protection beneficiaries, the asylum-seekers' centres provide only basic daily assistance, board and lodging and reduced pocket money, with no access granted to additional essential services like Italian classes and work-orientated trainings<sup>87</sup>. Instead, SIPROIMI is generally articulated in small facilities or apartments in order to foster beneficiaries' self-reliance and integration in the local communities. Their services are complete: Italian language learning, interpretation and linguistic-cultural mediation, legal counselling, access to schools for minors, health assistance, socio-psychological support, in particular to vulnerable persons, vocational training, counselling about the services available at local level, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.

Whereas the declared purpose of the reform was to reserve resources for the integration of those who benefit from international protection, the new system ends up allocating time, energy and public funds to just basic assistance by considerably slowing down the process of regaining self-sufficiency. Unlike the 2014-2016 period, the "golden age" of the governance of reception during which all the key-actors were equally involved in decision-making, since 2017 the dialogue among stakeholders has significantly declined and often exploited by the central governments as a means of winning voters in local, national and European elections.

**Most of the time, there is the feeling of a disconnect between civil organisations and relevant institutions. What is done from the bottom is denunciation, awareness raising on the issue of rights; protest etc; every time we see a violation of rights, we report that, we write articles, we rely on lawyers to take our requests to a higher level.' (...) [The best strategy remains to] 'use the media to convey denunciation messages, or contact, for example, some parliamentarians to whom we can pass our requests'. (Roberta Lo Bianco, activist and partner of MultiVolti, questionnaire, 2020).**

Ever since, the emphasis on security and reducing inflows has overshadowed the shared efforts to improve the quality of the reception system. The centralisation of the decision-making process and the 'personalisation of decisions' were further enhanced by the formerly appointed Minister of Interior Matteo Salvini, leader of the Northern League, after

the new government came to power at the end of May 2018 through a coalition agreement between the Five Stars Movement and the League. The space for consultation and involvement of different actors in the decision-making on asylum and reception was completely closed down. None of the main actors previously involved in decision-making on asylum, including institutional ones, have been consulted by the new Minister of Interior during his tenure.

Surprisingly, prior to the Salvini decree, the former SPRAR model was the flagship of the Italian reception system, praised by the EU and the Council of Europe on multiple occasions for enhancing:

1. The involvement of the local authorities on a voluntary basis and not by imposition, with the result of preventing conflicts which might arrive from reception in unplanned emergencies and “not accepted” on the local level. Decisions were taken in tune with the local economic, social and cultural context, by forging a close relationship with the local community.
2. An integrated reception model, conceived as not just a model of “hospitality”, rather as a life-coaching path to create autonomous identities and factors of well-being that the trauma of forced migration had interrupted.
3. The use of specialised mediation, essential as a communication channel. The general purpose of mediation is to accompany the people in orientation and the fully-aware utilisation of services. This could include hospitals and, for example, screening tests for contagious diseases.
4. The creation of highly professional figures in the area of asylum rights, a field that was previously little known in Italy, as for social workers, educators, psychologists, group and community leaders, healthcare personnel and mediators. As a matter of fact, one of the essential conditions required by the SPRAR system for tender announcements for setting up the centres was to have a consolidated experience in order to go beyond untrained volunteer work and improvisation.

Notably, the SPRAR experience has been strongly praised by the EU, COE and NGOs as good practice. This has encouraged the conversion of government led centres to a gradual absorption in the SPRAR centres. Nonetheless, it has been the first target for dismantlement by the former Minister of Interior Salvini (LEGA party)’s action premised on a false logic of security and control and no longer on people’s protection.

## **A) THE SECURITY DECREES IN DETAIL**

The so-called First Decree on Security and Migration (adopted on 5 October 2018 and converted into Law 132/2018) has strongly reformed the reception system and the protection which migrants can claim for. The main provisions are illustrated below:

### **I. Cancellation of protection for humanitarian reasons**

Most migrants in Italy belong to this category. Its duration was of two years and allowed access to work, social benefits and social housing. In short, it was a residence permit facilitating the beneficiaries' inclusion into the fabric of the country.

Prior to the security decree, the Italian law provided for a residual form of international protection that could be granted for humanitarian reasons to those non-eligible for refugee status nor subsidiary protection. The important role of 'humanitarian protection' has been in the past clarified by the Italian Highest Court (Court of Cassation), which stated that the right to be issued a humanitarian permit, together with refugee status and subsidiary protection, constitutes a fundamental part of the right of asylum enshrined in the Constitution<sup>88</sup>. In practice, humanitarian residence permits were a 'flexible instrument' which could cover several circumstances emerging from forced displacement where there was no sufficient evidence of an individual risk of persecution or serious harm. As explained by the Court of Cassation, prior to the entry into force of the Decree, humanitarian protection was granted to persons suffering from an 'effective deprivation of human rights' upon the fulfilment of two interrelated conditions: the 'objective situation in the country of origin of the applicant' and 'the applicant's personal condition that determined the reason for departure'<sup>89</sup>. The Court further presented as possible example of human rights deprivation the situation of a person coming from a country where the political or environmental situation exposes him to extreme destitution, or does not allow him to attain a minimum standard of dignified existence. As noted by the Court, the definition of environmental issues does not only contain natural disasters but it may also include non-contingent events, such as droughts or famines which deprive the person of the ability to earn a basic livelihood, and likewise political instability, episodes of violence or lack of family support in the country of origin<sup>90</sup>.

### **II. Reduction of the integration policy for asylum seekers**

The reform provides a clear distinction between asylum seekers and asylum seekers who are granted international protection who have access to second-line reception



(SPRAR/SIPROMI). The only available option to the former are the collective reception centres (CARA, CDA) or, in case of unavailability of places, the temporary reception centres (CAS) where, according to the decree, only basic levels of reception conditions have to be met. Asylum seekers with pending applications are therefore cut out of the local reception system. Further, there are no longer provisions dealing with the transition from first reception for asylum seekers to second-line reception for beneficiaries. As a consequence, since the coming into force of the Decree, it has become even more difficult than before to obtain authorisation from the Prefecture to stay in CAS or first reception centres once a protection status has been granted. Lastly, the decree has reduced the timespan during which asylum seekers are prevented from working from six months to 60 days from the formal registration of the asylum application. This implies that migrants are asked to find a job in 60 days which is clearly difficult, especially in consideration of the fact that knowledge of the Italian language and labour market are activities that require more than a couple of months.

### **III. The new special protection**

The decree replaced humanitarian protection with a residence permit for “special protection”. The government justified the abolition of humanitarian protection with the need to delimit the issuance of this residence permit as originally set out. It has circumscribed the humanitarian reasons to certain hypotheses and introduced, for this purpose, some new residence permits to be released only in special cases under the control of the Questura: 1) for victims of domestic violence or serious exploitation of work; 2) for those in need of medical treatment; 3) for people from a country in a situation of exceptional calamity; 4) for those migrants who have distinguished themselves by acts of particular civil value.

Unlike the humanitarian permit, this allows residence in Italy for shorter periods compared to the two-year duration of the previous permit; six months for exceptional natural disasters or violence and one year for ‘special protection’, which includes ‘medical reasons’ and other ‘special cases’. In addition, the new permits are renewable and allow the holder to work but they cannot be converted into a work permit. Therefore, once the circumstances for which they were issued cease to exist, the migrant loses all the rights acquired. Only in the event that the foreigner has accomplished exceptional civil acts, whose nature is not further specified by law, the person can be issued a residence permit lasting two years, at the discretion of the Minister of the Interior.

## **IV. Abrogation of Civil Registration**

Decree Law 113/2018 has repealed the rules governing civil registration of asylum seekers, and stated that the residence permit issued to them does not constitute a valid title for registration at the municipal registry office. This provision prevents asylum seekers from enrolling in municipal registers and obtaining the “residence card” (or identity card) issued by Municipalities. As some provisions of social welfare are conditional upon registration at the registry office, the lack of civil registration has led in many cases to public administration officials to deny asylum seekers access to social care services. No instructions are contained in the decree on how to guarantee these rights.

## **V. Creation of a Faster Border Procedure**

A faster border procedure has been established for applicants making an asylum application directly at the border or in transit areas after having been apprehended for evading or attempting to evade border controls. The faster border procedure was also applied to people that disembarked, considering them as people who avoided or tried to avoid the border controls<sup>91</sup>. The border procedure also applies to asylum seekers who come from a designated Safe Country of Origin<sup>92</sup>. Revealing the purpose of facilitating the application of an accelerated procedure to the people present in the hotspots, the Ministerial decree issued on 5 August 2019 identified among the transit and border areas, those ones close to hotspots: Taranto, Messina and Agrigento (Lampedusa hotspot). In these cases, asylum seekers are sent for repatriation.

## **VI. A New Detention System**

The Decree has introduced the possibility of detaining asylum seekers in hotspots for 30 days in order to ascertain their identity and citizenship. If this is not possible, asylum seekers may also be detained in Detention Centres for up to 180 days (the previous time limit was 90 days). However, measures of this magnitude violate national constitutional and international rules in as much as they do not fulfil the ‘conditions of necessity and urgency’ required by article 13 of the Constitution to deprive someone of their liberty without judicial authorisation, especially when one considers that it is common for almost all asylum seekers not to possess valid documents proving their identity.

## **VII. The Closed-Ports Policy**

With the adoption of Decree Law n. 53, issued on 14 June 2019 and later converted by Law 77/2019, the so-called Salvini Security Decree *bis*, the iron fist against those who help migrants at sea materialises. In detail, it has:

- established that the Minister of the Interior “can limit or prohibit the entry or transit of ships into the territorial sea for reasons of order and safety”, i.e. migration law is violated, and in particular the crime of “aiding illegal immigration” was committed (the so-called closed ports policy, article 1)
- imposed a fine between €150,000 - €1million to the skippers of NGO vessels who have rescued asylum seekers in the Mediterranean, “in the event of violation of the prohibition of entry, transit or parking” in the territorial sea (article 2). This constitutes a considerable increase from the €50,000 fine imposed by the first security bill.
- Established that the skippers involved will be arrested and their vessels seized. The ships would become state-owned, and the State may use or sell them, or even destroy the vessels two years after confiscation (article 2).

To sum up, these reforms are to be largely condemned for several reasons. Firstly, whereas the previous governments have tried to pursue asylum seekers’ integration since their arrival in the national territory (although with partially disappointing results), the recent reform rejects this objective by granting integration services only to beneficiaries of international protection. Secondly, the two-pronged system made up of SPRAR and CAS has been institutionalised. This has facilitated the establishment of large governmental reception centres that are more capable of economies of scale at the expense of SPRAR. Thirdly, stricter guidelines for granting humanitarian protection are expected to produce a large basin of irregular homeless migrants. As for the Security Decree *bis*, it has been harshly criticised by experts on the ground on the basis that it violates the International Sea Law, criminalises NGOs and raises an institutional conflict of competences between the Minister of the Interior, Minister of Transports and the Minister of Justice, especially by attributing the roles of the Minister of Transports and Public Prosecutors to the Minister of Interior and Special Anti-Mafia District Directorate, with the effect of increasing the Minister of Interior’s power. The overall impact of the decree will be examined in detail in the next chapter.

## **B) THE PALERMO MODEL: A STRUCTURED SUPPORT TO VOLUNTEER GUARDIANS**

A child may apply at the same time for both international protection and for a residence permit for unaccompanied and separated children (UASC) as other third country nationals. When applying for international protection, UASC are granted certain procedural guarantees, including the right to a priority examination of their application, to be heard and to legal assistance. Moreover, the legislation provides that the conditions of being a child applying for international protection and holding a permit for UASC or for family reasons may coexist. At the age of 18, a residence permit for UASC may be converted into a residence permit for study, work or job seeking. The application for conversion is at the discretionary and conditional approval of the Directorate-General for Immigration and

Integration Policies of the Ministry of Labour and Social Policies (MLSP).

Therefore, becoming an adult is a fundamental turning point for those who arrived in Italy alone. The borderline is clearly defined from a legal and reception point of view<sup>93</sup>. For children approaching the age of 18, different scenarios are envisaged according to their legal status:

- a) for those who hold international protection status, although they will lose rights and safeguards granted to them as children, the moment of transition to adulthood has a relatively minor impact since the international protection status provides a broad protection of rights and reception facilities;
- b) those with a residence permit for UASC are in a critical situation regarding both their residence permit and right to reception: they may apply for a permit for job seeking, study purposes or work purposes, but in all cases, they have to leave the reception facility in which they are living and become self-supporting unless they are granted continued protection by social services until the age of 21, which enables them to continue to benefit from reception services.

The uneven distribution of UASC on Italian territory negatively affects the regions, with Sicily ranking first by number of minors and, along with Lombardy, is currently hosting approximately 40 % of the total UASC in Italy. In particular, only in Sicily, the percentage is 28,4%, with an absolute number of about 2.066 out of 7272. Sicily is the area with the greatest number of SPRAR centres<sup>94</sup>.

In this regard, the so-called Palermo Model proved successful over the years<sup>95</sup>. Designed and implemented through the collaboration between the Office of the Ombudsman for Children and Adolescents of the Palermo municipality and the UNICEF-sponsored Volunteer Guardians Support and Monitoring Unit (USMT), this model developed a system of volunteer guardianship for UASC across Sicily based on a tailor-made approach and a participatory process involving the main institutional stakeholders. As pointed out by the coordinator of the USMT, each individual UASC's project of social inclusion and integration is treated as a specific case.

The responsibilities, actions and methods of intervention of each institutional entity have been identified through an institutional working group, which defined the role of the volunteer guardian and drafted and signed a protocol on the care and reception of UASC. A technical group was set up, composed of one member from each institution involved, to prepare and share a volunteer guardian's profile, to draft the tender for interested citizens and the agreement of the selection procedures, and eventually to prepare the contents of the training. The selection was aimed at identifying the "right people capable of assuming the role", considering the great responsibility that this role has and the risk of quitting during

the mandate. The Guardian Support and Monitoring Unit (USMT) has been subsequently created at the office of the Municipal Ombudsman to mainstream the process, highlight the critical issues and propose appropriate solutions for UASC, based on the acquisition of skills, autonomy and respect of their rights. Hence, the USMT is the reference point for finding a solution to problems; receiving information and building networks; facilitating access to ethno-psychological services that meet the needs of survivors of traumatic experiences. The volunteer guardian can then count on a network, which supports him/her in referring critical issues to the competent bodies maintaining the objectivity of a *super partes* entity.

It is noteworthy that the UN agency noted that in 2019, 65% of migrant arrivals by sea in Italy landed on the Sicilian coasts. During her visit to Sicily in July 2020, the UNHCR's Representative to Italy Chiara Cardoletti said: "Sicily provides a key contribution for Italy not only in ensuring rescue and assistance to those in danger in the Mediterranean but also through policies aimed at supporting refugees in their path towards the achievement of autonomy, a necessary condition to foster integration into Italian society"<sup>96</sup>.

## V. IMPACT OF MIGRATION POLICIES

Contrary to what was promised, the security decrees have created an emergency situation in the country. The impact of the decrees will be devastating in the long term on local communities and migrants, by making them more exposed to economic vulnerability, criminalisation and homelessness, in addition to a further erosion of their civil- political rights. This is an absurdity if we consider that the decrees bear the name of the major objective they are looking to achieve: security (Anonymous, interview 2019)

### A) IMPACT OF THE DECREES OVER MIGRANTS

The impact of the first decree over the migrants' lives have been tremendous. It significantly downsizes the Protection System for Asylum Seekers and Refugees (SPRAR), and grants access to the network only to beneficiaries of international protection and those in possession of special residency permits.

Even before the security decree (the first) was approved, the territorial commissions, entitled to examine the request for international protection, began to increase the number of denials even to minors seeking asylum; following the decrees, this choice of not ensuring any form of protection for asylum seekers has become structured, especially if the asylum seekers came from certain countries such as north and west Africa.

Humanitarian protection was canceled and therefore a very high percentage of young people could no longer renew it; this meant creating situations of illegality around people's lives. The chances of converting to a residence permit for work reasons were low, as many of these people were still too young to be ready and mature to enter the world of work and in Sicily the unemployment rate is very high.

**Furthermore, people who had just obtained a form of protection that was not international, found themselves without accommodation because the new decree established that the second reception was only for minors and holders of international protection. Consider that in Palermo 65% of the forms of protection were humanitarian. (Roberta Lo Bianco, activist and partner of Molti Volti, questionnaire, 2020)**

The overall outcomes of the decrees are:

## **I. Right to Asylum Denied**

According to the Institute for International Political Studies (ISPI), the reshaping of humanitarian protection (which today is called protection for special cases) has led to a collapse of protection for asylum seekers who do not obtain refugee status or subsidiary protection. While in the first part of 2018 the protection denials stood at around 55% of the total of the requests examined, by September 2019 they had risen to 80%. In absolute numbers, it means that in 2019 the total of the denials has approached the figure of 80,000 people, all at risk of being expelled from the system and destined in large part to join the population of illegal immigrants<sup>97</sup>.

As of October 2019, the border authorities refouled 8,279 foreign citizens considered not to be entitled to enter EU territory. Many Moroccans and Tunisians who disembarked in Italy were quickly repatriated under the expedited procedure. Their claims have never been examined<sup>98</sup>.

## **II. Illegality**

The above figure of the protection denials must be seen in relation to the number of those refouled in the same period; the new illegal immigrants are the result of a greater number of refusals of protection than the returns made, whose current rate is of 7,000 repatriations per year. According to IPSI estimates, from June 2018 to December 2020, in the base case scenario, namely the one in which Italy maintains all three levels of international protection (refugee status, subsidiary protection and humanitarian protection), illegal immigrants in Italy would have increased by about 60,000. As a result of the Salvini decree, the number of new irregulars will lead to a further increase by 70,000 units. Therefore, in total, by 2020 the number of irregular migrants present in Italy could exceed 670,000-750,000 by January 2021. This is more than double the number compared to just five years ago, when the estimated irregular immigrants totalled less than 300,000. It would also be the all-time record, apart from in 2002 when 750,000 irregular immigrants were estimated to be present

in Italy<sup>99</sup>. At these current rates, the returns of irregular migrants to their countries of origin will have only a marginal effect: repatriation of all of them would take 90 years, and only on condition that in the next century no irregular immigrants arrive.<sup>100</sup>

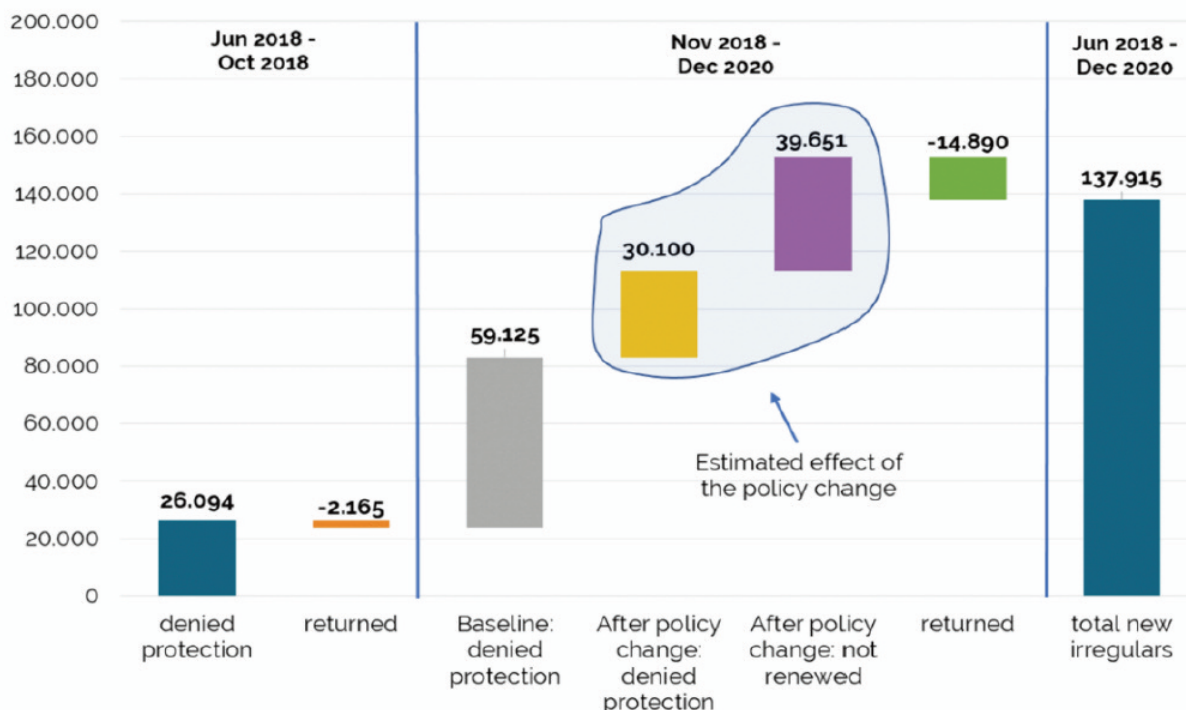


Figure 7: Prospective number of the new irregulars to Italy, source ISPI

Another aspect is related to the denial of getting valid ID documents. Due to the high rates of unemployment, especially throughout southern Italy, and the impossibility of getting a work contract without valid documents, the effects of the decrees will end up exacerbating an already fragile situation, with many people left with no recourse but to become undocumented or “irregular” (Activitst, interview 2019)

As for UASC, those who have obtained recognition of humanitarian protection before the entry into force of the First Decree are in a transitional situation in which, for a limited period of time of two years, they can still enjoy a form of protection. After this period, their case will be re-assessed by the competent Territorial Commission, with the possibility of being granted special protection or, in certain cases, international protection. If the necessary requirements are not met, they may not be granted any form of protection. As an alternative, they can proceed with the conversion to a residence permit for job seeking, or study or work purposes but accommodation in SIPROIMI facilities is not always guaranteed. The prospects for those who are granted special protection (and therefore not convertible into work permits) is even more uncertain. Likewise, those who are at the age of 18 will remain



in legal limbo as long as the guarantees of protection will be maintained until the outcome of the Territorial Commission; however, it is more difficult for them to begin and build a pathway of transition to adulthood, because their condition could radically change with a negative outcome that would put them in an irregular situation. (SPRAR manager, interview 2019)

As a result, as of June 2019, 4,700 children were registered as absconded since they had left formal reception facilities or care arrangements; it is not possible to know if they are still present in Italy. The trend of absconded UASC shows an overall decrease that is due, at least in part, to them turning 18 and thus ceasing to be registered as UASC in the reception system<sup>101</sup>.

### III. Homelessness

As a result of the far-right government's hard-line immigration measures, according to the Institute for International Political Studies, between June 2018 and December 2020 there will be at least 140,000 people landing on the streets in just 30 months. However this number is set to increase due to numerous factors<sup>102</sup>.

Firstly, the holders of humanitarian protection - having this formula abolished in the decree - will remain homeless. (Activist, interview 2019). The ban applies also to those who have already been granted such protection and currently find themselves in legal limbo. They are only granted a temporary permit that neither can be converted before the expiry nor is renewable anymore on humanitarian grounds, even if the circumstances for which the permit was granted in the first place still exist. These people - recipients of humanitarian protection and therefore until recently in a state of perfect regularity - will find themselves in a condition of certain irregularity, especially considering that the chance to obtain a work or study permit or to move towards subsidiary protection and political refugee status is almost void. They will be hosted by the SPRAR until the exhaustion of places, whereas the new immigrants will be dispersed with no other choice but to live on the streets. (Lawyer, interview 2019)

Secondly, the asylum seekers temporarily sent to the collective governmental centres for the period of the application process, will no longer be allowed to remain in these centres, should their claims be accepted. This creates a protection gap in practice, given the scarcity of places in the SIPROIMI, where they are supposed to go. Already it has happened that on the basis of a verbatim interpretation of the first decree, some public administration offices or prefectures all over Italy have begun to inform reception centres that those who have been granted humanitarian protection will have to leave these facilities, on the basis that material conditions immediately cease after the status recognition. The coming into force of the Decree has thus worsened the situation; even those prefectures such as Trieste which allowed accommodation for a long period after the status notification informed the

organisations involved in managing accommodation centres that beneficiaries will be only allowed to stay in reception centres until they had obtained an electronic residence permit. This means that, depending on the discretionary decisions of the responsible prefectures or on bureaucratic delays, the beneficiaries of international protection could be allowed to stay in the reception centre for a few months, a few days, or even just one day after the notification, in a totally arbitrary manner. These situations have led beneficiaries of international protection facing destitution and homelessness.

Thirdly, in respect of the asylum seekers expecting to be moved to the first reception centres (CAS) which accommodate approximately 75-90% of all migrants, the situation is no better; the massive budget cutbacks provided by the decree caused the shutdown of many of these centres, with the result that dozens of migrants in Italy have been left on the streets. The decree also repealed the rules governing civil registration, prohibiting asylum-seekers to apply for their residence and ID, obligatory in order to be accepted by the SPRAR. The turning-18-minors share the same fate. Those granted humanitarian protection must leave the facilities for minors without the possibility of being inserted into the reception centres for adults. Most of them, when they reach the age of adulthood, lose the right to reception and are left in the streets. The situation is particularly bad in Sicily. Until late 2018, over 4.700 unaccompanied minors were hosted in the reception facilities on the island – that is 42% out of total unaccompanied minors in Italy. As of 2019 only, according to the Ministry of Labour and Social Policies, about 2,000 of them have turned 18<sup>103</sup>.

## **B) IMPACT OF THE DECREES OVER THE LOCAL COMMUNITY**

The reception industry has so far had a positive impact on the local area, creating new professional profiles and increasing the demand for and supply of labour, new services and consultancies. The total expenses of the government for the management of reception is mostly returned to the local area in the form of wages to personnel, rent and consumption.

The professional engagement with the reception system entails ‘traditional’ and new career paths’, including cultural mediators, psychologists, teachers of Italian to foreigners, social workers, reception centres managers, project officers, legal consultants, nurses and doctors. It has encouraged the creation of new jobs, especially for the under-40 generations in a region where young unemployment has reached a peak of 53%, and where 42% of the population are not engaged in education, formal employment or training<sup>104</sup>.

Trade union sources estimate that, the drastic reduction of gross per capita daily expenditure earmarked for the reception facilities (from 35€ to 25-21€), along with the reduction of the services provided in the reception centre will result in the loss of over 18,000 - 36,000 jobs in the sector just in the first year of the implementation of the law. For those workers, no social flanking measures have been planned so far<sup>105</sup>.

In order to understand the picture of the impact in terms of reduction of working hours and staff cutbacks, it is useful to compare figures between, before and after the Salvini Decree in the CAS centres<sup>106</sup>.

	Up to 50 places		Up to 150 places		Up to 300 places	
	After	Before	After	Before	After	Before
Psychologist	0	12	0	24	0	24
Social Worker	6	18	8	24	20	36
Cultural Mediator	10	36	12	54	24	54
Doctor*	3,8	6	12	18	24	24
Nurse	0	24	0	27	42	168
Manager	18	36	24	36	30	36
Officer	56	112	112	392	168	840
Officer	28	56	84	168	168	392

**Table 2: Minimum Number of Personnel, source Minister of Interior  
\* only in SPRAR**

Centers	Total staff weekly hours 2019	Total staffweekly hours 2018	Difference in percentage
Up to 20 places	180	125	-30%
Up to 50 places	260	125	-52%
Up to 150 places	670	238	-64%
Up to 300 places	1398	418	-70%

**Table 3: Staff Cutbacks, source Migrazione Società Cooperativa Sociale**

Ultimately, the current reception system for asylum seekers is aimed at favouring the reception in large centres under the monopoly of a few big organisations, while rendering reception in small-scale facilities and apartments economically unsustainable. Large centres' monopoly, lack of transparency of the procurement procedures, lack of control by the supervising bodies, has in the past plunged these centres into numerous scandals on the grounds of mismanagement and corruption, violation of human rights, mafia infiltration and gang violence in the centres themselves<sup>107</sup>.

## C) IMPACT OF THE DECREE OVER NGOS

The so-called “closed ports” policy was mainly based on public announcements in social media and initially through circulars signed by the Minister of the Interior and the Minister of Transport, implemented to ban access to ports by NGO ships with rescued people on board for reasons of public order or national security. The Security Decree tried to give a legal basis to the Minister of the Interior bans on entry, transit or halting of ships engaged in rescue at sea.

Article 1 of the Second Decree empowers the Ministry of Interior, in agreement with the Minister of Defence and the Minister of Transport, to order such prohibitions for reasons of security and public order, in reference to Article 19 (2 g) of the Montego Bay Convention (UNCLOS), according to which a passage of a ship is not considered innocent in case of loading or unloading of persons contrary to the immigration or sanitary laws of the coastal state. In case of violation, the law provides for an administrative penalty to be imposed by prefects to the ship’s captain consisting in the payment of a sum between €150,000 - €1,000,000. The law also allows for the confiscation of the ship used to commit the violation.

In addition to the fact that it is not legally possible to “close” ports by means of a ministerial circular, the action taken by the then Minister of Interior Salvini originates an unprecedented case of conflict of law among institutions, which are: the Ministry of Interior, the Ministry of Transports, the Ministry of Defence, the Judiciary and the Italian Navy. (Lawyer, interview 2019) As highlighted by ASGI, the provision gives the Ministry of Interior a new power of intervention that goes beyond the control of borders, for which it was already responsible, directly affecting search and rescue activity at sea. It appears purely aimed at discouraging rescue at sea, considering that, apart from the ethical consideration that it is a specific duty upon the captain in fulfilment of the actual search and rescue legal framework (i.e. UNCLOS, SOLAS, SAR Conventions), the entry or stopping of a ship rescuing people after shipwrecks can by no means be considered as offensive conduct and therefore prohibited. However, immediately after the entry into force of the decree, the Minister of Interior made extensive use of these powers.

In the following paragraphs, it is shown that Salvini’s execution of the ‘close ports policy’ dragged the whole country into an escalating spiral of brutality.

### I. The Trial of Strength begins: June 2018<sup>108</sup>

The SOS Méditerranée’s and MSF’s rescue ship, the Aquarius, had been stranded in the Mediterranean between Italy and Malta in a standoff between the two states refusing to allow the vessel to dock, in a tragicomic ping-pong over which state should take charge of

the rescue operation. German charity SOS Méditerranée objected that the ship had been instructed by the Italian MRCC to stand by in its position, 35 nautical miles (65km) from Italy and 27 nautical miles from Malta. In response, a spokesman for the Maltese government insisted that the rescue of the migrants took place in the Libyan search and rescue area and was headed up by the rescue coordination centre in Rome, meaning Malta had no legal obligation to take in the migrants.

After nine days abandoned in the sea, the Spanish Prime Minister Pedro Sanchez allowed the ship to dock in Valencia. On its way to Valencia, the *Aquarius* was accompanied by a ship from the Italian Navy and one from the Italian Coast Guard, who took on board some migrants for health and security reasons. There were 629 people on board, among those were 123 unaccompanied minors, 11 small children and seven pregnant women. Some of them were suffering from drowning syndrome or severe fuel and saltwater burns.

A few days later, *Lifeline*, a vessel for the German charity Mission Lifeline, was stranded for six days while waiting to be allocated a port after rescuing 234 migrants off the coast of Libya, including 14 women and four small children. Malta and Italy initially refused to take in the migrants on various grounds: ignoring international rules while carrying out its rescues by refusing to co-operate with the Libyan coastguard; facilitating illegal immigration and being a pirate ship. As for the latter, Italy's Infrastructure Minister Danilo Toninelli reported that the Dutch representation to the European Union asserted that the ship did not sail under the Dutch flag and did not appear in the Dutch naval register. In response, Mission Lifeline posted a photo of a document showing the contrary. Mission Lifeline charity issued a public statement denying breaking sea law, arguing that the only order the ship denied was to hand over people to the so-called Libyan coastguard to disembark them in Libya, where migrants would not be safe and had already faced abuse and rape. Eventually the vessel was allowed to dock in Valletta after five days at sea.

## II. Salvini's growling and flexing of muscles: July 2018

In July, Salvini lashed out at the Italian coast guard when its Diciotti ship found itself at the centre of a government row. Initially, the migrants were rescued off Libya by a private Italian vessel, the Vos Thalassa, which remained in the Mediterranean. Upon the ban from disembarking by the Italian Minister of Interior, the situation reportedly became dangerous onboard when the rescued migrants were told they might be handed over to the Libyan coast guard, sparking a furious reaction from some of them. Sailors locked themselves in the control room and made emergency calls to authorities in Rome. Subsequently, migrants were transferred to the coast guard ship, the Diciotti, while Salvini insisted on denying it permission to dock by accusing passengers of hijacking the crew staff. Thenceforth, the Diciotti was ordered to remain in the water off the city of Trapani, Sicily, not authorised to disembark “for as long as necessary”, pending an investigation into a reported mutiny. The impasse was eventually unblocked by the Italian President, Sergio Mattarella, who intervened to end a dispute within the ruling coalition. The investigation by the local prosecutor in Trapani resulted in revising the allegations to one of ‘continued and aggravated private violence’ by just two passengers. It was the first time that a private Italian-owned and Italian-classed ship had been turned away from Italy, and represented the first conflict between institutions. In May 2019, almost one year later, the Criminal Court of Trapani acquitted two ‘rebel’ migrants rescued at sea by Vos Thalassa. Relevantly, the judge recognised they had acted in self-defence as the act of bringing them back to Libya would have been a crime. The result was that the Italian Coast Guard’s Diciotti ship was stranded in front of the port with 67 rescued asylum seekers on board for four days.

In July, the Head of Proactiva Open Arms Oscar Camps blamed the Italian government’s cooperation with Libyan authorities, accusing it of abandoning a woman and a toddler to death in the Mediterranean Sea after intercepting 160 Europe-bound migrants. The Open Arms had been witness to radio conversations between a Libyan patrol boat and the merchant ship TRIADES to set course for a boat in danger. Hours later, after insistently

demanding the presence of the Libyan patrol boat, they abandoned the shipwrecked person. After an intense six-hour search on the zone, Open Arms located them and confirmed that a Libyan patrol boat had carried the shipwrecked persons to Libya and left three people to their fate on the high seas, failing to comply with the obligation to save lives<sup>109</sup>.

Days later, Salvini insinuated that the NGO's decision to head to Spain after the rescue of Josefa would be suspect: "Despite our availability of Sicilian ports, the NGO ship goes to Spain, with a wounded woman and two dead ... Could it be that they have something to hide ????" (published by Matteo Salvini on Facebook Wednesday 18 July 2018).



Photograph 1: Salvini's Post on Facebook against Open Arms on Josepha case

Amongst the remains of the boat and the corpses, Open Arms and Astral vessels found the body of a 3-4 year old child and Josepha, a woman still alive but suffering from hypothermia and severe shock.

After her rescue, on the Internet hundreds of posts full of hatred proliferated addressing the Cameroonian migrant, accompanied by her photo with red nail polish and bracelets.

The comment was echoed by the media, led by the far-right newspaper *Il Giornale*, finding fertile ground amongst Lega supporters on Facebook and amplifying the conspiratorial and racist tone of the comments which stated that: 1) there was no shipwreck, Proactiva Open Arms had organised a charade; 2) Josefa would be nothing more than

an actress recruited by the NGO to stage the rescue; 3) the varnish on the nails on her would show that she is an “actress” and not a “real” migrant, as the polish is “intact after 48 hours in water”, or that she had no traumatic experience “as they want us to believe”. As a proof of that, videos and pictures of Josepha’s nails went viral on the web. The accusations have been disproved by official photos available, and the news was publicly declared as an online hoax and an example of the hideous propaganda put in place by the Minister of Interior’s party<sup>110</sup>.

Here are some comments that circulated on social networks:

“She is an actress”; “She runs away from the war but she has painted her nails. In addition, the hands do not have the spongy appearance typical of those who stay in the water for hours “; “It works like Cocoon, after 48 hours in the water you are more beautiful”, post others with cynicism.



Photograph 2: Rescue of Josepha



### III. Prelude to war: August 2018

Early in the month, 87 people were rescued by Open Arms from an inflatable raft floating directionless for 50 hours in the open sea with a broken motor and without drinking water. Many of the people on board had suffered skin burns caused by a mixture of fuel and salt water. After their rescue, the migrants were forced to wait at sea on board the ship seven days before knowing which port they would be heading for. The NGO ship docked in the southern port of Algeciras in Spain after Italy refused to take in the African migrants. Those saved included 84 from Sudan, one Syrian, one Egyptian and a Gambian. Twelve of those saved were children.

A few weeks later, the world saw unfolding before its eyes the absurd spectacle of an Italian government trying to prevent a boat of the Italian coastguard from boarding in an Italian harbour. On August 14, a boat coming from Libya and carrying people of various nationalities (prevalently from Eritrea and Somalia) was signalled by authorities as being in extreme difficulty and in urgent need of rescue. During the following two days, authorities from Italy and from Malta were embroiled in a controversy as to who was responsible for rescuing the migrants, with Italy insisting that Malta should take the group because their boat first passed through its SAR zone. Valletta refused claiming that the people onboard wanted to reach Italy. Malta has never signed the SAR and SOLAS conventions.

Two days after, the boat had begun to take on water, prompting the Italian Coast Guard to intervene in international waters and transfer the 190 migrants rescued to the Diciotti ship of the Italian Navy, located near Lampedusa Island. Among the rescued people, there were ten women and 37 minors. Thirteen migrants with health problems were immediately evacuated to Lampedusa island off Italy's southern tip. Questioned by the Italian authorities, the 13 people evacuated claimed that the Maltese had escorted them outside their search-and-rescue zone. After three days of negotiations, Italy's transport minister, Danilo Toninelli agreed to disembarkation at the port of Catania, Sicily. But shortly afterwards, sources close to Salvini suggested the boat was granted permission to dock but the migrants had to remain on board until he got an agreement from "the EU" about their relocation in other countries. After five days, the ship was eventually allowed to disembark in Sicily after the Catholic Church had brokered a deal with Ireland and Albania to take the migrants in.

The living conditions on the military ship were unbearable given the fact that the Diciotti itself had not originally been built in order to accommodate such a high number of people. On August 22, 27 unaccompanied minors were permitted to land. The Minister of the Interior authorised the disembarkation after an inspection of the ship led by Luigi Patronaggio, the prosecutor of the city of Agrigento. Patronaggio stated that while

politicians had the right to take decisions, these could not clash with the national constitution and international norms. These circumstances led the public prosecutor's office to open a formal investigation for kidnapping against unknown subjects. During this early phase of the investigations, there were not yet allegations against specific members of the government. The minors on board of the Diciotti - 25 boys and two girls, mainly from Eritrea, the youngest being 14 years old - were in very poor health. They were all suffering from malnutrition, and some were not even able to walk properly because of previously untreated injuries. In addition to this, all minors were physically and psychologically exhausted by the journey. Giovanna Di Benedetto, a spokesperson for Save The Children, reported that the migrants had all spent a long time in Libya, where they had suffered abuse for up to three years prior to their departure.

After investigations, the prosecutor Luigi Patronaggio, had imputed five violations to the Minister of the Interior. The first one was kidnapping, in violation of article 605 of the Italian penal code, since there had been no reason to keep the migrants on the Diciotti ship for such a long time. The second one was kidnapping for coercion purposes, a violation of Art. 289 of the Italian penal code, ascribed to Minister Salvini since he had used the Diciotti case to blackmail the European Union in order to obtain a more favourable deal regarding the redistribution of migrants. The detaining of distressed persons on the ship was also considered an illegal arrest, in violation of Art. 606. In addition to this, an abuse of power (Art. 323) was contested to Salvini, since he violated numerous norms of European and international laws. Finally, given the fact that the Minister had not indicated a place of safety to the Italian Coastal Guard, the omission of administrative acts article 328) was also contested. Lo Voi, the Head Office Prosecutor in Palermo, had fifteen days to analyse the accusations before formally sending the case to the three judges who constitute the Tribunal of Ministers in Palermo.

In this regard, Italy's constitution establishes that, despite the position held by a minister - or by the President of the Council of Ministers - in any government, ordinary legal proceedings can be put in place against them when needed. However, before the proceedings start, the Senate of the Republic or the Chamber of Deputies have to provide an authorisation to proceed with investigations. On December 7, 2018, the Tribunal decided that Matteo Salvini could be charged with kidnapping for abusing his powers in his capacity as Minister of the Interior, for depriving persons of their liberty, in violation of international conventions on sea rescue and the current Italian regulations and constitution. Moreover, the contested crime was aggravated by the power reserved by Matteo Salvini in the capacity of a public official who had abused his powers, thereby damaging distressed persons and unaccompanied minors. According to the judges in Catania, the Minister of the Interior had arbitrarily decided for the forceful permanence of the migrants on board, depriving them of their personal liberty without a judge's authorisation, and beyond the permitted time.

The vote in parliament regarding the authorisation to proceed against Matteo Salvini

took place on March 20th. An overwhelming majority of the Senators (237) voted in opposition to the decision of the Tribunal of the Ministers, thereby denying the authorisation to continue investigations into the Minister's conduct during the ten days leading to the disembarkation of migrants from the Diciotti ship. According to the Italian higher chamber, minister Salvini had acted to defend a constitutionally relevant interest of the state<sup>111</sup>.

#### **IV. On the Battlefield: January-April 2019**

At the end of December 2018, after rescuing 49 people including 32 women and 15 unaccompanied minors off Libya in a sinking dinghy in stormy waters, two rescue vessels run by the German NGOs Sea Watch and Sea Eye, were left stranded for two weeks at sea in extremely bad weather conditions, and held hostage by Italy and Malta who had both suspended their duty to provide a port of safety. Sea-Watch 3 was barred from entering Italian waters by Minister Salvini who accused the ship of sailing straight for Italy rather than taking the migrants to closer ports in Libya or Tunisia. The four crew of the British ship lamented they faced legal threats from the Italian minister for aiding illegal immigration.

Sea-Watch and Mediterranea, both part of the United4Med Alliance, left Malta with two boats to support Sea-Watch 3. The aims of this joint mission were threefold. The first was to bring logistical and material support to the ship, to allow crew changes and to replenish supplies. The second was to let representatives embark to witness for themselves the circumstances of the rescued people in order for them to report on the fragile situation on board to their governments who were deliberately ignoring the requests of dozens of cities to welcome the rescued people either in Berlin or Italy. On that occasion, the mayor of the Sicilian city of Syracuse along with a group of hotel and B&B owners offered to take in all 47 migrants and help integrate them at their own cost, from arranging Italian language lessons to giving them jobs. The third objective was to bring German and Italian journalists on board so that they could once again speak of the consequences of the violation of the rule of law in the Mediterranean Sea and thereby push European states to assign a port of safety.

The crew statement reads:

Being kept at sea is not only unnecessarily prolonging the journey of the rescued people on board, most importantly it increases risks to their health and safety on a daily basis. Mindful of imminent bad weather and sea conditions, both rescue vessels have sailed north in a timely manner and are now on standby to disembark all guests in a safe European port. The only thing that remains is political will and decisive action by any European authority. Disembarkation in Malta would be the most logical option, upon an agreement to redistribute people within a European solution. Malta has already allowed landings of people rescued at sea before, if other European states agreed on an immediate relocation of the people to other countries. Due to the size of the island and the fact that Malta

proportionally gives shelter to more refugees than any other European country, this is understandable; nevertheless redistribution problems have to be solved on land and after a safe disembarkation<sup>112</sup>.

In addition, the aid group filed an urgent case at the European Human Rights Court against Italy for refusing to allow its ship to disembark. Youngsters bore the scars of violence suffered in crisis-hit Libya. The Strasbourg-based European Court of Human Rights (ECtHR) urged the Italian government to “take all necessary measures, as quickly as possible”, to provide migrants on board the Sea-Watch 3 with medical care, water and food. The Prime Minister Giuseppe Conte announced that the rescued migrants could finally disembark after Italy and six other EU countries reached an agreement.

Two months later, on the evening of 18 March, an ongoing conflict between the Italian government and civil sea rescue initiatives was reignited following the rescue of 49 people by the ship Mare Jonio of the Mediterranean- Saving Humans Platform, an Italian citizen-funded sea rescue initiative<sup>113</sup>. In March, the Mare Jonio had rescued these 49 persons – including 12 children – on a rubber boat in distress off the coast of Libya. A Libyan coastguard vessel had approached the dinghy while the rescue was under way, but left the group to the Mare Jonio, which was expected to request permission to bring them to Italy. People on board were at sea for almost two days with problems of dehydration.

On the day of the rescue operation, Minister Salvini reacted to the ship’s request for a safe harbour for disembarkation by issuing an eight-page directive<sup>114</sup> which seeks to subordinate the infrastructure and transport ministry’s competences for port-related issues to security concerns and illegal immigration, based on the prejudiced assumption that rescued migrants might be involved in terrorism, or be a concern for public order and security. To sum up, the directive establishes that<sup>115</sup>:

- the requirement to apply the international law of the sea must be tempered by the need “to prevent the possible instrumental use of international obligations” and “the methodical violation of national and European norms on the surveillance of maritime borders and to counter illegal immigration”;
- the exception to the general application of the UN Conventions on the law of the sea – whereby a vessel’s passage may be deemed “innocent” if it is “not prejudicial to the peace, good order or security of the coastal State” – acts as a *carte blanche* for states to act discretionally. This should be decided by the national authorities, and in this particular case by the National Authority for Public Security who must immediately verify if there has been a preordained and unlawful violation of norms on every specific rescue regulation by “endangering the internal public order and security of the coastal state”;

- the international sea law in general regulates the exercise of a coastal state's sovereignty and power in its territorial sea, meaning that they represent an exceptional regime in relation to the norm that the coastal state fully exercises in its waters and, hence, "it may refuse to allow foreign ships into its internal waters and ports".

After the directive was issued, Mare Jonio was approached by two Italian police boats. They ordered the captain to cut the engine one mile from Lampedusa and dozens of officers then boarded the vessel to carry out inspections. Eventually, the ship was escorted by the Guardia di Finanza, a militarised police force under the authority of the Minister of Economy and Finance, to the port of Lampedusa, where its passengers were allowed to disembark. The captain of the ship has been formally put under investigation as well as the activist Luca Casarini, mission chief of the Mediterranean-Saving Humans Platform. The main allegations against both include aiding and abetting illegal immigration, complicity in favouring illegal immigration and refusing to obey an order from a warship.

The case of Mare Ionio and the anti-NGO directive has remained at the centre of the political scene. Reactions to the directive were plentiful and many of them argued it was an invalid document because state actions in this field are subordinated to the international legal framework. Criticism was voiced by Rear Admiral Vittorio Alessandro of the Italian Navy, unconnected to the world of NGOs but rather belonging to the military ranks, who spoke to *Avvenire* newspaper to describe the directive as "anomalous, clearly unlawful and vitiated by an abuse of power". Accordingly, critics to the directive can be summarised as follows:

- the concern over the "the peace, good order or security of the coastal State" is a mere unverified hypothesis that can be dealt with after disembarkation;
- the directive is formally unlawful because it referred to authorities with no competences, such as the armed forces and the Guardia della Finanza (GdF), a militarised police force under the authority of the Minister of the Economy and Finance, not the Ministry of Defence, with a nationwide remit for financial crime investigation. Instead, the blocking of transit in territorial waters is an exclusive competence of the infrastructure ministry, and the communication should therefore have been exclusively addressed to the Minister of Infrastructure. The distance between theory and reality was evident when the GdF asked the captain to switch off the ship's engines at a time when there were large waves at sea. The captain refused to do so, because it could have endangered the craft and people on board. Alessandro described the order as "inconceivable";
- NGO-run rescue operations are viewed as involving various elements that point to the "instrumental use by traffickers of the dutiful rescue activity" to enable illegal

entrances into the national territory. Fulfilment of this “ultimate purpose” or “objective” is viewed as necessary to achieve the unlawful profits that underlie this criminal activity;

- The directive considers the Libyan ports to be safe and that docking at Tunisian and Maltese ports is possible;

During the period between January and April 2019, there were no more civilian rescue vessels operating in the Mediterranean Sea, with the only exception of the Alan Kurdi, a rescue ship run by the NGO, Sea Eye, which had saved 64 migrants on board a dinghy off the coast of Libya. After Salvini’s refusal of disembarkation, on April 13 the ship arrived in Malta and the migrants were distributed between Germany, France, Luxembourg, and Portugal<sup>116</sup>. As is the case with all the other ships, the Sea-Watch 3 search and rescue vessel of the German NGO Sea-Watch remained blocked in the port of Catania after the Italian Coast Guard said it had found “technical irregularities”; the Proactiva Open Arms was prohibited from leaving by a decision from the Spanish Directorate General of Merchant Marine, Barcelona’s Port Authority and the German NGO Mission Lifeline’s ship has been detained in Malta since June 2018 under administrative investigations<sup>117</sup>. In December 2018, Médecins Sans Frontières announced the end of operations of the Aquarius due to the obstacles created by the EU states over disembarking persons to a place of safety<sup>118</sup>. After one month, the Mare Ionio was released from seizure and ready to leave port again. Its ship owner filed a lawsuit against the Directive, for its assuming ‘that we have committed the crime of aiding and abetting clandestine immigration, which carries a sentence of over 10 years in jail’. ‘The ship left from the Marsala port. They didn’t stop us. This is a moral imperative,’ said Alessandra Scirba, spokesperson for Mediterranean.

## V. The Height of the War: May - August 2019

Finance police put the Mare Jonio under sequester on May 10, after the NGO-run search-and-rescue ship picked up 30 migrants in the Mediterranean. The ship was then allowed to enter the port of the Italian island of Lampedusa to be put under sequester. The sequester was linked to the accusations against the crew of alleged aiding of illegal immigration. Among the 30 people rescued, there were five minors, including a one-year-old child and two pregnant women. According to the Security Decree *bis*, the fines would range up to €5,500 euros for each migrant picked up by rescue vessels. On that occasion, Alessandra Scirba, a spokesperson for Mediterranean, said that setting a price for saving the life of two-year-old Alima was outrageous.

In June, only one month after the release from impoundment, the Sea-Watch 3 ship rescued 52 people from a rubber dinghy off 75 km from Zawiya, and navigated toward Italy after rejecting an offer to dock in Tripoli. On 29 June, the Sea-Watch 3 ship captain

Carola Rackete, after two weeks in international waters with 42 rescued migrants on board, decided to enter the port of Lampedusa despite the absence of authorisation from the Italian authorities, considering that conditions on board were beginning to deteriorate and that some migrants had started to self-harm. In doing so, her ship rammed an Italian police patrol boat against the quay.

Soon after the Sea-Watch 3 arrived in Lampedusa, the migrants were taken off the ship and Captain Carola Rackete was arrested and warned she could face 10 years in jail. Captain Rackete's Italian lawyer, Leonardo Marino, said by phone that his client has been detained on charges of violating an article of the Italian Code of Navigation, specifically for "resisting a warship". She was also placed under investigation for facilitating illegal immigration. The migrants were greeted by insults on the part of a small group of Italians in the port.

Before the Captain's arrest, Sea Watch had appealed to the European Court of Human Rights to allow the ship to disembark in Italy as an 'interim measure' to "prevent serious and irremediable violations of human rights, pursuant to Rule 39 of Rules of the Court."<sup>119</sup> However, the ECtHR decided not to indicate an interim measure requiring authorisation for the applicants to be disembarked in Italy, as the requirements of an imminent risk of irreparable harm" were not met. Further, a regional administrative court (TAR) had previously denied a Sea-Watch 3 request to enter Italian territorial waters, by affirming that the "Sea-Watch 3 have not indicated that other individuals from vulnerable categories were on the ship. In consequence, [the judge] considered that there were no exceptionally serious and urgent reasons justifying the application of the urgent measures."<sup>120</sup>

Three days later, the Preliminary Judge of the Court of Agrigento decided to release Captain Rackete as he considered her behaviour had been justified by her duty to save the people on board the ship, and clarified that the boat of the finance guard was not to be considered a warship<sup>121</sup>. The judge responsible for the decision became the target of insults and threats by the media and on the internet. The Minister of Interior defined the sentence via social media as a "political judgment" and invited the judge, who he called "leftish", to take off his robe and stand for election to the Democratic Party. In January 2020, the Court of Cassation confirmed the legitimacy of the decision not to validate the arrest. Through this decision the Court of Cassation also affirmed that the refusal to authorise the landing of the migrants rescued by Sea Watch 3 was illegitimate, contrary to the provisions of international law on rescues at sea<sup>122</sup>. The case has highlighted a rising polarisation of opinion in Italian society which 'did not start with Sea-Watch 3, but it has become much more evident and harsher', in the words of Luiss University's Prof Hein. Rackete is believed to have received threats and has been moved to a safe location. While Salvini has insisted she must leave Italy, she is not thought to have done so.

In a long Facebook video, Salvini called the move “an act of war”, and accused Rackete of being a “pirate, outlaw, and a rich, white German woman”.

*(in English: “But it’s not that all those who are born white, German, rich, have to come and piss off in Italy, right? What does the government of Berlin think?? It is normal for one of their citizens to come to us and say: I don’t care about Italian law?”*

*On the picture: “The commander of the Sea Watch. I was born white, German, rich: I have a moral obligation to help Africans”*

After the disembarkation, Captain Rackete was hit with rude comments and insults from the bystanders gathered on the quay. Once again, a representative of the League Party, the former Lega Senator Angela Maraventano, lit the fuse. She said in front of cameras: “Do not come to our island otherwise the end of the world happens. Get the refugees down and then arrest them all. The commander Carola is a murderer, she wanted to kill some financiers, men of the state who were doing their job. She is a criminal who must stay in prison”. The video, posted on Facebook by the League of Lampedusa, has attracted more abuse from readers. The video was published on his Facebook page by a Senator of the Democratic Party Davide Faraone, who was on board the ship<sup>123</sup>. The words used are even difficult to report.

*(In English: “Kraut (...) I hope they’ll rape you, these n\*\*\*\*s. Four by four they have to stick their d\*\*\* on you, you like the black d\*\*\*\*”.  
 “Sold, sold”; “the handcuffs, the handcuffs”,  
 “G\*\*\*\*”, “Horned, Horned, Go to jail”, “Criminals”, “Toxic”, “Go to Holland”).*



Photograph 3:  
Salvini’s post attacking  
Carola Rackete





**Photograph 4: Case of Online Hate Speech Against Carola Rackete**

The author of the comments later justified his violent outburst by stating that: "I was drunk and angry because two days earlier a few Tunisians had harassed my girlfriend. In any case, I am not a League supporter, I vote for the Five Stars Movement". Even worse, in an official statement, the League of Lampedusa clarified "We, in addition to any form of racism, condemn these NGOs, which in our opinion are criminal associations that trade human flesh, earning good money thanks to the donations of their supporters and from who-knows-what other activities. We want regulated and controlled immigration, without accepting criminals from other states but only people in serious difficulty"<sup>124</sup>.

In July 2019, a similar case happened involving the Italian military ship Gregoretto of the Italian Coast Guard, which rescued 116 people at sea. The people on board had been rescued from a private fishing boat. The coordination centre had therefore sent Gregoretto to recover the shipwrecked and had subsequently directed the ship to the military port of Augusta in the province of Syracuse. As had happened at Diciotti, the military ship of the Italian Navy had not been given the opportunity to dock and therefore remained for days outside the port, although the ship was considered unsuitable to accommodate a large number of people. The prosecutor of Syracuse Fabio Scavone opened an investigation on the state of the 116 migrants on board. He sent doctors and Carabinieri from NAS to the ship to ascertain their conditions<sup>125</sup>. The prosecutor saw that there was only one bathroom for 116 people and migrants were kept in tight spaces or on the deck where they slept. After 6 days, the 116 people were disembarked and transferred to the Pozzallo hotspot to be redistributed

among France, Germany, Portugal, Luxembourg and Ireland. Unlike the Diciotti case, in February 2020 the Senate did not grant the former Minister Matteo Salvini immunity and authorised an investigation for kidnapping. The preliminary hearing in the context of the trial for the Gregoretta case, in which he is accused of deprivation of liberty, had been postponed to 12 December 2020, due to the coronavirus epidemic.

In August 2019, in a third similar case, the tug of war between the Minister of Interior and, this time, the Open Arms ship, led to another violent confrontation, involving a rescue operation of 151 migrants including 32 minors (28 unaccompanied). The ship was forbidden from docking in Lampedusa by Salvini and kept out at sea where it faced 2.5-metre swells for almost 20 days. After the first week at sea, the Open Arms' lawyers lodged an appeal at the juvenile court of Palermo asking for disembarkation and filed a complaint to verify whether the blocking constituted an offence by the Minister. During its second week at sea, the Palermo juvenile court acknowledged that a crime of collective refolement at the border and expulsion of minors was taking place and asked the government for explanations. The following day, Open Arms' lawyers filed another appeal at the Lazio administrative court against the Security Decree *bis*, that eventually suspended the ban on entry into Italian territorial waters. Following the court order, the ship approached the Italian coast but was notified of the the ban to dock by Salvini who, in the meantime, signed a new blocking order without informing the other ministers involved. In a number of twists and about-faces, Italy's Defence Minister Elisabetta Trenta blocked the new order as an act of "conscience"; it was now the ship's third week at the sea. A new complaint was then presented to the Agrigento prosecutor's office for omission of official documents and other related crimes.

During the three weeks, tensions grew on board; several people were transferred for medical reasons and some of them threw themselves into the water in desperation to try and swim to the coast. On August 20, after several transfers, the Agrigento prosecutor, along with judicial police and doctors boarded the ship and decided to order the landing through an emergency preventive seizure of the ship. The same day, the ship docked in Lampedusa with 83 people on board after three weeks of standoff while, at the same time on the other side of the Mediterranean, another rescue ship, the Ocean Viking of MSF, started pointing to Italy with 356 on board. It would spend two weeks stranded at sea.

Following the disembarkation, the Agrigento prosecutor sent judicial police to the coast guard headquarters in Rome as part of a probe into alleged kidnapping and abuse of office. Police took records of communications between the Interior Minister and the rescuers in order to verify the chain of command to determine who prevented the ship from docking. In November, the Agrigento formally opened an investigation against Salvini on charges of kidnapping and omission of official documents. In February 2020, the Court of Ministers decided to proceed against Salvini and the chief of staff of the Interior Ministry Matteo Piantedosi. The Court of Ministers that conducted its own investigation fully embracing the accusatory frame, claiming that the people on board the Open Arms were "shipwrecked"

and therefore could not be considered a danger to public safety, with the aggravating circumstance that they defied a decision of the court ordering disembarkation. The judges attached to the request correspondence held by the Prime Minister Conte and Salvini, in which the former strongly reiterated the need to authorise the immediate disembarkation of minors on board and that the ban constituted illegitimate refolement. On July 30, the Italian Senate gave the authorisation to try Salvini for kidnapping.

Clearly, the standoff laid bare the split between anti-migrant Salvini's League and the 5-Star Movement that had been governing Italy together, set against the background of a political crisis in Rome. On August 20, the then Minister of Interior Salvini pulled his party out of the ruling coalition to force early elections with the intention of improving the League's standing in Parliament and becoming prime minister. In an open letter, Conte accused Salvini of disloyalty and of using immigration for political gain. In his speech at the Senate, Salvini defended himself by claiming that he had acted to protect the borders and "the homeland", adding vaguely subversive comments such as "the true judgment will be brought by people, not the judiciary".

## VI. The Legacy of War

After the fall of the government, with a subsequent appointment of a left-centrist coalition made up of the 5-Stars Movement and the Democratic Party, in late August 2019 the policy of closed ports changed but until today it has not been formally abandoned. The informal redistribution policy of migrants established in the so-called Malta Declaration by Salvini's successor has often caused long waits at open sea before a place of safety is indicated, being subject to case-by-case agreements between EU member states. In October 2019, Italy, which had long refused to indicate itself as a place of safety for the SOS Méditerranée ship, Ocean Viking, carrying 104 migrants, half of whom were children, was finally able to disembark in Pozzallo (Sicily)<sup>126</sup>.

The joint declaration of intent signed at the informal summit between the Interior Ministers of Italy, Malta, France and Germany in Valletta on 23 September 2019 has been presented as a milestone in addressing controversies over Search and Rescue (SAR) and disembarkation of asylum seekers and migrants in the Mediterranean<sup>127</sup>. The outcome of the informal summit was the adoption of a joint declaration of intent on a Controlled Emergency Procedure – Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism. The objective was to come up with an early contribution to be discussed at the Justice and Home Affairs (JHA) Council meeting of 7 and 8 October 2019, with a view to broadening participation in the mechanism to other EU member states. Media sources covering this JHA Council meeting reported however that the mechanism failed to gain the necessary support<sup>128</sup>.

Besides sketching out a relocation mechanism for the migrants rescued at sea with the purported aim of strengthening solidarity among a group of 'willing' member states, the declaration includes a number of worrying provisions dealing with civil society, the Libyan coast guard and the cooperation with North African countries. The document has adopted a 'compulsory tone' in paragraph 9, whereby NGOs' and private actors' vessels are required "not to obstruct search and rescue activities conducted by the Libyan Coast Guard". This provision blatantly disregards the wealth of evidence showing criminalisation policies towards SAR NGOs and the unlawful conduct and acts of violence perpetrated by the Libyan coast guard in the context of pushbacks.

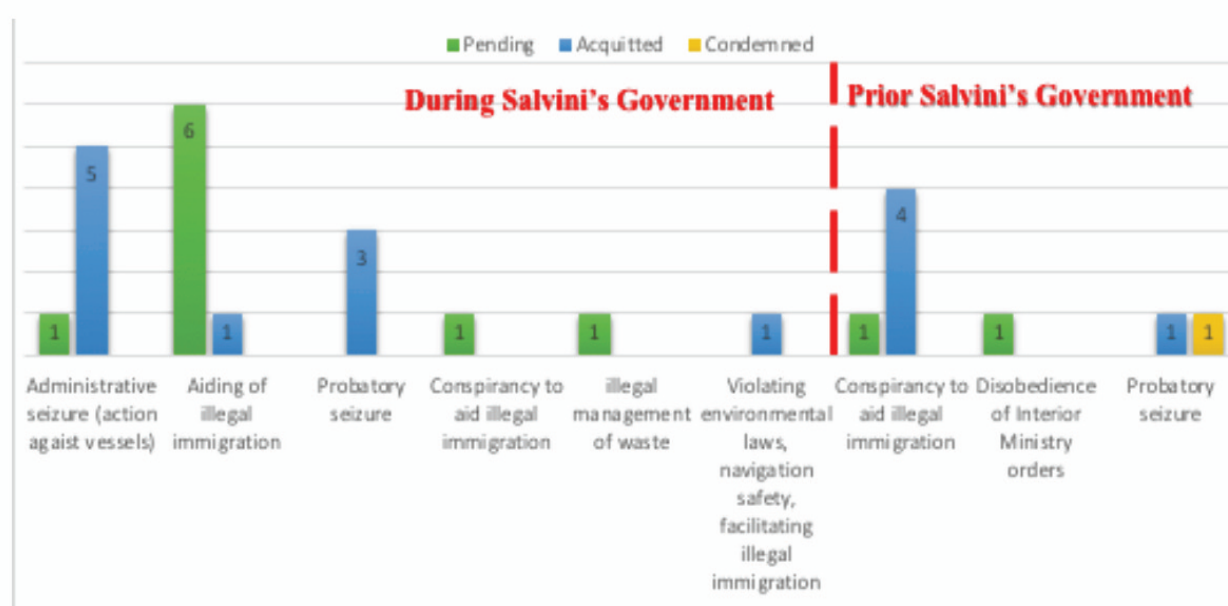
The position was reaffirmed by the declarations from the new Italian Interior Minister in the aftermath of the summit, when he stated that 'the current cooperation framework with Libya based on the 2017 Italy-Libya Memorandum of Understanding (MoU) will be preserved because the Libyan coast guard is doing a 'good job'. The EU has indirectly financially supported the Libyan coast guard through the EU Trust Fund for Africa. Insidiously, the agreement seems to assert the principle whereby NGOs' rescue activities act as 'pull agents' to encourage the human traffickers' business, when calling on them 'not to send light signals or any other form of communication to facilitate the departure and embarkation of vessels carrying migrants from African shores'<sup>129</sup>. Similarly, paragraph 14 of the declaration "encourages UNHCR and IOM to support disembarkation modalities in full respect of human rights" in North African countries. The agreement was discussed during the Austrian EU presidency in the second half of 2018 to set "regional disembarkation platforms" in third countries, but due to their political, legal and practical unfeasibility it was quickly cut short by all the civil platforms, the African Union and academics. In response, the Palermo Charter Platform Process signed a joint press release on the results of the EU Summit of Home Affairs Ministers, dismissing the allegations and criticising the policies put in place, especially in relation to confiscation of all civil rescue ships and criminalisation of solidarity, condemning once again the complicity of European States with the Libyan coast guard, perpetrators of crimes against humanity<sup>130</sup>.

One month later, Sea Eye's Alan Kurdi crew was threatened and shot at by a masked Libyan security force during a rescue operation<sup>131</sup>. Sea-Eye spokesman Gorden Isler said the Libyan boats arrived as the rescuers were handing life jackets to men and women on a white dinghy off the coast of Libya and began circling the ship, hampering rescue efforts. He said the masked men fired "warning shots" and pointed mounted guns at the rescue crew and the migrants, some of whom had jumped into the water, before retreating<sup>132</sup>.

In November 2019, the Italian court of ministers, upholding a request by the Rome prosecutor's office, shelved a probe in which former interior minister Matteo Salvini had been placed under investigation for abuse of office. The case involved the minister's actions concerning the Alan Kurdi migrant rescue ship run by the Sea Eye NGO in April 2019, which eventually disembarked in Malta. According to the judges, the responsibility for

assigning a “safe haven” to ships carrying refugees rescued at sea lies with the “First-Contact Country”, which is not always easy to identify”, and “the absence of clear regulations applicable to the matter makes it impossible to identify, with reference to the alleged refusal to indicate a POS (place of safety), any precise legal obligations violated by the persons under investigation, and consequently to rule that their conduct constitutes a criminal offence”<sup>133</sup>. This means that the interpretation of rules and regulations on the rescue activities, however, are far from obvious, thus opening up different scenarios in the two trials, Gregoretti and Open Arms, which see Salvini accused of kidnapping and other related crimes.

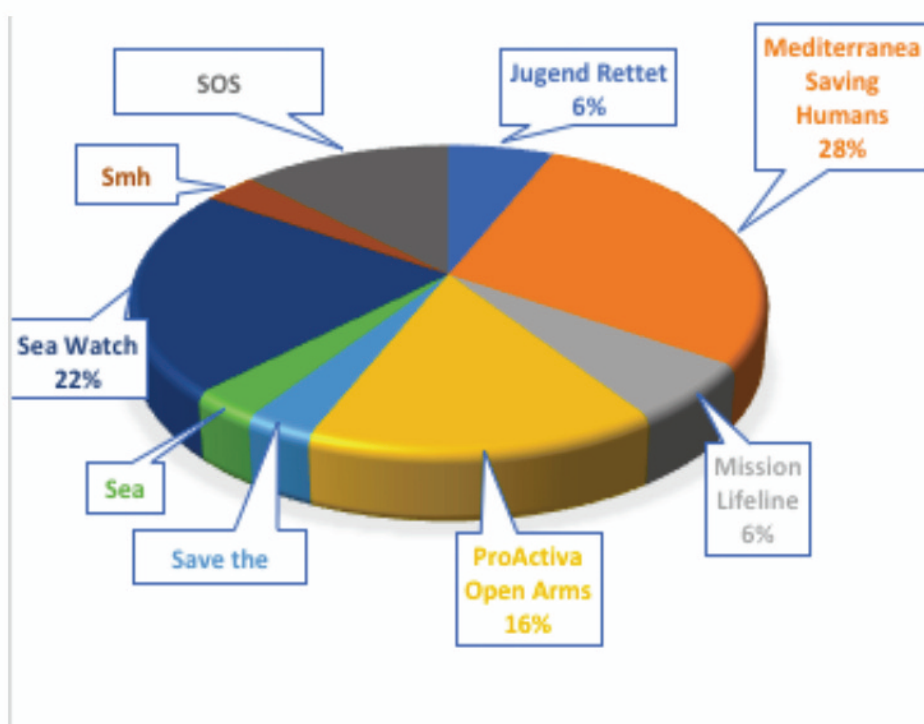
The diagram below shows the investigations launched against NGOs from April 2017 to September 2020: in total there are 18 of which four were closed before trial with no charges and one led to an acquittal. All other investigations are still pending, but none of them have yet resulted in a trial. Many of these investigations have been associated with the seizure of the boats operated by NGOs. Up to September 2020, cumulatively, the seizures lasted 45 months and were concentrated mainly in the summer months<sup>134</sup>.



**Figure 8: Type and Status of Legal Proceeding April 2017- Sept 2019**  
 \* Data elaborated from FRA and ISPI sources

In April 2020, following the outbreak of COVID-19 in Italy, Italy issued a ministerial decree in which it declared its ports unsafe. However, it is necessary to reiterate that this neither stops nor diminish Italy’s international and internal obligations on potential asylum seekers’ protection, a position also affirmed by Dunja Mijatović, the Council of Europe Commissioner for Human Rights<sup>135</sup>. During the epidemic, all NGO vessels (Ocean Viking, the Mare Ionio, the Sea Watch 3, Alan Kurdi and Aita Mari) have been made inoperative following all the same modus operandi; they have been blocked under administrative

seizure due to operational and technical irregularities reported during the coast guard safety inspection at the end of the quarantine period after their disembarkation. The seizures were ordered on spurious grounds, ranging from an alleged lack of environmental protection standards to lack of safety requirements relating to navigation and onboard personnel and migrants, on which the flag state has the final say. NGOs have recently accused the central government of making use of ‘the administrative distraint’ with the objective of keeping humanitarian ships away from the SAR area and preventing rescue operations which are particularly complicated during the pandemic. At the current time, Six Civil Fleet ships are currently stranded in port, including the Italian rescue vessel, Mar Jonio<sup>136</sup>.



**Figure 9: NGOs Subjected to Legal Action**

\* Legal action includes administrative seizure due to coronavirus or technical irregularities

On 5 October 2020, the Council of Ministers approved a new decree (Dec. L. n.130 of 2020) that brings new changes to both Salvini decrees. The modification of the decrees has been, and is still to some extent, subject to fierce opposition by the 5 Star Movement, who formerly had co-signed and supported Salvini’s decrees. In fact, the amendments do not imply the repeal of the decrees that, at least formally, remain in force. Rather, they imply their neutralisation. However, in the last year the Security Decree *bis* has never been applied, despite the humanitarian ships, still today, facing long stand-offs before being assigned a port of landing. This point was undoubtedly the one on which the tug-of-war between the two ruling parties was the most intense, given that a part of the 5-Stars Movement has always had positions close to those of the League on the issue of sea rescue operations.

The main changes include:

- the restoration of a two-year humanitarian protection (now called special protection) to be granted to foreigners on humanitarian grounds, or “as a result of constitutional or international obligations”. This permit can be convertible into a work residence permit;

- the ban of refoulement or repatriation to a state where human rights are systematically violated, or of those who have ‘a consolidated life in Italy’;

- the confirmation of ‘closed-ports policy’ in all cases, except those rescue operations that are carried out in accordance with international conventions and in communication with the competent authorities (in the case of foreign ships with their flag state). In case of breach, the fine ranging from 10,000 to 50,000 euros can be imposed only by a prosecutor and only at the end of a criminal trial, whilst the seizure of the ship is no longer planned;

- the elimination of the prohibition of registration of asylum seekers in the municipal registry offices;

- the halving of the maximum stay of those who are detained in the detention centres for repatriation (Cpr), formerly Cie, for up to 90 days (previously it was of 180 days);

- the reintroduction of the widespread SPRAR reception system managed by the municipalities (now-called Reception and Integration System), to all: not only the most vulnerable cases, minors and beneficiaries of international protection, but also the asylum seekers. Furthermore, first-level services for applicants for international protection (material reception, health assistance, social and psychological assistance, linguistic-cultural mediation, Italian language courses, and legal guidance services) are distinguished from second-level services, supplemented by job orientation and vocational training. The system will be run as the first option, whereas the prefectural reception system of the Extraordinary Reception Centers (Cas), often at the centre of scandals for below-minimum-standard life conditions, are retained to play a supplementary role;

- the reduction of the maximum waiting time for the request for citizenship to three years, in place of the four years previously ordered. The rule that provides for the revocation of citizenship in the case of crimes related to terrorism has been maintained only for those with acquired citizenship.

Following the declaration of the state of emergency (January 31, 2020) and the subsequent inter-ministerial decree with which the Italian authorities effectively closed the ports to rescue ships (April 7, 2020), the Civil Protection Department on April 12, 2020 adopted a provision to approve the use of ships for carrying out health surveillance of people rescued at sea and for which it is not possible to indicate the “Place of Safety”.

In recent months, about 10,000 people (as recently reported in an article referring to data from the Red Cross) have been confined to these structures at sea: migrants disembarked independently in Lampedusa and in other landing points in Southern Italy. People have been rescued in the Central Mediterranean, including women and minors.

The Interior Ministry has chartered other ships when there are at least six currently active, including five at the time of writing, (17.11.2020 as reported by RAI-TG1), with 2730 people on board in some Sicilian ports and at the disposal of the Italian authorities to manage health measures imposed by the Covid-19 epidemic. The doubts expressed in different areas and by different experts regarding this measure continue to this day, both in relation to the protection of the rights and dignity of confined persons, and with respect to the effectiveness in terms of containing the contagion. All this in the face of an economic expenditure connected, first of all, to the rental of these private boats, which is much greater than what would be necessary to carry out the same quarantine in structures located on land and identified for this purpose.

Two people are reported dead: Abdou Diakite, an Ivorian boy who died in a hospital in Palermo after disembarking from the Allegra quarantine ship and Bilel Ben Masoud, of Tunisian origin and only 22 years old, who died jumping off the Moby Zazà quarantine ship.

Civil society and the anti-racist forum of Palermo, together with other associations in the territory of Palermo, denounced what happened. This underlined: that the absence of official information available to police investigations on what happens on board of these “quarantine ships” represents a very serious lack of transparency and an additional source of concern for the violation front systematic of people’s rights, in particular but not exclusively for women and minors. This includes a total lack of information available as regards the support provided to citizens and or migrants in terms of health, psychological impact or support, legal support, the possibility of communication with the outside etc. (Roberta Lo Bianco, activist and partner of Molti Volti, questionnaire, 2020)



## VI. LEGAL ABUSES BY ITALIAN AUTHORITIES

The actions taken by the Italian Governments have constituted repeated alarming violations in multiple contexts of the extensive and heterogenous national, European and international *corpus juris* in the fields of right to asylum, right to life and protection of minorities.

### A) AT SEA

The role played by Italy in the pushbacks and in the relationship with Libyan authorities is at the root of recurrent violations by Italian authorities of human rights at national and international levels, as pointed out in many ordinary and second-level Courts' decisions which have condemned the detention centres in Libya and the illegality of the practices of pushbacks at sea as collective refoulement in every aspect. Indeed, by providing assistance to the Libyan coast guard and restricting NGO search and rescue activities, Italy was found guilty and complicit in the grave violations of human rights, in particular the right not to be subjected to torture or ill-treatment. The prohibition of torture and inhuman or degrading treatment is a peremptory norm of general international law, of *jus cogens* status, reiterated by various human rights instruments:

- the Universal Declaration of Human Rights (article 5);
- the International Covenant on Civil and Political Rights (article 4 and 7);
- the European Convention on Human Rights (article 3 and 15);
- the Charter of Fundamental rights of the European Union (article 4);
- the Human Rights Committee General Comments No. 24;<sup>137</sup>
- the International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Prosecutor v. Anto Furundzija case;<sup>138</sup>
- the International Law Commission;<sup>139</sup>
- the Committee against torture General Comment No. 2;<sup>140</sup>
- 2001 International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (art. 16);<sup>141</sup>

The state of necessity, which the Minister of the Interior Minniti implicitly referred to in some declarations, cannot be invoked by any means as a basis for precluding the wrongfulness of Italy's behaviour. This principle has been further upheld in article 26 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, whereby there are no circumstances which can preclude wrongfulness or justify a breach of a jus cogens rule. Consistently, necessity cannot excuse violations of the prohibition of torture, with the only exception of when they were "the only means for the state to safeguard an essential interest against a grave and imminent peril".

This is a general list of the most relevant legal cases attributed to or in the course of investigation on the State of Italy or its institutional representatives found in breach of or, to some extent, in tacit complicity, with the commission of grave human rights violations.

### **- at national level:**

- the Criminal Court of Trapani (May 2019) acquitted two migrants rescued at sea by the Vos Thalassa ship in 2018 after they rebelled aboard the ship threatening the captain and the crew upon realising that the ship was taking them back to Libya,. Relevantly, the judge recognised they acted in self-defence as the act of bringing them back to Libya would have been a crime<sup>142</sup>;
- the Court of Assizes of Agrigento ascertained the atrocious conditions of the Libyan detention camps, condemning a human trafficker for enslavement in the Sabratha camp<sup>143</sup>;
- Court of Palermo condemned three other persons for torture in the Sabratha "White House" for sexual violence, kidnapping and human trafficking<sup>144</sup>;
- Court of Rome accepted the appeal lodged with the support of ASGI and Amnesty by 14 Eritrean citizens based in Israel, who were victims of a collective refoulement by Italian authorities to Libya in 2009. The Court recognised their right to access the asylum procedure in Italy and ordered Italy to compensate them for the damages they suffered due to the illegal behaviour of the Italian authorities<sup>145</sup>. The Court recognised the need to expand the scope of international protection to preserve the position of those who were prevented from submitting an application for international protection, due to the fact that they could not access the territory of the State as a consequence of an unlawful act committed by the authority of the Italian State, inhibiting the entry to the territory in violation of the Constitution and the Charter of Fundamental Rights of the European Union;
- The Civil Court of Rome ordered the Ministry of Foreign Affairs to instruct the Italian Embassy in Addis Ababa to immediately issue an entry visa to Italy in favour

of a minor, the daughter of a female refugee in Italy, for urgent humanitarian reasons under Article 25 of the Visa Code (Article 25, Regulation CE n. 810/09);

- the Civil Court of Rome ordered the Ministry of Foreign Affairs, Italian Embassy at Tripoli, to issue a visa for humanitarian reasons for an unaccompanied Nigerian minor in Libya;
- The Criminal Court of Trapani (February 2020) judged the Memorandum of Understanding between Italy and Libya as not conforming to the Italian Constitution and to international laws. According to article 80 of the Italian Constitution, political agreements can be signed only through Parliament's authorisation. Furthermore, it is an agreement concluded with a party, the Libyan coast guard, repeatedly referred to as responsible for crimes against humanity. Furthermore, the court found that the agreement violates the principle of non-refoulement<sup>146</sup>;

### **- at European level:**

- European Court of Human Rights condemned Italy in the famous *Hirsi Jamaa and Others v. Italy* case. The ECtHR considered that Italian practice violated international obligations on safeguards for migrants and asylum-seekers by exposing them to the risk of being subjected to ill-treatment in Libya and being repatriated to Somalia and Eritrea;
- GLAN, ASGI and ARCI has submitted a complaint before the European Court of Auditors (ECA), the EU's financial watchdog, requesting the body launch an audit into the EU's cooperation with Libya. Such an audit would seek to determine whether the EU has breached its financial regulations as well as its human rights obligations in its support for Libyan border management, by funnelling €90m earmarked for poverty reduction to the Libyan coast guard<sup>147</sup>;
- European Court of Human Rights is expected to rule over the case *S.S. and others v. Italy*, concerning a rescue operation of the Sea Watch ship, hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC<sup>148</sup>. According to the 17 survivors of the incident (who happen to be the applicants), LYCG's arrival caused a strong water movement which led to the deaths of at least 20 people who had fallen from the boat. Furthermore, the LYCG obstructed the Sea Watch's rescue operations by throwing objects, as well as hitting and threatening the migrants with ropes and weapons, and failed to provide life jackets to those who were in the water. The Sea Watch was eventually able to rescue 59 passengers and bring them to safety in Italy. Nonetheless, 47 migrants were ultimately returned to Libya.

### - at international level:

- Communication to UN Human Rights Committee, in the case of *SDG versus Italy* submitted by the Global Legal Action Network (GLAN) in 2019, for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights<sup>149</sup>. In the case, Italy appears to play a key role in the privatised pushbacks policy which involves engaging commercial ships to return refugees and other persons in need of protection to unsafe locations. The complaint concerns the case of an individual refouled to Libya together with 92 migrants after being intercepted on the high seas by a Panamanian merchant vessel, the *Nivin*, in November 2018. The legal submission is based on the Forensic Oceanography report, which shows how the operation was fully coordinated by the MRC.

## B) ON LAND

Italy is involved in controversial migrant interdiction and detention practices in the “hotspots” at ports of entry and in the detention centres (CPR). Approximately 45,000 may have faced some forms of migration-related detention in Italy in 2017, placing it among the countries with the largest detention systems in the world<sup>150</sup>. In 2018, the First Decree Law 113/2018 increased the maximum length of detention in CPRs from 90 to 180 days, created a legal ground for detaining asylum seekers for identification purposes for up to 30 days and introduced new grounds for the revocation or denial of international protection, by for example, eliminating the possibility of appealing a first instance court decision and making appeal possible only through the Supreme Court. Asylum procedures were also simplified by removing the courts’ obligation to hear an asylum seeker. As highlighted by the Association for Legal Studies on Immigration (ASGI), this ground violates the EU Reception Directive, in particular Article 8(1), which prohibits detention for the sole purpose of examining an asylum request.

Unaccompanied minors are reportedly detained in hotspots for identification purposes even though the practice lacks any legal basis. Reports indicate that detention of children at these facilities is common. In 2016, Human Rights Watch (HRW) reported that unaccompanied minors as young as 12 were detained, sometimes for over a month, alongside unrelated adults at the Pozzallo hotspot. When HRW visited the centre in June that year, they found that of the 365 people held at the centre, 185 were unaccompanied children. Predictably, the children were vulnerable to violence and sexual harassment. Furthermore, NGOs have reported numerous cases in which age assessments for identification at the hotspot are inaccurate (Anonymous, interviews in 2019). For example,

in 2018 and 2019, Lasciate Entrare Social Cooperative and the National Guarantor for the Rights of Persons Detained and Deprived of their Liberty reported that many unaccompanied minors in a CPR have been detained on the bases of incorrect age assessments. Human rights protection bodies have repeatedly noticed that:

- In 2017, the Committee on the Elimination of Racial Discrimination (CERD), recommended Italy consider a presumption against immigration detention;
- the Human Rights Committee (HRC) asked Italy to ensure that detention is a measure of last resort, strictly necessary, proportional, non-arbitrary, lawful, and imposed for the shortest time possible;
- the Committee on the Elimination of Discrimination against Women (CEDAW) recommended providing adequate services in detention, especially to women in a vulnerable situation;
- the Committee against Torture (CAT) expressed concern regarding the difficulties faced by NGOs and the NPM in accessing detention facilities and requested that Italy ensure such access;
- the UN Committee on the Rights of the Child (CRC) expressed its concern over the increase in the maximum length of detention to 180 days;
- the Committee on Enforced Disappearances (CED) urged the Italian government to release a list of immigration detention facilities;
- the UN Subcommittee on the Prevention of Torture (SPT), which is mandated to monitor places of detention by the Optional Protocol of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), signed by Italy in 2013, urged Italy to prioritise non-custodial measures over detention, so that immigration detention remain a measure of last resort, and recommended that authorities address the prison-like design and security arrangements of CPRs, which were deemed inappropriate for immigration detention;
- The Special Rapporteur on the Human Rights of Migrants stated that the Italian judges in charge of expulsion and detention orders are Justices of the Peace without any particular expertise in immigration issues. The ability of these judges to review the detention orders on the merits seems to be limited; rather, the confirmation of the detention orders is perceived to be in many cases based on mere formalities, thus resulting in a lack of real judicial control over the order.”

Other violations of procedural rights have been encountered in relation to:

- return orders that are based on hurried and inaccurate interviews, showing relevant inaccuracies in their application of laws. For example, often migrants do not have received a copy of the signed declaration containing the details upon which return orders are based; (Activist, interviews, 2019)
- arbitrary distinction between asylum seekers and irregular migrants at the hotspot based on summary assessments, mainly through questionnaires (*foglio notizie*), filled in by migrants at disembarkation or by oral interviews. People are often classified just solely on the basis of their nationality. Migrants coming from countries informally considered as safe, for example Tunisia, are classified as economic migrants and therefore prevented from accessing the asylum procedure. This process is not established by the relevant legislation since police forces are merely entitled to 'receive' asylum applications; (Lawyer, interviews 2019)
- Expulsion paper: reportedly, after disembarkation, the national authorities release a document in which migrants are informed to leave the country within 7 days, as they are not entitled to obtain protection. This measure is fully illegal and against the law; (Lawyer, interview 2019)
- Right to information: according to the SOPs, all hotspots do not respect *inter alia* the migrants' right to information in a comprehensible language on the functioning of the asylum procedure. (Activist, interview 2019)
- Denial of access to the asylum procedure: reportedly, migrants are frequently asked to sign a paper called "Scheda informativa", through which they declared they were not interested in seeking international protection. The declaration is only written in the Italian language. After signing these documents, they were notified with deferred refoulement orders and transferred to the detention centres; (Lawyer, interview 2019)
- No financial support for taking public transports to the competent Questura is provided by Italian authorities. In practice, the NGOs working at the border points provide the train ticket for that journey on the basis of a specific agreement with the competent Prefecture. However, this support is not always guaranteed;

The most relevant legal cases are:

### **- at national level**

- Unconstitutionality of Salvini's decrees: the abrogation of humanitarian protection is likely to open a protection gap under article 10 paragraph 3 of the Italian Constitution on the right to asylum. (NGO representative, 2019). As noted by the ASGI, the substitution of humanitarian protection with a restricted list of 'special' residence permits means that the right to asylum set out by the Constitution is 'no longer fully implemented by the legislator'. This could open the possibility of bringing legal actions to ascertain the right of asylum guaranteed by article 10 – which can be invoked directly in front of an ordinary court – and raises questions of constitutionality. Many organisations, including ASGI, have raised the discriminatory aspect of this rule which, by denying a subjective right to one single category of foreigners, the asylum seekers, violates the principle of equality enshrined by Article 3 of the Italian Constitution;
- Unlawfulness of the provision of the Security Decree on the immediate expulsion of refugees and asylum seekers who are convicted at first instance for sexual assault, drug dealing, theft or aggravated injuries to public officials. The European Court of Justice excluded the automatic repatriation of refugees and asylum seekers who have a well-founded fear of persecution in their country of origin, even if they are convicted of crimes<sup>151</sup>;
- Violation of the substantive right to be registered at the civil registry office, as set out in the Salvini's First Decree. The decree repealed the rules governing civil registration of asylum seekers and stated that the residence permit issued to them does not constitute a valid title for registration at the registry office. Several civil courts upheld the appeal brought by asylum seekers who saw their request to register denied by local municipalities<sup>152</sup>. In four cases, the Civil Courts concerned sent the documents to the Constitutional Court to assess the compatibility of the foreclosed civil registration for asylum seekers with the principles of the Italian constitution and in particular with the principle of equality referred to in Article 3 of the Constitution<sup>153</sup>. Many municipalities, led by Palermo Mayor Orlando, have openly declared they will refuse to apply the amendments to the law. The Mayor of Naples, Campania, for instance, has decided to register asylum seekers in the registry of temporarily resident persons.

## - at European level:

- The European Court of Human Rights in its December 2016 ruling in *Khlaifia vs. Italy* found that Italy had violated Article 5 of the European Convention on Human Rights, which protects the right to liberty and security in relation to its detention of four Tunisian migrants at a “first aid and reception centre” in Lampedusa (the centre was later converted into a “hotspot”)<sup>154</sup>;
- The UN Committee against Torture (CAT) reviewed the case of Italy on detention practices in November 2017. During the session, it emerged that misleading language was being used by Italian authorities to refer to migration-related detention, calling it “administrative holding,” a persistent aspect of Italian policy. Noteworthy, the fact that it is not defined as detention makes the condition of migrants and their accessibility to rights worse than if they were in prison<sup>155</sup>;
- The Court of Justice of the European Union ruling in the case of *El Dridi* in 2011 found that Italian legislation did not comply with the EU Return Directive for criminalising irregular stay;
- The ECtHR is expected to rule over the case *Alagie Trawalli and Others v. Italy*<sup>156</sup>, regarding 13 unaccompanied minors who were detained in the hotspot of Taranto in July 2017 without a written order. They were placed in a single tent together with adults, closed within a metal-mesh perimeter fence controlled by the Italian Army. They were not allowed to communicate with the outside world and to receive minimum information on their rights as minors. Moreover, the claimants have declared that they did not receive any information on the possibility of asking for international protection nor the consequences thereof. Alleged human rights violations are: prohibition of torture and inhuman and degrading treatment; right to liberty and security; right to respect for private and family life; right to an effective remedy. In addition, alleged human rights violations refer to the national law n. 47/17, which prohibits the detention of minors in hotspots.



## VII. INSTITUTIONAL RACISM

Many lawsuits focus on maladministration discrimination and racist violence, even by national authorities. Actually, it is the law which is discriminatory. Therefore the problem lies more at institutional level: governments have been changing laws, and this can corrode safeguards. In the last 20 years, governments have been successful in pushing forward discriminatory laws in as much as they grant special rights to categories of people, moving away from the rights and values protected by constitutional law, the primary law which applies in the case of conflict of law.

Lawyer working for NGO Borderlines, 2019

Italy's role in the so-called refugee crisis as destination and transit country, as well as the challenges that the country is facing in economic and political terms, appear in public debate almost every day. The migrants-based debate has been highly divisive in the country and exacerbated the polarisation of public opinion into two main groups: those in favour and those against the policy of hospitality. At the institutional level, the latter are politically represented by the Five Stars Movement and the League party, in government until 2019, and the far-right Fratelli d'Italia party, closely allied to the League. Contextually, it comes as no surprise that EMORE Hate Speech survey's results pointed to 'political opinion' as the main reason for prejudice and hate in the country<sup>157</sup>. According to the authors of the EMORE Italian country report, the 'political opinion' category needs here to be considered in a broader sense 'as political and social activism' and can also be a form of retaliation or "secondary victimization" against those who provide help and support to the victims, or potential victims, of discrimination.

### A) THE RACIALISED RULING CLASS

The widespread presence of fake anti-migrant news in Italian society is fuelled by intertwined and multi-faceted relations among institutional players of a power structure ranging from media to politicians, the judiciary and communicators. The theorem according to which NGOs operate 'a sea taxi service' is a prime example of this. Its diffusion has been the result of an orchestrated plan of dissemination in which politicians, journalists,

prosecutors and web trolls had a relevant role to play in an organic and connected manner. Commonly, the narratives used against NGOs and their supporters can be summarised as the following:

- 1) NGOs become a pull factor of the crossing, by intervening too closely at the Libyan coastal area.
- 2) Search and rescue missions in the Mediterranean have led to an increase in deaths and shipwrecks
- 3) NGOs' funding lacks or transparency and their source of funding is the smugglers;
- 4) NGOs feed the hospitality business.

It all started in December 2016 with an article published by the Financial Times. The British newspaper had come into possession of a confidential report by Frontex, the European agency for the control of external borders, which reportedly denounced the alleged links between human traffickers and boats of humanitarian organisations. The hypotheses of the Financial Times was reinforced by some statements by the Director of Frontex, Fabrice Leggeri, who a few weeks later in an interview with Die Welt news accused the NGOs of being a pull factor for migrants fleeing Libya, leading traffickers to use cheaper and more dangerous means of transport such as plastic dinghies instead of the vessels used in the past for the crossings<sup>158</sup>. This accusation was promptly rejected by Riccardo Gatti of Proactiva Open Arms, who instead linked the use by traffickers of inflatable boats to the 2015 campaign by the EunavforMed Sophia operation, which destroyed iron or wooden boats therefore prompting the criminal organisations to switch to other cheaper means of transport. By the same logic, the EU agency deliberately avoided patrolling the area where most shipwrecks occurred on the assumption that the operations near the Libyan coast induced traffickers to plan. The logic whereby “saving more lives will only encourage more refugees to come” put in place by the EU agency was eventually denounced by the Intercept journalist Zach Campbell, who published leaked documents internal to Frontex<sup>159</sup>. The documents revealed a private communication by Mr. Klaus Roesler, Director of operations at Frontex, to Italian authorities ‘to not immediately respond to distress calls from outside their 30-mile patrol area’<sup>160</sup>.

The Financial Times story failed to provide solid evidence for the allegation of collusion and proved to be rife with inaccuracies<sup>161</sup>. In actual fact, Frontex only reported an incident where two people were transferred from a small boat flying the Libyan flag to the LifeBoat rescue ship by “persons pretending to be fishermen”, but subsequently reported by the rescued as smugglers. Subtly, in the conclusion, Frontex reported the incidents as “the first

case where criminal networks directly approached an EU vessel and smuggled the migrants directly into Europe using the NGO vessel”, and never outright accused LifeBoat of colluding with smugglers.

According to many NGOs and activists, the Frontex report and Financial Times were the start of a new strategy to criminalise NGOs by painting a public picture of NGOs as smugglers’ associates. Notwithstanding that spokespersons for the EU agency distanced themselves from the accusations by the Financial Times, it certainly helped to create a grey zone of suspicion. Coming to their aid, both media and politicians played a key role in the spread of the pull-factor thesis under the slogan of ‘no more NGOs as sea taxis’, reverberating in the public debate. This was especially due to the successive unfortunate engagement by the Public Prosecutor of Catania Carmelo Zuccaro, who appeared in a national television broadcast at 9:00 on 27 April 2020, issuing public pronouncements on the ‘subversive action of some NGOs against the economic stability of the country, certainly affected by the growing flows of migrants’. During the same intervention, he announced a ‘hypothesis of work’ to find out ‘why there has been such a noted proliferation of these ships and how they deal with such high operational costs without having a return in terms of economic profit’<sup>162</sup>. Promptly, the League’s and the Forza Italia’s senators decided to ride the waves of scandal, and asked the Defence Commission at the Senate to open an investigation into the work of the humanitarian organisations in the central Mediterranean. A few days later, Gefira online and other news websites reported a fake report by a Facebook blogger, Luca Donadel, who claimed to have collected evidence through ship-tracking software, Marinetraffic, demonstrating that NGOs, the Italian Coast Guard and smugglers were together coordinating their actions, and that ‘rescues were a part of a well-organised hazardous human trafficking operation’<sup>163</sup>. The video immediately went viral and was taken up by the national TV show, Striscia la Notizia, and other international media outlets<sup>164</sup>.

In parallel, Zuccaro said he had obtained compelling evidence from intelligence sources on ties between the smugglers and the NGOs. In the same days, two additional prosecutor offices (Trapani and Palermo) publicly launched investigations into the ships Iuventa, Open Arms and Save the Children, for abetting illegal immigration which carries a penalty of up to 15-years’ imprisonment. Some months later, it emerged that former plainclothes policemen, hired as security officers to infiltrate NGO vessels during rescue operations, were the origin of the untrue allegations. Engaged as informers through a private security agency, the IMI Security Service, to monitor the rescue activities, they had been reporting information directly to Salvini and 5 Stars’ politicians. Lately, links have been discovered between IMI Security Service and the European supremacist far-right ‘Identarian movement’, founder of the “Defend Europe” action which consisted in chartering a ship in the Mediterranean Sea with the purpose of thwarting NGO ships’ rescue operations and ferrying them to the Libyan coast guard<sup>165</sup>.

In the end, the Italian Parliament investigated these claims and found them to be unsubstantiated. Further, the prosecutors did not find probable cause in any of the cases to proceed to trial. In fact, the prosecutor of Palermo has formally dismissed the cases whereas the prosecutor of Catania and Trapani are expected to follow closely. The same prosecutor Zuccaro, who was at the origin of the scandal, has lately reversed his statements and saw dismissal of the charges against the NGOs. Based on environmentalists' wiretapping records, indeed nothing emerged from whistleblowing but gossip, second-hand allusions, personal dislikes and prejudices of absolutely no judicial relevance.

However, investigations have undoubtedly had a strong backlash in terms of image and trust in the NGOs' activities. Inescapably, the smear campaign put in place by the most prominent institutional figures has subtly injected the seed of wrongdoing by NGOs into public opinion and cast a shadow over the origins of their funding. In a few months, Italian public opinion has therefore been changed from favourable to NGOs to a climate of suspicion.

Once they had planted the seeds of doubt, right-wing Italian newspapers and activists built on them by making various claims. Capable of making room for somewhat contradictory conspiracy narratives, they managed to propagate the ideas that 1) NGOs active in migrants' assistance and rescue at sea would reap financial profits from their collaboration with the Italian authorities: or that 2) some NGOs are part of unlawful people-smuggling operations in coordination with the Libyan coast guard, or 3) they are funded by uncertain international criminal groups and financial institutions interested in fomenting political turmoil in Italy.

**This demonisation of NGOs elides seamlessly from the demonisation and actual criminalisation of the "presumed human trafficker", the boatman. The main strategy used by the human traffickers consists of choosing one of the migrants on board as the shipmaster during the final stage of the crossing, often on pain of torture or death. It is common for human traffickers to escort migrants in the boat until it reaches international waters. After that, they trans-ship to go back and leave all migrants alone with the "presumed boatman" who takes control of the boat until the coast.**

**"The presumed boatman has been usually instructed for a few hours before the crossing, and tortured and brainwashed for months to bend him to their will. At the disembarkation, people identify him as the boatman and he is arrested by the police and put on trial as a human trafficker."**

**Anonymous Sprar Center activist interview, 2019**

## **B) RACIALISED POLITICAL DISCOURSE**

Racist hate speech is an issue of growing concern in Italy. It is catalysed by a number of factors: the long-standing economic crisis in the country; the surge in migrants and refugees arriving; the incendiary tones used by political parties and movements in public debate; the biased media reporting on issues related to migrants or minorities in general; the uncontrolled use of social media platforms detonating hate-filled messages.

In this context, the right-wing parties and xenophobic movements have been playing an influential role in fuelling hostility towards ethnic, national, and religious minorities in order to gain political support, as underscored on several occasions by the Commissioner for Human Rights, ECRI and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCPNM), with regard to hate speech by Italian politicians targeting migrants, Roma and Muslims<sup>166</sup>. This is what emerged, although with some significant differences, from two different studies by Amnesty International, the Barometer of Hate, and VOX's 'Map of Intolerance. Both studies have demonstrated that there exists a clear correlation between the hate language used by politicians during electoral campaigns and the increase in attacks against migrants and foreigners on the web and on social networks<sup>167</sup>.

The political campaigns against refugees and migrants in the 2018 general election and in the 2019 European election have been an excellent litmus test for the measurement of hate, and to discover possible evolutionary trajectories from one electoral appointment to another. In 2018, the Barometer underlined the quantitative aspect of the role that hate speech had played in the electoral campaign, above all against migrants who were the main theme in a bad and increasingly "vulgar" political language. In the following 15 months, according to Barometer 2019, the situation became even more alarming: not only has the focus on migrants not diminished, but rather it has extended to attacks against the 'solidarity system', especially against those NGOs, associations and supporters sympathetic to migrants' rights and hospitality<sup>168</sup>. Hate speech, therefore, has become normalised on the basis of generic allegations rather than on factual data, with the effect of reversing the ethical-moral value system according to which it falls on those 'helping' to justify their action. The data emerging in 2019 confirmed the dramatic correlation between the increasingly intolerant and discriminatory language of the to-be-European parliament members and the increase in racist and xenophobic return tweets by users, with all the resultant potential to legitimate repressive political decisions in the context of migration policies.

The centralization of a few profiles, but with a large number of interactions, and polarisation among users have been revealed by both the Barometer of Hate and the Map

of Intolerance. This centralisation confirms that retweets represent an important communicative dynamic, emphasising the circularity of what could be defined as the “spiral of hate”. An important distinction in this context concerns the use of hate speech by politicians and by users: the former rarely use hate speech, while the latter systematise the dynamic of centralisation, considered as one of the characteristics of online hate (few users with more violent language; focus on specific issues or social groups). The imbalance between the level of aggression by politicians and that of users is an indication of different communication dynamics and purposes, depending on the profiles of those who communicate.

The escalation of racist verbal violence within public discussion is opportunistically ridden by politicians who, unable to give structural responses to the migratory phenomenon, systematically make use of an exclusionary rhetoric of ‘othering’, in order to legitimate draconian securitarian measures aimed at maintaining the ongoing emergency approach. The increased recourse to foul language, acrimony, and ‘ad personam’ attacks across the political spectrum, hence, becomes the new normal: hate speech by politicians is no longer just a tool to shape a political consensus by sharpening the deep social, cultural and political fractures of Italian society, but rather the ‘background noise of a way of making political communication, in which some actors are more at ease than others, but with which everyone must now deal’<sup>169</sup>. As a result, the seat of public debate seems to shift from the elective assemblies to the pages and social profiles of politicians, to the extent that a tweet from the Minister of the Interior seems to be enough to determine the closure of Italian ports, regardless of whether it represents a subversive overturning of the institutional ground rules, with parliament deprived of the legislative function at the expense of fundamental rights enshrined in the Constitution<sup>170</sup>.

## I. Data Analysis

During the EU elections in 2019, Amnesty monitored the online behaviour of 1,419 political candidates and their interactions on social platforms. It found that:

- Out of 787 offensive, racist and discriminatory comments and statements collected from 129 candidates, 91% concerned migrants (including security and reception-related issues), whereas 11% of the declarations concerned religious minorities (especially Muslims), 6% LGBTI communities, 4.8% Roma and 1.8% women;
- more than 1 content in 10 from 100,000 tweets (11.5%) by politicians and return comments by users was found ‘at least’ to be offensive and/or discriminatory. 1 case for every 100 contents was reported as hate speech on the highest scale of evaluation;

- 42 out of 100 of post / tweets on migration fall under hate speech, almost half of them. This makes shocking reading: migration is present in 8% of the content that makes up political debate, 42% of which is reported as hate speech. For the sake of comparison, only 7 out of 100 posts / tweets by politicians under the “other” thematic group of the survey, representing the largest share of online political debate generate offensive and / or discriminatory comments or hate speech;
- 47.5 out of 100 posts / tweets by politicians on the topic of religious minorities generate over 20% of offensive comments;
- discriminatory and / or offensive posts / tweets by politicians generate an average of interactions much higher than others: 2,467 likes, 595 shares and 473 comments, drastically dropping in the case of non-problematic negative posts (443 likes, 152 shares and 90 comments) or neutral or positive posts (326 likes, 79 shares, 50 comments). Similarly, only 10% of posts / tweets on the “other” topic generate 1,000 or more likes, a percentage that rises to 26% “when they deal with immigration and 33% with Roma. Over 51.5% of interactions fall under a single name, Matteo Salvini. The other political leaders follow a long distance behind and only six of them exceed the threshold of 1% of interactions: Luigi Di Maio (5-Stars Movement), (14.5%); Giorgia Meloni (Fratelli d’Italia, far right), (8.3%), Silvio Berlusconi (3.6%).
- As for the social targets of offensive / discriminatory and hate speech, the highest group is represented by migrants, refugees and people with migratory background, followed by humanitarian or solidarity activists / supporters, and thirdly by Muslims, women and Roma. In respect hate speech, Muslims are the first target (19%), followed by migrants and refugees (15,5%) and women (8%)

## II. Narratives in use

**The Salvini campaign's narrative always makes clear the connection between migration and the threat of so-called Islamic terrorism, as well as fuelling the narrative of the 'invasion'. Migration is always discussed as a matter of security and never as a matter of a positive social vision of the society. It is important that attacks happened in Spain, Germany, Belgium you can France never happened in Italy. It is the only country among the west European countries that had no terroristic attack.**

**Lawyer working with NGO involved in Sea Rescues**

Somewhat like the Czech republic (CIK, 2018), despite not having had a terrorist attack related to 'Islamist' political violence, the mobilisation of the Muslim terrorism trope has happened increasingly under the Salvini regime. Thus, views such as, "Most boats and dinghies ship migrants to the Italian shores", and also, "reception of migrants is mostly burdened by the Italian State, causing a conspicuous and unbearable draining of financial resources that could be used elsewhere for the Italians, instead of helping potential terrorists or criminals" have become more common. These few words synthesise the political refrain that right-wing and xenophobic parties are currently repeating over and over in Italy. Most often, it is accompanied by conspiratorial content, as for example Salvini did in his speech in Milan during the European Parliament campaign when he accused some "elites" – Merkel, Macron, Soros - of betraying Europe and paying NGOs to execute a purported plan of ethnic substitution against the 'European, Christian, white population'.

Central to the narratives in Italy is the identification of the recent migration waves, particularly refugees and asylum seekers, with "Muslims". This observation calls for scrutiny and methodological clarification, firstly because, empirically, not all refugees are – or are self-determined as – Muslims. (Dominant Counter-narratives to Islamophobia, Greece Report, CIK Project 2018). Furthermore, insults against Muslims are often used in combination with migrants in accordance with a syllogism whereby 'all migrants are Muslims; all Muslims are terrorists' and therefore 'we are importing terrorists.' Accordingly, terms such as immigrant/ Arab/ Muslim/ terrorist overlap in a number of comments and are used interchangeably. Therefore, anti-migrant sentiment seems to encompass the diverse typologies of racisms, including sexism, xenophobia, anti-Gypsyism and Roma-phobia, antisemitism, to the extent that it can be said they 'are mutually reinforcing and, in many cases, take place in a general social environment of hostility towards migrants and ethno-cultural minorities' (Counter-Islamophobia Kit, CIK Project 2018).



This is particularly evident when insults are addressed to women in prominent roles such as politicians, activists and journalists. Most cases reveal that the underlying message is reinforced by sexism and racism, according to which women who support migrants' integration are: 1) sexually frustrated and they will enjoy being raped by 'n\*\*\*\*s' ('the dream in the drawer of these bald geese is a black bird that will make them slaves', Facebook, social users 2018); 2) they are good only to prostitute ('go to work the street, monkey, the only thing you know to do', Facebook, social users, 2019)

**An emblematic case has been that of Matteo Camiciottoli, Mayor of Pontinvrea from the League Party, who commented on Facebook on a rape committed by migrants:**

**"They (the rapists) had to be sent to house arrest at Boldrini's home. Maybe they put a smile on her "**

**Laura Boldrini was at that time the third highest state office, the Speaker of the Chamber of Deputies (Parliament). He was sentenced in the first instance for the criminal offence of defamation.**



**Photograph 5: Case of Institutional Hate Speech Online by League**

A recent example is of Rama Malik, Italian citizen of Senegalese origin, who posted a video on Facebook, in which she expressed her support to the anti-racist street movement, Le Sardine. The messages from social users to her video repeatedly address her as a prostitute.



**Photograph 6: Cases of Intersectional Hate Speech**

In relation to anti-Muslim sentiment, the connections often made between ‘migrants’ and ‘Muslims’ serve to reinforce narratives of hatred by letting them be effective in different semantic and pragmatic areas and to reach a wider public e.g. combining, for example, the issue of a supposed (organised) invasion of Muslims associated with massive refugees flows, with therefore a discursive of the “Islamisation” of immigration. This narrative of the security threat that Muslims would shapes the narratives of hatred which function within the domains of immigration and of domestic defence politics and policies. These in turn, are internalised by actors dealing with both, as they merge “anti-refugee sentiment, and Islamophobia and patriotic nationalism” (Dominant Islamophobic Narratives Comparative Report, CIK Report 2018).

As for the language used, firstly, there was a particularly belligerent language during the two campaigns employing military and war metaphors, such as “social bomb”, “social clash”, “war at home”. Secondly, we saw dehumanising analogies such as ‘beasts’, ‘worms’, ‘tick’, ‘froggy/frog-eaters’, ‘monkey face’, ‘cattle’, ‘banana-eaters’, emerged in the language both from institutional representatives and social users, or other referencing to ethnicity or race or social status: ‘Bangla’, ‘Bedouin’, ‘kraut’, ‘kebabers’, ‘hawkers’, ‘Rabin’, ‘g\*\*\*y’, ‘n\*\*\*\*r’; ‘g\*\*k’; ‘barbarians’.

A post published in 2019 on Facebook by the Health Director of Piacenza (Emilia-Romagna region in northern Italy) grabbed the media's attention in a few hours.

"Livestock does not travel on super-luxury buses ..." The Health Director wrote under a news published by the new online newspaper Open, with reference to the migrants transferred from the reception centre of Castelnuovo di Porto on board buses.

The case was closed by the Piacenza Medical Association.



Photograph 7: Case of institutional hate speech online

By drawing a parallel with the examples reported by Amnesty Barometer and the categorisation of the umbrella narratives and counternarratives elaborated in CIK reports, especially in relation to those countries (Greece and Czech Republic) in which, as in Italy, the discriminating discourses conflates ethnic origins with religious affiliation in a general discursive oversimplification based around distinction between host and immigrant (Dominant Islamophobic Narratives Comparative Report, CIK Report 2018), it is possible to map the main narratives in used in Italy:

- 1) Threat to security (35): (especially in relation to Muslims) 'Muslims migration is a threat to the western civilisation'. The most used words are: 'terrorist', 'jihadist', 'cutthroat', terrorism.
- 2) Unassimilable: reverberating the concept of clash of civilisations.
- 3) Threat to identity: intercepted in the following messages; "they come here to dominate us with the help of the left that wants globalization"; 'they are incompatible with Christian value'; Here are the comments of those who rejoice in front of the fire of a symbol of CHRISTIANITY and the WEST, ah obviously they are written in Arabic by Islamists!!! How this time will justify the #RadicalChic ??? (Angelo Ciocca, League Party)<sup>171</sup>
- 4) Demographic threat: based on the perception of an incoming invasion, often mixed with that of an international plot by the EU and lobbies: Examples are: "the African and Islamic invasion that the European Union will impose on us will be the end of the Western world"; "We have to finish this African and Islamic invasion (...) They are a danger for us and all of Europe"; "The problem is that we already have too many in Italy and they continue to give birth like rabbits. Before we can stop the arrivals, we will find ourselves in an ethnic minority and Italy will become Islamic. Just look at the schools to understand that they are slowly screwing us";<sup>172</sup>
- 5) Gender Inequality: migrants, especially Muslims, are sexist, misogynistic, perverse, segregationists, sexual predators. (from Silvia Sardone, League Party, account: 'A poor girl forced into nightmare hours, raped by foreign rapists. These worms deserve only long hard prison'.<sup>173</sup>
- 6) Ontological diversity (63% from the Amnesty barometer): 'they are incompatible with Christian value'; 'Islam is too traditionalist and unable to adapt to the present'.
- 7) Innate violence: 'Islamic teaching promotes violence' (26%). (from the League Party representative Angelo Ciocca's account: 'ZERO TOLERANCE for those who, in the name of a religion, want to bring DEATH to #OurCountry. They deserve not to go out of PRISON anymore!!! Congratulations to the intelligence and law enforcement agencies, thank you for your commitment!!!'<sup>174</sup>
- 8) Draining financial resources: 'unbearable draining of financial resources that could be used elsewhere for the Italians'<sup>175</sup>

Particularly emblematic in this sense have been the cases of racialised verbal attacks against two women politicians from the local and national League Party representatives, using sexualised or dehumanizing tropes:

Roberto Calderoli, Vice-President of the Senate in 2013, League Party, addressing Cécile Kyenge, the then Minister of Integration:

“When I see her, I can’t help but think of an orangutan”. (). The judge sentenced him in the first instance to one year and six months for defamation with a racial aggravating circumstance.<sup>176</sup>



Photograph 8: Case of Institutional Intersectional Hate Speech by League

*\*the text reads as follows: 'but never anyone who rapes her, so much to understand what the victim of this brutal crime can feel !! shame'*

On this base, an identification of effective counternarratives is paramount. They can be used to expose, critically analyse and reject dominant narratives and they can be used to give voice to marginalised and silenced groups. They do not always need to be a direct response to dominant narratives, as responding and reacting to dominant narratives or set of opinions allows that account to frame and contain the discourse. Listening to and sharing views and experiences from migrants can be the beginning of creating a new narrative. (Counter-Islamophobia Kit, CIK project 2018)

The counternarratives to Islamophobia, as prioritised by the CIK project, can be redesigned in the context of this report, especially in relation to:

- 1) Challenging and contextualising construction of Muslim ‘threat’
- 2) Building inclusive nations: challenging exclusive and discriminatory national projects
- 3) Cultural compatibility and conviviality: challenging the narrative separation of cultural and ethnic groups
- 4) Elaborating plurality
- 5) Challenging narratives of sexism
- 6) Building inclusive futures
- 7) Deracialising the state: challenging institutional narratives
- 8) Emphasising humanity and Muslim/ the other normalisation: challenging narratives of division
- 9) Creating Muslim/ group space(s) in the local and national community
- 10) Challenging distorted representations, by promoting arts-based counter-racist work by discriminated groups.

## **C) A RACIALISED SOCIETY**

According to the Map of Intolerance project’s yearly report for 2019 which analyses hate content of users of Twitter, migrants, Jews and Muslims remain the main targets of online hate. Almost 60% (57.59%) of tweets focus on these three categories showing a hostile environment of intolerance against people considered “alien”. In 2018 this percentage stood at 36.92%.

Hate-filled tweets are contained in 66.7% of the total tweets referring to migrants, recording a sharp increase (+15.1%) compared to 2018. Of the total negative tweets, those against migrants are about 32%, that is to say, one in three hate posts is directed against “the foreigner”. According to the report, episodes of hatred and racism against migrants increased by 70%, whereas 23.4% of surveyed think that there are too many migrants in the country; 35.6% of them fear of being victims of crime or subjected to financial instability because of migrants (50.9%). Intolerance against Jews, in fact almost non-existent until 2018,

registered + 6.4% in 2019 (76.1% of the total number of tweets about Jews). Intolerance against Muslims recorded a sharp increase (+ 6.9%) and has remained high (74.1% of the total number of tweets on Muslims).

Similarly, a recent SWG poll seems to confirm this trend. Accordingly, more than half of the Italians surveyed said that racist acts were either always (10%) or sometimes (45%) justifiable and acceptable depending on the situation. Not surprisingly, crimes that involve racism and xenophobia are far from uncommon in Italy. According to police reports, in 2018, roughly 800 out of 1111 hate crimes were perpetrated for racist and xenophobic reasons (tab 1), including criminal offences and some cases of hate speech and discrimination. With over 200 cases, the majority of crimes are classified as incitement to violence, followed by grave desecrations (188) and physical assaults (88), notably perpetrated under racist or xenophobic motivations.

Racist and xenophobic crimes are on the rise in Italy, almost doubling in four years<sup>177</sup>. Most of them are motivated by the victim’s skin colour or origin (tab 1). As for racist verbal attacks in Italy, they have recorded a decrease in public for a, from 91 in 2017 to 31 in 2018. The opposite is true for racist verbal violence on social networks, flyers, political manifestos and street attacks<sup>178</sup>. Racist crimes also recorded a significant increase from 2017 to 2018 (+173%), mostly falling under the category of incitement to violence (tab 2). Notably, such figures solely represent reported crimes.

Cases of discrimination against migrants and other minorities relate mainly to access to social services including social housing, canteen service in elementary schools and, during the COVID lockdown, food vouchers.

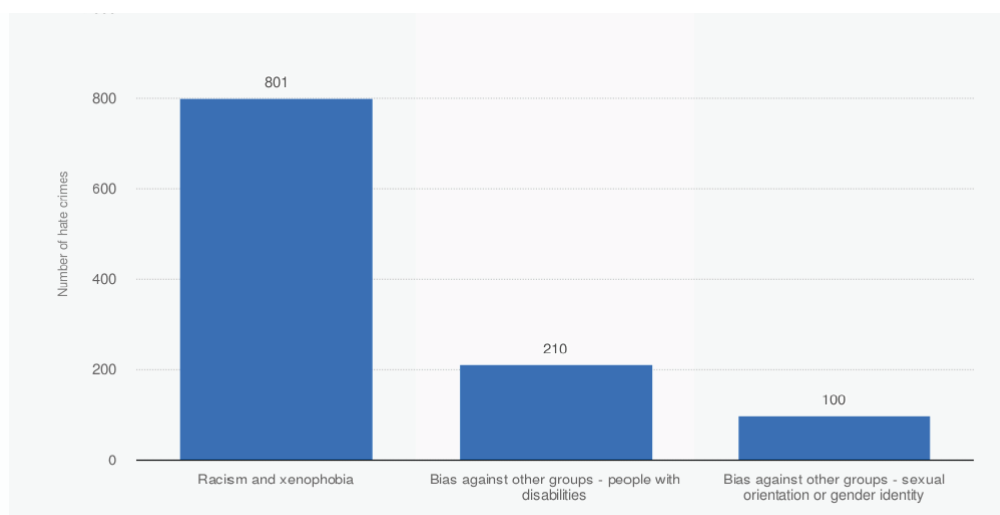


Figure 10: Number of hate crimes by bias motivation in 2018, source OSCE

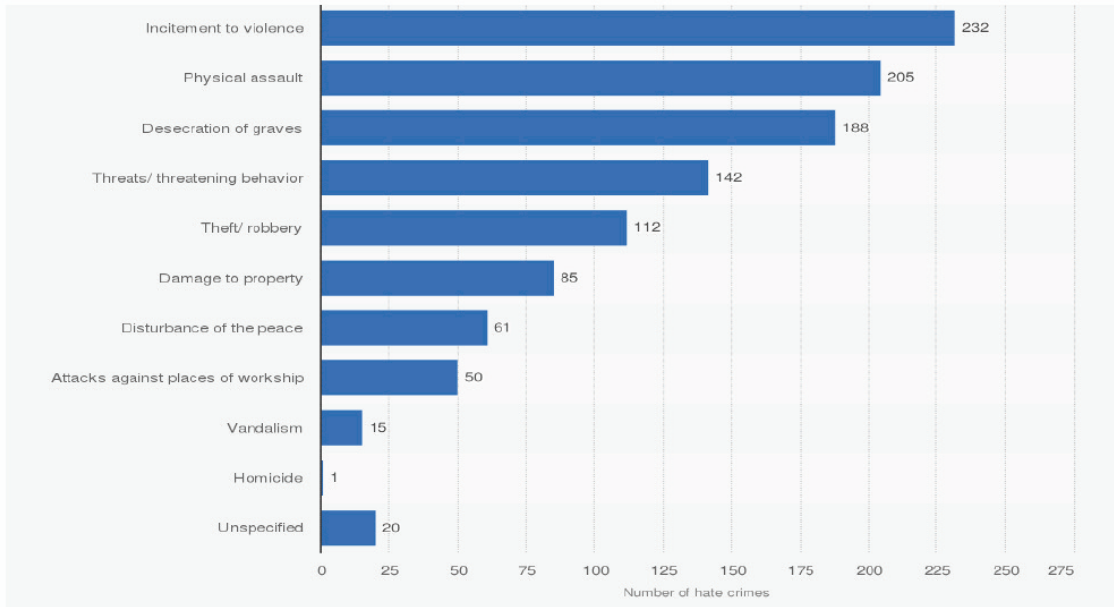


Figure 11: Number of hate crimes by type in Italy in 2018, source OSCE



## VIII) COUNTERACTING RACISM: A PERSPECTIVE FROM THE GROUND

This chapter is based on the input provided by the NGOs involved in the search and rescue operations and the integration process in Palermo following a country visit by an IHRC delegation in March 2019. All this material, together with subsequent additional information gathered from follow-up interviews and surveys in September 2020, makes up the bulk of the recommendations included below, departing from the fields of action in which most NGOs are already operative. The delegation witnessed a widening grass-roots resistance to Mr. Salvini's hard line on immigration, involved for years in fostering participative practices aimed at the production of spaces for intercultural social-inclusion and exploring alternative models of social governance, citizenship empowerment and civic resilience.

Under the protective wing of the Palermo mayor Leoluca Orlando, who defied Salvini's migration policy, civil society and the local government of Palermo have for years adopted a welcoming approach towards the economic migrants and refugees arriving to the city, with the support of social entities devoted to the integration of migrants, refugees and locals. The foundation in 2018 of the platform *Mediterranea Saving Humans* and the rescue ship *Mare Ionio* is an example of the collective engagement of the city of Palermo<sup>179</sup>. The initiative has been crowdfunded by the city of Palermo with the political support of the Palermo City Council. Foreign communities have launched their own initiatives to foster integration into the social fabric of Palermo. In 2016, a large group of Bangladeshi merchants collectively decided to challenge a street racket, by breaking for the first time the conspiracy of silence and impunity surrounding mafia mobsters against local business owners<sup>180</sup>. Generally speaking, the migrant second generation achieve a higher level of education than that of the local people, who instead show a strong distrust in it as a means to personal and professional development (Activist, interview 2019). Families with a migration background prefer to invest their resources into the education of their children and see education as a way of redemption.

IHRC conducted 15 semi-structured qualitative interviews (see the table below for a broad categorisation of respondents). Interviews were conducted in Italian and English, recorded and partially transcribed. The average length of interviews was one-to-two hours. Some interviews were conducted as a joint interview with up-to-three informants, whilst most of them were one-to-one interviews. Interviews were conducted from:

Role	Interviewed Person
Politicians/policymakers	1
Centre Manager/Experts in integration	4
Activists	3
NGOs' representatives	1
Lawyers	2
Representatives of Muslims/migrants/ religious communities	2
Psychologists/mediators	2
Doctors	1
<b>Total</b>	<b>16</b>

**Table 4: People Interviewed**

The organisations contacted, most of whom based in Palermo and Modica, are Porco Rosso (Arci); Molti Volti; Albero della Vita; Bordeline; Sprar Al Centro del Mondo; Caritas; Centro Astalli; Open Europe SPRAR; Emergency; Consulta delle Culture, Osservatorio contro le Discriminazioni Razziali Nouredine Adnane<sup>181</sup>. Their engagement covers a broad spectrum of activities:

- 1) Capacity-building and network-strengthening activities, through vocational courses for migrants; language course, job-matching support;
- 2) Community-building, by creating open spaces accessible to migrants, including undocumented migrants (Sans Papiers) and local people from the neighbourhood, with the objective of protecting them from victimisation and criminalisation or becoming a potential workforce for organised crime
- 3) Monitoring, through peer-to-peer feedback collection from migrants, human rights abuses and unlawful praxis records.
- 4) Building functional counter-narratives on migrants and de-escalating the process of falsification of reality put in place by the far-right parties.
- 5) Legal support including lawsuits due to misadministration, discrimination and racist violence, including those against national authorities.
- 6) Support Action at the disembarkation point: 2-3 days after disembarkation, the volunteers of Porco Rosso disseminate leaflets explaining how to apply for asylum.

Oxfam has a mobile team working the sensitive points such as stations, ports, hospitals, shelters and canteens to raise migrants' awareness about their rights and explaining legal procedures.

7) Family Reunion Support: a service for accompanied minors willing to cross borders to join their relatives in the EU countries. Minors are assisted by facilitating contacts between them and their relatives abroad, giving legal assistance, contacting shelters on their way to avoid sleeping in the streets.

Their recommendations have been categorised as follows:

## **1) LEGAL**

### **a. DOMESTIC**

1) To counter the lack of homogeneity and adequacy of training and skills of the reception system staff linked to the fragmentation of the reception system, particularly in the identification and timely protection and care of children with specific vulnerabilities and age assessment. (Observatory of racial discrimination, interview 2019)

2) To review the hotspot approach: hotspots in Sicily do not meet the standards required by European laws and are unsuitable for hosting people for long periods due to small rooms and the condition of proximity between men, women and children, with no psychological support in which migrants are forced to stay. (Observatory of racial discrimination, interview 2019)

3) To set up a new mechanism and a central regulatory body able to monitor the conduct of the management of the reception centres (especially those of large size). This will help the EU to improve data gathering and qualitative data. (Observatory of racial discrimination, interview 2019)

4) To set up a public list of reception centres, which remain almost unknown to most, especially those directly managed by the Ministry of Interior; (Porco Rosso, interview 2019)

5) To put in place facilitating measures to remedy the slow and complex procedures for obtaining documents and additional bureaucratic bottlenecks. (Porco Rosso, interview 2019)

## **b. EU**

To make all the necessary reforms on asylum and relocation system.

To decriminalise rescue NGOs (Bordeline, interview 2019)

To elude the structural funds accreditation process through the regional or national authorities: SPRAR centres should be able to benefit from a peer-to-peer funding system from the EU and be independent from the national and regional governments. (Albero della vita, interview 2019)

## **2) POLICY**

### **a. INTERNAL**

1) To publicly recognise migrants as victims of torture

2) To protect migrants from any forms of discrimination and racism, which represent an additional obstacle in autonomy and social inclusion pathways and affect their personal well-being especially in relation to access to job and housing markets. (Albero della Vita, interview 2019)

3) To fill the gap on knowledge on the migratory phenomenon and the good practice of SPRAR. (Al Centro della Vita SPRAR, interview 2019)

4) To overcome the geographical discontinuity between Sicily and the EU, through the establishment of an entity capable of bridging peripheral areas to the institutions in Brussels. (Albero della Vita 2019)

5) To counteract the current under-representation of Italian social entities at a horizontal or federal level through engagement with NGO networks, and at a supranational level with the European Parliament and the Commission. (Albero della Vita, interview 2019)

6) To reinvigorate inter-institutional tables with those NGOs and national authorities suspended in the last two governments' mandates. (Molti Volti, Questionnaire 2020)

7) To strategise social inclusion and transition pathways aimed at overcoming

past traumas and problematic cases. (Open Europe SPRAR, 2019)

8) To exert more effective control on the SPRARs' management and improve control instruments and measures. NGOs have reported abuses around "the business of the reception centres", whereby managers have been given full access to highly remunerative funds without having specific competences in the field. This has led to the delivery of sub-standard services and violation of individual liberties, exile to isolated centres in the countryside where migrants have little in common with the local social fabric. (Bordeline, interview 2019)

9) To boost the 'volunteer guardian model' which entails the referring to a competent network for resolving emerging problems and solving conflicts, which is crucial to creating a virtuous mechanism.

10) To acknowledge the rescue ships' activities as necessary and to remove any impediment preventing them from executing rescue operations. (Molti Volti, questionnaire, 2020).

11) To build a Muslim cemetery in Sicily in order to assure proper burials in line with Islamic specifications for those who die during the crossing. (Consulta delle Culture, interview 2018)

## **b. EXTERNAL**

1) To promote a new affordable vision of the society rather than proposing migration as a matter of security or criminalising NGOs. (Porco Rosso, interview 2019)

2) To reformulate EU migratory policies as opposed to the current ongoing state of emergency. (Porco Rosso, interview 2019)

3) To address the issue of institutional racism within the EU and national institutions

4) To take specific actions to ensure sufficient transparency and accountability in national and EU co-operation activities with third countries to ensure that they do not contribute, directly or indirectly, to human rights violations by those third countries.

### 3) COMMUNICATION

In consideration of the above, the fieldwork undertaken, extensive literature review and experience in working on narratives and counternarratives of racism, IHRC has further recommendations. These follow with concluding remarks.

a) EU and national institutions have to contribute to and boost the dissemination of counternarratives and best practice which must be strategised<sup>182</sup>:

1) To boost and raise awareness of the migrants' stories and best practices. The following Best Practices have been identified:

- Welcome Refugee (Porco Rosso) (see Text Box below)
- Diversity training in workplaces (IHRC<sup>183</sup>)
- Carta di Roma (media) (Molti Volti) (see Text Box below)

**REFUGEE WELCOME is a European network promoting a new model of reception focused on family hospitality. The initiative offers hospitality to asylum permit holders who must leave the reception centres without having developed an adequate social support network. Most of them are foreign children who arrive in Italy as unaccompanied minors. The "families" can be couples with or without children, single citizens, roommates, pensioners. The initiative aims at fostering social inclusion through the activities of mentoring and language learning in the family context. Since its foundation in Berlin in 2014, the initiative has reached 15 countries, and in Italy more than 30 cities have been involved.**

**CARTA DI ROMA is a deontological protocol – the Carta di Roma Journalist’s Code of Conduct on immigration - signed by the National Council of Journalists (CNOG) and the National Federation of the Italian Press (FNSI) in June 2008. The Code of Conduct seeks to be a reference point for journalists, media operators, as well as various institutions, associations and activists involved in promoting and supporting the rights of asylum seekers, refugees, minorities and migrants in the field of media reporting. It provides guidelines for the processing of information concerning asylum seekers, refugees, victims of trafficking and migrants in Italy, such as: a) adopting legally appropriate terms whereas ensuring the maximum adherence to the reality of the facts; b) avoiding the dissemination of inaccurate, summary or distorted information regarding asylum seekers, refugees, victims of trafficking and migrants that might raise unjustified alarms; c) protecting asylum seekers, refugees, victims of trafficking and migrants who deal with journalists through the adoption of precautions regarding identification.**

This follows from the recommendation (number 8) from the Counter Islamophobia Toolkit<sup>184</sup> ‘*Emphasising humanity and Muslim normalisation: challenging narratives of division*’ in which, the call for the recognition of the common humanity of Muslims and the normalisation of the Muslim presence in European societies was repeatedly voiced by respondents in eight European countries. Of those eight countries, respondents in Greece and Hungary which both saw large influx of migrants enroute to Western Europe in 2015 gave the following examples as good practice, some of which are replicated in Italy, others which could provide examples for similar projects:

“In Greece, empathy-evoking stories, particularly of refugees, that prompt the identification of the target audience with Muslims experiencing discrimination, exclusion, and hatred, and sometimes even inspire active intervention and advocacy on the part of citizens were discussed and here the aim of this counter-narrative is, in the words of one respondent, for “people [...] to understand that they [the refugees, Muslims] are human as well. Human like us”. Promoting a ‘patriotism of solidarity’ towards refugees (Archbishop Ieronymos, Greece) and promoting notions of shared humanity e.g. #*Stop Mind Borders* were key elements also in this counter-narrative. This required acknowledgement of the sensibilities of fellow human beings living away from their homeland, and Muslim citizens generally. The Hungarian case study highlighted the significance of a humanitarian frame (HF) of

meaning, which was identified as the most dominant frame in media coverage. This 'emphasises that refugees or migrants are human beings, individuals with a human face and that many of the asylum seekers are actually fleeing from civil war and more specifically, the ISIS. HF also puts emphasis on how asylum seekers are received in Hungary, what difficulties they encounter upon arriving in the country and how badly they are treated by the authorities''<sup>185</sup>

2) To construe effective and successful counternarratives and to counter the circulation of anti-migrant / anti-Muslim narratives<sup>186</sup> (I) at the EU and national level<sup>187</sup>. As the report into demonised narratives of Muslims and migrants in Czech<sup>188</sup> republic attest, this crossfertilisation is rife and mirrors some of the demonisation found in Italian discourses. The idea of all:

- (I) Muslim refugees as symbolising all refugees coming to Europe, are portrayed as lazy, crafty, unwilling to work, representing high fertility and high criminality, abusive of the generous social system and, above all, ungrateful; they make no effort to adapt, despite being repeatedly offered a helping hand. They come mainly to take advantage of welfare payments;
- (II) Muslims as sexual predators. The subordination and marginalisation of women cannot be ascribed to Islam as an ideology but also to the nature of Muslim men. Muslim men are thought to be incapable of adopting the alleged European approach to women, while the risk of immigrants from Africa is seen in their heightened sexuality based on the notion of barbarianism and backwardness rendering them incapable of controlling themselves;
- (III) The most common narratives are those describing Muslims as a security risk and Islam as a danger to democratic societies. The security narratives are heavily supported by the media referring to Islam and Muslims in the context of terrorism and radicalism. Security narratives are reinforced by orientalisng narratives stressing the anachronistic nature of Islam and the narratives portraying Muslims' inability to integrate;
- (IV) An emphasis on Muslims as having a different culture and mentality to "Europeans". It ignores the fact that Muslims might also be Europeans and it mixes up religious and supra-national affiliation.



The following strategies are examples of good practice to be adopted by media and policy framers:

- To foster the participation of Muslim/migrants intellectuals and communities to debate and media that reflect the diversity of migrants and Muslims. This might be facilitating the humanisation of Muslims and migrant subjects by showing 'them in their 'true' light'<sup>189</sup>;
- To underline the complexity of the emerging current feminism and pluralism in the Muslim women's situation.

3) To trigger a collective remembrance process and identity with the aim of emphasising Italian self-perception and consciousness through the use of two main counternarratives:

- a) Italy as not simply a colonial power (even with some past experience during Mussolini's rule). It is also an experience of cultural cross-fertilisation, with different waves of settlement across centuries. An example of good practice can be found in the UK with the Our Migration Story<sup>190</sup> website and resources, which overviews 2000 years of migration to what is now the UK, emphasising migration as part of almost everyone's heritage.
- b) Italians as 'people of immigrants'; remembering all the discriminatory experiences Italians witnessed abroad and the narratives used against Italians by the local communities will facilitate sympathy with the 'new migrants'.

**Founded in 1971, Caritas Italiana (Caritas Italy) works as part of the Church to raise awareness on issues around charity, to support the most vulnerable people and promote the importance of concrete actions for the poor, through a network of 218 diocesan centres committed in daily activities. Its remit extends to many areas including peace, old and new forms of poverty, volunteering, civil service, immigration, mental health and homelessness. Further, Caritas Italiana carries out research on the causes of poverty and prepares analyses of those in need, assisting civil institutions to take the appropriate action through legislation.**

**It also provides training for staff and contributes to development by awakening public opinion, offering services, financial help as well as by coordinating the initiatives of the various groups and movements inspired by Christian values.**

Randa Abdel-Fattah's<sup>191</sup> exemplary examination of how anti-Muslim racism works in the Australian context highlights that Islamophobia works at the street level and in the community primarily in an emotional sense. Thus, projects aimed at 'educating' majorities often misfire because racism works in a visceral, not logical, sense in its perpetrators. With this in mind, it is clear that Italian authorities, and in lieu of them, civil society and grassroots groups and movements, need to identify projects that disrupt the emotional processes that result in Islamophobic attitudes. To Abdel-Fattah this marginalisation can be disrupted at the point where inattention (where difference is unremarked and does not disrupt) becomes (negative) attention. In her interviews, Abdel-Fattah finds ellipses and moments where those expressing the most negative of views pause and find flaw or fatal illogic in their observations. Her insight that there is a process or, at least, the possibility for a subconscious decoding in the thinking of those holding Islamophobic views, consequently, sets the scene for constructing effective counter-narratives<sup>192</sup>. They type of PR proposed by Abdel-Fattah does not seek to promote positive narratives, but to rather should be one of burying existing tropes. More precisely, she argues, they should make Muslimness unremarkable in the emotional landscape of the majority.

This emotional landscape in Italy is by no means uniform, despite the depressing findings of this report. Solidarity in civil society, and within communities exists and challenges both the demonised narratives of media and political institutions and has seen brave acts of solidarity undertaken even at great personal and professional risk, both by those working e.g. the sea rescues, and those having migrated to Italy before e.g. the

opposition to racketeering by Bengali heritage shop owners in Palermo.

This report understands that the majority of Italians – including those who perpetrate racist acts – as operating an environment created by political, legal and media institutions reinforcing demonisation in discourse and praxes. This environment in the UK context has been labelled an ‘environment of hate’<sup>193</sup>. Whilst it is arguable that as with other European countries, Italy too may have succumbed to such an environment, this process is neither inevitable nor irreversible.

New administrations in Italy, the different facets of the European Union, and the Italian media can all become partners in the process of revitalising the country and the region as one of empowered and empathetic citizenship. The situation is without a doubt very serious, if not dire, but it is still not too late to change.

## Endnotes

- 1 UN Committee against Torture, Concluding observations on the fifth and sixth periodic reports of Italy, CAT/C/ITA/CO/5-6, 17 December 2017; UNSMIL and OHCHR, Desperate and dangerous: report on the human rights situation of migrants and refugees in Libya, December 2018; Panel of Experts established pursuant to Resolution 1973 (2011);
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as more of a problem. For example, over eight in ten (81%) of those who never have difficulties paying bills say that they would be comfortable having an immigrant as a doctor, compared with only just over two thirds (67%) of those who have difficulties paying bills.”

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son to a country where he/she has a well-founded fear of being persecuted or faces a real risk of being tortured or subjected to inhuman or degrading treatment. See also HRC, CCPR General Comment No. 36 (30 October 2018) on Article 6 of the International Covenant on Civil and Political Rights on the right to life, CCPR/C/GC/36, para. 63.

60 TFEU, art. 78, reads as following: “The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties”.

61 Article 98(1) of UNCLOS, 1982, states that every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, inter alia, to render assistance to any person found at sea and in danger of becoming lost. This obligation is not limited to government vessels but applies to any ship-master.

62 Regulation 15 of Chapter V of the Annex to SOLAS, obliges each State to “ensure that any necessary arrangements

63 Chapter 2, paragraph 2.1.10 of Annex to the International Convention on Maritime Search and Rescue of 1979 (SAR), says “Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found”. The SAR convention also provides a definition of ‘rescue’ and ‘distress’. It defines rescue as “an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety” (Annex, Chapter I at 1.3.2). ‘Distress’ is the highest emergency phase the SAR convention provides and it defines a “situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.” (Annex, Chapter I at 1.3.13).

64 Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code), as amended, 2006 O.J. (L 105) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>, archived at <https://perma.cc/LX5K-LJTD>.

65 SAR Convention, article 3.1.9 in Chapter 3

66 Under EU law, Article 12, in conjunction with Articles 3 and 3a of the Schengen Borders Code, stipulates that border management activities must respect the principle of non-refoulement. Given the complexity of the issue, the EU adopted guidelines to assist Frontex in the implementation of operations at sea, through Council Decision 252/2010/EU. Such decision has been annulled by the CJEU on formal grounds.

67 In May 2018, the Global Legal Action Network (GLAN) and the Italian Association for Juridical Studies on Immigration (ASGI), supported by the non-profit association ARCI and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School, filed an application before the European Court of Human Rights (ECtHR) on the . S.S. and Others v. Italy case. On November 11, 2019, Amnesty International and Human

Rights Watch submitted a joint third-party intervention to the Court. On the same day, the International Commission of Jurists (ICJ), the Advice on Individual Rights in Europe (AIRE) Centre, the European Council on Refugees and exiles (ECRE), and the Dutch Refugee Council (DCR) submitted their third-party intervention. The case specifically concerned a Search and Rescue (SAR) operation performed on November 6, 2017, by the LYCG's patrol vessel Ras Jadir and the NGO Sea Watch 3 in response to a distress call diffused by the Italian Maritime Rescue Coordination Centre (MRCC) coming from a sinking migrant dinghy, carrying around 150 passengers. According to the 17 survivors of the incident (who happen to be the applicants), the LYCG's arrival caused a strong water movement which led to the death of at least 20 people who had fallen from the boat. Furthermore, the LYCG obstructed the Sea Watch rescue operations by throwing objects, as well as hitting and threatening the migrants with ropes and weapons, without providing life jackets to those who were in the water. The Sea Watch was eventually able to rescue and bring to safety in Italy 59 passengers. Nonetheless, 47 migrants were ultimately returned to Libya, where several of them faced serious human rights violations, including being detained in inhumane conditions, beaten, and sold to a captor who tortured them.

68 ICC Prosecutor Fatou Bensouda at the United Nations Security Council, 8 May 2019. Her statement is available at <https://www.icc-cpi.int/Pages/item.aspx?name=180508-otp-statement-libya-UNSC>

69 Article 98.2 of UNCLOS Convention and Chapter V of the Annex to the SOLAS Convention.

70 Under Annex Chapter 2 at 2.1, in particular 2.1.10, States Parties must establish search and rescue regions and ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of the person or the circumstances in which that person is found. Rescue coordination centres must be operational on a 24-hour basis (Annex, Chapter 2 at 2.3). A three-volume manual – the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual) – was developed to assist governments in their search and rescue duties. The new paragraph 3.1.9 in Chapter 3 of the SAR Convention establishes a duty of states to coordinate their actions and to cooperate in order to release shipmasters who embarked persons rescued at sea from their obligations. The same obligations are repeated in new paragraph 1-1 in Chapter V, Regulation 33 of the SOLAS Convention.

71 The SAR amendments (Chapter 4, new paragraph 4.8.5)

72 The European Court of Human Rights judgment on the case of *Hirsi Jamaa and Others v. Italy*, available at <https://hudoc.echr.coe.int/spa#%7B%22itemid%22:%5B%22001-109231%22%5D%7D>

73 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>, archived at <https://perma.cc/96R5-L8SL>

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- 76 Council Decision (EU) 2015/1601 of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN>
- 77 Nevertheless, this first attempt proved to be disastrous; in 2017, the programme abruptly stopped with the relocation of less than 30% of what was originally pledged, amounting to only 2% of unauthorized arrivals to Italy and Greece. See <https://www.aa.com.tr/en/europe/3-countries-breached-eu-law-over-asylum-seekers/1789433>
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1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
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## ANNEX I RECENT CASES OF RACISM IN ITALY

The case of Silvia Romano<sup>194</sup>



**Photograph 9: Silvia Romano at Rome Airport after her release**

Silvia Romano, the 23-year-old Italian NGO worker in Kenya, was held hostage by the terror group Al Shabaab for 535 days in Somalia, and freed on 10 May 2020. During her captivity, she had voluntarily converted to Islam and changed her name to Aisha. Italian media snapped photos of her arriving at Ciampino Airport wearing a traditional Somali Muslim green jilbab as she spoke to reporters wearing a facemask and gloves.



Photograph 10: Nico Basso's attack on Facebook

Italian right-wing extremists and the accounts associated with them moved quickly to weaponize her case. Some members of Italian institutions also participated in the hate campaign against her.

Nico Basso, the municipal councilor of the town of Asolo and former Lega Nord councilor of the Treviso municipality, wrote in a post on Facebook that she should be hanged. Italian MP Alessandro Pagano, who belongs to the right-wing party Lega Nord, described Romano as a “neo-terrorist,” associating her conversion to Islam with membership to the terrorist group.



Photograph 11: Massimo Giorgetti's post against Silvia Romano

Massimo Giorgetti, a regional lawmaker supporting the far-right Brothers of Italy party, wrote on Facebook: "Am I happy about Silvia Romano's release? Not at all. Now we will have one more Muslim and 4 million euros less."



Photograph 12: Matteo Salvini's tweet on the case of Silvia Romano

Lega leader Matteo Salvini wrote on Twitter: “The Islamic terrorists gained both money from a criminal act and they won the cultural battle in the name of Islam and conversion.”



Photograph 13: Samples of right-wing newspaper’s headlines inciting hate against Silvia Romano

The day following her release, two right-wing Italian newspapers wrote: “We freed a Muslim”, “Islamic and happy, the ungrateful Silvia” (Libero Quotidiano and il Giornale). In the same article, Sallusti accused Silvia Romano of wearing the “jihadist uniform of the enemy” and claimed her conversion be as absurd as a Jew escaping from a concentration camp dressed as a Nazi.

The Italian Coordination of associations for the Defence of the Environment and the Protection of Consumer Rights (Codacons) filed a complaint to the Italian Court of Auditors for the liberation of Silvia, as the payment of a ransom to the kidnappers could represent not only a criminal but also an accounting offence.

When Romano returned to her hometown Milan, leaflets appeared near her home complaining of paying ransoms with taxpayer money to release captive NGO workers. Days after her return, a glass bottle was thrown near her apartment window facing the street. What followed was a hailstorm of online threats and abuse and she had received hundreds of threats of rape and death.

The main narratives used against her were:

- her conversion to Islam masked a potential relationship with one of her kidnappers that resulted in a pregnancy;
- she was working in a remote and dangerous context and that by doing that, somehow, she brought the kidnapping on herself;
- instead of focusing on the needs of Italians, she went abroad to help Kenyan children;
- her appearance: she was insulted because she was wearing a hijab and because she became Muslim;
- she was insulted because at her first encounter with her relatives she was too fat and 'too happy' to be a hostage.

The case of Willy195



Photograph 14: the victims Willy Duarte on the right; the charged killers on the left

Willy was a 21-year-old who was beaten to death by a group of four, after coming to the rescue of a friend in Colleferro, a city on the outskirts of Rome.

Three of the four arrested, currently in Rebibbia jail, are brothers and mixed martial arts practitioners. Although no racially aggravating circumstance has so far been formally raised by the prosecutor, too many xenophobic beatings emerge from the criminal record of the “White Twins”.

All the victims of their past violence have one element in common: they all had black skin. Two years before the killing of Willy, they have attacked, using a brass knuckle, a twenty-year-old Guinean; the same month, it was the case of a 22-year-old of Moroccan nationality also resident in Velletri. Furthermore, previous posts on their social accounts show eloquently a xenophobic tone and a sympathy to far-right narratives. Witnesses reported that, out of police station, they clearly heard one of the relatives of the suspects saying: “What did they do in the end? They did nothing. They just killed an immigrant”.

Monteiro Duarte’s killing has also shown the inability of a large part of the mainstream media to deal with black people because of prejudices and stereotypes inherent in Italian culture. Many media outlets described Duarte as “well integrated”, apparently forgetting that he was born and raised in Italy and should therefore be considered an Italian who didn’t need to be integrated.



Photograph 15: Sample of hateful message by a Fratelli d’Italia supporter following the murder of Willy Duarte

The killing fueled hate-filled messages on social networks either against the murders and the pro-immigrants supporters, highlighting a deep polarization and partisanship in Italian society.

“How glad you got that chimp out of the way, you’re heroes”. This was a racist message left from a fake account on Facebook bearing the Fratelli di Italia logo, the far-right party ally of Salvini’s Lega. Eventually the police reached the author of the account, a 23-year-old student.

The case of Soumaila Sacko<sup>196</sup>



**Photograph 16: Soumaila Sacko**

Soumaila Sacko was a Malian who was shot out on 2 June 2018 in San Calogero, southern Italy, while he was collecting scrap metal from an abandoned factory to build a shack in the tent-city of San Ferdinando. Two other migrants who were with him survived the attack.

He was an active member of the USB (Unione Sindacale di Base), a grassroots trade union that has been supporting migrant farm workers exploited in Italy.

Soumaila Sacko had repeatedly spoken out about human rights abuses in the

municipality of Gioia Tauro in Calabria, where migrants work in inhumane conditions for little pay, and are forced to sleep in grave poor sanitary conditions in the tent-city.

The main suspect in the killing is Antonio Pontoriero, a relative of one of the owners of the abandoned factory. In 2011, the Italian authorities launched an investigation into a toxic waste traffic scandal involving the factory's owners, who had been illegally throwing toxic waste in the factory premises. In the first communiqué from the prefecture of Reggio Calabria, Soumaila has been branded as a "thief" who has entered private property and was killed by unknown persons.

The killing held a wide appeal with the public as it came only few hours later the statement made by the then Minister of the Interior Salvini during a rally in Vicenza (Lombardy), who said that "the godsend for migrants is over". This was the most used refrain during his electoral campaign.

Soumaila was not an illegal migrant. He disembarked in Italy in 2014, entered the slum of San Ferdinando in Calabria in 2016 and started being exploited as a farm worker. Before crossing the desert to get to Libya and then to Italy, Soumaila was a farmer. Due to climate change, African land work was no longer sufficient to support his wife and daughter, and he left Africa. A year before his killing, he had obtained a humanitarian visa, the protection of which was canceled by Salvini during his mandate.

The huge shanty town of San Ferdinando, accommodating 3000 laborers in dehumanizing conditions, was demolished on March 2019. To date, despite the promises by Salvini, the place has not been cleared up of the remains of the shacks, nor have definitive and dignified housing solutions been found for the laborers, except for the temporary tent city which still houses 450 people.





[www.ihrc.org.uk](http://www.ihrc.org.uk)