



The shrinking space for solidarity with migrants and refugees:

how the European Union and Member States target and criminalize defenders of the rights of people on the move

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Mstyslav Chernov/Own work -Syrian refugees protest at the platform of Budapest Keleti railway station. Refugee crisis. Budapest, Hungary, Central Europe, 4 September 2015. (page 4)

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Solidarity as a crime

Foreword

By Michel Forst, UN Special Rapporteur on the situation of human rights defenders

Over the past years, migration has been increasingly at the center of national and international tragedies, from the thousands of Rohingya fleeing persecution in Myanmar to West African migrants being sold at auction by smugglers in Libya, or migrants' children being separated from their parents at the Mexico border in the United States.

Beyond the intermittent media focus on these tragedies, migration is far from being a new phenomenon. Today, an estimated 250 million people around the world live in a country different from their place of birth. According to the United Nations High-Commissioner for refugees, more people were forcibly displaced around the world in 2017 than ever before. And this trend is not going to reverse. In the next couple of decades, movements of people are expected to keep increasing, caused by a variety of factors, not least climate change.

Yet, State's reactions to migration have often been driven by distrust, nationalism, or xenophobia. People on the move are frequently used as scapegoats by political leaders who blame them for economic and social problems. As a result, migration has essentially been framed as a national security issue, leading to the militarisation of border control, strict visa requirement policies and increased surveillance, criminalisation and detention of migrants. Movements of people have recently been reduced to a "migration crisis", calling for emergency and extraordinary measures.

This environment is key to understand not only the threats faced by people on the move, but also by those who act to defend their rights. Earlier this year, I decided to dedicate my report to the UN Human Rights Council to those human rights defenders. I have chosen to use the expression "people on the move" to include, without distinction, documented and undocumented migrants, asylum seekers, refugees or migrant workers, internationally and internally displaced people.

The countless people who act to defend the rights of people on the move often come from very different backgrounds. Many of them decided to act out of solidarity and humanity, as a spontaneous reaction to the suffering and despair of newcomers. Some also see their actions as a way to alleviate the indifference or cynicism of public authorities. They give tea and biscuits to a family sleeping in their street. They give them shelter for a night. They help them charge their phone. They give them a ride on a very cold day. They try to grasp their own country's immigration law to help them seek asylum.

For doing so, many face intimidation, threats, arbitrary arrest and judicial harassment.

We live in a time when people are being criminalised for helping those in need. In many parts of the world, including in Europe, assisting undocumented migrants is a criminal offence, and the law fails to clearly articulate humanitarian exceptions. This is, at times, part of a more general trend of increased pressure on civil society, like in Hungary, where the law known as "Stop Soros" has been issued along with other measures aimed at obstructing the work of human rights organisations. But it goes well beyond that.

Some human rights defenders are being charged with smuggling or human trafficking after saving the lives of migrants at sea or at the border, and bringing them to a safe place. The actions of NGOs rescuing migrants at sea have been obstructed in plenty of ways, including attacks by extremists, port authorities seizing their ships, and smuggling charges brought against their staff. Helena Maleno, a Spanish activist, has been judicially harassed because of phone calls she made to request assistance for drifting vessels off the coast of Morocco.

Other human rights defenders are being accused of defamation because they have voiced concern and drawn attention to abuses committed by the police, or by private companies managing detention facilities. In some countries, such as Australia, human rights defenders hardly dare to speak out at all about these abuses: the laws make it a criminal offence to disclose certain protected information, which dissuades anyone from sharing information about human rights violations committed in off-shore detention centers. Advocating for the rights of people on the move has, to many extents, become perilous.

Even when only applied sporadically, all these criminal provisions have a chilling effect on civil society. They instill fear and intolerance. They stigmatize people on the move, and the human rights defenders who seek to help them, as criminals. They incite everyone to turn a blind eye to violations, instead of encouraging the protection and promotion of human rights.

Those who suffer the most from this hostile environment are people on the move. Many of them are human rights defenders themselves: many refugees have to leave their countries due to the threats and persecution they experienced precisely because of their actions in favour of human rights.

Yet, because of their precarious administrative situation, it is often excessively difficult for migrants to defend their own rights and the rights of others. They fear being deported if they complain about human rights violations committed by the authorities. They fear being arrested if they dare to protest through peaceful assembly. They risk losing their job – and often their residence permit – if they report their employer's abuses, when local labour laws recognise their rights at all.

NO ONE IS ILLEGAL

“Feeding people who are hungry has always been the fundamental gesture of solidarity. It is the basis for a community of equals. Punishing solidarity or impeding its exercise, regardless of the reason for it, endangers the principles and values of humanity and civility”.

In February 2017, a French shepherd, Cedric Herrou, from the Roya Valley, was condemned to an eight-month suspended prison sentence and a €3,000 fine for providing shelter to homeless migrants. In Denmark, Lisbeth Zornig Andersen was fined in 2016 for opening her house to refugee families with nowhere to live. In February 2017, on the border between Greece and Macedonia more than 60 volunteers from Germany, Switzerland, the Netherlands, Austria, Spain, the UK, and the Czech Republic were subjected to a campaign of harassment and intimidation by armed police, including threats of arrest and arbitrary house searches.

These cases are the tip of a particularly unpleasant iceberg – and a far cry from the scenes of German citizens welcoming Syrian refugees with flowers and chocolate...

Today solidarity with migrants is a crime. Save people from drowning in cold waters and you are a human trafficker. Open a shelter for stranded people in an abandoned train station and you are a trespasser. Give food to the hungry and you are a threat to hygiene standards. Criticize rough detentions by the police and your behaviour is insulting. Open free showers and you are infringing urban law. Protest against a forced deportation on a plane and you are obstructing a flight. Watch an illegal expulsion from a squat and you are detained. Oppose repressive laws and you are a terrorist.

Not only are International Non Governmental Organisations that rescue migrants at sea accused of collusion with traffickers and facilitating illegal migration, but their right and obligation to help and save lives is being denied in some Member States. The leap from denial of solidarity to criminalization has led to an increase of deaths of migrants at sea.

Today caring for refugees and migrants, demanding respect for fundamental human rights, fighting racism and xenophobia – the very principles upon which the European Union was founded - have been consigned to the dustbin by Fortress Europe and by restrictive policies and legislation in various Member States.

Further, since the start of 2018, the proliferation of cases and fronts (with the Alps becoming tainted as a place where migrants die trying to cross borders) and the intensity of onslaughts by the police, judiciary, political powers and far-right militants, and increasingly media and public opinion, mean that hostility to solidarity is now mainstream. It is crucial to understand the inevitability of this authoritarian drift, driven in part by specific populist or anti-immigrant politicians and authorities in member states.



1. Introduction

Europe's "refugee crisis" (as various observers have defined it, overlooking the fact that this is in fact a Crisis of Europe as a political project) – epitomised by the picture of Alan Kurdi, a three-year-old Syrian washed up on the beaches of Turkey – triggered a wave of solidarity and civil disobedience actions by both civil society organisations and ordinary citizens. Their efforts were part of a wave of compassion, as people organised convoys to refugee reception centers, warmly greeted arrivals at German train stations and lined highways to provide food and water to those making the arduous trek from war-torn regions of Syria and elsewhere.

While a minority of EU member states have welcomed refugees, the majority have turned their back on their international obligations. As European politicians retreated from their humanitarian obligations, its citizens demonstrated Europe's tradition of compassion, solidarity and commitment to justice and human rights.

In his first **State of the Union address**, EU Commission President Juncker even praised the volunteers as representative of the kind of "Europe I want to live in". Just a few years later, the Union looks very different, and Juncker is silent as those same activists are treated as criminals rather than heroes.¹

Research by TNI and the Institute of Race Relations suggests there is now a wide pattern of systematic intimidation and repression across the European Union.

Emboldened by overbroad EU laws criminalizing the "facilitation" of illegal entry and residence, prosecutorial discretion has been grossly abused to curtail the legitimate activities of humanitarian organisations and intimidate those engaged in civic support for migrants and refugees.²

Similarly, it was EU pressure on Italy that forced the end of one of Italy's most successful humanitarian missions in October 2014. 'Mare Nostrum', was a search-and-rescue operation that brought 130,000 refugees safely to Europe's shores in just one year. The decision to end the operation was supposed to 'deter' would-be refugees, but instead created a void, which humanitarian organisations then attempted to fill.³

What is happening to NGOs, social movements and activists is also explicitly linked to the EU's policy of "externalisation" of migration controls, which is geared toward shifting the refugee 'burden' from southern Europe to Turkey and northern Africa. It is linked to the EU funding that is pouring into the hands of militias and security forces now tasked with preventing refugees' departures from Libya. Stopping the NGOs that were operating off the coast of Libya is a way of ensuring that there are no witnesses to their treatment at the hands of the Libyan 'coastguard'.⁴

To this end the EU's Border and Coastguard Agency (ECBG, formerly known as Frontex) has smeared NGO search-and-rescue boats by implying their collusion with traffickers and smugglers, despite an Italian Senate Committee enquiry in April 2017 finding no evidence of such links. These smears prefaced a wider attack on those NGOs operating in the Mediterranean by an unholy alliance of state agencies, fascists and far-right activists.⁵

The manufactured narrative around NGOs and trafficking has been seized upon by populists and fascists, such as the supposedly crowd-funded 'Defend Europe' boat launched in July, 2017 with the aim of actively disrupting humanitarian NGOs activities. Following a string of embarrassing setbacks, including needing assistance from a refugee-rescue boat to solve their mechanical problems, they abandoned their mission largely because of disruption by antifascists. Nevertheless they claimed success, arguing that the Italian and Libyan governments had done the job for them: *"Only two months ago, many NGOs sailed in front of the Libyan coasts, like cabs waiting for customers. Today, there is only one."*⁶

Money and material support has flowed into fascist and racist groups leading to wider attacks on Italian NGOs and social movements, reminiscent of the scapegoating and demonisation of George Soros in Hungary.

This report looks at how EU policy has played out in Italy and beyond and offers a glimpse into the ways citizens and movements are organising, resisting and confronting xenophobic and securitarian policies at EU and Member States' levels.

2. Behind the onslaught

The current onslaught against people acting in solidarity with migrants and refugees originated in the intensification of the EU's restrictive approach to immigration policy from late 2014 and the EU's treatment of Italy and Greece, front-line states on the EU's migration routes.⁷

The two states were chastised for months by other Member States for failing to adequately implement the Dublin Regulation requirement to fingerprint all entrants and ensure asylum seekers apply only in the first member state they enter.

The Bavarian interior minister, Joachim Hermann, accused Italy of *"deliberately ignoring standard refugee procedures such as fingerprinting in order to let them seek asylum in other countries"* in August 2014.

Under the then prime minister of a coalition government from April 2013 to February 2014, Enrico Letta of the *Partito Democratico* (PD), Italy had formally given priority to sea rescue operations over the "apprehending of illegal migrants", even beyond member states' territorial waters.

The Dublin System requires member states to fingerprint asylum seekers and enter them into the EURODAC database to establish where asylum seekers should submit an asylum or international protection application. However, the scale of movement from north Africa since the Arab Spring uprisings meant these requirements were not fully complied with.

This had two significant implications. First, Italian navy vessels deployed in the *Mare Nostrum* operation rescued 156,362 people in 2014. *Mare Nostrum* was launched by Prime Minister Letta after the umpteenth large-scale shipwreck in which 359 people died off the coast of Lampedusa, on 3 October 2013. Secondly, the crisis appeared to temporarily subside once it became easier for arrivals in Italy to engage in what are called "secondary movements" to other member states.

Both of these developments were anathema from the viewpoint of the European Commission and the EU Council representing the governments of the member states and their restrictive immigration policies. Frontex was deployed to assess the situation.

This prefaced the termination of *Mare Nostrum* and its replacement with the Frontex-coordinated Joint Operation *Triton* as of October 2014, and the adoption of a new European Agenda on Migration, unveiled in the spring of 2015. While *Mare Nostrum*'s mission was to save lives, *Triton*'s was to militarize border control.

The new agenda introduced the "hotspot approach" now deployed in Italy and Greece (see further below), which effectively requires Greece and Italy to act as holding pens for migrants and refugees.⁸

The rules on the reintroduction of internal border controls were also relaxed, contrary to the fundamental principles of the Schengen agreement on free movement, which abolished internal borders. As the EU's eighth biannual report on the implementation of the agreement recognises:

"Although in 2013 the legislators agreed that migratory flows cannot per se justify the reintroduction of checks at internal borders, the Commission takes the view that the uncontrolled influx of high numbers of undocumented or inadequately documented persons, not registered upon their first entry to the EU, may constitute a serious threat to public policy and internal security and thus may justify the application of this extraordinary measure available under the SBC [Schengen Borders Code]." (p.6)⁹

The re-introduction of border controls was presented by EU elites not as a failure of European integration – which is premised on the abolition of internal border controls – but a failure of those Member States dealing with the arrival of larger numbers of refugees to enforce Fortress Europe's rules.¹⁰

Instead of sharing Italy and Greece's refugee 'burden' – another promise of European integration – the EU effectively lambasted them for failing to respond to the crisis with the requisite level of coercion. Following their request for assistance, it then proceeded to enact a plan, the European Agenda on Migration, which enabled the large-scale deployment of EU agencies in the two countries (Frontex, EASO and Europol).¹¹ It was presented as an attempt by the EU to show solidarity with front-line states, but effectively worked to place them at a serious structural disadvantage, creating a permanent crisis and allowing legal frameworks and rights to be subordinated to other concerns. The consequences have been staggering, turning swathes of the two countries into places where people are subjected to, and constrained to live in unbearable conditions.

Delegitimising search-and-rescue – to let people die¹²

The idea that life-saving activities were a "pull factor" for refugees was parroted by politicians around Europe and was subsequently repeated like a mantra by the EU agency for the management of the EU's external borders, Frontex, which began to make the link between life-saving operations in the Mediterranean and the people traffickers profiting from the EU's efforts to keep people out:

"The presence of the assets of the operation Mare Nostrum, patrolling closer to the Libyan coast with the aim of preventing the loss of migrants' lives, has been exploited by facilitation networks in Libya, who have been able to push an increasing number of migrants to depart in unseaworthy vessels, with the expectation of being rescued soon after departure".

While this line of reasoning is attractive to policymakers, it is not supported by evidence. Giving evidence to the Italian Senate's human rights Commission On 24 September 2014, Admiral De Giorgi of the Italian navy explained that over ten months, 141,891 people had been rescued, 289 people smugglers had been arrested and several ships had been confiscated. He stressed that the increase in people taking to the sea had occurred in 2013 for reasons unrelated to sea rescue operations (wars, genocide, desertification, widespread violence, the worsening situation in east Africa and human rights violations) and that the available data contradicted the "pull factor" thesis, particularly as smuggling operations had been targeted.

The champions of the "pull factor" theory also show complete disregard for the right to life – a universal human right – and international conventions like the Search and Rescue (SAR) Convention on maritime search and rescue and the Solas Convention for the safety of life at sea.

In its concept note for Operation *Triton* in August 2014, Frontex Joint Operations Unit's Operations Division even recognised that *"the withdrawal of naval assets from the area [The Libyan coast], if not properly planned and announced well in advance, would likely result in a higher number of fatalities"*. Yet this was the chosen course of action and the Frontex-coordinated Operation *Triton* replaced *Mare Nostrum* on 1 November 2014.¹³

A humanitarian void¹⁴

NGOs began their life-saving operations around the time of the withdrawal of *Mare Nostrum*. This includes *Jugend Rettet e.V.* – whose ship, the *Iuventa*, was seized on 2 August 2017 and is currently impounded¹⁵ – *MOAS*, *Save the Children*, *MSF*, *SOS Méditerranée*, *Lifeboat*, *Sea Watch Foundation*, *Sea Eye*, *Watch the Med* and *Proactiva Open Arms*.

Marco Bertotto of MSF told *vita.it* that their mission is not something anyone wishes to take on, but it is necessary in view of the situation and institutional shortcomings:

"We are at sea because there are people who are forced to make the crossing without a legal system that can guarantee their safety. We are filling an institutional void and we respond to a humanitarian duty".¹⁶

SOS Méditerranée is an international civil society organisation founded in May 2015 which began operating at sea in February 2016 on board of the ship *MS Aquarius*. It has an international crew comprising a nautical technical team, a search-and-rescue team and medical expertise provided through its partnership with *Médecins sans Frontières* (MSF). By late 2017, it had assisted more than 23,689 people, 12,539 of them since the start of 2017. The situation worsened again in the spring of 2018, to the point that a press statement on 26 May urged "European authorities to

acknowledge that every single rescue asset is needed”, stating that they had saved more than 1,500 people over two days. In a statement announcing the opening of its Swiss section, *SOS Méditerranée*’s vice-president Sophie Beau noted both the reason for their activity and why they are currently ostracised (see below):

“The crisis at Europe’s doorstep is ongoing and the need for professional search-and-rescue activities in the Mediterranean is still there, as we are preparing ourselves for a second difficult winter at sea. The creation of SOS MEDITERRANEE Switzerland demonstrates the growing awareness of European citizens across our national borders, and the strength of the civic mobilization in regard to the tragedy in the Mediterranean.”¹⁷

The European strategy for stopping Mediterranean crossings is based in part on its externalization policy, which exerts pressure on third countries to sign readmission agreements and build their immigration control capabilities, such as coast guard authorities in north African states.¹⁸ The crucial nexus in this process is Libya, which has been in a state of discontinuous armed conflict and without a coherent government since the UK and French-led military intervention and the fall of Gaddafi in 2011. Italian Interior Minister Marco Minniti engaged in countless missions to the north African country, to secure services for migration control purposes from groups controlling the different zones of the Libyan territory.

Researcher Sara Prestianni (ARCI)¹⁹ offers valuable insights into this issue, linking the criminalization of NGOs operating at sea to the externalisation of EU migration policies to its north African neighbourhood and to Libya in particular.

“When they decided to externalise search-and-rescue [activities] to Libya, in some way NGOs had to be pushed back in the sea and the only way to do that was to create a kind of criminalization around them”.

She notes that this process began in the courts, continued within political parties, and then up to the highest levels of government. It is also an expansive process and stretched beyond people saving lives at sea, to those like Eritrean priest Abba Mussie Zerai (see below), who did not operate at sea but was a key figure in life-saving activities.

Prestianni argues that externalisation is nothing new, pointing to the Berlusconi government’s deal with the Gaddafi regime in 2008. The present government struck a memorandum of understanding with the al Sarraj government in February 2017 through the activities of the interior minister, Marco Minniti.

“From this point different means were put on the table to try on one side to externalize search and rescue, so to give the means to the Libyan coastguard and different militias that are managing the coast and border control to stop migrants and to send them back to Libya. Of course, from the Italian government side they speak of search and rescue made by the Libyan coastguard, from our side we think that there is no possible search and rescue when people are brought and put in a country where, when they are disembarked, after they are detained and tortured”.

This emerges from testimonies from both migrants stuck in Libyan camps and from people who eventually managed to reach Italy. Arbitrary detention, rape and enslavement, as well as conditions that amount to torture, have prevailed in Libya for a long time. Prestianni claims that, in the absence of an effective central Libyan government, Italy has negotiated deals with and paid money to various tribes and militias around the country, to block migrants and prevent even a single person from leaving the country. This led to a temporary decrease in arrivals in July and August 2017, and to a number of problems, as externalization is not just to a government but to militias as well:

“[a problem]... of democracy, from the Italian side because we are negotiating with criminals and militias, a problem of destabilization of Libya, because increasing the power of militias is a problem for the peace process that is quite difficult in Libya, and of course for migrants because Italy and Libya are playing with their bodies and they are suffering from this process of externalization”.

Prestianni notes that ARCI created an observatory to monitor externalization policies. Its work has included a mission to Niger, attempts to develop relations with civil society organisations in Africa, and a mission to Sudan to document human rights abuses, which has resulted in the submission of a case to the European Court of Human Rights. It is a matter of developing multi-level action at the legal, political, civil society and advocacy levels, she says.

Finally, Prestianni links externalization policies directly to the criminalization of NGOs, noting the transition from

“one moment in 2016 when NGOs were considered something helping for an important action... one of the pillars of the Italian government, that was the search-and-rescue action, and they became in a few months the enemy and the people working with the traffickers, but they are always the same people. So, what really changed was the policy and the strategy, which decided to bring out NGOs from the sea and externalize search and rescue to the Libyan militia and coastguard”.

The criminalization of NGOs at sea is similar to the tactics being applied in Italy's northern border regions, which target activists and migrants support groups, she concludes.

Seizure of the Open Arms and the Libyan coastguard

Suspicions that anti-trafficking activities had led to traffickers being paid and turned into border guards were confirmed on 8 June 2018, when the UN issued sanctions against six men linked to migrant smuggling.²⁰ One of them, Abd Al Rahman Milad, is now commander of the coast guard unit at Zawiya. Another, Mohamed Koshlaf, was commander of the al-Nasr Brigade, which ran a detention centre in the same area. The United States followed suit on 11 June.²¹ A treasury statement explaining the decision read: *“Milad and other coast guard members have been directly involved in the sinking of migrant boats using firearms, some reportedly in an attempt to undermine the smuggling business of Koshlaf's competitors”.* Referring to events at sea in recent months, even as Italy strived to present the coastguard as a legitimate authority, the statement says: *“A member of Milad's local coastguard unit has been video-recorded striking migrants on a small rubber dingy with a bullwhip”.* The setting up of a Libyan coastguard has had consequences. NGOs heading for incidents have been asked by the Italian Maritime Rescue Coordination Centre (IMRCC) to stand by as the Libyans intervene and take over operations, often acting unprofessionally or cruelly, before returning people to Libya.

One dramatic incident demonstrates both the change in circumstances off the Libyan coast and a three-pronged attack on NGOs operating at sea by the government, judiciary and the Libyan coastguard: the seizure of *ProActiva's Open Arms* rescue boat on 17 March 2018.²² On 15 March, the IMRCC alerted the boat about a shipwreck in international waters, 73 nautical miles from the Libyan coast. The boat responded and rescued 117 people from a first dinghy, found a second empty one, and was preparing to rescue 101 passengers from a third one, distributing life vests and loading people into speedboats, when the Libyan coastguard intervened. They positioned themselves between the boat and rescue speedboats, tried to stop them recovering anyone and threatened the crew with weapons, as they demanded that the people they rescued be “returned” to them. A journalist on board, Cristina Más, described the threats by the captain of the Libyan boat, who shouted “I am the captain, give me the migrants or we'll kill you” three times. They managed to avoid doing so and the Libyans eventually left, after a two-hour stand-off, and possibly with official intervention by authorities called by the crew. After two days at sea, and having dropped off two emergency cases in Malta, a woman and her three-month-old baby, in stormy conditions and awaiting instructions, they were eventually assigned to Pozzallo, where they landed around midday.

The captain and head of mission were questioned for hours without either a lawyer or interpreter, and the boat was confiscated on the orders of the Catania prosecuting magistrate Fabio Regolo of the anti-Mafia department (DDA) headed by Carmelo Zuccaro (see below). They were accused of criminal association for the purpose of illegal smuggling, alongside the NGO's general coordinator, because they should have left their “load” with the Libyan coastguard, regardless of the fact it would have meant returning people to Libya's infamous detention camps. The charges entailed between five and 15 years' imprisonment and fines of €15,000 for each person who disembarked.

On 16 April, the judge for preliminary investigation in Ragusa released the ship because the crew's actions were justified by “serious violations of human rights” in Libya, which meant it was not a safe port for them to disembark. They remain under investigation.²³ The original allegations against them provide an idea of the lengths some judges will go to to criminalize humanitarian activities. The crew were described as having *“arbitrarily decided to continue the search and then the rescue in the events for which the Libyan coastguard (the operations all occurred in Libyan SAR waters) had assumed command”* and had asked that nobody be present on the scene to “guarantee safety” during the rescue. However, Libya does not have a SAR zone assigned to it beyond its territorial waters (it withdrew its application because it does not

have a control centre), and the operation was well beyond their limits. They transited in Malta without seeking to dock and disembark the people on board as suggested by the IMRCC, but rather, “obstinately continued navigating towards Italian waters”. This meant the suspects Marc Reig Creus, Ana Isabel Montes Mier and Gerard Canals, who was not on the boat, “acted with the sole purpose of landing in Italy”. Further, their conduct “cannot be deemed to be decriminalized”, because there was no immediate risk to life.

However, it has been customary for some years for Malta to disembark people with serious health conditions only. The Code of Conduct had been contravened. The main allegation was of not yielding to the Libyan coastguard when ordered to do so, but the people would have been returned to camps, where evidence of torture and abuse is plentiful. Returning people to places where they will be tortured or suffer inhuman and degrading treatment is a human rights violation, as upheld when the ECHR (European Court of Human Rights) ruled against Italy in 2012 in the *Hirsi Jamaa et al vs. Italy* case.²⁴

“Restoring credibility” – with human rights violations

The “hotspot” approach was launched by the European Commission in May 2015,²⁵ as part of its European Agenda on Migration. Premised on providing support for member states dealing with large influxes of people, it is primarily designed to ensure that identification, registration and fingerprinting is systematically implemented, with security screening if necessary. In theory, it also allows for the agencies working in hotspots to determine in practice whether particular arrivals were asylum seekers or not, but the procedures were more concerned with whether they qualified for relocation.

Hotspots like the one in Moria on Lesbos effectively turned into long-term detention centres where people waited to be returned to Turkey, in pitiful conditions and with severe overcrowding. Progress reports to both Italy and Greece consistently pushed for tougher laws on asylum to weaken possibilities of appeal, increasing the numbers of detention centres to facilitate expulsions, and for efforts to keep people on the islands (in Greece) or to bus them south, away from borders (in Italy).²⁶ Those who did not meet the relocation criteria could be promptly returned if there was a working readmission agreement in place. This has led to widespread criticism from human rights NGOs, who argue that refugees are being denied their right to seek asylum.

As Caritas Italia observed:

“We have witnessed a new practice in the context of the hotspot. People coming from sub-Saharan African countries that are considered safe are issued with deportation orders as soon as they arrive on the Italian territory. They are not informed on asylum possibilities and the authorities present in the hotspot, national authorities and European agencies, do not give them the opportunity to claim asylum. Usually, their deportation is carried out very quickly, in the days following the issue of the order.”²⁷

The European Agenda on Migration includes a broader plan for the large-scale expulsion of “irregular migrants”, for which Dimitris Avramopoulos, European Commissioner for Migration, Home Affairs and Citizenship, mentioned a figure of one million people to be deported in 2015.

Widespread allegations and reports of abuses, poor conditions and the unlawful use of force, including on children, emerged following implementation of the hotspot approach.

An *Amnesty International* report into hotspots reported multiple allegations of the use of force and degrading treatment to obtain fingerprints, including severe beatings and blows struck against genitals. Further coercive tactics reportedly included threats of physical violence, “the denial of basic assistance including medical care, food and water” to coerce people into “giving their fingerprints”.²⁸

MSF initially criticised the conditions in the hotspot centre in Pozzallo (Sicily).²⁹ ASGI and ADIF revealed that people who were not relocation candidates were being given orders to leave the Italian territory.³⁰ They also noted an abundance of minors in hotspots despite the principle that minors should not be in the structures, and trick questions, such as “Do you want to work?”, on arrival to exclude people from asylum as “economic migrants”. Information sheets, which were altered following public criticism, included a range of reasons for which people may have travelled to Italy (with boxes to tick next to them), without initially including the option “to seek asylum”.

Another ASGI report documented cases at the Ventimiglia border post in which the French police were returning people to Italy through small mountain roads, and abandoning them some distance from the town.³¹ Here and in other border towns such as Como, and around the Brenner tunnel to Austria, people are dying. There were 12 such deaths in Ventimiglia in the last few months of 2017. A Malian was electrocuted attempting a crossing into Switzerland on top of a train from Como and there were four deaths along the Brenner route.³²

In the winter of 2017 a new front for border crossings opened in the Alps, between the towns of Bardonecchia and Clavière on the Italian side and Briançon on the French side with a border post manned by the PAF [*Police aux Frontières*] in between, which proved deadly for a 31-year-old Nigerian woman named Beauty. On 9 February 2018, PAF officers refused Beauty and her husband entry, in spite of her being both pregnant and ill. They were returned to Bardonecchia, left outside a building used by the NGO *Rainbow4Africa* as a shelter and medical support station which became active the previous December, rather than taking her to the hospital in Briançon. Beauty died on 22 March after giving birth to an underweight baby. Paolo Narcisi, president of the NGO, said “the French authorities appeared to have forgotten about humanity” and that “couriers treat their parcels better” to describe how she was dumped outside the shelter.³³

On the French side of the border, mountain guide Benoit Duclos from the Briançon area has been charged with facilitating illegal immigration and faces a sentence of up to five years for rescuing a family, including a pregnant woman, near the border and giving them a lift in his car on 18 March 2018. He has been a volunteer assisting migrants for two years. Activists from *Tous Migrants* explained that the gendarmes “cannot say anything if we show them [migrants and refugees] tracks or assist them like in the centre we set up in Briançon” but giving people a lift makes you liable to prosecution. The family was spotted in distress on the *Mongènevre* at an altitude of 1,900 metres in the fresh snow, so Duclos went to pick them up and take them to Briançon hospital. They were stopped by police who held them, including the pregnant woman, for over an hour. When Duclos was formally charged, his wife Sophie said: “I am stunned by what happened, I can’t understand all this violence”, adding that a policewoman who told Benoit that “he had never given birth, so he was not able to judge the urgency of the situation” is what she found most insulting.³⁴

The situation has clearly hardened on this mountain front. There were other striking developments, apart from the fact that three dead bodies (two men and a woman) appeared as the snow melted in May.³⁵ Firstly, perhaps in response to the criticism received when Beauty died (see above), armed PAF officers entered the *Rainbow4Africa* shelter in Bardonecchia on 30 March and compelled a Nigerian man to take a urine test in the lavatory. The NGO and ASGI viewed it as an “unacceptable serious interference with the activities of Italian NGOs and institutions. A medical shelter is a neutral place, respected even in times of war”. Narcisi viewed it as a “provocation”, whereas ASGI president Lorenzo Trucco argued that “the system of rights that should set Europe apart... as well as the basic principles of human dignity” were violated. They expressed faith in the Italian institutions in the hope they would take adequate steps.³⁶

Secondly, on 21 April, the conspiracy-theory group *Génération Identitaire* conducted one of their stunts, supposedly to help the border police.³⁷ Around 100 of them descended to block the Col de l’Echelle, one of the Alpine passageways, displaying a banner and erecting a symbolic wall. They uploaded a video on YouTube of their success in blocking the passageway. On the following day, the left-wing *NO TAV* and *Briser les Frontières* movements took over the scene. A counter-demonstration involving up to 300 activists escorted dozens of migrants across the Italian-French border in the same area, from Clavière in Italy to Briançon. They breached a police border line and three people, two Swiss men, Theo and Bastien, and an Italian woman, Eleonora, were charged and held in Marseille’s *Baumettes* prison from April 26 to May 3, before appearing in court in Gap, with hundreds of supporters present. On 3 May they were released, on condition that they stay in France. A trial date was set for 30 May, where they stood accused of facilitating illegal immigration as an organised group, but the date was postponed to 8 November. The *Briançon Three* were later released.³⁸

Solidarity dismembered

The EU’s common asylum system (CEAS) is premised on the idea that responsibility for future refugee crises would be shared, and in spite of the attribution of responsibility for examining asylum claims to country of arrival, a “spirit of solidarity” is called upon in its documents for developing the system further. Regulation 439/2010 establishing a European Asylum Support Office³⁹ views the “common asylum area” as relying on an “effective harmonized procedure

consistent with values and humanitarian traditions” of the EU. Yet EU member states have acted disappointingly when it comes to accepting transfers of even small numbers of refugees from front-line states, particularly in the case of the four central European countries of the Visegrad group (Poland, Hungary, Slovakia and the Czech Republic).⁴⁰ This has resulted in an ongoing conflict with the European Commission, which has been unable to impose its will, and threatened punitive measures for non-compliance. Rather than solidarity and the sharing of a burden that may become manageable if EU countries (whose joint population tops 500 million) acted to support each other, the opposite appears to be happening, with the isolation of front-line states, including the reinstatement of border controls.

In return for implementing the hotspot approach, the other EU member states promised Italy and Greece to relocate some 160,000 people across the EU. However, this never materialised because the criteria used to qualify for relocation (nationality of a country from which 75% or more of asylum applications were successful in the previous year) were stringent enough to disqualify almost everyone who arrived in Italy except for Eritreans.

This method would not have worked in Greece due to the arrival of large numbers of Syrians and Iraqis, thus an arbitrary cut-off date was agreed in the infamous EU-Turkey statement, which allowed for “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 [to] be returned to Turkey”.⁴¹ Thus, the supposed hotspots turned into long-term holding centres for people whose return to Turkey was pending. This worsened conditions in the regions and islands of arrival.

The exclusion of almost everyone who arrived from qualifying for relocation resulted in successive European Commission reports arguing that those who entered Italy by sea were “economic migrants” and, likewise, those who arrived in Greece were not the EU’s or Greece’s responsibility. To justify the failure of the relocation scheme, the need for relocations is presented as having been originally “overestimated”, in Commission “state of play” documents.⁴²

Almost three years after the hotspot system and relocations began in September 2015, they only amount to a fraction of the transfers originally envisaged: 34,689 persons – 21,999 from Greece and 12,690 from Italy (5,434 of whom were taken in by Germany alone) in May 2018.

Italy and Greece have been left unable to cope with the number of arrivals by their European partners. The idea is to hold any ordinary migrants (labelled pejoratively as “economic” or “illegal”) there by “preventing secondary movements”, the new priority after a 100% fingerprinting rate was achieved for new arrivals. This has led to increased human rights violations by those states and has fed hostility to migrants among populations. It has also led to growing hostility towards NGOs and activists assisting migrants and refugees or that document abuses against them by state agencies. If we add another pillar of the EU Agenda to the mix, that of enacting large-scale expulsions to “restore the credibility of the EU’s return system”, and in view of the widespread presence of people acting in solidarity with migrants, it is liable to fuel conflict.⁴³

The degradation of debate as migrants and migrant support groups are targeted has affected the political landscape. In the first months of 2018, this has included the rightward and populist drift that emerged with the electoral victories of Viktor Orban in Hungary, Sebastian Kurz in Austria, the Lega and the 5 Star Movement in Italy, and Janez Jansa in Slovenia.

Targeting civil society

Wherever people have been abandoned by the state, organised and spontaneous groups and associations have sprung up to do what they can to help, while official camps set up (with help from the Red Cross) are avoided by people who either do not qualify, or who do not want to be fingerprinted and recorded.

From Sicily to Rome, in other large cities, the border areas in the Northeast and Northwest, permanent observatories and associations helping people who arrive have sprung up, by providing them food, clothes, makeshift and more established places to find shelter, legal assistance and media and communication work.

Networks and associations like *Refugees Welcome*, *Borderline Sicily*, the *Baobab* Experience center in Rome, the *Presidio Permanente* in Ventimiglia, *Melting Pot* in the Northeast and an endless list of others provide a critical response from civil society, which has robustly condemned the dehumanising of people in the name of migration controls.

Since the summer of 2016, reports, testimonies and video evidence have been published from all over Italy about interventions by the police and local authorities working to make life impossible for so-called “illegals” [*clandestini*]. This includes periodic police raids on informal shelters, as can be noted with regards to the 18 police raids and evictions in Rome against the *Baobab* centre, to date. It also includes violent evictions, arrests and transfers from makeshift camps, squares, and cities in proximity of the border to the south.

The identification and issuing of “*fogli di via*” to activists, ordering them to leave and banning them from the locations and towns where they conduct their humanitarian activities, is becoming commonplace, sometimes seriously affecting people’s ordinary lives and professional activity. Incredibly, freedom of movement within their own countries is now being denied to European citizens in the name of countering irregular immigration.

In Rome, on 19 August 2017, an abandoned apartment block in *piazza Indipendenza* was violently evicted. The apartments, near *Termini* station, had been occupied by local movements for the right to housing, and people who were granted refugee status without being provided any form of assistance or shelter by the local authorities.

Hundreds of people camped out in the square in protest and were violently removed, including with the use of a water cannon (a remarkable photograph captured the image of a woman walking with crutches being sprayed by a powerful jet) to empty the square. The square was cleared again on 4 September, after Eritrean families had been engaged in a sit-in protest because most of the families evicted had not been offered alternative solutions.⁴⁴

Yet, in spite of the actual and symbolic violence that is being deployed, the most significant shift is that whereas grass-roots movements and migrant solidarity collectives have been used to these forms of repression for some time, it is now also targeting long-established NGOs like *MSF*, *Save the Children*, *Amnesty International* and the Soros-funded *Open Society Foundations*.

Even Pope Francis, who has been vocally opposed to the institutional mistreatment of migrants for some time has come in for criticism from supporters of a “*Christian*” Europe. The summer of 2017 also witnessed priests being targeted by far-right *Forza Nuova* militants for offering hospitality to refugees and migrants. In late August 2017, don Massimo Biancalani, the parish priest of Vicofaro di Pistoia, was reprimanded by Lega Nord leader Matteo Salvini for bringing a group of migrant youngsters to a swimming pool. This criticism was followed by the presence of a group of *Forza Nuova* activists attending one of his services in order to “*carry out surveillance [vigilare] of the mass*”, which was attended by a record number of attendees for the small parish church, who booed the self-styled fascists and applauded his sermon.⁴⁵ In it, don Biancalani highlighted the church’s role, comparing it to a “*field hospital*” in which “*everyone must be welcomed*”, as highlighted in the “*scriptures*”, as an “*ethical principle*” and a “*duty*” which includes “*feeding the hungry*”. In this sense, he argued that “*We will have to find the courage to say that the measures adopted by the Italian government are unacceptable. Ethically unacceptable*”, in reference to both what happens in, and the money that is being sent to, Libya to impose these policies.

Earlier, in mid-August 2017, Eritrean priest don Mussie Zerai of the *Habeshia* agency, was accused of “*assist[ing] illegal migration*” by the Trapani prosecutors’ office.⁴⁶ Like the accusations levelled against NGOs by Frontex, the priest was accused of connivance because he received distress calls and passed them on to the Maltese and Italian coast guards to assist their rescue. This work, as well as documentation he produced of the traffic in migrants’ organs in the Sinai peninsula, resulted in his being nominated for the Nobel Peace Prize in 2015.

Responding to the charges in an interview with *Radio Vaticana*,⁴⁷ he explained that “*I always acted for humanitarian reasons and will continue to do so*”. He added that the current climate is that of a “*witch-hunt*”, whereby “*anyone who expresses any form of solidarity towards exiles and migrants in any way, is accused or criminalized through media campaigns and other means*”. He noted further pitfalls of externalisation. The number of deaths of people abandoned in the desert by traffickers increased. Development aid, ostensibly intended to “*help people at home*”, has instead been used to fortify border controls and create more obstacles to migration. “*I am proud of having contributed to saving the largest number of lives I could*”, he concluded after accusing Europe of tainting its name by enacting “*veritable crimes against humanity*”.

The externalization of repression against solidarity and civil society groups is another development, exemplified by the case of Helena Maleno Garzón,⁴⁸ who works in northern Morocco for the NGO *Caminando Fronteras*. Like Mussie Zeraï, she was accused of facilitating illegal immigration and people trafficking as a result of the distress calls she sent out to the Spanish coastguard when she was aware of vessels having set off from the north African country. Even more importantly, she had been a key source of evidence and documentation concerning illegalities and abuses at the border fences in the Spanish enclaves of Ceuta and Melilla. *Caminando Fronteras* was responsible for providing information, interviews and the medical records of people who were treated in hospital following failed attempts to cross the border. This was most prominent in a case when there were at least 15 deaths at El Tarajal (Ceuta) on 6 February 2014. Most of the people who were killed were trying to swim across the border as *Guardia Civil* officers used rubber bullets and teargas to prevent them from doing so. A report, including photographs of wounds from rubber bullet impacts, was published, contradicting official reports which claimed the rubber bullets had been fired as warnings in the air, rather than at people.⁴⁹

Maleno is undergoing her second trial, this time in Morocco, after she was acquitted in the case brought against her before the Spanish courts. Having appeared in court on 27 December 2017, Maleno claimed the evidence on which the case was based was largely from the same case prepared against her by the Spanish police's UCRIF [Central Unit on Illegal Immigration and Document Falsification], which domestic courts dismissed in 2017.⁵⁰ *"I've not done anything wrong. Saving lives is not a crime"*, she states, reflecting the understanding of the *Audiencia Nacional*, which shelved the case because Maleno's calls to the coastguard were not a crime, but rather, they helped to save lives. She was questioned in Tangiers on 31 January 2018. In just 36 hours, 30,000 signatures were collected for an appeal to the Spanish government to inform Moroccan authorities of her acquittal in Spain. Maleno's is one of the 45 cases documented in a report on the criminalization of solidarity by the Institute of Race Relations (see below).

Following a demonstration in Rome in June 2017 in support of global refugee rights, Gianluca di Candia, a lawyer and *Resistenza Meticce* activist, was charged with "offending the institutions" [*vilipendio*] after criticising draft immigration laws during a speech to the crowd. One of the organisers of the demonstration, Riccardo Noury of *Amnesty International*, was then asked to "dissociate" from the words spoken by di Candia, leading AI to comment (as quoted by Fanpage): *"The speeches during the initiative fall squarely within the exercise of freedom of expression and what happened afterwards, insofar as it was motivated by the opinions expressed by one of the speakers, is entirely unjustified"*.⁵¹

It is important to stress the rupture being forced upon Italian society by policies implemented within the framework of the European Agenda on Migration. Italy is in the difficult position of having to deal with the EU's unwanted migrants with little more than coercion and deportation. This in turn requires the subjugation of a large constituency that simply disagrees with those policies and acts in accordance with their conscience.

3. Crimes of assistance

Ventimiglia, near to the French border, was the first place in northern Italy where the bottleneck created by the EU's emphasis on preventing secondary movements resulted in an increase in the presence of migrants. On 1 June 2016, a statement issued by the *People's Health Movement-Italy* (PHM) expressed solidarity⁵² to the migrants in Ventimiglia as well as to activists from the No Border network who had set up a permanent presence in the Ligurian city (the *Presidio Permanente*).⁵³

Like Calais, it is a frontier city along one of the routes migrants prefer to use, and which state authorities are trying to shut down. Like Calais, it has become the site of periodic evictions and routine harassment, violence, irregular practices and criminalization, not just for migrants but for activists supporting them as well. Whenever conditions improve, authorities make sure to tear down the work done by migrants and people who assist them, using law enforcement agencies for destructive purposes. Like Calais, it is a place where the situation and in particular the struggles undertaken by migrants are sometimes blamed on the activists who support them, denying migrants both agency and respect as people. Like Calais and other borderlands, it has become a place of death: in the French city, seven people died in

2018 and nine in 2017, including train falls, stabbings, hit-and-runs, truck- or police-related, suicide.⁵⁴ Unlike Calais, it is an internal border within the Schengen area, but border controls have been reintroduced since France called a state of emergency on 9 December 2015. The European Commission also relaxed obstacles to reimposing borders, noting that: “shortcomings in the implementation of the EU acquis led to temporary reintroduction of controls at the German, Austrian, Slovenian, Hungarian, Swedish and Norwegian internal borders”, three of which share borders with Italy.⁵⁵

On 4 March 2016, at the time of a prominent large-scale eviction, *Calais Migrant Solidarity* (CMS) saw it necessary to issue a statement in defence of *No Borders*.⁵⁶ In the previous week, “the French government has sought desperately to divert attention away from its brutal actions in Calais by resurrecting the perennial propaganda campaign against ‘dangerous’ *No Borders* activists”. Different authorities (the interior minister, the prefect and the mayor) accused them of violence, of not actually caring about migrants, of burning down shacks and of manipulating migrants who resist. CMS suggest four reasons for this:

- 1 admitting migrants’ resistance would be like acknowledging that the violence of the border regime is such “that it would provoke even the most cooperative person to fight back”;
- 2 support from grassroots activists grows, while for years the French and British government have strived to clear the area through violent attempts to destroy and evict the jungle, meaning that authorities realise solidarity and resistance are a threat to their border regime;
- 3 there is tension and violence in Calais, from fascists, among people, but “an overwhelming majority of it” by the police, so deflecting the blame on them or migrants is a useful distraction;
- 4 finally, CMS explains *No Borders* is more an idea than a group, so the definition can be assigned in vague terms when arrests are made in the jungle. They refer to a case when five arrests including British *No Borders* activists were reported but three were volunteering for charities and “two were Iranians defending their homes. All have been released without charge, but the [damage to *No Borders*] reputation will stick.”

A few weeks before the PHM statement the interior minister, Angelino Alfano, had visited the town to “clear” the ongoing situation marked by the presence of migrants and people acting in solidarity towards them, and ordered the closure of a centre run by the Red Cross and an intensification of police operations. PHM accused Alfano of making “an intolerable situation even harsher” and noted that a new “tent city” [*tendopoli*] which had been set up below a highway bridge near the banks of the Roja river was evicted on orders from the mayor for “hygienic reasons” without offering any alternatives. They highlighted that this justification was a mere “pretext to legitimate racist and repressive policies” and that the risk to health was in reality “inevitable” in view of European and Italian policy choices. PHM described the situation in Ventimiglia in the wake of Alfano’s visit:

“Since then, the combing and deportation operations targeting undocumented migrants in transit which we are witnessing in these hours began, a veritable manhunt in the streets of a militarised city which takes us back to landscapes from a troubling past. Apart from this, numerous ‘fogli di via’ have been handed to some Italian activists to limit freedom of movement not just on the basis of citizenship, but now also for political leanings, criminalizing solidarity and presenting the struggle by the people in transit as subordinated to the action of some militants, denying it its intrinsic strength whose roots lie in the natural and spontaneous will of migrants to see their rights recognised”.

In the summer of 2016, Italian town councils – the first of which was Ventimiglia on 11 August – began passing bylaws to “forbid the distribution and/or provision of food and drinks in public spaces by unauthorised people”.⁵⁷ Mayor Enrico Loculano of the centre-left PD withdrew the Ventimiglia bylaw on 22 April 2017 after demonstrations were announced in response to the fines.⁵⁸ The appeal by the organisers of the demonstration stated:

“Feeding people who are hungry has always been the fundamental gesture of solidarity. It is the basis for a community of equals. Punishing solidarity or impeding its exercise, regardless of the reason for it, endangers the principles and values of humanity and civility”.

Across Europe

European cities passing by-laws that prohibit feeding people in need is a damning indictment of the contemporary response to people fleeing poverty and conflict. In different ways, the pattern appears to be repeated across Europe, whether it is the destruction and eviction of shelters or the harassment of people taking on tasks that the authorities have relinquished. This is true in the case of sea rescue activities, health care and basic necessities and it has led to associations, lawyers, doctors, psychologists, firefighters, students and activists networking to provide emergency solutions to a range of serious issues, each using their own skills. In the Institute of Race Relations report entitled “Humanitarianism: the unacceptable face of solidarity” (see below), Frances Webber has observed that “in countries across Europe, the criminal law is increasingly being used as a weapon to punish and deter those seeking not to violate but to uphold standards of decency”.⁵⁹

In October of 2016, French university teacher Pierre Alain Mannoni learned this lesson the hard way. He was driving back from a party in a village close to the Italian border and, on his way, he decided to stop at the migrants’ camp of St. Dalmas de Tende. In an open letter published on his blog he explains his reasons⁶⁰: *‘I know well that my return to Nice is an opportunity for some of them to get out of this place. There is no water or electricity and temperatures do not rise over 10 degrees. I decided to take some home and to drop them off at the train station the day after’*. He took three women from Eritrea, who were wounded and barely able to walk. The group was arrested before reaching Nice.

Interviewed before his trial he recounts the tough process he then had to go through: *‘I was arrested at a checkpoint on the highway. The Gendarmes were there.’⁶¹ They asked for identity papers and, as the women did not have any, they called the Police Aux Frontières ⁶² (PAF). It was a cordial arrest. I was not handcuffed nor was I formally arrested. They took me to the PAF in a truck. I asked about my car and they answered: ‘We will drive you back’.* But once inside the facilities of the PAF the whole scene changed: *‘I was handcuffed right away and formally arrested. It was around 2am or 4am. I spent the night in jail. From the beginning, I explained everything. I had nothing to hide. But their answer was ‘Listen, we know what we have to do and you know what you have done.’* The day after, they searched his flat and car. *‘I even gave them access to my phone. They downloaded everything looking for proof that I was a smuggler. They found nothing. They kept telling me it was important to say everything, that otherwise I would anger the judge, and that my behaviour was not appropriate. But I was white as snow...’*, he laments.

In total he was detained for 36 hours and was then under an injunction ordering him to stay in Nice. *‘The most vicious part was when they finally authorised me to leave Nice so I could get my girls to their mother in a remote village. But as my car was still impounded for four months, my daily life was really complicated. I also had to wear an electronic bracelet, because they feared I would run away’*. Initially released without charges he was given a two month suspended sentence in September of 2017 for *‘facilitating the circulation of undocumented people’*.⁶³

In April of 2016, three firemen faced similar treatment in Greece. They came from Andalucia in Spain with the organisation *ProemAid* to organise rescue missions in the Aegean Sea. *ProemAid* helps stranded migrants on makeshift boats who are trying to cross the short but dangerous distance between Turkey and Greece. After a night time rescue attempt off Lesbos island which did not come to pass, they were arrested and taken into custody by the Greek police. Two members of a Danish group, *Team Humanity*, who were also responsible for saving large numbers of people and had always cooperated with the Greek coastguards, were also arrested and faced human trafficking charges. It was also alleged that they were smuggling weapons, because they had security knives for cutting ropes or clothes during emergencies. They were later released on bail after more than 24 hours detention in a tiny room. The judge asked for €5,000 as proof that they would come back to Greece if needed, depending on the findings of the investigation. On 7 May 2018,⁶⁴ the five men were tried in Mytilene, with lots of supporters present and they were all acquitted. The backing some Spanish mayors and the government gave the three Seville firemen is noteworthy, as was the support Barcelona mayor Ada Colau gave *ProActiva* in the *Open Arms* case.

Martine Landry, a 73-year-old activist with both *Amnesty International* and *Anafé*, is currently on trial for helping two 15-year-old children who had just crossed the Italian-French border at Menton/Ventimiglia to contact the border police and ask for them to be entrusted to social services for minors. *‘I helped French law to be respected’*, she says.

She risks a sentence of up to five years and a €30,000 fine. On 30 May 2018, at her trial, the prosecuting magistrate appeared to acknowledge a lack of valid elements to constitute a criminal offence.⁶⁵

Authorities do not have a monopoly on criminalization of solidarity with migrants. Sometimes ordinary citizens and neighbours press charges, as Lisbeth Zornig Andersen discovered. In 2015, she decided to help Syrian refugees stranded near Rødbyhavn in the south of Denmark. She offered lifts and opened her house to families who were then walking en masse through the country towards Sweden, which is more welcoming for refugees. The rest of her account is disturbing: *“That was in September. The following month, my husband and I were contacted by the police. They were investigating us on the charge of people-smuggling and wanted us to come in for questioning. (...) It was a strange experience, to be interrogated by the police. It turned out that about 15 people had filed complaints against me and that five or six had filed complaints against my husband. One had even been in our garden and peeked through the windows of the living room to be certain that ours was the house where refugees had been sheltered. The police did not initiate the investigation by themselves, they did it because of the number of complaints from Danish citizens”*. She and her husband were sentenced with a 22,500 kroner (€3,000) fine each⁶⁶.

Every day, activists and citizens willingly break the law to help migrants during their journeys, because most European legal systems include the possibility that anyone can help undocumented people on humanitarian grounds⁶⁷. Nevertheless, supportive actions are systematically matched by tough charges and the accused have to fight their corner to prove that their support was not for profit: Basque activists Mikel Zuloaga and Begoña Huarte were detained in December 2016 for transporting eight migrants in northern Greece. They were released on bail some weeks later. The same year, Italian translator and activist Francesca Peirotti was detained on the French side of the border with Italy, with five people from Eritrea, Ethiopia and Chad in her vehicle. She was released with a fine. In May 2017, four pensioners from the Roya Valley in France were also detained on charges of “facilitating irregular entry”. They were fined 800 euro. On the border between Greece and Macedonia more than 60 volunteers from Germany, Switzerland, the Netherlands, Austria, Spain, the U.K., and the Czech Republic were subjected to verbal harassment by the police, including threats of arrest, and arbitrary house searches by armed police and trained dogs, without a mandate and no further explanation of the reasons. During that search, nothing illegal was found⁶⁸. Greek citizens were also prosecuted for facilitating the circulation of migrants between cities on the island of Lesbos⁶⁹.

There are no accurate figures available about the extent of these actions but according to the French organisation GISTI, since the 2000s, they have been widespread in France and in Europe⁷⁰.

In some countries, people are obliged by law to report undocumented migrants. In the Netherlands, providing shelter to an undocumented migrant and failing to report the person can lead to a €250 fine.

An *Institute of Race Relations* report documents 26 case studies involving 45 people of prosecutions from all over Europe resulting from acts of solidarity, and it identifies problematic trends, first of all the downgrading of commitment to humanitarian principles by states.⁷¹ In turn, Liz Fekete notes that the retreat of the state from duties like search and rescue in the Mediterranean, requires that NGOs be targeted as well, because they constitute witnesses of what should not really be known, describing the Italian government as “bullying” NGOs. On the mainland, citizens plugging gaps in state provision are increasingly portrayed as anti-social, harassed by the police, and may find themselves treated as “enablers of irregular migration” for providing, food, water or shelter, such as sleeping bags. She describes a “shrinking space” resulting from the interplay between an intransigent approach to borders as defence rather than life protection, and solidarity being an unacceptable obstruction of state policy and unpatriotic. This legitimizes far-right harassment of refugee support groups.

The report sets off from the conflict between morality and law which is being forced upon people, where doing the right thing appears to become akin to misbehaving and deserving of punishment. From Calais to northern Italy, to Idomeni in northern Greece, Frances Webber describes how provision of basic necessities like showers and foodstuff is leading to legal cases, charges and orders [*fogli di via*] removing people from the towns in which they were operating, as happened to 16 *No Borders* activists in Como in October 2016. Allegations of petty infringements and aggressive behavior by police officers are rife, as 60 activists were reportedly subjected to police harassment near the Greek-Macedonian border, and there seems to be a degree of concerted effort going into actions against migrants and those

helping them. It moves on to guilt by association, using Calais as a test case, and focusing on notions of an attempt to create a “hostile environment” in the area which involves continuous harassment. Intimidation by the CRS (*Compagnies Républicaines de Sécurité*) partly involves actively discouraging communication between the citizens and the refugees and migrants in the ‘jungle’; other times, violence includes the use of rubber bullet charges, use of pepper spray or sleep deprivation through night-time raids. Following one of many efforts to destroy the ‘jungle’, in October 2016, and promises never to allow it to develop again, “state sanctioned violence and harassment has increased considerably”, writes Anya Edmond-Pettitt.

Meanwhile, it appears that legal cases against migrant support activists are coming from organised right wing groups. The report draws on cases from 10 countries (Denmark, France, Germany, Greece, Italy, Norway, Sweden, Switzerland and the UK), and provides a three-year timeline of incidents.

Talking of the report, Liz Fekete⁷² notes how far-right campaigns are feeding off the anti-immigrant language in the mainstream and seeing their language used by institutional actors at both a national and EU level in relation to immigration policy. Regarding *Génération Identitaire*’s (GI) campaign, Fekete, says “it actually came after months, even years of innuendos about NGO search-and-rescue missions from the director of Frontex... the innuendo was that they were in some sort of collusion with smugglers”. Official rhetoric is therefore giving the “green light” to far-right activists and conspiracy theorists and the messages are incredibly similar. “One of the messages we want to get out from this report... is that the European Commission that has all these anti-extremist programmes is actually in contradiction with its own anti-extremist message through actually fueling extremism through irresponsible slurs and rhetoric made by politicians and Frontex”. As for ways to counter this, Fekete suggests that the key struggle is over the principle of humanitarian action. “Humanitarian action, acts of conscience, should not be prosecuted using criminal law”. This requires turning every case into a massive campaign. She notes that while GI are largely involved in symbolic actions, there are neo-Nazi groups who are going so far as to physically attack politicians, as happened to the mayor of Altsdorf in Germany, and the MP Jo Cox in the UK.

Codes of conduct

The Draft EU Council Conclusions of 27 January 2016 on the 2002 Directive on ‘facilitation’ went even further, by conflating smuggling and trafficking, and failing to make any mention at all of the exemptions for humanitarian assistance.⁷³ With the EU’s tacit support, Greek and Italian authorities turned their attention to NGOs and activists, first those helping arrivals in the Greek islands, then those conducting life-saving operations in the Mediterranean.

Statewatch Director Tony Bunyan complained that

“The Council proposals would criminalize NGOs, local people and volunteers who have worked heroically to welcome refugees when the EU institutions did nothing, while other plans would require them to ‘register’ with the police and work within state structures. In a humane and caring EU it should not be necessary to ‘register’ to offer help and care to people who have suffered so much already.”

Steve Peers of the University of Essex urgently called for the affirmation of the protection of humanitarian assistance:

“This document fails to acknowledge the crucial role played by Greek islanders and volunteers in rescuing and caring for migrants who cross the Mediterranean in unsafe vessels. The EU should amend its anti-smuggling laws as soon as possible to confirm that no-one giving such vital humanitarian assistance should ever be penalised for it.”

Regardless, since January 2016 all organisations and volunteers operating on the island of Lesbos, in Greece, are required to register with the General Secretariat of the Aegean and Island Coordinating Committee. The information required includes sources of income, affiliation with other groups active in Greece, and proposed activities. Individuals must provide information on their professional capacity, their CV, earlier work, date of arrival and departure, and affiliation or cooperation with organisations already active in Greece. If they fail to do so, they may face charges of complicity with a criminal organisation.

The management of refugee camps is also under strict surveillance by the army in Greece and under military management since the enactment in 2016 of provisions from law 4368/16. Any activist providing food or shelter outside

the legal boundaries can be prosecuted and the facilities may be destroyed. This is what happened in Thessaloniki in 2016. Three self-organised shelters for refugees were reduced to rubble and its occupants, both activists and migrants, prosecuted for infringing the property code.

“For us these criminalization actions are part of a general narrative produced by some European states and the European Union who have a very negative position against organisations who help migrants” explains Marine de Haas. “They are trying to create a general feeling of suspicion and intimidation by saying: behave yourself or you do not know what could happen to you”.

4. Criminalizing search and rescue

This trend started with a leaked report⁷⁴ from the European Border and Coastguard Agency (EBCG) published by the *Financial Times* in December 2016. The article reported that the agency considered, in a confidential report, that organisations rescuing migrants at sea were being used by criminal networks: *“migrants had been given ‘clear indications before departure on the precise direction to be followed in order to reach the NGOs’ boats”*. The article also mentions that the Agency had previously documented its *‘first reported case where the criminal networks were smuggling migrants directly on an NGO vessel’*.

These accusations were later reiterated by the Agency director, Fabrice Leggeri, before the Italian Senate Defence Commission.⁷⁵ He called it a ‘paradox’ that organisations perform so many search-and-rescue missions in the Mediterranean, *“when the EU and Italy have never deployed that many public vessels into the sea: it’s quite strange”*. Later, in an interview to the German publication *Die Welt*⁷⁶, he said that such rescue operations *“should be re-evaluated (...) we must avoid supporting the business of criminal networks and traffickers in Libya through European vessels picking up migrants ever closer to the Libyan coast, (...) This leads traffickers to force even more migrants onto unseaworthy boats with insufficient water and fuel than in previous years”*. He then implied that these organisations were not cooperating with EU security agencies, which *“makes it more difficult ... to gain information on trafficking networks through interviews with migrants and to open police investigations”*.

MSF’s Aurelie Ponthieu answered these accusations in a press release asking

“What is the alternative but to let even more people die? We are not encouraging the smugglers, but it is not our job to act as a law enforcement agency ... [and] not our job to cooperate with law enforcement agencies about the smugglers... We are a humanitarian agency, and we carry out proactive search-and-rescue operations because the alternative is that hundreds of people will die from drowning, asphyxiation and dehydration. If we just wait 60 miles out to sea for boats that may pass by chance, rather than going to the areas where the smugglers are operating, there will be many more deaths.”⁷⁷

Smearing and investigating NGOs

Following the accusations by the EBCG, the Prosecutor of Catania Carmelo Zuccaro told the media⁷⁸ that he had opened an investigation, stating that *“in my opinion, some NGOs could be financed by traffickers and I know of contact (between them). This trafficking is currently bringing in as much money as the drug trade”*. He later acknowledged that he had no proof but considered it “his duty” to continue investigating. The mainstream media followed news of this investigation actively, and the scene was set to insinuate collusion between organisations rescuing migrants at sea, without naming them, and transnational organised crime. Soon after, the then vice-president of the Senate, Luigi Di Maio, published tweets and made declarations to the media supporting these allegations: *“we have raised the issue due to the many alarms received on deaths at sea and the increase in landings. We want to shed light on certain dysfunctions - as does the Catania prosecutor’s office in Sicily, which would like to open an investigation - and like Frontex, the EU agency tasked with the issue”*.⁷⁹

Between April and May of 2017, the Senate Defence Committee investigated the possibility of connections between organisations rescuing migrants at sea and organised crime. In the end, the commission found no proof of such links but issued some non-binding recommendations to the government. It advocated implementing compulsory

registration and background checks for organisations rescuing lives at sea. It also proposed that organisations should take police members on board during search-and-rescue missions in order to investigate migrant smugglers better.⁸⁰

The *pubblico ministero* [prosecuting magistrate] who initiated the media and political storm against NGOs saving lives at sea is Carmelo Zuccaro, which resulted in the subsequent coining of the phrase equating rescue missions with a “taxi service” for migrants.⁸¹

In a hearing before the *Consiglio Superiore della Magistratura*, he stressed that he did not yet have any information that would justify a criminal investigation beyond a mere fact-finding exercise, although he had previously expressed his certainty about the relations between NGOs and traffickers. He had also suggested they were involved in a plan to destabilise the Italian economy by helping migrants to arrive.

The far-right used this as a platform for actions like the occupation of the International organisation for Migration in Rome⁸² and the blocking of an *MSF* rescue boat in the port of Catania⁸³ in protest against their actions to assist migrants. A French group even organised a subscription through Paypal to finance a boat (the *C-Star*) that would thwart the rescue boats’ efforts at sea between Italy and Libya. The account was closed under pressure from activists, but donations had reached over €30,000.⁸⁴

On 15 August 2017, the *Golfo Azzurro* boat of Spanish NGO *Proactiva Open Arms* was disturbed by the *C Star* throughout the day until the right wingers were accosted by a Libyan coastguard patrol boat. Subsequently, the Libyans demanded to see the *Golfo Azzurro*’s authorization, although the boat was still outside Libyan territorial waters. They ordered the NGO boat to follow them to the mainland, threatening to shoot if they failed to do so, and the port authority proceeded to fine them €6,000 for not having a “waste garbage declaration”. The head of the mission, Riccardo Gatti, noted that “it appeared obvious to us that the Libyans were called by the *C Star*”.⁸⁵

Divide and rule

On 5 July 2017, Italian Minister of the Interiors Marco Minniti proposed a “Code of Conduct for NGOs involved in migrants rescue at sea” containing a list of requirements to hinder their independence, including obligations to assist investigative activities and allow judicial and armed police officers on board, meet strict technical requirements and assessment of their finances (see below).⁸⁶ These included:

- absolute ban on the entry of NGOs into Libyan territorial waters;
- obligation not to turn off on-board transponders;
- obligation not to make telephone communications or send light signals (as these may facilitate the departure of vessels laden with migrants);
- obligation not to make trans-shipments on other vessels, either Italian or belonging to international naval assets, and to disembark in a safe harbor;
- obligation not to obstruct search-and-rescue operations by the Libyan Coast Guard;
- obligation to receive on board judicial police officers for investigation related to trafficking in human beings;
- obligation to declare sources of financing;
- obligation to notify the MRCC [Maritime Rescue Coordination Centre] of their flag state of any sightings and interventions
- obligation to hold certification attesting technical suitability for rescue operations;
- obligation to collaborate with the Public Security Authority at the migrants’ intended landing location;
- obligation to transmit all information of investigative interest to the Italian Police Authorities

Failure to sign the code would result in refusal of the use of Italian ports. Following amendments to the code included

in an “addendum” to obtain *SOS Méditerranée*’s signature, the primacy of national and international law was affirmed, as the code is not legally binding, and the presence of armed police officers on board was ruled out. Further, any temporary presence of judicial police officers on board should not obstruct rescue activities, and the reference to trans-shipments did not imply their cessation, but rather, they would only take place under IMRCC coordination. These changes allowed *SOS Méditerranée* to sign.⁸⁷ Initially three organisations agreed to the terms. The remaining five refused. Minniti’s code, unsurprisingly, was welcomed in the Commission’s progress reports on the European Agenda on Migration and the hotspot approach, although it appeared to mirror what had happened on the Greek beaches in early 2016, with strict regulation of access and the first prosecutions.

MSF spoke out against the imposition of such a code,⁸⁸ refusing to sign it following discussions with the interior ministry. The humanitarian doctors’ association complained that the code did not adequately stress the priority of saving lives at sea; it viewed the prohibition of passenger transfers between vessels as reducing the efficiency of life-saving activities; and it endangered humanitarian principles by linking such activity to police and judicial purposes.

Aurélien Ponthieu of MSF notes⁸⁹ that there were cases where crews were infiltrated by police officers, as in the investigation leading to the confiscation of *Jugend Rettet*’s *Iuventa* rescue boat. The news about the infiltration of search-and-rescue crews in that case “shows where the priority lies for judicial authorities in Italy. It’s very concerning because we are independent humanitarian actors and knowing that... you can have members of the police infiltrating the operation, it’s very serious. Because it can have an impression on the people we are trying to help”. It is crucial for such people to know that they are there purely to provide assistance.

In October and November 2016 allegations emerged, primarily in the media, about NGOs being responsible for deaths. Ponthieu views it as a “convenient” way for Italian authorities to deflect blame away from themselves. There is no evidence that NGOs are acting as a pull factor, Ponthieu says, but there is a correlation between the deployment of NGOs and the decrease in mortality: MSF has analysed the data and it shows there is no substance to the allegations against them.

As for what the EU and its member states could do to improve the situation, Ponthieu is in no doubt, arguing in favour of a systemic shift to stop the smugglers. “Obviously, we have called for safe and legal channels to be opened, because that is the only alternative to people smugglers; you know, if you fight smugglers, if you focus on stopping the business, without offering alternatives to the people who are benefiting from those services, and who have no other choice than to benefit from those services, you are condemning people to death.”

Insidious claims from national and EU authorities signalled a shift in attitudes to humanitarian operators and volunteers saving lives at sea.⁹⁰ Following the introduction of the code of conduct and the reinforcement of the Libyan coastguard, vessels at sea became targets. They have been chased by Libyan coastguards, harassed by the *Defend Europe* ship, fined by the Libyan authorities, had their boats confiscated, and denounced by prominent politicians.

Soon after the code was issued MSF suspended all its operations in the Central Mediterranean Sea. It continues to collaborate on board of other NGO boats like *SOS Méditerranée* and *SeaWatch*, which remain at sea⁹¹. The organisations also stopped patrolling close to the shores of Libya after the Libyan coastguard attacked rescue missions and fired warning shots at their boats.^{92 93}

José Pastor of *Jugend Rettet*, notes⁹⁴ how he worked for two years on the *Iuventa* boat, which the organisation had rebuilt, patrolling the coast. He had previously worked in Lesbos during the Syria crisis and describes himself as “very committed” and as trying “to do my best”. Life on the *Iuventa* was “really dramatic. The number of people involved in the situation was astonishing, more than 2,000 people or 3,000 per day, for many days in a row was a big number of people in the worst situation possible, without life jackets, without any small bit of water, food, nothing, you see people floating in the middle of the sea... and leaving them there was really a nightmare for a long time”. He is aware that the work they are doing is not a permanent solution, because “they want to escape from death. It’s a very easy decision. What do you want to do? Live or die?”

Pastor was shocked when he found out about undercover officers taking pictures of their work and he denies any collusion with the smugglers whatsoever. “Some spy undercover in another vessel from the NGO Save the Children took some

pictures about the work that we were doing... and the pictures were used by the Trapani magistrate to investigate the behavior of Jugend Rettet and the Luventa". The pictures were "nothing", Pastor says, on a normal day, when nothing strange happened. He views it as a smokescreen. "Nothing is real about the accusation... they say the Luventa are collaborating with the smugglers and that is totally wrong. Never collaborating with the smugglers... Never doing flashing in the night. Or send our position in the night... You can check the position of the vessel... and the maritime authority of Italy, they know perfectly what we are doing... All our operations are under his supervision. I need to call them every time... That is the real relationship with them, it's a really professional relationship. Never the Luventa collaborating with smugglers. It's absolutely clear for me." Pastor feels that *Jugend Rettet* was targeted because it is a very small organisation, they are young people and they do not have any external support. *"It's a way to put one player out of the field"*.

Asked whether the aggressive treatment of SAR boats is a way to sideline independent witnesses of the effects of EU policies, he answered: *"Yeah, for sure. The NGOs are a really problematic witness, because you can see what happens in the sea, the sea is really big, if you don't have anyone there you can cover everything... if you are there you can send pictures, send images, share things"*. It's a problem as far as the EU strategy is concerned. Externalisation is a strategy to keep everyone outside and make a massive camp in Africa, Pastor said. Asked what far-right activity and the targeting of NGOs means for democracy, Pastor says that he is really scared and there are many people in Brussels who share his view, that it is a *"dark period"*.

The EU, the Italian government and the far-right are increasingly reading off the same hymn sheet on this issue. Attacks on migrants by far-right activists continue, but they are now also turning to volunteers and associations that help people who are left in the streets with nothing. Even a *Save the Children* office in Milan was attacked by the *Veneto Fronte Skinheads*,⁹⁵ after its ship, the *Vos Hestia*, was confiscated in the context of enquiries in late October 2017, a prelude to its abandoning rescue activities at sea.

5. Defending the defenders

The repression of solidarity often arouses spontaneous support, as was the case for Pierre Alain Mannoni. When he was arrested for transporting migrants he *"started with a blog post explaining my situation and it was widely read. I have received lots of support from organisations, even from a priest and a rabbi"*. Danish woman Lisbeth Zornig Andersen and her husband received donations of money to pay the fines attached to their sentence. The three Spanish firemen's case attracted worldwide attention and support. In all cases, attaining visibility for their situation was crucial. If they had not made their situation public, the effects they suffered could have been worse.

There are also spaces within European societies where resistance is actively questioning the repression of migration. Such is the case of the *FluchtHelfer* initiative in Germany and Austria. Created by the Peng! collective⁹⁶, the *FluchtHelfer* website⁹⁷, organises transit of undocumented migrants in their country, openly defying possible prosecutions of up to ten years in Germany. They claim to have successfully organised 569 escape flights within the Schengen zone. The site details every practical step to become an Escape agent as they call themselves: how to find migrants, finding alternative routes, driving in convoys or preparing the car so it is less noticeable by the security forces⁹⁸. They emphasize that *"Escape Aid within the EU is nothing new. There are many people who have already supported friends or family to migrate through the EU. For us, Escape Aid is more than a favour among friends. For us, flight facilitation is a political statement in support of the freedom of movement and a powerful example of civil disobedience"*.

Public education

Public awareness campaigns are also an interesting tool for action. In 2008, the Spanish campaign *Salvemos la Hospitalidad* managed to prevent the government strengthening its activities and grounds to prosecute people helping migrants. The first campaign in France of *Délinquants Solidaires* in 2009, successfully introduced exceptions to the prosecution of migrant support into national law. The spontaneous *Welcome Refugees* campaign of 2015 in Germany gave public support to migrants in a very adverse political climate. Nonetheless, and in spite of setbacks in all these countries since then, the very existence of these spaces for confronting public xenophobia can be considered a step forward.

Human rights defenders mechanisms

In addition to grassroots movements and local authorities, the social movement in support of migrants should consider reaching out systematically to actors who defend human rights defenders. The United Nations Special Rapporteur on Human Rights Defenders⁹⁹, the Council of Europe's Commissioner for Human Rights¹⁰⁰ and national Ombudsmen¹⁰¹ all have a duty to investigate and make recommendations to states in order to protect and facilitate the work of Human Rights Defenders. Supporters of migrants' rights fall under this definition because they defend rights of other persons or groups¹⁰².

Recently, Michael Forst, the current United Nations Special Rapporteur on Human Rights defenders, slammed Australian authorities on legal provisions reducing freedom of dissent on migration issues *"During my visit I have observed that new laws and policies have often increased secrecy provisions, particularly in the areas of immigration and national security (...) organisations that continue receiving decreased governmental funds have often to abide by the so-called 'gagging' clauses in their funding agreements, instructing them against 'lobbying' the Governments or to 'engage in public campaigns'"*.¹⁰³ Even though, the laws are still in place, the narrative has changed and the criminalization of migrant help in Australia is now manifest in the media¹⁰⁴.

The wave of criminalization and delegitimation of Italian NGOs and of solidarity with migrants by media and political leaders reached its peak in May 2017, coinciding with the visit of UN Special Rapporteur on Human Rights Defenders Michel Forst, who was invited by Italian networks in support of HRDs, In difesa Di. Forst met with Italian NGOs and gave testimony to the Italian Senate's Human Rights Committee, where he criticized the campaign against NGOs and urged the Italian government to refrain from further attacks, and rather defend the role of HRDs and migrant solidarity organisations.¹⁰⁵ Michel Forst later published a report on the Situation of Human rights of people on the move that contains reference to the situation in Italy and other Member States.¹⁰⁶

Forst is currently investigating European practices—individuals and organisations with evidence of intimidation, coercion and prosecution of human rights defenders should contact him. Francesco Martone, spokesperson of In Difesa Di, sees the recognition of people supporting migrants as human rights defenders as a significant shift,¹⁰⁷ as it means they can draw on UN and OSCE/ODHIR [Office for Democracy and Human Rights] instruments for the protection of human rights defenders.¹⁰⁸

Forst's reference to people on the move was deliberately chosen, Martone notes, to avoid the arbitrary distinctions between asylum seekers, refugees and migrants, all of whom are facing *"unprecedented restrictions, including threats and acts of violence, criticism in the media and criminalization"*. The report also cited an Italian human rights defender, who wondered whether this trend would promote *"indifference towards refugees and migrants, if not openly racist and nationalist positions"*. In May 2018, the UN High Commissioner for Human Rights' Office published guidelines and principles calling on states to *"ensure that suitable laws and procedures exist to enable human rights defenders and humanitarian operators to protect migrants and document human rights violations"*. Principle 18 calls upon states to *"respect and support the activities of human rights defenders who promote and protect migrants' human rights"*.¹⁰⁹

The former United Nations Special Rapporteur on the human rights of migrants, François Crépeau, has already opened the way by declaring on migration: *"Blaming the patient for the illness or the victim for the crime is a common response in our societies: we need to identify a culprit for our social ills. Especially in the current populist atmosphere, scapegoating is a temptation for the authorities, as they try to deflect blame and want to fuel the mistaken assumptions of their electorate"*.¹¹⁰

Lastly, the European Parliament LIBE Committee will discuss a European Parliament resolution on Guidelines for Member States to prevent the criminalisation of humanitarian assistance ((2018/2769)(RSP)). The draft, tabled in June 2018 by MEP Claude Moraes on behalf of the Committee on Civil Liberties, Justice and Home Affairs urges the European Commission to *"adopt guidelines to Member States in order to bring clarity and uniformity of implementation of the current acquis, including on Article 1.1(b) and 1.2 of the Facilitation Directive, by specifying which forms of facilitation should not be criminalised by Member States and stresses that clarity of parameters will ensure greater consistency in the criminal regulation of facilitation across EU Member States and will limit unwarranted criminalisation"* continuing,

“[The European Parliament] Regrets the very limited transposition by Member States of the “humanitarian assistance” exception provided for in the Facilitation Directive and notes that humanitarian exemption should be implemented as a bar to prosecutions, to ensure that prosecution is not pursued against individuals and civil society organisations assisting migrants for humanitarian reasons”¹¹¹. The vote in the LIBE and Plenary is still pending at the time of publication of this report.

Strategic litigation

Recently, in Melilla on the border between Spain and Morocco, migrants supported by the European Centre for Constitutional and Human Rights and other organisations¹¹² have used the ECHR to stop “immediate expulsions”. The term refers to instant deportation of migrants crossing the border illegally by the authorities without checking if they could apply for refugee status, amongst other rights. Spain was condemned for this practice in October of 2017.¹¹³

Following the missions to Africa by Italian organisations *ARCI* and *ASGI*, which Prestianni spoke about (above) in the context of strengthening relations between European and African civil society organisations, two cases were lodged in 2018 with the ECHR. The first concerns the expulsion of Sudanese nationals on 24 August 2016 from Italy, and it seeks to certify the unlawfulness of the Italian authorities’ actions, as well as challenging the Memorandum of Understanding (MoU) the Italian Interior Ministry signed with Sudan’s police in August 2016.¹¹⁴ The second case was brought regarding the 6 November 2017 incident in which a *SeaWatch* rescue boat was harassed by Libyan coastguards while the crew were saving 130 people from a dinghy.¹¹⁵ There were at least 20 casualties. 47 of the survivors were returned to Libya by the Libyan coastguard. The NGO’s missions in Africa enabled them to track down people who were subsequently detained in awful conditions, beaten, extorted, suffered hunger and rape. Two of the returnees were kidnapped and subjected to torture using electrical shocks. Further cases worthy of litigation may emerge from the first acts of the new Italian government which formed at the end of May 2018 and appears determined to drive NGOs enacting search-and-rescue activities from the Mediterranean (see below).

Inspiration may be drawn from the acquittal in Imperia, Italy of Felix Croft, a French man arrested in July 2016 while attempting to take a Nigerian family into France in his car, because his action “*does not constitute a crime*”, and the Liguria regional administrative court’s (TAR) ruling that the “*fogli di via*” issued against 19 *No Border* activists were unlawful.

In the latter case in July 2017, the TAR’s sentence rejected the claim that activists were “*socially dangerous subjects*” and argued that:

“Demonstrating with migrants to support freedom of movement does not represent a fact liable to justify a measure of repatriation with the issuing of a ‘foglio di via’, but rather, it falls within constitutionally guaranteed rights to express one’s beliefs, freedom of assembly and of association”.

Moreover, such measures were deemed “*unjustified, disproportionate and a serious breach of the constitutionally guaranteed right of freedom of movement and residence in the national territory*”, thus confirming the difference between policies which are forcefully asserted and the normative frameworks which apply.

The Permanent Peoples’ Tribunal Session on the Rights of Migrants and Refugees

Another way in which the magnitude of abuses committed in the name of restrictive immigration policies may be revealed and judged informally, is the *Permanent People’s Tribunal* (PPT), which is a prestigious “court of opinion” through which civil society looks to address specific state behaviours. It is a bottom-up process in which grassroots organisations organise the sessions and materials, building important bodies of work and knowledge. In the last year, sessions on the rights of migrants and documenting the plight they are currently suffering were held in Barcelona (7-8 July 2017), Palermo (18-20 December 2017) and Paris (4-5 January 2018). The Palermo session focused on the Mediterranean as a border and on its management by Italian and EU institutions; the financing of management of migration flows by Italy and the EU; direct testimonies; technical juridical reports on obstacles to migrants’ rights; and statements by civil society organisations. As a “court of opinion”, it adopted an innovative approach to migrants by suggesting that their shared experience worldwide is such that they may be treated as a “people”, and hence as holders of individual and collective rights, as a way to defuse the dehumanisation that policies currently impose on them. Its ruling also considered the issue of “system crimes” which are hard to grasp or fit into formal judicial proceedings.¹¹⁶

Having examined crucial material submitted by experts, the PPT jury found that EU policies on asylum and immigration “constitute a denial of the fundamental rights of persons and of the migrant people, demeaning their dignity by defining them ‘clandestines’ and ‘illegals’ and by deeming ‘illegal’ the activities to rescue and assist them at sea”. Secondly, the retreat of EU and national naval assets, including Frontex operations and EUNAVFORMED, has expanded “the scope for intervention by the Libyan coastguard in international waters” to block their onward journey and return them to “consequences of death, deportation, disappearances, arbitrary imprisonment, ... and, in general, persecution against the migrant people”, which amounts to “crimes against humanity”. Italy’s implementation of the Italian-Libyan memorandum of 2 February 2017 “amounts to complicity in the actions of Libyan forces against migrants, both at sea and in Libyan territory”. In view of the links and agreement with the Libyan coastguard and its activities, aggression against NGOs undertaking search-and-rescue operations at sea may be attributed to the Italian government, on some occasions EU agencies were also possibly complicit. The final finding was that the dismissal of NGO vessels through the Code of Conduct and other means, has weakened search-and-rescue activities, contributing to an increased death toll.

The PPT’s recommendations include a moratorium on the implementation of agreements like the EU-Turkey deal and the Khartoum Process, due to their contribution to the collective violation of migrants’ fundamental human rights. It calls on the Italian and European parliaments to open an inquiry on migration policies and agreements and their human rights impact; that Italy and the EU guarantee respect for the right to seek asylum, and that media be responsible, treating the migrant people not as a mere threat but as holders of rights. Most importantly, authorities of the EU and of member states are invited to “finally adopt an immigration policy that fully complies with respect for human rights”.¹¹⁷

Milan charter

The situation has become so serious for NGOs, activists and citizens acting in solidarity with migrants that an observatory began operating on 30 September 2017 following the blueprint laid out in the “*Milan Charter: solidarity is not a crime*” which was unveiled at a large demonstration in Milan on 20 May 2017.¹¹⁸ It was presented as a way to safeguard the “honour, freedom and rights of civil society in all its humanitarian expressions: when it saves lives at sea; when it protects and rescues people experiencing hardships at the borders; when it monitors respect for the principles of legality and equality; when it reports the failure to respect fundamental rights in procedures for administrative detention and forced removals; when it complies with the binding duty of solidarity which is a foundation of the Italian Constitution”. It proposes to do so by acting on two fronts: the first one in the communications sector (involving journalists, documentary makers, film directors, bloggers and cartoonists) and the second one in the legal sector (lawyers, jurists and activists) to assist defendants, share knowledge, and lobby for legal reform. The document announcing its launch describes the observatory as a response to “systematic attacks against the possibility of enacting rescues at sea, trials against citizens who were ‘guilty’ of offering assistance to refugees, charges against people who express dissenting opinions for ‘contempt for the institutions’, the issuing of bylaws which prohibited giving food to refugees and the adoption of ‘fogli di via’ [orders to leave a town and not to return there for a specified period] which forbid activists from returning to border towns for three years”. The Charter stresses that migrants are now presented as the ultimate enemy and source of all evils, with the corollary that people in civil society are being pushed to avoid expressing concern regardless of the horrible things that happen to them, from being crushed under trains or electrocuted on top of them, to living in destitution.

Welcoming Europe – a European Citizens’ Initiative

European NGOS and movements have launched a Trans-european campaign for a European Citizens’ Initiative directed at the EU Commission. The petition, which is expected to be signed by one million EU citizens, deals with various aspects of EU migration policy. It calls on the EU to:

- a) offer direct support to local groups that help refugees who are granted national visas, and
- b) to guarantee more effective ways and rules to defend all victims of labour exploitation and crime across Europe and all victims of human rights abuses at our borders, and significantly, to revise the “Facilitation Directive” to pressure EU Member States governments to stop criminalizing solidarity.¹¹⁹

6. Conclusions

Despite widespread concerns about authoritarianism, which foregrounds coercion as a pragmatic means for attaining policy objectives, 2018 has been a “perfect storm” on several levels. From the categories included in TNI’s framing paper “On shrinking space”¹²⁰, those which are currently most applicable to the EU include “philanthropic protectionism” (government-imposed constraints on the ability of domestic CSOs to receive international funding), notably Orban’s proposed 2018 reforms in Hungary to regulate this sector, aped by some right-wing politicians in Italy. Their explicit target is George Soros’ *Open Society Justice Initiative*, which is widely disparaged and demonized by right-wing and populist movements. Their spurious claims are premised on a supposed desire to flood Europe with migrants, whereas in fact their likely target is the work it supports on Roma people, against discrimination and to promote democratic standards. Over-regulation and accounting requirements are imposed upon NGOs to hinder their work, deployed through one-sided codes of conduct that impose stringent conditions and possible sanctions for non-compliance (notably in Italy). Furthermore, media campaigns against NGOs and solidarity have meant a significant decrease in the private donations these organisations depend on, adding further pressure to an already dire situation. Restrictions on freedom of assembly and association in the name of public order and security have been prominent in France, where a ‘state of emergency’ has been ongoing since late 2015. The criminalization, stigmatization and delegitimation of human rights defenders have also been prominent in attempts to impose harsh conditions for immigrants all over Europe, to preempt criticism, which also restricts freedom of expression through intimidation.

There is also a prominent and increasing overlap of the policy ambitions of EU authorities with far-right, fascist and populist groups who intimidate and attack activists, civil society organisations and migrants. The EU Agenda on Migration’s pursuit of maximalist goals is proving destructive for both civil society and principles such as non-discrimination and the validity of basic human rights, in view of the instrumental forms of reasoning which are at work. The interplay between these different forms of encroachment will be key to understanding Europe’s future.

The EU is now at a crossroads. Its attempt to create a European citizenship and identity in opposition to third-country nationals is being doggedly resisted by a sizable part of its population and Member States’ governments. In parallel, however, a strong bond is being formed between like-minded people across Europe who refuse to accept the degradation of Europe in pursuit of questionable policy aims. In effect, European civil society are challenging the policies enacted by Member States, national authorities and EU institutions that are regressive and authoritarian. Through civil disobedience and support for migrants’ rights they represent the real “constituent” force of a new European de-colonized project based on justice and rights for all.

Since solidarity has been framed as a crime and a whole apparatus is being put in place to prosecute and drain the forces of any dissidence, activists and citizens should look for past and present examples to open up new spaces, promote respect for life, dignity and freedom of movement. This is not just because of migrants’ rights, but also because criminalization promoted by high-level authorities is putting the core values of European democracies at risk. Today, the front line is migration. Tomorrow, these techniques could be used widely in Europe against anyone campaigning on the environment, free speech, diversity and so on. In fact, any kind of freedom or rights is at risk when criminalization is used as a strategy.

7. Post-scriptum

As this report was concluded in June, 2018, the new Italian interior minister, Matteo Salvini, opened a diplomatic tug-of-war with Malta over the reception of an *SOS Méditerranée/MSF* rescue boat.¹²¹ The *Aquarius* has 629 migrants on board, including 123 unaccompanied minors, 11 babies and 7 pregnant women. Hostility to NGOs and to the supposed “invasion” have been crucial to Salvini’s thinking. Discouraging “people trafficking” and a promise of 600,000 expulsions were his electoral pledges.

After a hard night and six separate operations, the *Aquarius* tweeted that it was heading north towards a safe harbor. It awaited instruction for hours, but to no avail, noting that *“Our only objective is to disembark the people we rescued yesterday”*. Salvini announced that Italian harbours were shut to the *Aquarius*. Salvini and the M5S infrastructures minister Danilo Toninelli requested that Malta allow the boat to dock in Valletta, the nearest harbour to their position, unsuccessfully. Malta noted that it was not involved in the rescue, which was coordinated by the Italian MRCC centre. In turn, the two Italian ministers accused Malta of *“looking the other way when it is a matter of respecting precise international conventions on the safeguarding of life at sea and cooperation among states”*. The boat had been heading north towards the Sicilian port of Messina in Italy, yet the night’s last tweet from the *Aquarius* explained that it was instructed by the IMRCC to remain at their current position, 35 nautical miles from Italy and 27 nautical miles from Malta.

Malta’s prime minister, John Muscat declared that Italy was in violation of international law, endangering the lives of everyone involved. The mayors of Naples, Palermo, Reggio Calabria, Taranto, and Messina all declared their ports were open for the *Aquarius*,¹²² but it is not technically their decision. The mayor of Messina, Renato Accorinti commented:

“Minister Matteo Salvini’s début in the management of migrant reception leaves us astounded, both in terms of the humanitarian dimension which is denied, and of knowledge of the laws of the sea. You cannot think of doing away with human rights and the law of navigation in which the human being is sacred regardless of the colour of his skin and country of origin.”

The boat eventually headed towards the Spanish city of Valencia, which volunteered alongside Barcelona, a full three days’ navigation away, causing a diplomatic scandal, as hundreds of vulnerable people stayed at sea for far too long in difficult conditions. In another incident the previous morning, in which the *Sea Watch* disembarked 232 people in Reggio Calabria, the captain was questioned by the judicial police for four hours, and journalists on board were pressured to hand over their video files of the rescue activities. The boat did not leave until midnight.

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- placed on their activities, as individuals or as part of civil society organisations, must be in accordance with international standards.¹⁷⁴ Ensure that legislation which affects the activities of human rights defenders, including legislation on public safety and public order and legislation and procedures for registering and funding civil society organizations, is consistent with international human rights law.¹⁷⁵ 3. Take all necessary measures to ensure that human rights defenders are protected from violence, retaliation, threats including threats of deportation, discrimination, and other kinds of pressure or arbitrary action by State or non-State actors as a consequence of their work.¹⁷⁶ Ensure that they are able to communicate to non-governmental or intergovernmental organisations, and international and regional human rights bodies, without fear of intimidation or reprisal.¹⁷⁷ http://www.ishr.ch/sites/default/files/article/files/201802_ohchr_principles_and_practical_guidance.pdf
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Europe's "refugee crisis" triggered a wave of solidarity and civil disobedience actions: People organised convoys to refugee reception centers, warmly greeted arrivals at train stations and lined highways to provide food and water to those making the trek from war-torn regions. While a minority of EU member states welcomed refugees, the majority turned their back on their international obligations. Research by TNI and others suggests there is now a wide pattern across the European Union of repression of solidarity with people on the move. Repression and criminalization of NGOs, social movements and activists is also linked to the EU's policy of "externalisation" of migration controls, which is geared towards shifting the refugee 'burden' from southern Europe to Turkey and northern Africa. This report examines how EU policy has played out and offers a glimpse into the ways citizens and movements are organising, resisting and confronting xenophobic and securitarian policies at EU and Member States' levels.



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