



Landing in Lampedusa, 2015. Photo: Michele Borzoni/Oxfam

HOTSPOT, RIGHTS DENIED

The lack of a legal framework is threatening the rights of migrants reaching the Italian shore

The flow of migrants into Italy continues to be dealt with as an ‘emergency’ situation. The EU’s ‘hotspot’ approach, outlined in the European Agenda for Migration of May 2015 as a short-term measure, has been implemented in Italy and Greece and is an approach involving EU officers, in collaboration with national authorities, in the identification, fingerprinting and registration of migrants.

This paper from Oxfam Italia examines the hotspot approach in Italy through the experiences of humanitarian agencies and civil society organizations on the ground, and through the voices of migrants themselves. It concludes that, due to the lack of a legal framework, the hotspot approach seriously violates the fundamental rights of people reaching Italian shores. Oxfam calls for the Italian government and the European Union to define hotspot procedures and activities in EU and national regulations and to take medium-term action to expand the capacity of the receiving and support systems in Italy.

SUMMARY

The European response to the refugee crisis is proving ineffective and dangerous. Ineffective, because it is failing to hold back the migratory flows, which was its main objective, and to ensure appropriate management of incoming migrants. This briefing describes the situation in Sicily.

The response is dangerous because, as was easily foreseeable, the political response – and the media coverage often linked to it – was initially about the necessity to avoid future tragedies like the shipwrecks of 3 October 2013 and 18 April 2015; or the three-year-old Syrian child found dead with his mother and brother on the Turkish beach of Bodrum in September 2015. However, within a few months this response had given way to an increasingly rigid attitude and a policy of exclusion. The EU–Turkey agreement of March 2016 was just the latest step in a process in which Europe and its Member States have put the security of their external borders before the protection of human rights.¹ This approach is not helping to preserve internal unity and cohesion among Member States: for the first time in the European Union's history, the Schengen system is being questioned and some countries are considering, or actually implementing, a 'selective' border blockade.

The 'hotspot' approach, included in the European Agenda for Migration of 13 May 2015 as short-term measure, was implemented in Italy and Greece a few months later. It is a new approach involving EU officers, in collaboration with national authorities, in the identification, fingerprinting and registration of migrants. In the four hotspots presently operating in Italy – Lampedusa, Trapani, Pozzallo and Taranto – activities officially started between September 2015 and February 2016.

Oxfam believes that, due to the lack of a legal framework, the hotspot approach seriously violates the fundamental rights of people reaching Italian shores.

The system has no defined legal framework because activities taking place in the Italian centres are not regulated by any Italian or European standard and are often in clear contrast to the provisions of laws concerning international protection and the infringement of personal freedom.

Over the last few months, the Italian police, supported by Frontex representatives, have been operating an arbitrary distinction between asylum seekers and irregular migrants at border crossings. This process is not established by the relevant legislation since police forces are merely entitled to 'receive' asylum applications.²

Activities to provide legal information are mandatory by law but have been largely inadequate. Residence in the centres can last between several days or weeks, although the facilities were designed for a much quicker turnover.

Witnesses report episodes of violence and intimidation during fingerprinting operations, and the European Union has been pressuring Italy for months to introduce in these regulations the ability to use prolonged detention and forced fingerprinting on migrants refusing to comply with identification procedures.³

Worst of all, soon after disembarkation a large number of migrants have been given return orders, based on hurried and inaccurate interviews showing an inconsistent legal basis and many errors in process (for example, none of these migrants have received a copy of the signed declarations containing the details upon which return orders are based). As a consequence, the responsibility for people abandoned in the streets by the police falls on civil society. Some migrants receive aid, material support and legal assistance from associations and private citizens; the others simply disappear.

Reception centres are chronically overcrowded and cannot offer dignified living conditions, even to unaccompanied minors. They will not be able to cope with the massive wave of arrivals expected in the summer of 2016. Primary and secondary level reception nationally is proving completely inadequate.

Italy and Europe must radically change their approach to the management of the pressure of the migration crisis, and prioritize people's rights over any other issue.

Oxfam calls on European and Italian authorities to immediately:

- Define hotspot procedures and operations in EU and national regulations;
- Ensure that all migrants are informed about their rights, including the right to ask for international protection, in accordance with law and in a form and language that they can actually understand;
- Ensure that identification and registration procedures fully respect human rights. More particularly, an independent supervisory body not subject to the Ministry of Interior must be present in both phases;
- Guarantee that migrants are not sent back without their individual situations being specifically examined. Law enforcement officers are not legally entitled to distinguish between international protection seekers and irregular migrants;
- Ensure that migrants are not detained in reception centres for the sole purpose of being identified;
- Forbid the use of coercive measures (violence, intimidation, prolonged detention) to force migrants to comply with photo-identification and fingerprinting procedures;
- Guarantee the presence of an adequate number of operators and qualified mediators from civil society organizations on the ships, at disembarkation points and inside the centres where the first identification procedures take place. These people can provide support, facilitate communication and monitor the respect of human rights;
- Ensure that national and European parliamentary members, journalists, and civil society representatives can access the centres on request;
- Create specific protection procedures for vulnerable groups such as unaccompanied minors, pregnant women and women travelling alone, and physically or psychologically traumatized and sick or disabled people.

In the medium term:

- Expand the capacity of the national receiving system, particularly through the creation of additional SPRAR (Protection System for Asylum Seekers and Refugees) centres, in order to avoid constant overcrowding in primary reception centres;
- Recognize that migrant flows are a structural component that must be managed through active participation in *resettlement* programs, the creation of humanitarian channels and by re-opening the legal working immigration channels which are now practically closed;
- Discontinue flow-restriction policies at national and EU levels that include agreements with countries of origin or transit on the possibility to retain migrants with coercive measures or to return them collectively;
- Agree on a radical reform of the Common European Asylum System in order to introduce the concept of mutual recognition of positive decisions on asylum.

1 THE ORIGIN OF THE HOTSPOT APPROACH: A SYSTEM THAT DOES NOT PROTECT PEOPLE'S RIGHTS

THE EUROPEAN REFERENCE FRAMEWORK

In the European Agenda on Migration published in May 2015, the European Union outlined the main principles of its migration and asylum policy for the years to come.⁴ The Agenda had been in preparation for several months, but the shipwreck of 18 April 2015 near the Sicilian coast, with its tragic death toll of more than 800 people⁵ and its impact on public opinion, significantly accelerated the document's publication.

The first chapter of the Agenda, 'Immediate action', focuses on four aspects: search and rescue operations at sea; the definition of mechanisms for distributing people in need of international protection among the EU Member States (the so-called relocation and resettlement mechanisms); the fight against smugglers; and cooperation with third countries.

The second chapter – 'Four pillars to manage migration better' – deals with broader issues: reducing incentives for irregular migration; border management; creating a strong common asylum policy; and promoting legal migration.

The first chapter introduces the so-called 'hotspot approach' to managing the European Union's external borders. The term hotspot indicates a 'crisis point' and refers to the most permeable borders. The new approach includes the identification, registration and fingerprinting of incoming migrants. These operations are no longer managed exclusively by the national authorities of frontline Member States (presently Italy and Greece), but in collaboration with officers of four European agencies: Frontex (EU Border Agency), EASO (European Asylum Support Office), Europol (EU Police Cooperation Agency) and Eurojust (EU Judicial Cooperation Agency).

This initiative has been greeted by many as an encouraging sign of awareness by European institutions of the fact that migrant flows into Greece and Italy are a matter of concern for the whole of Europe and not only for the two frontline countries. However, the Italian Ministry of Interior responded to the news negatively, speaking of a sort of 'compulsory administration' of Italy,⁶ in spite of the fact that during the Italian presidency of the EU (1 July – 31 December 2014), the country had pushed for more homogeneity in managing the migration crisis and a stronger coordination role for European agencies.⁷

The impetus for the European Union to take immediate action was probably the high number of people reaching Italy via the Mediterranean route over the last few years who were not identified in Italy and who travelled on to other Member States in order to claim asylum there. Although the reasons for this behaviour obviously vary, they are all linked either to the desire to join family members or friends, or to the desire to live in countries offering better reception conditions in the short term, and better working opportunities in the medium and long terms.

Numbers are high: in 2014, about 170,100 people reached Italy by sea,⁸ but asylum applications were just 63,655⁹ – a difference of more than 106,000. The example of Syrian citizens was the most significant: 42,323 arrivals¹⁰ but only 500 asylum applications in Italy.¹¹ All the other Syrian migrants stayed in Italy for just a few days, often living in precarious conditions,¹² and then travelled on to northern Europe. The situation was not much different in 2015: 83,245 asylum applications¹³ against 153,842 arrivals.¹⁴

This phenomenon is now called ‘wave through’ and indicates migrants who travel across first arrival countries in order to reach their intended destination elsewhere. The trend is not new in Italian migration history and has been typical of migrant flows over the last two years.

Better control of incoming migrants by the Italian authorities was certainly one of the main purposes of the hotspot approach, and in fact the periodical EU reports contain fingerprinting figures that show successful results from this point of view: ‘The percentage of migrants whose fingerprints are included in the EURODAC¹⁵ database has risen in Greece from 8% in September 2015 to 78% in January 2016, and in Italy from 36% to 87% over the same period. These figures are expected to improve further as hotspots become fully operational’.¹⁶ The report dated 16 March 2016 mentioned ‘nearly 100%’ of migrants being identified.¹⁷

Box 1: The reason many migrants do not want to be identified in Italy

The situation described so far is simply an adverse effect of the European legislation regulating the right of asylum; more specifically of two elements combined. The first is the Dublin III Regulation (Regulation No. 604/2013) and the limits to freedom of movement and residence in EU Member States for third-country citizens unless they are family members of EU citizens.¹⁸

The second element is worth deeper analysis: the European Union refuses the so-called secondary movement of third-country citizens even if in possession of a residency permit, including permits based on any form of international protection. As a consequence, a migrant claiming for protection and obtaining it in a European country is not allowed to move to a different one later on.

The aim of the Dublin Regulation is to define criteria for clearly determining which country is responsible for examining asylum applications. To this end it has established the principle of first arrival/identification.¹⁹ In the 1990s, when the first Dublin Convention was issued,²⁰ this helped avoid the phenomenon of ‘orbiting refugees’, i.e. people who ended up in a sort of legal limbo because no Member State acknowledged being responsible for processing their asylum applications.

Over the last few years the situation has significantly changed. People arriving in Europe across the Italian border are identified and must claim for asylum in Italy (in compliance with the Dublin Regulation) and cannot decide to then move to another country where they think they will be offered better opportunities or where they have personal relations (because of the restrictions on the circulation of third-country citizens). But the Italian route to Europe is clearly the shortest one in the absence of legal channels. As a consequence, according to 2014–2015 figures, a huge number of people travelled to Italy and, once arrived, avoided identification and travelled on to northern Europe. In spite of the fact that the Italian route to Europe is the most dangerous: more than 7,000 people have died in the central Mediterranean since 2014, 976 of them in 2016.²¹

The result is a contradictory situation where, on the one hand, Europe opposes the possibility for asylum seekers to choose the country in which to apply for protection. This opposition is clearly related to the bigger political influence within European institutions of

countries possessing better attraction power due to more dynamic labour markets, more inclusive welfare systems, and the presence of pre-existing foreign communities that ensure the appropriate environment for better integration of newly-arrived migrants. On the other hand, the effect created so far by the same European norms is a de facto 'asylum shopping'²² without any form of protection, which is fuelling more or less organized illegal networks of smugglers who operate undisturbed and organize the movement of migrants into the Europe, exposing the most vulnerable people to additional risks.

One of the EU responses to such a paradox is the hotspot approach. The EU Commission calls hotspots 'operational solutions for emergency situations' whose aim is to assist frontline Member States which are facing 'disproportionate migratory pressures at the EU's external borders'.²³ Member States can benefit from the hotspot approach on request and subject to evaluation by the European agencies involved.

It is essential to stress that hotspots are not a new kind of identification centre (in fact, they are not described in the European documentation) but a new working method relying on existing centres, with a specific legal profile which has not been formally modified so far.

The EU financial support only refers to human resources and to technical equipment if necessary (e.g. fingerprinting devices), and not to the creation of new facilities.²⁴

As specified in the European Agenda on Migration, the hotspot approach means that 'those claiming asylum will be immediately channelled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks'. The hotspot approach will also contribute 'to the implementation of the temporary relocation schemes proposed by the European Commission on 27 May and 9 September: people in clear need of international protection will be identified in frontline Member States for relocation to other EU member States where their asylum application will be processed'.²⁵ Actions to be taken by EU representatives in collaboration with national staff, and specified in a letter sent to Member States by Dimitris Avramopoulos, European Commissioner for Migration and Internal Affairs on 15 July 2015, are:

- Identification (including photo-identification);
- Initial screening (interviews) to distinguish between migrants who have the right to apply for asylum, those who must be immediately returned to their country of origin, and those in an 'uncertain' situation;
- Debriefing (interviews) to gather information about smugglers and routes;
- Support in receiving and processing asylum applications;
- Coordination of return activities.

These functions are distributed among the agencies involved as follows:

Frontex has deployed its experts for identification and fingerprinting procedures, 'debriefing' interviews and the coordination of return operations (pre-repatriation assistance and the organisation of return flights).

EASO staff support member States in the registration and processing of asylum applications and provides information to migrants, including on their rights to international protection, in collaboration with the national authorities.

EUROPOL and **EUROJUST** coordinate intelligence and investigation activities in the fight against smugglers and other forms of organized crime. EUROPOL will also deploy its experts working in the JOT (Joint Operational Team) MARE, a team specifically set up to tackle trafficking in the Mediterranean Sea.

Frontex and EASO operations in collaboration with national officers are also a component in the system of relocation of asylum seekers, which requires migrants to be identified in order to be entitled to the relocation procedure.

Box 2: Relocation: working alongside the hotspot approach

The relocation mechanism and its effects are an essential element in accurately evaluating the hotspot approach.

With two decisions issued in May²⁶ and September²⁷ 2015 respectively, the Commission proposed a first relocation of 40,000 people from Italy and Greece over the following two years (specifically, 24,000 from Italy and 16,000 from Greece); and then of 120,000 more people (15,600 from Italy, 50,400 from Greece and 54,000 from Hungary) over the same period. Hungary later withdrew from the mechanism.

According to the relocation scheme, people 'in clear need of international protection' are identified by European officers when they arrive in frontline countries and then distributed among other Member States which voluntarily offer receiving opportunities, and can apply for asylum there. The principle for identifying migrants who are entitled to relocation is based on their belonging to a nationality that, according to Eurostat figures, has recorded a European average of international protection recognitions of over 75 percent during the previous quarter. It is important to note that this principle does not have any legal basis and is the expression of a political choice.

The relocation procedure has been greeted by many as the first attempt to waive the Dublin Regulation – even if under strict control and only for selected groups of migrants – as it allows people to apply for asylum in a country other than their country of arrival. Actually, from a technical point of view the redistribution of migrants among Member States was already possible under Article 78, par. 3 of the Lisbon Treaty as well as the Temporary Protection Directive No. 2001/55/EC, but this operation had never been implemented due to the lack of political will. The combination of the relocation and hotspot approaches seems more an attempt to preserve the Dublin system, which Italy and Greece no longer respect anyway.

The relocation mechanism has proved a failure so far. Until 11 April 2016, only 1,145 people had been relocated, 615 of them from Greece and 530 from Italy. 'Formally pledged' relocations amount to 4,516 people, or just 2.8 percent of the total. Some Member States (Austria, Croatia, the Czech Republic, Slovakia, Slovenia, and Hungary) explicitly oppose relocation, and more generally, voluntary participation has undermined its efficiency from the beginning.

Table 1 shows actual relocations from Italy, pledges by other Member States and the goals established by the Commission.

Table 1: Relocations from Italy by 11 April 2016

Member State	Formally pledged ¹	Effectively Relocated	Commitment legally foreseen in the Council Decisions
Austria ²			462
Belgium	30	24	1397
Bulgaria	90		471
Croatia			374
Cyprus	15		139
Czech Republic	10		1036
Estonia	8		125
Finland	150	135	779
France	200	137	7115
Germany	10	20	10327
Hungary			306
<i>Iceland</i>			
Ireland	20		360
Latvia	20		186
<i>Liechtenstein</i>			
Lithuania	30		251
Luxembourg	30		248
Malta	17	15	53
Netherlands	50	50	2150
<i>Norway</i>			
Poland	35		1861
Portugal	388	92	1173
Romania	330		1608
Slovakia			250
Slovenia	10		218
Spain	50	18	2676
Sweden ³	50	39	1388
<i>Switzerland</i>	30		
TOTAL	1,573	530	34,953

Source: Report from the Commission, the European Parliament, The European Council and the Council – Second Report on relocation and resettlement, 12 April 2016.

THE IMPLEMENTATION OF THE HOTSPOT APPROACH IN ITALY

The European Union initially identified six locations for implementing the hotspot approach in Italy: Lampedusa, Pozzallo, Trapani and Porto Empedocle for a total of about 1,500 places, and the two centres of Augusta and Taranto, which should have become operational by the end of 2015 with 600 additional places.²⁸

As of April 2016, the hotspot approach is implemented in 4 centres:²⁹

- the CPSA (*Centro di Primo Soccorso e Accoglienza*, First Aid and Reception Centre) in Contrada Imbriacola, Lampedusa (from 21 September 2015);
- the CIE (*Centro di Identificazione ed Espulsione*, Identification and Expulsion Centre) in Trapani Milo (officially from 22 December 2015, but some adaptation work was necessary for the facility to be fully operational);
- the CPSA in Pozzallo (from 19 January 2016); and
- Taranto (from 29 February 2016), where prefabricated facilities have been built on a former parking area.

However, the principles of the hotspot approach, made public over the last few months, had already long been applied there, as testified by local associations.³⁰ This means that de facto practices had already taken the place of legal provisions or established themselves in response to the lack of specific regulations.

The identification of additional sites remains an open question. The idea of a centre in the port of Augusta had to be abandoned due to strong opposition by the port authorities, as declared among others by Prefect Mario Morcone, Head of Department for Civil Liberties and Immigration of the Italian Ministry of Interior, during a deposition before the Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion (hereafter referred to as the 'Parliamentary Commission').³¹ Similarly, according to the European Commission no satisfactory programs have been submitted for the Porto Empedocle area.

In January 2016, the European Commission and the Italian government reached an agreement for the implementation of a 'hotspot mobile team' in order to accomplish identification and pre-registration procedures in the case of landings taking place in ports where the hotspot approach is not yet operational. This is happening often because the choice of landing points mainly depends on sea conditions, port traffic and overcrowding in the centres. The 'mobile' hotspot approach is already operational: 'Hotspot capacity is clearly limited, and when the number of incoming people is high, they have to disembark elsewhere... there have been arrivals in Crotona, Reggio Calabria, Cagliari, and Salerno recently', the Commission representative told Oxfam.

Documents provided by the European Commission show that experts presently deployed in Italy for implementing the hotspot approach include 47 Frontex officers, 8 EASO officers and some cultural mediators.

Table 2 shows the capacity of the centres, although these figures do not exactly match those provided by local organizations.

Table 2: Hotspots in Italy

HOTSPOTS IN ITALY						
	LAMPEDUSA	POZZALLO	PORTE EMPEDOCLE	AUGUSTA	TARANTO	TRAPANI
Total Reception Capacity	500	300	300	300	300	400
EU Presence	Frontex: 14 Officers (Debriefing, screening and fingerprinting teams, Frontex supporting officers)	Frontex: 14 Officers (Debriefing and screening teams)	0	0	Frontex: 4 Officers (Debriefing and screening teams)	Frontex: 15 Officers (Debriefing and screening teams)
	EASO: 2 Member State Experts	EASO: 2 Member State Experts	0	0	EASO: 2 Member State Experts	EASO: 2 Member State Experts
	EASO: 2 cultural mediators (Arabic, Tigrinya)	EASO: 2 cultural mediators (Arabic, Tigrinya)			EASO: 2 cultural mediators (Arabic, Tigrinya)	EASO: 2 cultural mediators (Arabic, Tigrinya)

Source: State of Play of Hotspot capacity, European Commission, 4 May 2015.

On 6 October 2015 the Italian Ministry of Interior sent a circular letter to the Prefects and Police Commissioner detailing the measures to be taken for starting the relocation procedure. The circular letter included a ‘Roadmap’ explaining the whole organizational flow, from receipt and identification of incoming migrants to their admission to the relocation mechanism where applicable. In mid-September the same document had been sent by the Italian government to the European commission to illustrate the hotspot approach implementation program.

It should be noted that the circular letter describes the hotspot approach as solely instrumental to starting the temporary procedure for the relocation of asylum seekers to other European countries:

‘... more specifically, the relocation procedure was designed by the European Union in order to mitigate the migratory pressure on the Italian territory. It is subject to – among other things – the presentation of an Italian Roadmap (Annex 1) and the establishment of specific hotspots, or adequately equipped disembarkation areas, where incoming migrants can receive first aid and emergency assistance and are registered and photo-identified’.

Since the relocation mechanism has substantially failed so far, Italy clearly finds itself in a difficult situation. The increased number of identifications due to the intervention of European agencies, along with the resulting increase in the number of asylum applications and heavier pressure on the accommodation system, is not counter-balanced by a sufficient redistribution of migrants among other countries.

According to the Roadmap, in the centres where the hotspot approach is already operational, incoming migrants are divided into two groups: those who express the will to apply for international protection and should be sent to the appropriate centres where

they can make their request official by filling in the C3 form,³² and those who don't. Within the first group, a further selection will identify migrants who are entitled to benefit from the relocation procedure.

The Italian Roadmap re-defines the hotspot approach working procedures and describes them as follows:³³

'The following procedures will be activated in the facilities identified as "hotspots":

- a) Medical screening of all migrants upon arrival in order to immediately detect possible health problems.*
- b) Interviews by immigration authority officials who will fill in an information form ('foglio-notizie') indicating the migrants' personal details, photograph and basic information, including whether they wish to apply for international protection.*
- c) Further to the mentioned activities and pre-identification interviews, some people may be interviewed by investigative police officers, with support from Frontex and Europol officers, to acquire information for investigative and/or intelligence purposes.*
- d) Following pre-identification activities, all migrants will be photo-identified as asylum seekers or irregular migrants in accordance with their declarations during the interview with immigration authority officials (par. b).*
- e) Upon completion of medical screening, pre-identification and investigative/intelligence activities, and based on their outcomes, people seeking international protection will be transferred to regional hubs throughout Italy; those who fall within the relocation procedure's remit will be transferred to dedicated regional hubs, whereas irregular migrants and those not willing to seek international protection will be transferred to Identification and Expulsion Centres (CIE) [...].*

Box 3: 'We are service providers. Nothing more.'

During an interview with Oxfam in the EURTF headquarters in Catania, a Frontex Communication Officer strongly and repeatedly reiterated that the Italian government, more specifically the Italian Ministry of Interior, remains fully responsible for the whole process. This is in line with the official definition of the hotspot approach, and the assertion clearly comes in response to harsh criticism about the role of the European agency inside Italian centres. Criticism has been particularly heated after Coordination Officer Miguel Angel Nunos Nicolau declared on 14 January 2016 during a meeting with local associations in the Catania police headquarters, that he is in favour of forced fingerprinting because migrants who do not want to comply with the procedure probably 'have something to hide'.³⁴

The Communication Officer explained that Frontex staff operate in teams of two experts, usually of different nationalities, a cultural mediator working according to specific agreements with the Ministry of Interior, and a police officer who coordinates team activities.

- Screening teams: identification and pre-registration procedures, with a special focus on ascertaining the migrants' nationality;
- Debriefing teams: migrant interviews to learn details about migration routes and traffickers;
- Document experts: practically inactive in this context, since nearly all incoming migrants lack their identity documents;
- Fingerprinting teams: fingerprinting and fingerprint registration in collaboration with scientific police officers.

Some organizations have been operating in reception centres on the Sicilian coast for several years. They were initially involved in the 'Praesidium'³⁵ project, which ended in 2015, and are now operating according to individual agreements with the Ministry of Interior: UNHCR (United Nations High Commissioner for Refugees), IOM (International Organization for Migration), the Italian Red Cross and Save the Children. Each of these organizations is working according to a specific mandate.

Over the years, other public and private organizations have joined forces with the above-mentioned bodies, with different tasks. These include Doctors Without Borders, which has been working in Pozzallo through 2015 and at arrival points in case of shipwreck to deliver psychological first aid in emergency situations. Doctors Without Borders is now organizing support activities in the Trapani and Taranto areas. Mediterranean Hope is a project promoted in Lampedusa by the Federation of Evangelical Churches in Italy; and Emergency is an organization working with mobile teams at disembarkation sites, particularly in Augusta. Terre des Hommes operates in the First Aid and Reception Centre in Pozzallo; and Civil Protection, coordinated by municipal authorities, works in many port areas where migrants arrive.

2 THE FLAWS OF THE HOTSPOT APPROACH: INFRINGEMENT OF THE RIGHT TO ASYLUM

Several aspects of the hotspot approach raise serious concerns about its legitimacy.

THE LACK OF A LEGAL FRAMEWORK

From the beginning, the hotspot approach has had no legal basis within Italy's domestic legal system. Technically, it is the definition of a working methodology which includes a new organization of the activity flow, the collaboration between European experts and representatives of the Italian Ministry of Interior, and the use of new paperwork such as the information form mentioned in the Roadmap.

As already noted, hotspots are not a new type of centre (reception, identification or expulsion centres). The only available reference norm is dated 1995 (the so-called 'Legge Puglia'), referred to in Article 8, par. 2 of the more recent Legislative Decree No. 142/2015: 'First aid, assistance and identification activities will continue in the facilities set up in compliance with Legislative Decree No. 451 of 30 October 1995, reviewed and modified by Law No. 563 of Dec. 29, 1995'. The facilities where the hotspot approach is already operational are in fact first aid and reception centres (CPSAs, established by Interministerial Decree of 16 February 2006) and a (former) identification and expulsion centre (CIE, established by Leg. Decree 286/1998).

The activities taking place in these centres are neither established nor regulated by law. The European Union has not adopted any specific legislation, such as Regulations or Directives, since the operations of the European agencies involved in the process are already subject to their respective regulations.³⁶ Italy has not issued any internal legal provisions and the only available reference document is the Roadmap which is a political document without legal value.

The so-called 'foreign population management system based on circular letters' is not new in Italy. The actual legal status of foreigners is increasingly regulated by circular letters issued by Public Administration bodies rather than by law, and more specifically, by ministerial circular letters which are not recognized as source of law in the present Italian legal system.³⁷ This is also a violation of constitutional law, since Article 10 par. 2 of the Italian Constitution says, 'The legal status of foreigners is regulated by law'.

THE ARBITRARY DISTINCTION BETWEEN ASYLUM SEEKERS AND ILLEGAL MIGRANTS: PRE-IDENTIFICATION

Another extremely critical component of the hotspot approach is the distinction between economic migrants³⁸ (classified as 'irregular') and asylum seekers. Over the last few months, this distinction has been operated immediately on the arrival of migrants at disembarkation points or in nearby facilities by means of inaccurate interviews performed by police staff, which have determined the migrants' legal status and the possibility for them to apply for international protection or not.

The procedure described in the Roadmap includes medical screening of all migrants on arrival, photo-identification and fingerprinting, and an interview to determine 'whether they wish to apply for international protection'. The Italian document shows a better formulation, or at least better terminology, than the documents issued by the European Commission which state, 'Central to the hotspot approach is that it helps to identify who is and who is not in need of international protection through a process of identification and filtering of applications'.³⁹

Determining 'who is and who is not in need of international protection' by means of interviews performed by police staff at the border, is inappropriate. Legislative Decree 25/2008, reviewed by Legislative Decree 142/2015 to acknowledge EU Directives on the procedures for international protection applications, states that the border police are solely entitled to 'receive' asylum applications by migrants at the Italian border.

'The law is clear: there is no situation in which border police are entitled to decide whether a migrant can or cannot obtain international protection', said Paola Ottaviano of Oxfam partner association Borderline Sicilia, an organization whose staff contributed to this report with their testimonies. 'The decision is up to the specifically established Territorial Commissions, which must first examine every single story in detail.'

However, Oxfam has ascertained that the Italian political world and the media are passively acquiescing to this shift of decision making power on the migrants' legal status from the correct entities, i.e. the Territorial Commissions for the Recognition of International Protection, to identification procedures at border crossings. In its description of the hotspot functioning, the European Commission says, 'Migrants who are not in need of protection must be returned' and 'registering those who are in need of international protection and quickly returning those who are not',⁴⁰ thus giving police authorities a de-facto authorization to decide at the border whether a person is entitled to obtain protection.

In addition to this, in most cases it is now difficult to draw a sharp distinction between asylum seekers and 'economic' migrants. Literature on this subject more generally mentions 'mixed flows'⁴¹ with reference to both the wide range of reasons driving people to leave their home countries, and the coexistence of several push and pull factors along the migratory route of a person. The desire to improve one's living conditions, which traditionally explains working migration, is increasingly combined with traumatic experiences of persecution and violence.

Another significant aspect of the hotspot approach is that none of the actors involved in its implementation formally denies the migrants' right to access asylum procedures at any moment, including after having being classified as irregular migrants. On 20 January 2016, the Head of Police and Prefect Alessandro Pansa declared to the Parliamentary Commission: 'However, even that condition [i.e. being a returned migrant] does not prevent migrants to apply for asylum. Whether returned or not, or even expelled, if a migrant boarding the plane to fly back to his/her country declares that he/she wants to apply for asylum, the return procedure is interrupted'.

Unfortunately, in an uneven distribution of knowledge and power, as is the case for particularly vulnerable persons like newly arrived migrants in identification centres, the mere existence of a right is not enough. In order for a person to exercise his/her right, that person must be fully aware of being entitled to it and must have a real possibility of exercising his/her right, meaning that the environmental context should facilitate or at least protect it.

Based on the above principles, it is hard to imagine that, within the framework of the hotspot approach, a migrant's will to apply for international protection is not only ensured but also facilitated, as established by law. After analysing current practices, Oxfam has concluded that it is not.

Pre-registration operations clearly show several flaws in connection with individual rights protection and the lack of a minimum system of legal guarantees.

Migrants are interviewed by a team made up of two Frontex experts, usually of different nationalities, a cultural mediator, and a police officer who coordinates the group. The interview usually lasts a few minutes. The interviewers ask migrants some questions, recorded in the information form (*foglio notizie*), such as their personal data or the reason they have come to Italy.

Several versions of the same form exist or have existed in the past; Oxfam is in possession of at least two of them (see below).

The possible answers differ slightly from one version to the other and are as follows:

- Occupation
- To join relatives
- Escaping from poverty
- Other *or* Fleeing for other reasons
- Asylum *or* Request political asylum

The information form is signed by the migrant, by the police officer performing the interview, and by the cultural mediator. It is worth noting that the responsibility to verify the migrants' nationality falls upon the cultural mediator instead of the Frontex 'screening team' and that the Frontex experts taking part in the interview are not required to sign the information form.

As Prefect Alessandro Pansa⁴² declared, 'the information form is signed by the cultural mediator who, basing on experience and capacity, is able to confirm or not the nationality declared by migrants'.

Regardless of experience and capacity, a cultural mediator is a non-officially recognized professional who is not protected by any professional register; therefore this attribution of responsibility seems to be highly inappropriate.

Figure 1: The information form (foglio notizie)

Questura di [redacted] Nr. [redacted]
 Ufficio Immigrazione

FOGLIO NOTIZIE

FOTO

NUCLEO PARENTELA

Informazioni rese dall'interessato	Sesso
COGNOME - SURNAME - NOM - القاب	
NOME - NAME - PRENOM - الاسم	
DATA DI NASCITA - DATE OF BIRTH - تاريخ الميلاد	
DATE DE NAISSANCE - تاريخ الميلاد	
CITTA' DI NASCITA - CITY OF BIRTH - مكان الميلاد	
VILLE DE NAISSANCE - مكان الميلاد	
PATERNITA' - NAME OF FATHER - باسم الأب	
PRENOM DU PERE - باسم الأب	
CITTA' DI RESIDENZA PLACE OF RESIDENCE - VILLE DE RESIDENCE - مكان الإقامة	
NAZIONALITA' - NATIONALITY - الجنسية	
LOCALITA' DI PARTENZA - LOCATION OF DEPARTURE - PLACE DE DEPARTURE - الموقع المغادرة	

VENUTO IN ITALIA PER:

LAVORO - OCCUPATION - TRAVAIL - العمل RAGGIUNGERE I FAMILIARI - TO JOIN RELATIVES - SE RÉUNIR AUX FAMILIERS - التجمع العائلي

FUGGIRE DALLA POVERTÀ - ESCAPING FROM POVERTY - FUIR LA PAUVRETÉ - الهروب من الفقر

ALTRO - OTHER REASONS - AUTRES MOTIFS - أسباب أخرى

ASILO - ASYLUM - ASILE - حق اللجوء السياسي

Firma del mediatore linguistico Firma dell'operatore Firma dello straniero

A seguito di verifica, il mediatore linguistico ha rilevato la seguente nazionalità di appartenenza:

Firma del mediatore linguistico

N° PROGR

Foglio notizie sbarco

615 ore 29 30

Nr. 773

Polizia di Stato
 Questura di
 Ufficio Immigrazione
FOGLIO NOTIZIE
 صفحة التعريف الشخصية

Nucleo parentela

Numero M.M.

Informazioni rese dall'interessato	Sesso
COGNOME - NOM - SURNAME: القاب	
NOME - PRENOM - NAME: الاسم	M
DATA DI NASCITA - DATE DE NAISSANCE - DATE OF BIRTH: تاريخ الميلاد	
CITTA' DI NASCITA - VILLE DE NAISSANCE - PLACE OF BIRTH: مكان الميلاد	
CITTA' DI RESIDENZA - VILLE DE RESIDENCE - PLACE OF RESIDENCE: مكان الإقامة	
PATERNITA' - SITUATION FAMILIALE - FATHER'S NAME: باسم الأب	
NAZIONALITA' - NATIONALITE - الجنسية	
LUOGO DI PARTENZA - LIEU DE DEPART - PLACE OF DEPARTURE: الموقع المغادرة	

1/11997

Gambia

VENUTO IN ITALIA PER - VENU EN ITALIE POUR - REASONS TO REACH ITALY - أسباب الوصول إلى إيطاليا:

LAVORO - TRAVAIL - JOB SEARCH - العمل

RAGGIUNGERE I FAMILIARI - RE-JOINDRE LA FAMILLE - REJOINING FAMILY - التجمع العائلي

FUGGIRE DALLA POVERTA' - FUIR LA PAUVRETÉ - FLEEING FOR POVERTY - الهروب من الفقر

FUGGIRE PER ALTRI MOTIVI - FUIR POUR AUTRES MOTIFS - FLEEING FOR OTHER REASONS - أسباب أخرى

RICHIEDERE ASILO POLITICO - DEMANDE D'ASILE POLITIQUE - REQUEST POLITICAL ASYLUM - طلب اللجوء السياسي

Firma dell'Interprete Firma dell'Operatore Firma dello Straniero (Signature)

A seguito di verifica da parte del mediatore culturale è stata rilevata la seguente nazionalità di appartenenza:

PARTE RISERVATA ALL'OPERATORE DELLA POLIZIA SCIENTIFICA

RILIEVI FOTODATILOSCOPICI

NR. DATA

According to Oxfam's information, migrants have not received a copy of the information form bearing their signature.⁴³ During the interview, migrants are alone in front of two European officers, a police officer and a cultural mediator who works in collaboration with the Ministry of Interior. No other entity is present to protect migrants at this stage, neither UNHCR or EASO, nor any of the NGOs actively working at disembarkation sites according to the specific conventions with the Ministry of Interior. No one is there who could impartially ensure that the migrants' will is actually understood and correctly registered.

Oxfam has gathered several testimonies on this subject:

'I told them that I had to flee my country because of the conflicts... my country is at war and I would have to fight against my fellow citizens... that's why I cannot go back. I told them. But two days later they gave me a document [the return order], and I had to go!'

M., 23-year-old Ghanaian arrived at Lampedusa.

'When they interviewed me and wrote down in a paper, I said, "Asylum! Asylum!" I told them, I swear! Then they put me together with other people from Nigeria, Togo, and Mali. They gave us the paper [the return order]'

B., 22 years old, from Gambia, arrived in Pozzallo.

Two more young men from Gambia whom Oxfam met in Agrigento reported that they had told the policemen who were escorting them on the ferry boat from Lampedusa to Porto Empedocle about their intention to apply for asylum. They did so in vain: shortly before landing they were delivered a return order.

Lucia Borghi, an operator of the association Borderline Sicilia, recalls:

'There were 26 young men wandering in Pozzallo after having received a return order, because they did not know where to go. I spoke to them. They came from Gambia and from Senegal, and told me that some of them had been interviewed in very bad English about the reason for their escape. Some others declared that nothing had been asked, they were just given the return order.'

A similar situation is reported by Roberto Majorini, a lawyer who collaborates with Caritas Agrigento to provide legal protection to migrants: 'Many people who arrived in January and February declared having received a return order without having ever filled in the information form. They said, "I have not seen any form, I have not signed anything!'"

Majorini also reported further alarming episodes: 'At the beginning, during the first interviews, migrants were simply asked, "Have you come here to work?" They obviously answered that they had, because also those who claim for international protection want to find a job... but this was enough to classify them as economic migrants. It was a typical trick question'.

According to the law, a person who irregularly enters Italian territory and then expresses his/her will to apply for asylum cannot generally be delivered a return order.⁴⁴

The Ministry of Interior recently declared that the information form has no legal value in determining the legal status of a person.⁴⁵ In spite of this, interviews continue without any legal reference system. In their conversations with Oxfam, both the European Commission representative in Catania and the Prefecture in Ragusa mentioned a

‘second interview’ that migrants are subject to after filling in the information form, probably after having come into contact with protection services. During the second interview migrants are allowed to modify their previous declarations.

During his declaration to the Parliamentary Commission on January 20, Prefect Alessandro Pansa explained: ‘Those who do not immediately apply for asylum are channelled into another mechanism based on a second information form, which is much more detailed and exhaustive. Here migrants have the possibility to apply for asylum. This procedure is obviously enacted with the participation of cultural mediators. Those who do not take this second opportunity are subject to photo-identification and return procedures’.

There is a lack of further information about the second interview, and performing two interviews is redundant and wasteful. None of these actions are regulated from a legal point of view and remain voluntary practices. The context in which interviews are carried out is also inappropriate, and the techniques vary from one port to another, frequently depending on migrants’ arrival time.

Where dedicated facilities are available, such as in Lampedusa, Trapani and Pozzallo, interviews are usually performed there. But since arrivals might take place in several locations, not necessarily near the centres, photo-identification and pre-identification operations very often take place directly on the dock (for instance in Catania or Augusta).

This is alarming, considering for example that there were 30 arrivals in Augusta from 1 January to 4 April 2016, with a total 3,836 people⁴⁶ (the second-highest number after Pozzallo). On 3 December 2015 Prefect Mario Morcone, Head of Department for Civil Liberties and Immigration, declared to the Parliamentary Commission: ‘The receiving conditions on the Augusta dock are quite miserable – please excuse me for saying it clearly. Those brown tents with camp beds in them are really dreary...’

Soon after disembarkation and usually photo-identification, migrants must stand in a line, waiting to be interviewed. Therefore pre-identification takes place when people are exhausted after a long journey and obviously under heavy physical and psychological stress.

‘Strange as it may seem, disembarkation is one of the most difficult moments of the whole journey’, declared Antonio Fiore, a lawyer from Catania providing legal assistance to migrants. ‘Once arrived, they finally feel safe. Many migrants experience a sort of sudden fall of adrenaline; they are extremely vulnerable in these moments’.

‘Disembarkation is a very critical moment’ confirmed Alberto Mallardo of Mediterranean Hope (Oxfam Italia partner operating in Lampedusa). ‘Migrants are exhausted and disoriented. They are received at the port by an intimidating crowd of policemen, coast guards, finance police, Red Cross staff, officers and representatives of several European agencies, and even the fire department with power generators if disembarkation takes place at night... all wearing uniforms and protective masks. It is a really difficult situation for them’.

Not only are interviews performed at an inappropriate moment, but also their ‘setting’ is inadequate for the vulnerable condition of migrants and it does not respect their dignity; added to this is the fragility of the procedure’s legal basis.

Members of Oxfam Italia’s partner Borderline Sicilia, who have taken part as observers in many disembarkation operations including those in the port of Augusta on 27 April

2016, recall: 'Migrants have to walk on slowly, in small groups divided into rows, and in silence; they wear white thermal suits. They must stop on the large paved square and stay there, waiting to be interviewed by police authorities and Frontex representatives who sit in the shade behind a small table. [...] A young boy fainted while sitting on the ground, waiting for his turn in pre-identification procedures. The wind was not too high, but the sun was hot and migrants were visibly exhausted after the long journey by sea; and yet they must stay there'.

In its report about the First Aid and Reception Centre in Pozzallo,⁴⁷ Doctors Without Borders declared that during interviews migrants 'stand in a line with other people and are forced to bend down to hear/understand questions, while the interviewer is sitting in front of them'.

T., aged 24, who arrived in Augusta from Mali, told Oxfam: 'They gave us blankets and some water, then we had to stand in a line. There were many lines in front of the tables where they were sitting... it was very cold, I had only my slippers on... I had to stand in line for about an hour, I do not remember exactly. There were many of us. Some people wanted to talk to us [probably EASO or UNHCR operators] but the police held them back'.

MIGRANTS DO NOT RECEIVE ADEQUATE LEGAL INFORMATION

The position of information delivery operations along the activity chain described so far is not clear. Information delivery is compulsory⁴⁸ and must be performed in order to explain clearly to incoming migrants that they can apply for international protection, and how to do it.

The Italian Court of Cassation has reiterated the public administration's obligation to inform all incoming foreign citizens about the possibility of asking for international protection and the significance of this option. It also specifically reaffirmed the principle according to which 'Whenever a foreign or stateless person crossing the border into the national territory expresses his/her will to apply for international protection, the competent authorities have the duty to provide information about how to access the procedure and to ensure an adequate interpretation service in order to facilitate access to the asylum procedure. If these duties are not fulfilled, both the deriving return and retention order will be null and void.' (Court of Cassation, Civil Division VI, No. 5926 of 25 March 2015).

According to local associations working in Sicily and to several migrants, this aspect is particularly critical: many migrants have been delivered a return order without having any idea of what was going on, because no one had informed them about the rights that they could exercise in Italy.

Some legal professionals operating in the Agrigento area reported that the situation in the First Aid and Reception Centre in Lampedusa has slightly improved over the last few weeks compared with the first months of the implementation of the hotspot approach.

Oxfam interviewed a Somali girl aged 22, arrived in Lampedusa on 24 December 2015, who was given a return order.

Oxfam: Did anyone tell you about your rights, including the right to apply for asylum, when you arrived in the port of Lampedusa or later in the centre?

F.: No, never. While I was staying in the centre nobody told me about that.

Oxfam: Have you had the possibility to speak in your language with a mediator?

F.: No, I haven't. No one could speak our language. Immediately on arrival we were fingerprinted and photo-identified, and we were asked our name and nationality. That's all. Later on they put us on a ferry (to Porto Empedocle, AM), and as we arrived they gave us the document [the return order].

Oxfam: When did you learn that you could apply for asylum?

F.: Here in Catania...when I met a lawyer. Nobody had told me before.

A., aged 30, from Nigeria, arrived in Catania on 30 September 2015 on a coastguard ship. He recalls having received a return order before being informed about his rights: 'As we got off the ship they put us in a line for fingerprinting and photo-identification... then they asked us about our name and country of origin... no one asked me whether I wanted to apply for asylum; they gave us the paper instead [the return order]. I was with a group of other Nigerians – we were put onto the streets'.

B., a 22-year-old man from Gambia arrived in December, told Oxfam: 'The doctors examined us... then we had to stand in a line waiting to fill in the document... no, nobody talked to us to explain what was happening... there were only the police'.

Borderline Sicilia has enquired about the possibility of the involved organisations providing information to migrants before they are interviewed, particularly in Pozzallo: 'During a meeting with Prefecture representatives [in Ragusa] it was explained to us that UNHCR, IOM and Save the Children can already intercept migrants and provide information on arrival and during transfers, and continue this activity after pre-identification operations. Given that it is nearly impossible to interact with migrants on arrival, since they are immediately and directly transferred from the dock into a bus, we concluded that we only have a few minutes during bus transfers.'

In fact, since the experience of the past months has shown that the migrants' status is determined in the pre-identification phase, it would be useless to provide information later.

According to what has been directly reported to Oxfam, due to the lack of a clear definition of how humanitarian operators must/can perform their information activity, in Pozzallo they get onto the buses that take newly arrived migrants from the dock to the First Aid and Reception Centre a few hundred meters away. The short distance is not enough to provide information effectively, but just some basic details on where they are and what will happen in the centre. Once there, as in other centres or on the docks where identification procedures take place, the operators try to interact with migrants who are lining up or waiting in groups to be interviewed.

They provide information verbally, with no opportunity to verify if everyone has understood correctly or to answer migrants' individual needs. As a consequence, 'no one is able to verify for certain whether, before the issuance of a return or expulsion

order, migrants are fully informed, in a form and language they can actually understand, about their rights to express the will to apply for international protection'.⁴⁹

The hotspot procedures clearly do not include a place and time to be specifically devoted to legal information activities. Unfortunately, the destiny of many people depends on such activities.

Mediterranean Hope operators in Lampedusa reported: 'Sometimes there are not more than three or four operators at disembarkation points, and they have to provide information to two hundred people all gathered in a courtyard'.

'That's true', confirmed Riccardo Campochiaro, a lawyer based in Catania who is assisting some migrants in their appeal against return orders, 'we can see the consequences on the ground: people come to us with return orders in their hands and no idea of what is written in them, without having been informed about their rights'.

DEFERRED AND COLLECTIVE RETURNS: HOTSPOTS AS SOURCES OF IRREGULAR PRACTICES

Based on the procedures described, thousands of return orders have been delivered to migrants for them to leave Italian territory within seven days, by their own means, across the Fiumicino border.⁵⁰

Oxfam has repeatedly asked the Ministry of Interior to provide data about returns in 2015 and the first months of 2016, including details of single police headquarters in Sicily (more specifically, Ragusa, Siracusa, Agrigento, Trapani, and Catania), in order to have a clear overview of the practices adopted in different areas before and after the hotspot approach implementation.

The Ministry of Interior has not complied with the Oxfam request so far. The only data presently available, in the form of national aggregated figures, are those provided to the Parliamentary Commission by the Public Security Department of the Ministry of Interior. According to these, in 2015 57,780 migrants were photo-identified as illegal entries and 34,107 were found to be irregular; of the latter, 18,128 were not repatriated. During the first two months of 2016, 5,009 migrants were photo-identified as illegal entries and 6,643 found irregular, of which 3,553 were not repatriated.⁵¹

Although it is impossible to draw detailed figures from aggregated data in order to analyse the functioning of single hotspots, numbers are clearly very high; and the numbers go hand in hand with practices which are too often not legitimate.

Many returns initiatives target whole groups of people instead of taking into account individual situations, which is clearly an unlawful practice.⁵² Italy has been sanctioned several times in the past by the European Court of Human Rights (ECHR)⁵³ for similar episodes.

The term 'deferred' refers to the fact that they do not take place at sea, but once people have already arrived on the mainland. ASGI correctly reminds us that 'if a foreign citizen is admitted into the national territory out of public rescue necessities after being rescued in international waters, and arrives in Italy simply because a ship takes him/her to Italy in compliance with obligations established by the international Law of the Sea, returns

decisions have to be considered null and void'.⁵⁴

Oxfam been able to examine various return orders issued by the Agrigento, Catania and Ragusa police headquarters: they were all identical pre-printed forms, except for the migrants' personal data and the name of the police headquarters issuing them.

The European Court of Human Rights (ECHR) issued a judgement in relation to return measures taken by the Police Commissioner against Tunisian nationals who had been rescued and taken to the First Aid and Reception Centre in Contrada Imbriacola, stating that the ban on collective returns is violated whenever return orders are issued to foreign citizens of the same nationalities being in similar situations, without any reference to specific individual circumstances, or whenever it cannot be proved that individual interviews about each person's specific situation have taken place prior to the orders being issued (Case *Khlaifia and Others vs Italy*).⁵⁵

As reported by Borderline Sicilia operators, there was a long series of returns of this kind between the end of 2015 and the beginning of 2016: 35 people arrived in Augusta at the end of September, 32 in Catania on 30 September, 26 in Pozzallo a few days later, about 100 arrived in Agrigento from Lampedusa on December 8 and 9, 50 people arrived in Lampedusa on 11 December, 30 in Siracusa between December 16 and 19, several dozen in Agrigento on January 14 and 15; and the list could go on.⁵⁶

This kind of return measure is unlawful not only because of its collective nature, but also because migrants do not possess copies of the interviews and alleged declarations on which the return orders are based.

'When we read the return orders, as lawyers we wondered: where are these declarations they have made? Where is the document, signed by the migrant and counter-signed by a cultural mediator, which is supposed to contain the details based on which the return order has been issued?' asked Antonio Fiore.

Contrary to the understanding of the public, these people are not expelled from the national territory, since expulsion is only possible in the case of migrants coming from countries that have a readmission agreement in force with Italy or Europe (e.g. Nigeria, Tunisia, Morocco, Egypt). The others are de facto abandoned, if there are no available places in Identification and Expulsion Centres, and ordered to leave within seven days.

Data provided by the Parliamentary Commission help to give a much clearer idea of this trend's proportions: between September 2015 and January 2016 the Agrigento Police Headquarters issued return orders on 1,426 people, but only 311 of them found accommodation in Identification and Expulsion Centres. The others were simply left on the streets.

Returned people are mainly from Western African countries such as Nigeria, Gambia, Ghana, Senegal, Mali, and the Ivory Coast. As underlined by ASGI Puglia in its document '*Il diritto negato: dalle stragi in mare agli hotspot*' (Rights Denied: from Sea Tragedies to Hotspots), it is difficult not to conclude that incoming migrants are subject to a 'racial profiling', i.e. a nationality-based selection of those who are allowed to apply for asylum and those who are not because they are automatically considered 'economic migrants'.⁵⁷

Even if they wanted to, returned people are obviously financially unable to travel to Rome and buy an air ticket to go back to their home countries; and in any case they could not leave without identity documents and air tickets. Unless they are intercepted

by chance by local organizations that can provide legal assistance, they will add up to the multitude of hopeless irregular migrants sleeping in makeshift shelters.

Here are some of their voices.

‘When we got off the ferry in Porto Empedocle, coming from Lampedusa, there was a bus waiting for us. They took us to the train station, gave us a sandwich and a bottle of water along with a piece of paper with Caritas’ telephone number on it. They left us there. It was five in the morning, in January, and we did not know where to go’ says F., a Somali woman who spent eight months in detention in Libya. ‘We slept on the ground for a few hours, then a fellow countryman told us that we ought to go to Catania... so another girl and I took the train and left.’

F. told Oxfam that, once in Catania, she found hospitality at Locanda del Samaritano, a religious institution hosting people in need. She went alone to an Internet café where she found a compatriot who introduced her to the lawyers with whom he had formerly collaborated as an interpreter.

B., coming from Gambia, recalls: ‘Two days later they gave us the paper [the return order] and they put us out on the street without explaining to us why. We did not know what had happened. There were seven of us. We slept at the train station in Catania for three months, we got meals from Caritas, now and then we went to another place to take a shower...where there are people who help those in need’.

‘All through the last months migrants received the return orders on the ferry boat between Lampedusa and Porto Empedocle,’ said Valerio Landri of Caritas Agrigento. ‘The police would be waiting for them at the port in order to take them to the train station in Agrigento. They left them there inviting them to take the first train to Rome and go back to their countries. But when the institutions discovered that local associations were helping migrants exercise their rights and taking them to the police headquarters to apply for asylum, the police started to take migrants further and further away, to train stations inland, up to 35 kilometres away from the city. They tried to come back on foot, walking along the rails. This is very dangerous’.

‘Police Headquarters clearly do not want migrants to come into contact with lawyers’ said Roberto Majorini, himself a lawyer, who told us a significant story: ‘Some migrants got in touch with me by phone from Villa Sikania.⁵⁸ Someone had given them my telephone number. Later on, UNHCR operators also contacted me in their name. I officially applied for an access permit because entering Villa Sikania is very difficult, but the Prefecture refused it in spite of the fact that the migrants had specifically requested to meet me. That was a clear violation of their right to defence. I had to meet them outside the centre, in a remote café in the Agrigento area, three kilometres away from the city centre. When they left on foot, a Carabinieri jeep followed them for several hundred meters’.

‘Another episode that can help you understand the situation is that of the Palaspedini sports arena⁵⁹ says Lucia Borghi, a Borderline Sicilia operator. ‘After arriving in Catania on 30 September, 32 people coming from Western Africa were taken by bus straight from the port to the Palaspedini facilities, without any explanation, while other people who had travelled with them were sent to accommodation centres’. They did not receive anything to eat and had to stay there all night, with the police mounting guard outside the door. The following morning, five people arrived and delivered them a return order, saying that they would have to leave Italy within seven days; then they put them out on the street. The police closed the sports hall and went away. The following day some activists

informed us; we went and found them still sitting there on the ground, in the rain, wearing Red Cross t-shirts and green flip-flops. They kept waiting without really knowing what had happened and what to do’.

These are the stories of the luckiest people, those who have come into contact with associations and lawyers in various ways and hence have had the possibility to appeal against the return order and apply for international protection.

A precise estimate of numbers is impossible because migrants holding a return order have spread out into the country, and the lawyers whom some of them have turned to for help are not necessarily networked. However, we know for certain that in 2015 there were several hundred appeals in the provinces of Catania, Ragusa, Siracusa and Agrigento.

We cannot know what has happened to all those people who could not get in touch with protection bodies after having received a return order. We can only guess that some of them will have tried to reach other countries, though they will not be able to apply for asylum there due to the fact that they were first identified in Italy. The remaining majority will have joined the ranks of illegal workers toiling in the fields or in urban centres, subject to oppression and exploitation, like anyone in an irregular situation.

‘Institutions create the damage and civil society has to pay for it’, says Paola Ottaviano. ‘Leaving people out in the street is inconceivable’.

Caritas operators in Agrigento and the lawyer who collaborates with them report having literally picked up from the streets more than 150 people over the last few months and helped them meet their material needs. Emergency shelters are often provided by parishes and mosques: ‘I rescued as many as 45 people from the street in two weeks, and some of them are under age’ said Carlo D’Antoni, a priest in Siracusa, to a local newspaper.

Even the Ministry of Interior must have realized that the practices enacted by police headquarters and Prefectures involved in the hotspot approach have become unsustainable from a legal point of view: on 8 January 2016 Prefect Mario Morcone, Head of Department for Civil Liberties and Immigration, issued an urgent circular letter titled ‘Access to asylum procedures: guarantees and methods’.

The circular letter expressed concern about reports received from third sector organizations and pointed out some basic aspects such as the duty to provide information to migrants and the fact that only Territorial Commissions are entitled to ‘examine the substance and validity of protection applications as well as decide on their acceptability’.

WHAT IS HAPPENING IN HOTSPOTS? RETENTION AND COERCION, THE GREY ZONE OF LAW

According to sources of the European Commission and the Ministry of Interior, in Italy a draft law to regulate the hotspot approach is ready at technical level and awaiting approval. But this draft law does not seem to be in line with Prefect Morcone's circular letter and to comply with the principles expressed by third sector organizations.

The purpose shown in the available documents is to 'improve the legal framework with regard to longer retention and to clarify fingerprinting operations, including, as a last resort, the proportionate use of force' for taking fingerprints.⁶⁰

Immediately after issuing the Agenda on Migration, the European Commission has taken the first steps in this direction by submitting to the Council a working document, acknowledged on 20 July, on the implementation of the EURODAC regulation⁶¹ and including information activity on the rights and duties of migrants. Nonetheless, it declared that 'if a person does not cooperate, Member States may apply a minimum level of detention measures, resorting to coercion as a last resort'.⁶² In December 2015, the Commission explicitly urged Italy: 'Further efforts, also at legislative level, should be accelerated by the Italian authorities in order to provide a more solid legal framework to perform hotspot activities and in particular to allow the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting'.⁶³

The fingerprinting phase

The problem the European Union wants to tackle is the fact that migrants – generally those coming from the Horn of Africa and especially from Eritrea – refuse fingerprinting. Since they are familiar with the basic principles of the Dublin Regulation, they know that they will then be forced to stay in Italy and therefore resist being registered in the EURODAC database.

And yet, ironically, Eritreans are entitled to the relocation mechanism – a mechanism which appears not to be clearly explained to migrants and which they do not trust, determined as they are to join their pre-existing communities in Northern Europe, by their own means and without relying on European and Italian authorities. What scares them is also the idea of having little or no voice in the choice of their country of destination. An interesting remark comes from Father Mimmo Zambito, a priest in Lampedusa: 'Migrants resist fingerprinting not primarily because they fear being stuck in our country, but because they are aware of the fact that this system is devoid of any legal framework'.⁶⁴

Father Mussie Zerai, President of Habeshia and recently included by TIME Magazine in the list of 100 most influential people in the world,⁶⁵ said, 'They took people's fingerprints, inviting them to choose where they wanted to go. People made their choice and wrote: Germany, Sweden, Norway, and so on. Then, once fingerprinted, they were told that they would not go to those countries but rather to Spain, someone maybe to France, others to Portugal or Romania. So the migrants said, 'We've been cheated on'.⁶⁶

Over the last few months several people have reported episodes of menace and intimidation, and even the use of force.

On 15 February 2016, some young Somali boys who arrived in Augusta and were

hosted in the Palanbiolo facilities in Messina⁶⁷ told Borderline Sicilia operators: 'When we arrived, most of us did not want to stay in Italy. Most of us wanted to go to other European countries. But when we arrived as refugees, the police forced us to fingerprinting. They hit us with electronic batons. Some people were hit without knowing what the police wanted them to do. The police seized their arms, put them into the machine which took their fingerprints, and those people did not even know what to do. Only afterwards did you discover that they had taken your fingerprints'.

On Wednesday, April 27, Borderline Sicilia operators testified:

'There is unrest outside the Pozzallo facilities, with lots of police and the army controlling the access. For over half an hour this morning, we clearly heard the screams of migrants retained inside the hotspot. We ... do not know what caused them to shout, but we worry about the notorious practices used when migrants resist fingerprinting or when protest is the only means they have to claim their rights'.

At the beginning of May 2016 a group of migrants living in the centre of Contrada Imbriacola, on the island of Lampedusa, started a protest because they did not want to comply with fingerprinting requirements.⁶⁸ Similar episodes have occurred several times, especially at the beginning of January 2016 when more than 200 Eritreans demonstrated in front of the church in Lampedusa for the same reason, after several weeks of protests and hunger strike. Some of them were then transferred to Trapani Milo and their fingerprints were taken a couple of days later.⁶⁹

On 7 May a group of 32 refugees issued a public statement that was translated by members of local associations and published in social networks and local newspapers: 'We are refugees/asylum seekers, we have come here because we had to flee our countries which are at war. We come from Somalia, Eritrea, Darfur (Sudan), Yemen, Ethiopia. The way they treat us in the centre in Lampedusa is inhuman, in some cases the police forces mistreated people to force them to comply with fingerprinting operations. If we do not accept fingerprinting, centre operators become verbally and physically aggressive towards us, there are discriminations in food distribution and playing football in the courtyard is forbidden'.

A famous episode happened in Pozzallo in the month of April 2015, which was brought to the attention of European institutions thanks to an official query submitted by parliamentary member Barbara Spinelli.⁷⁰ The case was about a group of Syrian and Palestinian migrants who denounced having been beaten with electric devices in order to force them to submit to fingerprinting.⁷¹ Commissioner Avramopoulos replied that the Commission was not informed of similar abuses and that he would take all necessary measures to shed light on the episode.⁷² The episode remains unexplained.

During Parliamentary Commission hearings, the authorities involved in the implementation of the hotspot approach have expressed various opinions about the possibility of forced fingerprinting. There is a strong request for legal provisions authorizing forced fingerprinting in line with EU *desiderata*:

'If, from a legal point of view, a formal document or a law establishes that forced fingerprinting is possible ... in my opinion this would help operators who have to do the job. Sometimes they are scared. If a migrant gets a broken finger, operators will have a serious problem. Nobody will stand up for those who incur such an accident'

Miguel Angel Nunos Nicolau, Frontex Coordination Officer, in its declaration to the Parliamentary Commission on 13 January 2016.

‘When a migrant, a woman for example, settles into a foetal position, it is not easy to perform photo-identification. We have videos proving that in some cases we managed to photo-identify only one person in about forty minutes, with the collaboration of two or three policemen. Since we are requested to do so, we are considering introducing a norm in our system that allows the use of force on those who resist fingerprinting’.

Giovanni Pinto, Director of the Central Directorate for Immigration and Border Police of the Ministry of Interior, in his declaration to the Parliamentary Commission on 29 October 2015.

‘We have got video recordings (we usually film these situations) of a woman whom I call “Somali Mum”, huddling in a corner in the toilet with clenched fists, crying and saying, “Please, please “. We couldn’t get her to stop. Though we kept telling her, “Don’t worry, it’s all right” we did not get her to move’.

Daniela Stradiotto, Director of the Scientific Service of the State Police, in her declaration to the Parliamentary Commission on 10 September 2015.

It is hard to conceive the use of force against crying women huddling on the ground or in a toilet; it is hard to imagine that, if a migrant gets a broken finger, the only problem is for the policeman having nobody to defend him.

In spite of pressure from the European Union and the desire expressed by Frontex and the state police, the Italian legal system presently envisages a proportionate use of force in just one case: Article 349, par. 2 bis of the Criminal Procedure Code establishes that during preliminary investigations the judicial police are allowed to coercively take hair or saliva samples ‘in the respect of the personal dignity of the individual and subject to authorization by the Public Prosecutor’, a situation which clearly has nothing in common with the condition of migrants in Sicilian centres.

Retention and detention

A serious problem in Italian reception centres, as well as the use of force discussed above, is prolonged retention.

It is sometimes used as a coercive measure on people who refuse fingerprinting. They are detained in the centres until they change their mind, often separated from one another in order to discourage and demotivate them, or they are transferred from one centre to another.

‘When we are confronted with foreign citizens who do not want to comply with fingerprinting requirements, we leave them in these places, in these spaces where they have to stay until we manage to fully identify them’

Felice Romano, Italian Trade Union of Police Workers, interviewed by *‘Internazionale’*.⁷³

‘The process of forced fingerprint taking is composed of several phases: an advisory phase, an attempt phase, and finally, if a person still does not collaborate, he/she can be taken to another centre...’

Miguel Angel Nunos Nicolau, declaration to the Parliamentary Commission, 13 January 2016.

The retention of migrants in reception centres for the sole purpose of being identified is never legitimate, excepted for very few cases established by law.⁷⁴

According to Article 10 of Legislative Decree No. 142/2015, residence in accommodation centres is compulsory only at night. On some occasions, single asylum seekers can have residence imposed in a specific place or geographical area, but such

restrictions must be individually established by the Prefect in a written document specifying the reasons and communicated to asylum seekers individually (Leg. Decree 142/2015, Article 5, Par. 4).

Whether Italians or foreigners, all those who resist identification will be taken to the police station and are subject to custody for identification purposes, where transfer and custody must take place under continuous control by the criminal court with the possibility for a lawyer to be present, and in any case for a period not exceeding 24 hours.

Any other form of deprivation of freedom violates Article 13 of the Italian Constitution: 'Personal liberty is inviolable. No one may be detained, inspected, or searched or otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.'⁷⁵

More often, prolonged retention seems to be caused by chronic overcrowding in regional hubs and/or in secondary reception facilities, or by an operational bottleneck in transfers to the centres where asylum seekers should make their applications official. Due to the lack of a legal basis, the duration of migrants' residence in hotspot centres is obviously not defined – a crucial issue, due to the continuous inflow of migrants.

The only option is to rely on existing regulations: the hotspot approach procedure is presently operative in centres where migrants cannot be retained for more than 48–72 hours and where no restriction of freedom can be enacted without a specific intervention and validation of custody by the Judiciary.⁷⁶

Migrants, lawyers and associations report stories which contradict these principles. F, from Somalia, said: 'After arriving in Lampedusa I immediately completed fingerprinting procedures, then I was left in the centre for 12 days. Other people were transferred every day, but we had to stay there 12 days. They initially gave us clothes, then nothing else. We did not know how long we would have to stay there, nobody told us'

On 2 March 2016, in Pozzallo, a young man told a Borderline Sicilia operator: 'I've been here for 14 days now. They told me that I'd soon be transferred to another centre, and yet I'm still here'.

According to Mediterranean Hope operators, 'Retention times in the Lampedusa centre have become much longer: since September 2015, they have been 1–3 months. That's why it is impossible to keep migrants locked inside; the centre would be in an explosive situation within a few days. They are allowed to go out during the winter months, since they certainly could not leave the island ... but the start of the tourist season will pose a big problem. Then it will not be deemed as appropriate for migrants to freely circulate in Lampedusa'.

A report by Doctors Without Borders about the situation in Pozzallo contains a passage describing a de facto situation of retention which goes beyond legal provisions: 'A police car is parked in front of the emergency exit of the centre. It is positioned in such a way as to obstruct the door which is therefore unusable. The block continues even after identification operations, thus preventing access to the external spaces within the centre (delimited by external fences). This fact causes tension among guests, especially in case of prolonged retention in the centre. Access to external spaces is also prohibited to women, children and unaccompanied minors. ... MSF also informs that the main entrance of the centre is blocked by security officers (*carabinieri* and/or the police) by means of a wooden board used to bar the door on the outside.'⁷⁷

The report shows that there are two different scenarios. The first one is a real detention situation where it is totally impossible to leave the facilities, while the second one has to do with retention episodes – not less serious indeed – where people are only allowed to go out for short periods during the day, but are practically stuck in the centre for an indefinite time.

Near the CSPA in Pozzallo, a young man told Lucia Borghi of Borderline Sicilia: ‘We have been in the centre [the hotspot] for one week now. They have already assigned us three different transfer dates but every time they tell us that we have to wait. Why?’ The boy held in his hands a paper with his photograph, indicating 9 May – the day this conversation took place – as his transfer date. ‘The problem is that they cannot give any reason. They do not understand that we spend the whole day waiting and waiting to go away, and then we are so disappointed. They’d better not tell me anything. This is already the third time.’

In this context, the situation of minors, especially those travelling alone, is particularly alarming. In this population group, arrivals have increased and accommodation places are scarce: 2,480 minors (2,370 of whom are unaccompanied⁷⁸) arrived between 1 January and 30 March 2016, a notably higher number compared with 2015.⁷⁹ Together with a generalized slowing down of procedures, this is the reason given for the fact that many minors have to stay in hotspot centres for several weeks.

On 13 May 2016 Oxfam staff working in Sicily met two groups of minors, a total of about 20 people, outside the First Aid and Reception Centre in Pozzallo. They were all from Western African countries such as Senegal, Guinea Conakry, and Mali. That day they were allowed to leave the centre for the first time after having been retained there for two or, in some cases, three months. Among them was an 11-year-old child who had been in Pozzallo since 1 May. According to what some of them had heard, they were allowed to go out that day because a visit to the centre was planned as part of the program of the Sabir Festival then taking place in Pozzallo.

The minors were all in possession of ‘homemade’ documents, issued in two slightly different versions, containing their name, photograph and identification number, whose validity or function is unknown.

They reported that all adults had been transferred elsewhere and that there were only minors in the centre; and in fact, while journalists and associations had been denied access to the centre for months, that day Senator Luigi Manconi visited the facilities and found 142 residents, 120 of whom were minors.⁸⁰

A., aged 15, from Senegal, told Oxfam: ‘They tell us that we must stay here and wait for available places ... they keep telling us, “tomorrow, tomorrow” ... we can’t do anything here inside, we just hang around ...’.

Oxfam has heard several reports of the same kind:

‘The worst thing about Pozzallo is that we weren’t even allowed to get out in the courtyard’, a minor staying in a secondary reception centre told about his experience in Pozzallo. ‘The *children* had to stay inside the whole time, including when there were many of us and we couldn’t even move around. We were allowed to play football, but always inside. It was suffocating in there’.

‘When I arrived in Pozzallo they told me that I would be transferred soon. In the meantime, I was not even allowed to set foot outside the door. Time hangs heavy when

you're locked inside. I thought that also in Italy, I'd better not trust anyone'.

Food also seems to be a problem after several weeks in the centre:

'Breakfast always consists in coffee poured in a plastic glass and a slice of bread ... Then you have half-raw spaghetti and macaroni for lunch and dinner'. In addition to the lack of movement, clothes are one of the biggest problems: 'We have been wearing the same clothes since we arrived ... we cannot even wash them'.

The fact that people have to stay in the centres much longer than they should has serious consequences on material availability: as far as we know, migrants are delivered clothes, slippers and a telephone card only once, irrespective of the length of their residence.

'They have given us only one set of clothes, a pair of slippers and a 5-euro charge card since we arrived', a Pozzallo resident told a Borderline Sicilia operator a few weeks ago. 'I wanted to ask for additional clothes because I'm often cold, and for a new charge card in order to call my family, but then I've given up because I fear that then I would have to stay here for longer'.

The problem of overcrowding is closely linked to prolonged retention.

After the arrivals taking place in the first week of May, there were 270 people in Pozzallo against a maximum capacity of 180. Over the same period, the First Aid and Reception Centre in Lampedusa was hosting 811 people, while maximum capacity is about 400.⁸¹ Due to chronic overcrowding, it is impossible to deliver dignified living conditions in these facilities.

'We sleep all together in the same room – men, women, and children. As for food ... well, I feel uncomfortable, because we have pasta every day and portions are really small', a young boy told Borderline Sicilia operators outside the Pozzallo centre.

Some representatives of the agencies involved in the hotspot approach management seem not to worry about this issue. 'What else would you expect when there are 600 people in a place conceived for 300? It's true that some people will have to sleep closer to one another since there are not enough beds for everyone, but no one must sleep on the ground. After all, you have to adapt to the situation', Miguel Angel Nunos Nicolau declared to the Parliamentary Commission on 13 January 2016.

Unfortunately, the situation that 'you have to adapt to' is unbearable: there is promiscuity among men, women and children, toilets are insufficient, and diseases inevitably spread among migrants. At the beginning of May, 65 cases of scabies (a disease which is easy to eradicate in normal hygienic conditions) were diagnosed in the First Aid and Reception Centre in Pozzallo.⁸²

In a recent report, Terre des Hommes, a NGO working in the centre, wrote that 'after four consecutive landings, the centre is overcrowded. The facilities' awful hygienic and sanitary conditions represent the most alarming side of the problem. The centre hosts more than three hundred people, including many women (some of them pregnant), unaccompanied minors, and small children. Hygienic and sanitary conditions were already bad, as repeatedly criticized by several associations, and have worsened since regular medical assistance, formerly provided by other NGOs, is no longer available in the centre.'⁸³

The situation in the First Aid and Reception Centre in Lampedusa, visited by MEP Elly Schlein in January 2016, is no better: camp beds with thin foam rubber mattresses without sheets, sewage flowing out of squat toilets. In the area dedicated to unaccompanied minors, separated from the rest by a grating, there were 60 beds and 87 residents, with only four toilets and four showers in total.⁸⁴

PEOPLE REACHING THE ITALIAN COAST ARE TRAUMATIZED

These facilities host highly vulnerable people. Forced to leave their countries by conflict, abuse and extreme inequality, and having to endure terrible experiences on their route to Libya and then further dangers during the passage to Europe, a high percentage of these people are affected by severe trauma. Some therapists consider migration in a psycho-traumatic perspective as a trauma in itself, since it involves separation from home and loved ones and anxiety about the result of the journey.⁸⁵ In addition to this, those who reach Italy have inevitably experienced very distressing events due to the situation in their home countries, the journey to the Mediterranean coast and in most cases, the terrible Libyan transit and the sea passage to Italy. All these events are difficult to process.

MEDU (Medici per i Diritti Umani, *Doctors for Human Rights*), a Sicilian partner of Oxfam, confirms a very critical situation: 'We have provided medical and psychological support to 150 migrants in the framework of the ON.TO⁸⁶ project. All of them have had extreme traumatic experiences: more specifically, 95% had been victims of torture in their countries of origin and/or along the migratory route, especially in Libyan prisons and detention centres', said Flavia Calò, MEDU coordinator in Sicily. 'Repeated beating and rape, in particular, are the forms of intentional violence most frequently reported both from men and from women'.

Intentional violence, in particular, causes a state of annihilation and profound mistrust. Not only do people who suffer from this kind of trauma distrust others, but they also lose their self-confidence. They no longer trust their own capacity to protect themselves and to distinguish potentially dangerous people from the others. This is exactly the state of mind that torture, in its different forms, intends to create in its victims.⁸⁷

'Migrants recall inhuman detention conditions in prisons or abandoned buildings, the lack of hygienic facilities, scarcity of food and water, and social deprivation,' confirmed Flavia Calò. 'They often had to endure annihilating experiences, they were reduced to a state of impotence and forced to witness torture and atrocities inflicted on others, in many cases friends or relatives'.

Oxfam and Borderline Sicilia directly gathered several experiences from migrants arriving in Italy. Here are some of them.

What we mean by 'Libyan hell'

In a country destabilized by several years of conflict, migrants' reduction to slavery or detention for ransom has become a real business in Libya, involving not only the military and paramilitary, but also ordinary citizens.⁸⁸

'I spent 8 months in Libya' said F., a 22-year-old girl who travelled alone from Somalia to Italy. 'When we arrived in the country we were imprisoned by a gang of traffickers.

There were more than 80 of us in the same room, men and women, all together. The whole of Africa was locked in that room ... people coming from all countries. Traffickers would often leave us without food and water for two or three days and beat us just for fun. I have many scars on my breast. They forced us to call our families and ask them to send money'. F. was released when her family managed to pay the traffickers \$800, but then she had to pay a further \$1,000 for the passage to Italy.

D., aged 30, comes from Mali. He arrived in Libya in February. 'They seized me at the border and took me to a place surrounded by fences. There were many buildings; we could not get out ... I had to stay there until March 2015 – this is the only place I've seen in Libya. There was a brick factory; we all had to work there. They gave us food once a day. One day I could not work because I was too weak, so they shot at me'. D. shows a large scar in his left leg. His persecutors were always armed and wore balaclavas but no uniforms.

S., a 21-year-old man from Ghana, fled his country at the age of 15. He lived on the streets and survived on expedients and occasional jobs until he arrived in Libya, where he was imprisoned in a military camp for six months. 'They used to beat me every day. They did not get me to work, they just waited for someone to come and fetch me. They claimed money, but I had none and I had nobody to ask for it.

'We were locked up, they opened the door only to beat us with rods, electric wire and their rifle stocks, every day. That's how they broke my tooth', he said, showing his upper front tooth. 'They shot people dead right in front of me. I often think of this, and I think of death, and I am still scared'.

'Before getting on the boat I spent one month in a sort of prison in Libya', said Y., a young man from Cameroon. 'They gave me some food once a day. I was regularly beaten by Libyans who vented their rage on me and on other people waiting to leave when some of their businesses went wrong. During that period, three persons disappeared either because they had refused to give their cigarettes or because they had spoken at the wrong moment. They were dragged away by the Libyans and never came back.'

M., from Gambia: 'It's impossible to survive in Libya if you are black and you don't hide. Anywhere in the street you can meet armed youngsters, policemen or ordinary citizens ready to kill you without any reason, just because you are invisible – you have no identity documents, you have nothing. I had to stay in Libya for three months. I did anything they ordered me because I had no choice. Once you decide to leave you cannot change your mind, whatever conditions they set, otherwise they simply kill you'.

T., from Nigeria: 'When I was in Libya, I practically never slept in five months because every single small movement could bring about a death sentence. War is everywhere, whether visible or not. They shoot you in your legs and as soon as they realize that you're black they threaten to put you into prison. I saw some young men being dragged away because they had dared raise their eyes to their masters. As soon as you arrive in Libya you realize that you will barely survive, but I did not know which other way to take.'

'I must tell everyone what is happening at sea'

The terrible conditions that migrants are forcibly subject to during their sea journey are now commonly known: the kind of boats used by smugglers (rubber boats or old fishing vessels); the incredible number of people squeezed into them; the use of violence; the fact that people who can pay less are forced to travel in the hold, where available.

'There were more than 100 people in the rubber boat, including very small children. We left at night. Only people who have no choice can embark on such a journey with small children. I was newly pregnant. After three or four days at sea – I do not remember exactly – the boat tipped over. Waves were very high... only 15 of us survived. The water was icy and many people could not swim. My husband died. I do not know how I managed to survive. Now I am alone with my baby daughter ... I do not know what my future will be like. I am scared', said N., a 25-year-old Nigerian woman.

'We were so squeezed together in the boat that for most of the trip I feared I would fall into the water soon' said A., aged 32, from Nigeria. 'A boy in my boat had died but I realised that only much later, and from that moment I kept crying because I believed I would end up like all the others, on the bottom of the sea. Now that I am here, I must tell everyone what is happening at sea'.

'We had to wait for two days, and then they finally let us onto a rubber boat, threatening us and beating us with sticks' said 23-year-old F. from Somalia.

'There were 115 of us, and two people complained saying that we were too many for a single boat. They were shot straight away, in front of us. Then we left. It was one o'clock at night ... We did not dare raise our eyes, many of us were crying. I did not believe we would ever survive. It was dark all around, we could not see anything'.

R., another Somali man, survived a shipwreck: 'I did not come in a rubber boat. Mine was a large, two-storey ship. Many people were locked in the hold. I do not know exactly how many people were on board, but it was a big ship. After two days ... I don't know what happened, people began to scream, to move, to push all together ... and the ship tipped over. All of us fell into the water. There were also many children. I was rescued, but many people died. Lots of people died'.

What are they fleeing from?

Internal conflict to gain control over resources, dictatorship, general instability, armed groups, persecution of religious or political minorities, land grabbing – even in countries that are not 'at war', a huge number of people live with extreme difficulties.

Some asylum seekers living in accommodation facilities told Oxfam their experiences.

D., aged 29, comes from Mali. He is Muslim but his mother was Christian. 'My two elder brothers were killed 4 years ago, after having been kidnapped in the village because they did not want to join the armed group', he recalls. 'On the same day my uncle was killed at the market. Then they came to our home to take my father, but he refused to go. Soon after, they killed him.' D. was out in the fields when the armed group arrived, so he was not taken away. 'One month later my mother died, too. The armed group was staying in our village, they used to shoot just for fun... and one day she was hit. The following month they captured me. I was forced to join the armed group; otherwise they would cut my hands. We went to their headquarters in the desert, but after a couple of days I managed to run away. I went back home to my younger brothers.' D.'s story is a heartbreaking one. 'During the day we had to hide, and we walked only at night. We had nothing to eat, we could only drink water when we found a well ... my brothers died of hunger and exhaustion ... I am the only one who survived'. In addition to this, since 2012, D. has had no news of his wife and daughter, who were staying in a different village.

M., a 20-year-old boy from Somalia, told us: 'My father worked for the army, that's why Al-Shabaab burned down our house. My brothers and I tried to escape from the fire, but they

were waiting for us outside and they shot at me. I have practically lost my left leg. I have no idea of where my brothers and parents are – we got separated while running away’.

B., aged 28, from Gambia, was the pupil of an Imam who was not in line with the extremist and fundamentalist Islamic currents that were spreading in his country. The ‘Supreme Islamic Council’ kidnapped the Imam and put him in prison, where he was repeatedly tortured. ‘They started to persecute us, his pupils. They followed us, they came searching for us at home. We were terrified. When some of us disappeared, I realised that I had to go away.’

‘I decided to leave my country because my family and I were repeatedly tortured,’ said A., an asylum seeker from the Ivory Coast. ‘After all that I have been through, finally I am in a place where my rights are respected. I hope this is the end of a nightmare and the beginning of a new life.’

3 OXFAM RECOMMENDATIONS: RIGHTS PROTECTION, POLICY REFORMS

Over the first few months of 2016, the flow of migrants into Italy has been dealt with as an endless ‘emergency’ situation, justifying continuous disregard of the provisions of law and common sense. However, the facts show that current events are far from being an emergency situation, since migration flows are largely predictable if we analyse the international social and political trends. Instead, they reveal an ambiguous, sometimes clearly extra-legal management of the present migration phenomenon.

Oxfam believes that the present status quo is unacceptable because it constantly violates the rights of vulnerable people – those to whom Oxfam has been committed for many years – and has heavy consequences for local communities:

- the immediate consequences, described in this paper, with thousands of people abandoned in Sicily, deprived of any resources and condemned to illegal work and exploitation, begging and petty crime, thus feeding the illegal and criminal networks that are strangling the region; and
- long-term consequences, due to the continuous violation of law and the creation and adoption of ambiguous practices and abuses which become the only form of regulation.

A healthy society cannot allow such practices. Everyone, not only the few, must be enabled to exercise their fundamental rights. Everyone’s rights should be respected or no one will feel protected.

In addition, there is potential for hotspots to have a role as creators of irregularity and criminalization, which will increase the negative perception of migrants within host communities. This in turn will make integration of the ‘native’ and the ‘newly arrived’ increasingly hard to achieve, and both groups will be more vulnerable.

In order to stop serious rights violations resulting from the implementation of the hotspot approach, Oxfam calls for the Italian government and the European Union to immediately:

- Define hotspot procedures and activities in EU and national regulations. The chain of responsibility should be precisely detailed for each procedure being implemented and the role of each actor must be specified;
- Include supervisory bodies and civil society representatives in drawing up the relevant regulations;
- Ensure that all migrants are informed about their rights, including the right to ask for international protection, in accordance with the law and in a form and language they can actually understand. Legal information activities must take place in appropriate places and moments in order for all incoming migrants to fully understand what is communicated to them;
- Ensure that identification and registration procedures fully respect human rights. More particularly, an independent supervisory body not subject to the Ministry of Interior must be present in both phases to guarantee that migrants’ declarations are correctly interpreted and registered and that procedures are accomplished with full

respect of personal rights. Migrants should always receive a copy of the documents they have signed and containing their declarations;

- Guarantee that migrants are not pushed back without their individual situation being specifically examined. Law enforcement officers are not legally entitled to distinguish between international protection seekers and so-called 'economic migrants';
- Ensure that migrants are not retained in reception centres for the sole purpose of being identified; no restrictions on personal freedom must be applied in the centres;
- Forbid the use of coercive measures (violence, intimidation, prolonged retention) to force migrants to comply with identification and registration procedures;
- Guarantee the presence of an adequate number of operators and qualified mediators from civil society organizations on the ships, at disembarkation points and inside the centres where first identification procedures take place. These staff can provide support, facilitate communication and monitor the respect for migrants' rights;
- Ensure that national and European parliamentary members, journalists, and association representatives can access the centres on request; all areas inside the centres must be open to these visits;
- Create specific protection procedures for vulnerable groups such as unaccompanied minors, pregnant women and women travelling alone, physically or psychologically traumatized and sick or disabled people.

The Italian government and the European Union should in the medium term:

- Enlarge the capacity of the national receiving system, particularly through the creation of additional SPRAR (Protection System Asylum Seekers and Refugees) centres, in order to avoid constant overcrowding in primary reception centres. New accommodation facilities for minors with appropriate standards must be created urgently. Municipalities and their associations should be obliged to take part in the SPRAR system;
- Recognize that migrant flows are a structural component that must be managed through active participation in *resettlement* programs, the creation of humanitarian channels, and by re-opening legal working immigration channels which are now practically closed. This component is essential for managing migratory flows efficiently and responsibly;
- Discontinue flow restriction policies at national and EU level that include agreements with the countries of origin or transit on the possibility to retain migrants with coercive measures or to return them collectively. More specifically, the possibility of an agreement with Libya similar to the one recently signed between Turkey and the European Union, or similar to the past bilateral agreement between Libya and Italy, should be deemed unacceptable;
- Agree on a radical reform of the Common European Asylum System in order to introduce the concept of mutual recognition of positive decisions on asylum. Accelerate the process of harmonization of asylum systems in different Member States in order to avoid excessive discrepancy among support and integration measures for asylum seekers and refugees.

NOTES

- 1 For example, agreements between Italy and Libya and between Spain and Mauritania to stop irregular migration flows, and the recent Action Plan published after the conference in La Valletta.
- 2 As established by Leg. Decree 25/2008, reviewed by Leg. Decree 142/2015.
- 3 See the testimonies in section 2 of this briefing.
- 4 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_it.pdf
- 5 http://palermo.repubblica.it/cronaca/2015/04/19/news/almeni_700_migranti_morti_in_un_naufragio_a_nord_della_libia_solo_28_superstiti-112315076/
- 6 <http://www.lastampa.it/2015/05/12/esteri/triton-come-mare-nostrum-soccorsi-a-miglia-dalle-coste-aiy1o5Efw1K2KgV9HYSQFO/pagina.html>
- 7 http://italia2014.eu/media/1350/programma_ita_def.pdf
- 8 Italian Ministry of Interior, 2015.
- 9 Eurostat, Asylum Quarterly Report, 2015
- 10 Italian Ministry of Interior, 2015.
- 11 Eurostat, Asylum Quarterly Report, 2015
- 12 A particular episode came under the spotlight in Milan: for several months, families coming mainly from Syria and travelling to Northern Europe stayed at the Central Station for a few days and nights, getting support from private citizens and solidarity associations which responded initially in a spontaneous way and later on became more organized.
- 13 Eurostat, Asylum Quarterly Report, 2015
- 14 UNHCR, 2015.
- 15 Regulation No. 603/2013 established the creation of the EURODAC database for fingerprint comparison in order to effectively implement the Dublin Regulation. The database has been in force since 20 July 2015, replacing the former Regulation CE 2725/2000.
- 16 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration 10.02.2016
- 17 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration 16.03.2016
- 18 Regulation No. 562/2006 (Schengen Borders Code) only allows the circulation of third-country citizens possessing a visa or a residency permit, for '90 days in any 180 days period'.
- 19 'Whenever it is ascertained, based on proof and circumstantial evidence as per the lists mentioned in article 22, par. 3 of this Regulation – including data referred to in Regulation No. (EU) 603/2013 – that the applicant has illegally crossed the borders of a Member State either by land, sea or air coming from a third country, the Member State involved is responsible for examining the international protection request' (Art.13, par.1).
- 20 The Dublin Convention was signed on 15 June 1990 and came into force on 1 September 1997.
- 21 Missing Migrants Project, <http://missingmigrants.iom.int/mediterranean>
- 22 The term 'asylum shopping' means that an asylum seeker applies for international protection in a country other than the country of first arrival, or in several countries, following a negative response.
- 23 'The hotspot approach to managing exceptional migratory flow's, EU factsheet.
- 24 In October 2015, in the framework of a total allocation of 1.7bn Euros in order to respond to the 'refugee crisis', the Commission allocated about 86m Euros to Frontex, EASO and EUROPOL in the form of human and financial resources for return operations and hotspot activities (source: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL .Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration. 14.10.2015).
- 25 The hotspot approach to managing exceptional migratory flows, EU factsheet.
- 26 http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/proposal_for_a_council_decision_on_provisional_relocation_measures_for_italy_and_greece_en.pdf
- 27 <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32015D1601&from=IT>
- 28 Aida Country Report, Italy, 2015.
- 29 The above-mentioned dates, communicated to Oxfam by a EU Commission representative based in Catania, are those of official implementation. The EURTF (European Regional Taskforce) offices in Catania are the headquarters of European agencies working in the immigration field and presently based in Sicily.
- 30 <http://www.redattosociale.it/Notiziario/Articolo/492423/Migranti-nei-futuri-hotspot-gia-emessi-centinaia-di-respingimenti-differiti>
- 31 Deposition to the Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion, 3 December 2015.
- 32 The C3 form is used in police headquarters to officially register international protection applications (the so-called verbalization).

- 33 The text is taken from the official document but edited for conciseness.
- 34 <http://www.lasciatecientrare.it/j25/italia/news-italia/188-comunicato-stampa-catania-2016-lasciatecientrare- incontra-il-responsabile-regionale-frontex>, <http://siciliamigranti.blogspot.it/2016/01/incontro-catania-tra-le- associazioni-e.html>
- 35 http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_04_07_scheda_progettuale_PRAESIDIUM_IX_2014.pdf
- 36 '(...) no specific legal framework has been established for hotspots or for the work of MMSTs. Rather, the deployment of both EASO and Frontex to provide operational support is regulated by the respective Regulations on the two agencies. As such, pursuant to articles 8 to 8h of the Frontex Regulation¹¹⁴, Frontex may "deploy its experts to support the competent national authorities" in Member States "facing specific and disproportionate pressures" and can also deploy European Border Guard Teams "at the request of a Member State faced with a situation of urgent and exceptional pressure". Similarly, under Chapter 3 of the EASO Regulation¹¹⁵, EASO may deploy Asylum Support Teams at the request of a Member State "subject to particular pressure". Operational support provided in the hotspots by both EASO and Frontex is therefore explicitly provided for in existing legislation.' Source: On the Frontline: the hotspot approach to managing migration, Directorate general for internal policies, Policy Department C, Civil Liberties, Justice and Home Affairs, European Parliament.
- 37 'L'infra-diritto degli stranieri. Quale cittadinanza nel sistema di governo per circolari?' Iside Gjergj, 2008.
- 38 Oxfam does not acknowledge the term 'economic migrant'; it is mentioned here simply because it is largely used in documents and speeches about the hotspot approach, in depositions to the Parliamentary Commissions and in the media. As correctly pointed out by Fulvio Vassallo Paleologo and by Stefano Galieni in their contributions to the monitoring report 'Accogliere: la vera emergenza' making part of the LasciateCIEntrare campaign, the population group called 'economic migrants' cannot be found in legal sources.
- 39 Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, 10.02.2016.
- 40 Ibid.
- 41 For an overview of the definitions of mixed migration flows and various approaches to them, see <http://www.mixedmigrationhub.org/about/what-mixed-migration-is/>
- 42 Deposition to the Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion, 20 January 2016.
- 43 None of the migrants interviewed by Oxfam and its partners have declared that they got a copy of the information form, and associations and lawyers who assisted migrants in Catania, Ragusa, Siracusa, Agrigento, Caltanissetta and Palermo over the last few months confirmed that no copy had been delivered.
- 44 Article 10, par. 4 and Article 19, par. 1 of Leg. Decree. 286/1998.
- 45 EASO meeting in Catania, 16 March 2016.
- 46 Data provided by the Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion, 4 April 2016.
- 47 <http://www.medicisenzafrontiere.it/notizie/news/rapporto-pozzallo-condizioni-inaccettabili-servono-risposte-urgenti-e-strutturate>
- 48 In compliance with Article 2 of Leg. Decree 286/98 and Article 10 and 10bis of Leg. Decree 25/2008, and Leg. Decree 142/2015.
- 49 Document issued by ASGI managing council on 21 October/2015, 'Garantire i diritti degli stranieri soccorsi in mare e sbarcati'.
- 50 Article 10 par. 2 Leg. Decree 286/1998.
- 51 Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion.
- 52 The ban on collective returns or expulsions is established by Article 4 of Protocol No. To the European Court of Human Rights, acknowledged in Italy with Presidential Decree No. 217 of 14 April 1982.
- 53 Italian violations have already been verified several times by the European Court of Human Rights, which has sanctioned Italy because returns have been decided on ships or in First Aid and Reception Centres without any form of individual screening, or by staff not entitled to carry out individual interviews, or in the absence of interpreters or legal assistance, This is enough for the Court to declare absolute absence of sufficient warranties to specifically assess the situation of single migrants rescued at sea or assisted on the mainland (see ECHR decisions of 21 October 2014, case 16643/09 Sharifi and others Vs. Italy and Greece, and case 27765/09 23 February 2012 Hirsi Jamaa and others Vs. Italy).
- 54 Document issued by ASGI managing council on 21 October 2015, 'Garantire i diritti degli stranieri soccorsi in mare e sbarcati'.
- 55 <http://hudoc.echr.coe.int/eng?i=001-156517#%7B%22itemid%22:%5B%22001-156517%22%5D%7D>
- 56 siciliamigranti.blogspot.it
- 57 http://www.asgi.it/wp-content/uploads/2016/01/2016_asilo_puglia_11.pdf
- 58 Villa Sikania is a former tourist village turned into a regional HUB according to the National Plan on Reception dtd 10 July 2014.
- 59 Palaspedini is a sports arena provided by the municipality and recognized by the Prefecture and the police headquarters as appropriate for receiving migrants after landing.
- 60 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Progress Report on the Implementation of the hotspot in Italy 10.02.2016.

- 61 <http://www.consilium.europa.eu/it/meetings/jha/2015/07/20/>
- 62 COMMISSION STAFF WORKING DOCUMENT on Implementation of Eurodac Regulation as regards the obligation to take fingerprints 27.05.2015
- 63 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Progress Report on the Implementation of the hotspot in Italy 12.12.15
- 64 <http://meridionews.it/articolo/39555/lampedusa-la-difficile-convivenza-con-hotspot-nicolini-esperimento-inefficace-imposto-da-ue/>
- 65 <http://time.com/4302419/mussie-zero-2016-time-100/>
- 66 Deposition to the Parliamentary Commission of Enquiry on Migrants Reception, Identification and Expulsion, 9 December 2015
- 67 Palanebiolo is a small football stadium used as reception centre with tents installed in it.
- 68 <http://www.repubblica.it/solidarieta/immigrazione/2016/05/07/news/lampedusa-139305423/>
- 69 <http://siciliamigranti.blogspot.it/2016/01/le-porte-girevoli-della-fortezza-europa.html>
- 70 With Eleonora Forenza, Curzio Maltese, Elly Schlein, Laura Ferrara, and Ignazio Corrao
- 71 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-007777+0+DOC+XML+V0//EN>
- 72 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-007777&language=EN>
- 73 <http://www.internazionale.it/video/2016/05/12/hotspot-le-impronte-dei-migranti>
- 74 Fingerprinting and photo-identification cannot be performed by means of limitations of personal freedom except for the cases established by law: detention in an Identification and Expulsion Centre of a foreign national who has already been expelled (Article 14 Leg. Decree 286/1998), asylum seekers submitting their asylum application after having been delivered an expulsion decree or subject to detention (i.e. claiming asylum after the establishment of detention measures), or considered dangerous for order and public safety (in case of previous conviction for specific crimes), or socially dangerous or suspect terrorists, or in case of flight risk (if prior to the asylum application the applicant has delivered false personal details to the sole purpose of preventing the adoption or execution of an expulsion decree (Article 6 leg. Decree No. 142/2015).
- 75 L'identificazione dei cittadini stranieri da parte delle forze di polizia e il divieto dell'uso della forza per i rilievi fotodattiloscopici, ASGI, 2014.
- 76 According to Italian law (DPR 394/99), administrative detention of migrants is only possible in Identification and Expulsion Centres. Such measures must be validated by the JP within 48 hours and are only valid if communicated to the concerned person in a form which can be easily understood (translation or cultural mediator).
- 77 <http://www.medicisenzafrotiere.it/notizie/news/rapporto-pozzallo-condizioni-inaccettabili-servono-risposte-urgenti-e-strutturate>
- 78 Save The Children
- 79 Figures provided by the Ministry of Interior show that 1,336 unaccompanied minors have arrived in Italy in January–February 2016, against 521 in the same period last year.
- 80 <http://www.redattosociale.it/Notiziario/Articolo/507875/Pozzallo-nell-hotspot-quasi-tutti-minori-Gravissima-violazione>
- 81 <http://siciliamigranti.blogspot.it/>
- 82 <http://terredeshommes.it/comunicati/pozzallo-preoccupazione-per-le-condizioni-di-accoglienza/>
- 83 Ibid.
- 84 <http://www.a-dif.org/2016/02/01/a-lampedusa-lhot-spot-non-ci-puo-essere/>
- 85 Mazzetti, 2008.
- 86 <http://www.mediciperidiritiumani.org/progetto-on-to/>
- 87 Mazzetti, 2008. Sironi, 1999
- 88 <http://www.amnesty.it/Libia-orribili-abusi-spingono-i-migranti-a-rischiare-la-vita-attraverso-il-Mediterraneo>

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The author would like to thank Salvatore Maio, Serena Sabella, Floriana Bucca, Andrea Bottazzi and Chiara Trevisani of Oxfam Italia for their assistance in data collection. We also would like to thank Sara Tesorieri and Vincent Koch of Oxfam International as well as Federica Corsi and Roberto Barbieri of Oxfam Italia for their help in drawing up this paper.

Oxfam acknowledges the essential contribution received from the association Borderline Sicilia Onlus, in particular from Paola Ottaviano and Germana Graceffo, lawyers, and Judith Gleitze, Lucia Borghi, Alberto Biondo, and Elio Tozzi. Oxfam would like to thank Roberto Majorini, Riccardo Campochiaro, Antonio Fiore and Filippo Finocchiaro, lawyers, of ASGI; Valerio Landri and Federico Spagnesi of Caritas Agrigento; Alberto Mallardo of Mediterranean Hope; Flavia Calò and the whole staff of Doctors for Human Rights.

For further information on the issues raised in this paper please email advocacy@oxfaminternational.org

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The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under ISBN 978-0-85598-751-0 in May 2016.
Oxfam GB, Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK.

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