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# HOTSPOT ITALY

HOW EU'S FLAGSHIP APPROACH LEADS TO VIOLATIONS  
OF REFUGEE AND MIGRANT RIGHTS

AMNESTY  
INTERNATIONAL



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**Cover photo:** A migrant prays on the Migrant Offshore Aid Station ship Topaz Responder after being rescued around 20 nautical miles off the coast of Libya, 23 June 2016

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# GLOSSARY

A **refugee** is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them international protection as a substitute for the protection of their country of origin.

An **asylum-seeker** is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal grant of asylum. This report therefore uses the term refugee to refer to those who have fled persecution or conflict, regardless of whether they have been officially recognized as refugees.

A **migrant** is a person who moves from one country to another to live and usually to work, either temporarily or permanently, or to be reunited with family members. Regular migrants are foreign nationals who, under domestic law, are entitled to stay in the country. Irregular migrants are foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules. They are also called “undocumented migrants”. The term “irregular” refers only to a person’s entry or stay.

# EXECUTIVE SUMMARY

Hundreds of thousands of men, women and children, fleeing conflict, human right violations and poverty, have crossed the Mediterranean in the past three years in search of safe haven or a better life. In the absence of safe and legal routes into Europe, they have travelled irregularly, at considerable risk to their own lives. This has posed significant challenges to European leaders, who have largely failed to meet them. They have placed a particularly large burden on Greece, but also on Italy, which has led efforts to save lives at sea and has seen over 150 thousand irregular arrivals for each of the last three years. Rather than creating a bold, orderly system providing safe avenues for people to seek protection in Europe, and advocating for the respect and protection of human rights in countries where conflict and persecution are displacing people, European leaders have resorted to negotiating with human rights violating governments to stop them coming. Rather than promoting solidarity between EU member states, European governments have invested precious time and resources in securing their own national borders and reducing space for the protection of the vulnerable, often traumatized people who have risked their lives to come to Europe. The “hotspot approach”, whose consequences this report examines, has come to epitomize many of these failures.

The hotspot approach was presented back in mid-2015, as a flagship EU response to the high number of arrivals in Europe’s southern countries. With EU leaders unable, in the time available, to design, let alone agree on a necessary reform of the EU’s ailing asylum system, the hotspot approach was essentially a sticking plaster. Its fundamental premise was to combine increased controls on refugees and migrants on the point of arrival with the distribution of a number of those seeking asylum to other member states for subsequent processing. Control paired with responsibility-sharing were the buzz words back then. One year on, it is clear that only the first has really happened, and at considerable cost to the rights of refugees and migrants, while very little progress has been made in respect of the second; indeed, the principle of responsibility-sharing is facing increasing political resistance.

The hotspot approach was not an Italian idea. The setting up of centres, or “hotspots”, and the implementation of a hotspot approach were recommended by the European Commission in May 2015, as a central plank of its Migration Agenda,<sup>1</sup> and endorsed by the European Council in June 2015.<sup>2</sup> Hotspots were designed to provide locations in which irregularly arriving refugees and migrants could quickly be identified, primarily through obligatory fingerprinting, screened to identify any protection needs, and subsequently filtered for the purposes of the processing of asylum applications or return to their countries of origin. A sharp decrease of irregular onward movements of refugees and migrants to other EU member states, a key target, was to be achieved through fingerprinting, with a view to ensuring the possibility of their being returned, under existing Dublin regulations, to Italy and other countries of first arrival. In order to reduce the burden on these countries however, an emergency relocation scheme was adopted in September 2015, providing for the onward transfer of up to 160 thousand asylum-seekers (of which 40 thousand from Italy) to other EU countries for processing there.<sup>3</sup> The Italian government started to implement the hotspot approach

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<sup>1</sup> European Commission, Communication from the Commission to the European Parliament and the Council: A European Agenda on Migration, 13 May 2015, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>2</sup> European Council Conclusions, 25-26 June 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/06/26-euco-conclusions/>

<sup>3</sup> European Council Decision (EU) 2015/1523, 14 September 2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_239_R_0011)

in the same month, with the transformation of the centre for first assistance already existing in Lampedusa into a hotspot and the deployment of officials from different EU agencies.

While the solidarity component of the hotspot plan has proved largely illusory – with a mere 1,196 people being relocated from Italy to other European countries, out of 131 thousand arrivals, as of the end of September 2016 –<sup>4</sup> the repressive elements, designed to prevent onward movement and increase returns, have been implemented aggressively, at significant human rights cost. One year after the official start of the hotspot approach in Italy, it has become clear that it has served primarily as a reaffirmation of the Dublin system. It has increased, not reduced the burden on frontline countries' shoulders to police borders, protect asylum-seekers and keep irregular migrants out. While the number of arrivals in Italy has remained stable, the imposition of the hotspot approach has led to a sharp increase in the number of people seeking protection in Italy, straining the authorities' capacity to adequately assist new arrivals.

Amnesty International's research paints a worrying picture: the reaffirmation of old principles in a more aggressive way is leading to more human rights violations – for which Italian authorities have a direct responsibility, and EU leaders a political one.

In its pursuit of a "100% identification rate", the hotspot approach has pushed Italian authorities to the limits, and over, of what is permissible under international human rights law. The implementation of coercive measures to force uncooperative individuals to provide their fingerprints has increasingly become the rule, through both prolonged detention and the use of physical force. It is against this backdrop, that refugees and migrants unwilling to give their fingerprints have been subjected to arbitrary detention and ill-treatment by police. Whilst there is no doubt that the vast majority of police officials keep doing their work spotlessly, consistent testimonies collected by Amnesty International indicate that some engaged in excessive use of force, cruel, inhuman or degrading treatment, or even torture.

The hotspot approach also required the introduction of an early, swift screening of the status of all individuals disembarked in Italian ports, to separate those believed to be asylum-seekers from others believed to be irregular migrants. A screening process not based on any legislation and performed in haste, when individuals are still too tired or traumatized by the journey to participate in an informed way, and before they have had a chance to receive adequate information regarding their rights and the legal consequences of their declarations, risks denying people fleeing conflict and persecution access to the protection they have a right to.

Finally, the emphasis placed by European institutions and governments on the need to increase expulsions has led to two critical developments in Italy. Thousands of orders to leave the country autonomously have been handed to individuals considered to be irregular migrants following the above mentioned, flawed screening. These people have virtually no chance to comply with the order, even if they wanted to, due to lack of documentation and money. As a result, they have remained in the country, but without any form of assistance, vulnerable to exploitation and abuses. The Italian authorities have also negotiated new bilateral agreements, including with governments responsible for appalling atrocities, such as the Sudanese government. On the basis of these agreements, groups of individuals considered irregular migrants, again on the basis of a flawed screening process and without an adequate assessment of the risks involved in their repatriation, were sent back to countries where they were exposed to the risk of ill-treatment and other serious human rights abuses.

Italy must now act to put such human rights violations to an end and ensure accountability. Police officers need clear instructions regarding the permissible use of force and it must be made absolutely clear that the use of force has a low limit. Continuing resistance must be met through other law enforcement responses, not the application of ever greater force. The monitoring of this procedure needs to be strengthened and allegations of abuses must be investigated thoroughly.

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European Council Decision (EU) 2015/1601, 22 September 2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL\\_2015\\_248\\_R\\_0014](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL_2015_248_R_0014)

<sup>4</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Sixth report on relocation and resettlement, 28 September 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf)

UNHCR, Refugees/Migrants Emergency Response – Mediterranean/Italy, <http://data.unhcr.org/mediterranean/country.php?id=105>

The Standard Operating Procedures applicable in hotspots need revising to ensure that no screening takes place immediately after disembarkation and that all those arriving have access to sufficient information prior to their screening.

Lastly expulsion orders must be based on individualised assessments and motivated, to ensure that individuals are not returned to countries in which they are at risk of serious human rights violations, even if they have not requested asylum. Italy must also stop negotiating and implementing readmission agreements with governments that are responsible for widespread persecution and serious human rights violations, or where such agreements do not include guarantees to ensure that those returned will not be at risk of serious human rights violations.

There are broader tasks for European institutions and governments. They must also assume responsibility and foster change in ways that promote and protect human rights, rather than undermining them. Current challenges must be addressed with new, bold measures including a revision of the Dublin system that foregoes the first country of arrival criterion – the key reason why people resist fingerprinting – and the setting up of a system that provides for the effective redistribution of newly arrived asylum-seekers across Europe, ensures that the level of protection and assistance given to asylum-seekers is consistent across the region, and enables people granted protection in an EU country to move freely across the EU. Amnesty International also believes that a significant reduction in the number of people undertaking the perilous crossing of the central Mediterranean – hence a reduction in both deaths at sea and irregular movements within Europe – can and should be achieved through the opening of more safe and regular routes, providing individuals and families at risk of serious human rights violations with an opportunity to find safe haven without risking their lives for it.



# METHODOLOGY

The information presented in this document has been gathered by Amnesty International representatives during 2016, through four visits to several cities and reception centres in Italy: Rome, Palermo, Agrigento, Catania and Lampedusa (March), Taranto, Bari and Agrigento (May), Genoa and Ventimiglia (July), and Rome, Como and Ventimiglia (August). Some information is also based on previous visits to Italy, including to reception centres in Lampedusa and Pozzallo in July 2015.

During these visits, Amnesty International conducted interviews with 174 refugees and migrants, and shorter conversations with many more. Interviews took place in reception centres functioning as hotspots (Lampedusa and Taranto), in other reception centres run by Italian authorities or by NGOs (including reception centres in Ventimiglia), and also outside of reception structures, in particular in Rome, Ventimiglia and Como. The majority of interviews were carried out with men, reflecting the gender imbalance amongst refugees and migrants, however women and unaccompanied minors were also interviewed. Amnesty International interviewed people of at least ten different nationalities. However, this report only explicitly mentions the cases of some of the people who alleged having suffered serious human rights violations – and these mostly came from Sudan and, to a smaller extent, Eritrea and Ethiopia. Care has been taken to avoid the inclusion of information that could reveal the identity of individual refugees, asylum-seekers and migrants, in order to respect confidentiality and ensure that any published information does not prejudice their personal safety or ongoing asylum proceedings.

In March, Amnesty International met the Head of the Department for civil liberties and immigration at the Italian Ministry of Interior, Prefect Mario Morcone. During visits to the hotspots of Lampedusa and Taranto, as well as in Agrigento and Ventimiglia, Amnesty International delegates also received information from police and other officials working there. While thanking these officials for their availability, Amnesty International regrets that the Central Director for immigration and border police at the Ministry of Interior, Prefect Giovanni Pinto, whose role is pivotal in this area, could not be available for a meeting with Amnesty International and did not reply to a letter Amnesty International sent him in June 2016, requesting information regarding screening and processing of new arrivals. During the year, Amnesty International sent two letters to the Minister of Interior, Angelino Alfano, expressing concern in relation to the provisional findings of the research and requesting information regarding the use of force and detention to fingerprint new arrivals, and the readmission of third country nationals, in particular Sudanese nationals. Minister Alfano has not replied to any of the letters.

Amnesty International has also met representatives of EU institutions and agencies. In particular, in March 2016 Amnesty International met officials Marc Arno Hartwig, Alberto Volpato and Tosca Vivarelli and also visited the EU Regional Task Force (EURTF) in Catania, interviewing representatives of Frontex, EASO and Europol.

Both in May and September 2016, Amnesty International interviewed a representative of the Rome office of UNHCR in charge of coordinating operations in Southern Italy. Amnesty International delegates also spoke with UNHCR, IOM and Save the Children officials working in hotspots visited by the organization.

In addition, Amnesty International gathered information from lawyers interviewed in different cities, particularly members of the Association for legal studies on immigration (ASGI), from lawyers and academics operating at the human rights clinic (CLEU) at the University of Palermo, from NGOs such as ARCI, Caritas, Italian Refugee Council (CIR), Mediterranean Hope, Baobab Experience, MEDU, and Firdaus, and from a number of individual activists assisting refugees, asylum-seekers and migrants in various ways.

# 1. THE “HOTSPOT APPROACH”

**“The Commission will set up a new 'Hotspot' approach... to swiftly identify, register and fingerprint incoming migrants... Those claiming asylum will be immediately channelled into an asylum procedure... For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants...”**

European Commission, European Agenda on Migration, 13 May 2015

## 1.1 BEFORE THE AGE OF HOTSPOTS

Irregular sea crossings from North Africa are a reality Italy has been confronting for decades, since the introduction of visa requirements for access to the country in the 1990s. However, since 2013, the number of people attempting the crossing and dying at sea has strongly increased. 170 thousand crossings and 3,186 deaths were reported in 2014, 153 thousand crossings and 2,794 deaths in 2015, and over 153 thousand crossings and 3,252 deaths as of 24 October 2016. The increased influx of refugees and migrants through the extremely dangerous central Mediterranean route, linked to persisting conflicts and human rights violations in Africa and the Middle East, increasing lawlessness in Libya, and the closure of other routes, generated the need for dedicated naval operations to patrol the central Mediterranean and carry out rescue operations. Without these, the number of people dying every year would be much higher than it already is. The implementation of these operations<sup>5</sup> has reduced to a minimum the number of boats reaching Europe's shores autonomously. In the overwhelming majority of cases, governmental and non-governmental vessels have rescued refugees and migrants at sea, taken them on board and disembarked them in Italian ports, particularly in Sicily and other regions in Southern Italy.

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<sup>5</sup> Naval operations primarily focusing on saving lives in the central Mediterranean include those carried out by Italian Coast Guard and Navy, by the Irish Navy, as well as by NGOs such as Doctors without borders (MSF), MOAS/Italian Red Cross, SOS Méditerranée, Sea-Watch, Save the Children, and Proactiva Open Arms. Multinational operations such as EUNAVFOR Med Sophia and Frontex Joint Operation Triton have primarily law enforcement and security objectives, although they also conduct search and rescue operations as required under international law. All operations in the central Mediterranean end with the disembarkation of survivors in Italian ports, primarily in Sicily.

During 2014 and 2015, this led to the gradual establishment of certain practices in relation with the disembarkation of those rescued at sea and their processing once on land, with slight variations depending on the location. Usually, at the port, medical staff would undertake a preliminary medical screening and take care of individuals in need, while NGOs would distribute water and biscuits. Either at the port or in closed centres of first assistance, the Italian Police would then undertake a basic registration process, asking each individual to provide name, date of birth and nationality. Police would also request refugees and migrants to undergo a formal identification procedure involving fingerprinting. However, significant numbers of people (notably Eritrean and Syrian nationals) refused to be fingerprinted and managed to leave the centre and travel to other countries to reunite with their relatives or communities or to enjoy better assistance there. After fingerprinting, police would separate nationals of countries having bilateral re-admission agreements with Italy (e.g. Morocco, Tunisia and Egypt) from others, and subject them to expulsion towards those countries, often following a period of detention in centres for identification and expulsion (CIE). All the others would be automatically provided assistance in open shelters for asylum-seekers, assuming that they would be willing to submit a request for international protection, which in fact they would usually do.

Inadequate levels of fingerprinting attracted the criticism of other governments, focused on Italy's obligation to fingerprint all arrivals and to enter gathered data in the Eurodac database to enable other countries to enforce returns to Italy under the Dublin Regulation, when applicable. Such criticism, coupled with the promise to ensure responsibility-sharing for some asylum applications under new emergency programmes for relocation, resulted in the proposal of a "hotspot approach".

## 1.2 THE NEW APPROACH

The European Commission first tabled a proposal for a new hotspot approach in its Agenda on Migration, adopted in May 2015, stating:

"[T]he Commission will set up a new 'Hotspot' approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants... Those claiming asylum will be immediately channelled into an asylum procedure... For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants..."<sup>6</sup>

As Official Marc Arno Hartwig, from the EU Commission's Hotspot Team in Italy, explained to Amnesty International in March 2016: "Hotspots can be intended as both a location – the place where disembarkation takes place – and a concept – a modular way to jointly tackle migratory pressure. Hotspots help to clarify the different channels, based on three pillars: asylum, relocation and returns".<sup>7</sup>

### THE LOCATION: "HOTSPOTS" AS CENTRES FOR IDENTIFICATION, SCREENING AND FIRST ASSISTANCE

"Hotspots" are centres for the identification, processing and first assistance of newly arrived refugees and migrants, usually taken to shore after search and rescue operations at sea. Centres of this kind existed already in Italy – usually labelled Centres of first assistance and reception (CPSA). In Lampedusa and Pozzallo, for instance, hotspots were set up using existing structures of CPSAs, but with the involvement of EU agencies and the implementation of a new way of processing people. Two more hotspots would be set up in following months in Trapani and Taranto. As a result, four hotspots are currently operational, with a declared capacity of 1,600 places.<sup>8</sup> According to original plans, two additional hotspots were to be set up, in Augusta and Porto Empedocle. However, the Italian authorities halted such plans and started new ones for the transformation of the Centre of assistance for asylum-seekers (CARA) of Mineo into a hotspot.<sup>9</sup>

The number of currently existing hotspots and their capacity are not sufficient to ensure the disembarkation and processing of all arrivals. For this reason, the EU Commission has recommended to Italy to increase the number of hotspots, and has also introduced the concept of "mobile hotspots", preparing mobile teams

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<sup>6</sup> European Commission, A European Agenda on Migration, 13 May 2015.

<sup>7</sup> Interview with Amnesty International, Rome, 15 March 2016.

<sup>8</sup> European Commission, Hotspot state of play, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf) accessed 13 October 2016.

<sup>9</sup> Interview with Prefect Mario Morcone, Rome, 15 March 2016.

ready to be deployed at short notice to undertake the screening/identification operations in ports used for disembarkation which do not qualify as a hotspot.<sup>10</sup> In fact, only about 30% of newly arrived people pass through hotspots,<sup>11</sup> while the rest are taken to other ports.<sup>12</sup> Both in hotspots and other ports of disembarkation, police and other authorities carry out their activities in line with new operating procedures.

### **THE CONCEPT: “HOTSPOT APPROACH” AS A WORKING METHOD**

As explained above, the European Agenda on Migration indicated identification and fingerprinting of all arrivals, screening to separate asylum-seekers from others considered “irregular migrants”, and the repatriation of the latter, as the three fundamental objectives of the hotspot approach.

Beyond scant reference to hotspots in EU Council Decisions, however, no piece of legislation was adopted, either at EU or domestic level, to regulate the setting up of hotspot facilities and the working method to be applied in centres labelled as hotspots or in other ports where refugees, asylum-seekers and migrants are disembarked. As a result, critical procedures – such as the detention in hotspots, the use of force to obtain fingerprints, the initial screening process – would be implemented not based on new legislation, but rather on existing regulations, new circulars by the Italian Ministry of Interior,<sup>13</sup> or simply new practices.

A “Roadmap” adopted by the Italian government on 28 September 2015,<sup>14</sup> marking the beginning of the implementation phase of the hotspot approach in Italy, indicates how this approach consists in “the canalization of arrivals to a series of selected ports where all relevant procedures would be implemented, such as medical screening, pre-identification, registration, photographing and fingerprinting of foreigners.” According to the “Roadmap” the pre-identification screening entails an interview of each newly arrived person with police officials, who register their personal details “as well as an indication of whether they intend to seek international protection or not”. This enables authorities to proceed with a preliminary differentiation between asylum-seekers (and among them, those who can benefit from relocation to a different country) and other people irregularly present in the country, as well as to their transfer to different centres, after everyone has been fingerprinted.<sup>15</sup>

Struggling to ensure consistency among practices implemented in different locations, in March 2016 the Italian Ministry of Interior adopted Standard Operating Procedures (SOPs) for the hotspots, providing further details on the tasks to be pursued upon disembarkation and on their chronological order.<sup>16</sup> Such actions turn around three crucial areas: the fingerprinting of those arriving; their early screening to separate asylum-seekers from others considered irregular migrants; and their onward transfer, depending on their legal status. The following three chapters will focus each on one of these areas, to describe the human right violations that have emerged as a result of the implementation of the hotspot approach, either in hotspots or in other ports of disembarkation or police stations.

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<sup>10</sup> European Commission, Communication from the Commission to the European Parliament and the Council, First report on relocation and resettlement, Annex IV: Italy – State of Play Report, 16 March 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first\\_report\\_on\\_relocation\\_and\\_resettlement\\_-\\_annex\\_4\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_-_annex_4_en.pdf)

<sup>11</sup> Phone interview with representative of UNHCR in Rome, 30 September 2016.

<sup>12</sup> See the Ministry of Interior Circular n.41807 of 29 December 2015, indicating that “Awaiting the setting up of all the hotspot structures planned in the Roadmap (Augusta, Lampedusa, Porto Empedocle, Pozzallo, Taranto and Trapani), in case of disembarkations in other ports in Italy, migrants shall anyway be subjected to identification and fingerprinting”, <http://www.asgi.it/banca-dati/23638/>

<sup>13</sup> Ministry of Interior, Department for civil liberties and immigration, Circular n.14106, 6 October 2015, <http://www.asgi.it/banca-dati/circolare-del-ministero-dellinterno-del-6-ottobre-2015-n-14106/>

<sup>14</sup> Ministry of Interior, Italian Roadmap, 28 September 2016, [http://www.immigrazione.biz/upload/Roadmap\\_2015.pdf](http://www.immigrazione.biz/upload/Roadmap_2015.pdf)

<sup>15</sup> Ministry of Interior, Italian Roadmap.

<sup>16</sup> Ministry of Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, March 2016, [http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots\\_sops\\_-\\_english\\_version.pdf](http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf)

# 2. ILL-TREATED AND ARBITRARILY DETAINED FOR A FINGERPRINT

**“I can't say how painful it was...I would have never thought that in Italy they could do something like that to me. ”**

Adam, 27, from Darfur (Sudan)

## 2.1 THE FINGERPRINTING OF NEWLY ARRIVED PEOPLE

Among the thousands of men, women and children arriving in Italy every month through the central Mediterranean, about half travel to Europe fleeing conflict, persecution or other serious human rights violations.<sup>17</sup> While the majority of them applies for asylum in Italy,<sup>18</sup> others wish to go to other European countries and seek international protection there. Their ability to have their claim for international protection processed in other countries is limited, however, by the implementation of the Dublin and Eurodac Regulations, which establish criteria for allocating responsibility for asylum applications among EU member states. The Dublin system has the effect, whether willed or not at the time of its creation, of prioritising the attribution of responsibility for processing asylum applications to member states at Europe's external borders, as it allows countries to return asylum-seekers to the first EU country they entered. The efficient functioning of this system is predicated upon the identification of the individual, through registration of their fingerprints, in the first country of entry.

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<sup>17</sup> The percentage of asylum-seekers being granted protection in first instance in Italy was 42% in 2015, and 38% in 2016 (as of 7 October). Thousands more people were granted protection in appeal. During this period, tens of thousands of people – overwhelmingly coming from top refugee-producing countries such as Syria and Eritrea – arrived in Italy but then moved to other European countries and submitted protection claims there.

Ministry of Interior, Asylum data 2014-15,

[http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepilogo\\_dati\\_2014\\_2015.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepilogo_dati_2014_2015.pdf)

Ministry of Interior, National Commission for the right to asylum, Decisions on protection claims for 2016 (as of 7 October), on file.

<sup>18</sup> 83,970 people submitted protection claims in Italy in 2015 (out of about 153 thousand arrivals) and 87,893 in 2016 (as of 7 October, out of about 144 thousand arrivals). Data: Italian Ministry of Interior, National Commission for the right to asylum, Asylum requests for 2016 (as of 7 October), on file, and Italian Ministry of Interior, Asylum data 2014-15, [http://www.interno.gov.it/sites/default/files/modulistica/riepilogo\\_dati\\_2014\\_2015.pdf](http://www.interno.gov.it/sites/default/files/modulistica/riepilogo_dati_2014_2015.pdf)

For several years, Italy has had limited success in obtaining fingerprints of individuals arriving on its territory and wanting to move to other EU countries. Between 2013 and 2015 tens of thousands of Syrians and Eritreans, in particular, managed to move to other countries without leaving trace of their passage through Italy, thereby circumventing the application of the Dublin Regulation, to the dismay of other European governments, unwilling to take responsibility for larger numbers of asylum-seekers.<sup>19</sup> Between 2014 and 2015 European governments and institutions put increasing pressure on the Italian authorities to introduce more stringent fingerprinting processes. In May 2015, the European Commission's Agenda on Migration emphasized that "Member States must also implement fully the rules on taking migrants' fingerprints at the borders" and that "Member States under particular pressure will benefit from the Hotspot system for providing operational support on the ground".<sup>20</sup> From the outset the objective of ensuring the fingerprinting of all arrivals was one of the primary aims of the hotspot approach. This was also recognized by the Head of the Department for civil liberties and immigration at the Italian Ministry of Interior, who told Amnesty International: "We intend a hotspot as a transit point for identification purposes. In the past we were accused of not identifying people, now this is ensured."<sup>21</sup>

## 2.2 NEW PRACTICES, NEW HUMAN RIGHTS VIOLATIONS

**"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. The target of a 100% fingerprinting rate for arriving migrants needs to be achieved without delay."**

European Commission, Progress report on the implementation of the hotspots in Italy, 15 December 2015<sup>22</sup>

In 2014, both European and Italian authorities started airing the possibility for police officers to use force for the purpose of fingerprinting. The European Commission engaged in a survey of relevant procedures among member states, which concluded with the adoption in October 2014 of a document mentioning the "proportionate use of coercion" – accompanied by a number of guarantees – among "Best Practices for upholding the Obligation in the Eurodac Regulation to take fingerprints".<sup>23</sup> In 2015, the European Commission opened infringement proceedings against Italy for violation of the Eurodac Regulation,<sup>24</sup> and imposed on Italy the target of 100% fingerprinting rate for arriving refugees and migrants "to be achieved without delay", recommending Italy to adopt legislation on hotspots, "in particular to allow the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting."<sup>25</sup>

Despite this pressure, Italy did not amend its legislation accordingly. However, the lack of legal grounds did not hold the Italian government back from promoting important changes in practice. In fact, in March 2016

<sup>19</sup> In 2014, 502 Syrians and 474 Eritreans requested international protection in Italy, compared with a total of 42,323 Syrians and 34,329 Eritreans who were disembarked during the year. Similarly, in 2015, 729 Eritreans and 497 Syrians requested international protection in Italy, compared with a total of 39,162 Eritreans and 7,448 Syrians disembarked in Italy during the same year. Data: Italian Ministry of Interior, Asylum data 2014-15, [http://www.interno.gov.it/sites/default/files/modulistica/riepilogo\\_dati\\_2014\\_2015.pdf](http://www.interno.gov.it/sites/default/files/modulistica/riepilogo_dati_2014_2015.pdf), UNHCR, Italy – Sea arrivals update #5, January 2016, <http://data.unhcr.org/mediterranean/download.php?id=755>, and IOM, Migrant Arrivals by Sea in Italy Top 170,000 in 2014, 16 January 2015, <https://www.iom.int/news/migrant-arrivals-sea-italy-top-170000-2014>

<sup>20</sup> European Commission, A European Agenda on Migration, 13 May 2015.

<sup>21</sup> Interview with Prefect Mario Morcone, Rome, 15 March 2016.

<sup>22</sup> European Commission, Progress Report on the Implementation of the hotspots in Italy, 15 December 2015, [http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528-01aa75ed71a1.0011.03/DOC\\_1&format=HTML&lang=EN&parentUrn=CELEX:52015DC0679](http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528-01aa75ed71a1.0011.03/DOC_1&format=HTML&lang=EN&parentUrn=CELEX:52015DC0679)

<sup>23</sup> European Commission, Best Practices for upholding the Obligation in the Eurodac Regulation to take fingerprints, 30 October 2014, <http://statewatch.org/news/2014/dec/eu-com-coercive-fingerprinting-migrants-ds-1491-14.pdf>

<sup>24</sup> European Commission, Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings, 10 December 2015, [http://europa.eu/rapid/press-release\\_IP-15-6276\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6276_en.htm)

<sup>25</sup> European Commission, Progress Report on the Implementation of the hotspots in Italy, 15 December 2015.

the EU Commission acknowledged that “Fingerprinting rates reported by the Italian authorities, the IOM and Frontex have almost reached 100% in recent disembarkations in operational hotspots.”<sup>26</sup>

Italian authorities have stated that their success in increasing the rate of fingerprinting among arrivals, since late 2015, is due to decreasing arrivals of nationalities traditionally refusing fingerprinting, and to the police’s ability to “negotiate” with newly arrived people, and persuade them by separating those refusing to be fingerprinted and distributing individuals or small groups among different police stations in different towns.<sup>27</sup>

However, it is clear that the use of coercive measures has also played its part. The reality is that, between late 2015 and early 2016, the Italian police has introduced more aggressive strategies to force individuals to provide their fingerprints, including the use of physical force and extended detention, which have resulted in serious human rights violations. Pressured by EU institutions and other member states, the Italian government has fostered change through arm-twisting, in a metaphorical and literal sense.

### **CASTRO, FROM SUDAN<sup>28</sup>**

19-year-old Castro fled the Sudanese government’s attacks on civilians in Darfur, which killed his two brothers and his 8-year-old sister. He then escaped hunger at the refugee camp in Touloum, Chad, following cuts in food and water provisions. Having travelled through Libya, he arrived in Italy in July 2016.

“I arrived by boat from Libya, a big boat from Germany came to rescue us. They took us to the port of Bari... Then in groups of 22 we were taken to a police station by bus. It took about 45 minutes... The police were asking us to give the fingerprints. I refused, like all the others, including some women. Ten police came and took me, first, and hit me with a stick on both the back and right wrist. In the room there were 10 police, all uniformed. Some took my hands back, some hold my face. They kept hitting me, perhaps for 15 minutes. Then they used a stick with electricity, they put it on my chest and gave me electricity. I fell down, I could see but not move. At that point, they put my hands on the machine. After me, I saw other migrants being beaten with a stick. Then another man told me he also had electricity discharged on his chest. Then they just left me on the street, they said I could go wherever I wanted. I stayed there for three days, almost unable to move.”

## **2.2.1 FROM USE OF FORCE TO TORTURE**

According to Italian legislation, law enforcement authorities are entitled to coercively take “hair or saliva” from a person subject to criminal investigation, in ways that guarantee “the respect of the dignity of the person” and following authorization from the Public Prosecutor.<sup>29</sup> Beyond this, no other coercive action is permitted by Italian laws to obtain samples in order to identify an uncooperative individual.<sup>30</sup> On the contrary, the Italian Constitution clearly states that “any physical or moral violence against people subjected to restrictions of their liberty of whichever nature must be punished”.<sup>31</sup>

A 1962 judgment by the Italian Constitutional Court stated in passing that fingerprinting and other descriptive surveys on the exterior parts of the body did not constitute in themselves a limitation of personal liberty. However, in no part did this judgment mention the use of force by public authorities to this aim or describe its limits. Instead, the court emphatically underlined the need for Parliament to legislate in order to clarify the matter.<sup>32</sup> During the following 54 years, while legislation was introduced to allow the coercive taking of hair and saliva, no law was introduced to permit the coercive taking of fingerprints.

<sup>26</sup> European Commission, Italy: State of Play Report, Annex IV to the Communication from the Commission to the European Parliament and the Council: First report on relocation and resettlement, 16 March 2016,

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first\\_report\\_on\\_relocation\\_and\\_resettlement\\_-\\_annex\\_4\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_-_annex_4_en.pdf)

<sup>27</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

<sup>28</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>29</sup> Italian Code of Criminal Procedure, Art.349.2bis

<sup>30</sup> ASGI, The identification of foreign nationals by the police and the prohibition of the use of force to take fingerprints, 14 December 2014, <http://www.asgi.it/wp-content/uploads/2014/12/IDENTIFICAZIONE.-OBBLIGHI-E-FACOLTA2.pdf>

<sup>31</sup> Italian Constitution, Art. 13.

<sup>32</sup> Italian Constitutional Court, Judgement N.30, 27 March 1962, <http://www.giurcost.org/decisioni/1962/0030s-62.html>



In January 2016, the Chief of the Italian Police, Prefect Alessandro Pansa, stated during a Parliamentary inquiry that the use of force – albeit theoretically legitimate in his view – was not contemplated by the Italian Police as fingerprints collected under duress would not be properly recorded by scanning machines and would be therefore unusable.<sup>33</sup> However, this was somewhat contradicted by the testimony to the same Parliamentary Committee, only three months earlier, of the Central Director for immigration and border police at the Ministry of Interior, Prefect Giovanni Pinto, who stated: “We have videos showing how in about 40 minutes it was possible to do the fingerprinting [of an uncooperative person], with two or three police officers. As they are requesting, we are considering the introduction of a new law to allow for the use of force on those who refuse. Obviously this would also imply a period of detention with the purpose of identification. It is necessary to find a legal basis for this operation”.<sup>34</sup>

In the meantime, the absence of such legal basis has not prevented the Italian police from gradually changing its practices in the direction recommended by the European Commission and Frontex.<sup>35</sup>

Back in September 2014 the Ministry of Interior had already adopted a circular emphasizing the importance of taking the fingerprints of all new arriving refugees and migrants, explaining that this was necessary due to repeated complaints by other member states. Notably, a flyer attached to the circular, to be distributed to new arrivals, indicated that fingerprints would be collected “even with the use of force, if necessary”.<sup>36</sup>

Amnesty International understands that in 2015 the Ministry of Interior provided additional guidance to police officers involved in fingerprinting activities, explaining that, if and when necessary, the use of force may be considered permissible. The Ministry of Interior has not disclosed such guidance, however the organization received confirmation of its existence from two separate police officials, working in both hotspots visited by the organization. The police official in charge of the hotspot of Lampedusa on the day of Amnesty International’s visit in March 2016,<sup>37</sup> stated that police officials had received a communication from the Ministry of Interior “allowing the use of force to take fingerprints, but saying we should not hurt people”. The official also clarified that they did not receive more detailed guidance on the type of force they might be permitted to use, for what purpose nor in what circumstances. In May 2016, Amnesty International also visited the hotspot of Taranto, where another police official confirmed: “The law allows for a proportionate use of force – there is a circular of the Ministry of Interior on this – but here there was never the need to do so.”<sup>38</sup> Four months later, the same official confirmed to Amnesty International that during the summer police had resorted to the use of force in order to obtain fingerprints from uncooperative refugees and migrants, when considered necessary, although emphasizing that “the use of force is exercised rarely, proportionately and without violence.”<sup>39</sup>

All sources consulted by Amnesty International consistently indicated that police had resorted to the use of force in many instances during 2016. However, the legal basis for it remains unclear. Tellingly, police officials themselves requested clarifications regarding the use of force to obtain fingerprints. In February 2016, the police union UGL sent a letter to the Head of Police, Prefect Alessandro Pansa, explaining that there is no legal basis under Italian legislation for the use of force to obtain fingerprints, and concluding:

“In light of the ‘legislative gap’, of the absence of operational guidelines unmistakably based on precise legal provisions, and of an opaque ‘do-it-yourself’ approach characterized by practices that, in our view, are markedly misaligned with current laws and expose personnel to negative consequences including at a judicial level, with the aim of avoiding a protracted excessive exposure

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<sup>33</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016.

<sup>34</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Central Director for immigration and border police, Giovanni Pinto, 29 October 2015,

[http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2015/10/29/indice\\_stenografico.0028.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2015/10/29/indice_stenografico.0028.html)

<sup>35</sup> Parliamentary commission of inquiry on reception and identification, Hearing of Frontex Coordinating Officer, Miguel Angelo Nunes

Nicolau, 13 January 2016,

[http://www.camera.it/leg17/1058?idLegislatura=17&tipologia=audiz2&sottotipologia=audizione&anno=2016&mese=01&giorno=13&idCommissione=69&numero=0036&file=indice\\_stenografico](http://www.camera.it/leg17/1058?idLegislatura=17&tipologia=audiz2&sottotipologia=audizione&anno=2016&mese=01&giorno=13&idCommissione=69&numero=0036&file=indice_stenografico)

<sup>36</sup> Ministry of Interior, Circular n.27978, 23 September 2014, [http://www.meltingpot.org/IMG/pdf/circolare\\_impronte.pdf](http://www.meltingpot.org/IMG/pdf/circolare_impronte.pdf)

<sup>37</sup> Interview with police official, name withheld, hotspot of Lampedusa, 19 March 2016.

<sup>38</sup> Interview with police official, name withheld, hotspot of Taranto, 14 May 2016.

<sup>39</sup> Phone interview with police official working in hotspot of Taranto, name withheld, 28 September 2016.

of police officers to probable criminal, civil and administrative liability, we consider that a clarification by your police department is urgently required ...”<sup>40</sup>

It is against this backdrop that Amnesty International received, during 2016, a significant number of reports of excessive use of force by police for the purpose of fingerprinting newly arrived refugees and migrants, including allegations of torture and other cruel, inhuman or degrading treatment.

The majority of asylum-seekers and migrants interviewed by Amnesty International during the course of the year had not refused giving their fingerprints and did not, therefore, report any problems with the relevant procedure. However, Amnesty International also collected numerous and consistent reports of abusive treatment: 24 individuals interviewed by Amnesty International alleged having been subjected to torture or other ill-treatment by police, while several others reported having been subjected to unnecessary or excessive use of force, in different cities, in the attempt to force them to give their fingerprints. The victims, mostly from Sudan, also included women and unaccompanied minors. All said that the abuses had been perpetrated by Italian Police, either in hotspots, other reception centres or police stations across the country.

### **TORTURE AND OTHER ILL-TREATMENT**

Some refugees and migrants interviewed by Amnesty International reported being subjected to torture to coerce them to give their fingerprints. These included allegations of beatings causing severe pain; the infliction of electric shocks by means of electrical batons; and sexual humiliation and infliction of pain to the genitals.

Some individuals reported having suffered **severe beatings** by the police, recounting how police continued to beat them for several minutes, inflicting pain by means of using punches, kicks, and batons.

**Adam**,<sup>41</sup> a 27-year-old man from Darfur, Sudan, was disembarked at the port of Catania on 26 June 2016. Police transferred the group he was in by bus to a police station, where they were expected to give their fingerprints:

“On the ground floor there was the waiting area, on the first floor the office for the identification. They carried us there three at a time... There was no interpreter, they only ask you to give fingerprints. I refused. There were six policemen in uniform. With a baton they hit me on the shoulders, on the hip, and on the little finger on the left hand, which since then is twisted. I fell down and they started kicking me, I don’t know how many times, it lasted 10 minutes or so. I was scared.”

**Abker**,<sup>42</sup> 27, from Darfur, Sudan, arrived in an unidentified Sicilian port at the end of July 2016, after 13 days on a boat that was travelling from Egypt and lost direction at sea. Taken to a big building, he was immediately asked to give his fingerprints. “They took us one by one in a room, where there were at least seven police officers, some seating at a desk. None of them spoke Arabic. Then they took my hand to put it on the machine. I struggled, so they started punching and kicking me everywhere, for half a hour. Eventually they got my fingerprints.”

Children also reported having been subjected to severe beatings. **Ishaq**,<sup>43</sup> a 16-year-old boy from Darfur, Sudan, arrived on the night of 26 June 2016 in a port in Southern Italy, but managed to reach Turin, in the North of the country, without leaving his fingerprints. However, at Turin’s train station, police approached him and others as they boarded a train to Ventimiglia, at the border with France, and took them to a police station inside the train station. There, they were brought to the identification office. “They asked me to give my fingerprints, but I refused. I was alone with five policemen, they hit me. One of them kicked me on the ankle, with the police shoes that have iron tips. It still hurts. They punched me everywhere and folded my fingers backwards. Some folded my hands towards the fingerprinting machine, others were punching me.”

In a number of other cases, people who spoke to Amnesty International recounted having suffered beatings as well as being subjected to electric shocks by the police by means of **electrical batons** (also known as stun

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<sup>40</sup> UGL, Use of force in the identification and fingerprinting operations of foreign and Italian nationals, Letter to the Head of Police, 10 February 2016, [http://www.uglpoliziadistato.it/index.php?option=com\\_content&view=article&id=6329&Itemid=133](http://www.uglpoliziadistato.it/index.php?option=com_content&view=article&id=6329&Itemid=133)

<sup>41</sup> Interviewed in Ventimiglia on 8 July 2016. Amnesty International saw the twisted little finger on the left hand.

<sup>42</sup> Interviewed in Ventimiglia on 11 August 2016.

<sup>43</sup> Interviewed in Ventimiglia on 7 July 2016.

batons), weapons that inflict significant pain without leaving long-lasting physical traces on the body of the victim.

**Salah**,<sup>44</sup> a 26-year-old man from Sudan who is trying to reach his brother, his only surviving family member, in the UK, described the treatment he suffered as he was detained in a police station in Cagliari in June 2016: “Many policemen came at night, while we were sleeping, and took us one by one... They caught me, put my hand on the machine, I retracted it and said: ‘No!’. They hit me with a stick on the back, twice. Then, while someone held my hands and legs, they discharged electricity on my back with an electrical stick. I fell down. They put me on a chair. They put my two indexes on the machine, I couldn’t feel anything.”

Children have also reported being subjected to electrical batons. **Djoka**,<sup>45</sup> a 16-year-old boy from Sudan arrived in Italy on 7 June 2016. He fled the conflict in Darfur, which killed his father, and hopes to join his brother in France. When he was disembarked in Sicily, he was taken to a police station and detained there. He told Amnesty International: “After three days... they took me to the ‘electricity room’. There were three policemen wearing uniforms, plus a woman without uniform. At some point also a man, without uniform and speaking Arabic, entered the room... The police then asked me to give fingerprints. I refused. Then they gave me electricity with a stick, many times on the left leg, then on the right leg, chest and belly. I was too weak, I couldn’t resist and at that point they took both my hands and put them on the machine. I couldn’t resist.” **Ali**,<sup>46</sup> a 17-year-old boy from Darfur, Sudan, had a similar story. After refusing to give his fingerprints he was locked in a room in a police station near Bari: “The following day they opened the door, I ran towards the exit. The police ran after me and caught me. They put me on the floor. One put his foot on my hip to hold me down. I tried to get up, another one came and touched me with an electric stick on the left foot. I fainted. Then I started feeling pain on the groin – I can still feel it. The two policemen then took me back to the room where the fingerprinting machine was. They put my hands on it by force, pushing down with their hands.”

Five interviews collected by Amnesty International coincided in describing the use of beatings and electrical batons in the hotspot of Taranto on the occasion of the arrival of a group of about 300 refugees and migrants on 24 and 25 June 2016. **Ibrahim**,<sup>47</sup> a 27-year old man from Sudan, trying to join his brother in the UK, detailed how the group was disembarked in Reggio Calabria on 23 June, before police transferred them on six buses to the hotspot of Taranto, where they arrived early in the morning. As buses stopped in front of the centre, people refused to get off, fearing they would immediately be fingerprinted. “Seven policemen boarded the bus and took us by force, one by one... Police surrounded me, one of them took the electric baton and put it on my right arm. I fell down, fainted. They woke me up using a fan. I felt a strong pain at the arm... Two policemen lifted me up and took me to the office. The police asked my name, nationality and date of birth. From there, I was carried by force to the other office nearby, to take a picture... They took my fingerprints, first one finger at a time, then the whole hands.” **Khider**,<sup>48</sup> a 30-year-old man also from Sudan, described what happened on the bus he was on: “We were 14 men refusing to give our fingerprints. Uniformed police came to tell us they would use force... Some were frightened and decided to give their fingerprints, because they saw someone else dragged away by the police. Eventually only two of us remained, deciding not to give our fingerprints and not to get off the bus. So the police came up... they took me, one for each arm, and dragged me. I blocked my legs to the seat, so they used electricity on my back two or three times. They used a baton similar to those police carry around. At that point I was almost unconscious so they could drag me... I decided to succumb.” **Ramadan**,<sup>49</sup> a 23-year-old man from Sudan, who arrived in Catania and was then taken to the hotspot of Taranto, said police made him get off the bus and go into the police office: “There they punched me hard all over my body. My face was swollen. I was punched, slapped and kicked... They tried to put my hand on the fingerprinting machine, I pull it away. Then they hit me with a baton on both arms, near my shoulders, hurting me so much that I could no longer

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<sup>44</sup> Interviewed in Ventimiglia on 7 July 2016. Amnesty International saw a copy of expulsion orders against him adopted by authorities in Cagliari on 17 June 2016, proving his presence there at the time of the abuses he recounted.

<sup>45</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>46</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>47</sup> Interviewed in Ventimiglia on 7 July 2016. The description provided of the areas where fingerprinting is carried out in the hotspot of Taranto corresponds to observations by Amnesty International.

<sup>48</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>49</sup> Interviewed in Ventimiglia on 7 July 2016.

resist.” Amnesty International saw signs consistent with this account on Ramadan’s left shoulder and both legs. **Abass**,<sup>50</sup> 22, and **Salih**,<sup>51</sup> 16, both from Sudan, shared similar stories.

In two cases, people told Amnesty International that police ill-treated them by **causing severe pain to the genitals and sexual humiliation**.

**Ishaq**<sup>52</sup> maintained that he was sexually humiliated by police officers in an office inside Turin train station. First, he said, police officers took the group to a room. “They made us undress, all naked. The policemen started laughing.” Then, as, he still resisted fingerprinting, police officers resorted to a different tactic: “They held me by my four limbs, one person for each. The fifth pulled my penis down until she got me seated. At that point one took a photo of me, while another one was turning my head towards the camera. And they managed to put my hands on the fingerprinting machine... For two days I bled every time I peed.” **Adam**,<sup>53</sup> explained that despite a beating and the discharge of electricity on his body he still managed to resist fingerprinting. At that point, he claimed, police officers in Catania resorted to extreme means. “I resisted still. So they made me undress, I took my trousers off and I had no underwear on. They used another instrument – a kind of plier with three ends... I was on a chair made of aluminium, with an opening on the seat. They held me from shoulders and legs, took my testicles with the plier, and pulled twice. I can’t say how painful it was.”

In Amnesty International’s view, the treatment described in the cases above amounts to torture within the definition of the UN Convention Against Torture – that is, the intentional infliction of “severe pain or suffering, whether physical or mental, ... on a person for such purposes as ... punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.<sup>54</sup> Torture and other cruel, inhuman or degrading treatment (ill-treatment) are absolutely prohibited under customary international law, and this prohibition is expressly set out in several international treaties binding on Italy, including Article 7 of the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 3 of the European Convention on Human Rights, stating that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Particularly alarming are the consistent reports that law enforcement officials used electrical batons to administer electric shocks to some people. Electrical batons, which are a specific type of portable electro-shock weapons, deliver a painful electric shock aimed at causing compliance by directly touching electrodes onto the skin, disrupting muscle functions and/or causing pain. Electro-shock weapons of any kind are not part of the official equipment of the Italian police, although legislation adopted in 2014 enabled the police to launch a testing phase, including through their distribution to a limited number of officers.<sup>55</sup> Under EU legislation, portable electro-shock weapons must be strictly controlled to reduce the risk of their being used in human rights violations.<sup>56</sup> Electrical batons raise human rights concerns in particular because they are open to abuse through sustained or prolonged use or the infliction of multiple shocks. Amnesty International believes that these weapons should never be used, because they do not meet a legitimate law enforcement objective that cannot be effectively accomplished with safer alternatives.

In addition to the cases of torture described above, Amnesty International collected numerous other testimonies describing acts by police violating the international prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Many of those who spoke to Amnesty International reported beatings and threats of beatings and arbitrary detention. In some instances individuals recounted having been deprived of basic assistance as a means of coercing them to give fingerprints.

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<sup>50</sup> Interviewed in Ventimiglia on 9 July 2016.

<sup>51</sup> Interviewed in Ventimiglia on 9 July 2016.

<sup>52</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>53</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>54</sup> UN Convention Against Torture, Art.1.

<sup>55</sup> Decree-Law n.119, 22 August 2014, as modified by Law n.146, 17 October 2014.

<sup>56</sup> Regulation (EC) 1236/2005 on the trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

Several people reported to Amnesty International that they had been subjected to **beatings**, including by means of slaps and punches.

**Helen**,<sup>57</sup> a 25-year-old woman from Eritrea, left the hotspot of Lampedusa in early May 2016, having refused to provide fingerprints, and was transferred by ferry to Porto Empedocle, in Sicily.

“When we were disembarked, police came to take me and a friend of mine at the port by car. Until we left our fingerprints, the police were checking on us all the time, even when we went to the toilet. Then they took our fingerprints by force. I said I didn’t want to. They put my hand on [the machine], I retracted it. There was a woman behind a computer, and four men – all in police uniform. One of the men slapped me on the face, I don’t remember how many times. I was too scared, so I gave my fingerprints.”

**Abdallah**,<sup>58</sup> a 20-year-old man from Sudan who fled in 2013 after secretly informing residents of a village about governmental plans to attack it, and being discovered by the authorities, recounted how he was treated in a police station in Foggia upon his arrival there on 8 July 2016.

“The interpreter left the room, two policemen remained inside, and a third, muscly one, came in. He asked me to give my fingerprints, I refused. He pulled my hand twice towards the machine, but I managed to retract it... He took me by the neck and threw me on the floor, I fell and he put a foot on the side of my face to hold me on the floor. We remained like that for almost 10 minutes, they were saying ‘Do you want to give your fingerprints or not?’, in English. I had only retracted my hand, I didn’t do anything else. I said ‘OK’”. After threatening him with further violence and so convincing him to give his fingerprints, and after taking them, the police used further force on him: “After I gave my fingerprints, a policeman pushed me, I risked falling and hitting a wall. I don’t know why he did it, maybe because I wasted their time.”

**Ibrahim**,<sup>59</sup> a 38-year-old man from Sudan, explained that after arriving at the port of Crotone, he was transferred to a reception centre after a two-and-a-half hours bus ride. There, he was requested to give his fingerprints. “I didn’t want to, because I want to go to France. But they forced me. Three police held me and forced my hand on the machine. I retracted it, so they punched me on my face once, then once on the shoulder. Then they twisted my arm back. In the end I gave the fingerprints.” Similarly, 19-year-old

**Asladain**,<sup>60</sup> an Oromo man from Ethiopia who fled after his father was arrested and his brother killed due to their political activities, recounted the ill-treatment he was subjected to after arriving in Italy on 27 July 2016: “I said I didn’t want [to give my fingerprints], but they forced me... They slapped me on the face, I don’t know how many times.”

Amnesty International also collected several testimonies indicating that police officials had used **threats** of violence or extended detention as additional means to coerce refugees and migrants to give their fingerprints.

**Decam**,<sup>61</sup> a 28-year-old man from Darfur, Sudan, recounted how he was stopped by police while transiting at the train station of Turin, and what police officers told him. “They took me to a police station inside the train station. I was with six other people, we were all caught together... They wanted to take our fingerprints again. We all refused. The police terrified us, they said ‘Either you give us your fingerprints or we are going to beat you’. More police joined, there were 15. At that point, all of us gave fingerprints, because we were afraid.”

**Ibrahim**,<sup>62</sup> describing what happened as he arrived to the hotspot of Taranto on 24 June 2016, explained how warnings by an interpreter working with the police escalated into threats of physical violence and prolonged detention:

“The Somali interpreter told us we had to give fingerprints, with or against our will. We asked for guarantees that this would be for security reasons only. He told us to get out of the bus, we refused. So the bus was taken inside the gated area. The Somali told us: “This is your last

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<sup>57</sup> Interviewed in Rome on 12 May 2016.

<sup>58</sup> Interviewed in Rome on 3 August 2016.

<sup>59</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>60</sup> Interviewed in Como on 9 August 2016.

<sup>61</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>62</sup> Interviewed in Ventimiglia on 7 July 2016.

chance”... Seven policemen boarded the bus and took us by force, one by one. I was the first one, so I went down. I saw the interpreter who told me: ‘Do you want to give your fingerprints or not? Either you do it or you suffer like the others’... [Later] The interpreter told me that they would not leave me until I gave my fingerprints.”

**Khider**,<sup>63</sup> who described the same events, said that after uniformed police told them they would use force if necessary to get their fingerprints, some were frightened and decided to give their fingerprints, because they saw someone else dragged away by the police. After a while, as he remained as one of only two still refusing fingerprinting, a woman approached him: “She told me I should give my fingerprints or otherwise I would suffer, they would give me more electricity. At that point I said that I would leave them do whatever they wanted with my body. So they took my fingerprints...” Also in relation to events in the hotspot of Taranto, **Abass**<sup>64</sup> detailed how an interpreter threatened him and made reference to the pressure exercised by European governments to push Italy to take fingerprints: “An Algerian or Tunisian interpreter explained that we had to give our fingerprints as otherwise Italy would receive a fine. They said that there were other European policemen checking whether everyone was being fingerprinted. And that those refusing to be fingerprinted would be beaten by the Italian police.”

In other cases, **Abdallah**<sup>65</sup> reported that after beating him, the policemen told him “If you don’t give the fingerprints, we’ll do to you worse than this”. **Salah**<sup>66</sup> said that in Cagliari “the police told us if we didn’t give fingerprints, we wouldn’t go out, and that they would give us electricity.”

In some cases, the showing of beatings appears to have been used by police as a threat to force others to give their fingerprints.

**Shawgi**,<sup>67</sup> from Eritrea, disembarked in Catania on 6 July 2016, as part of a group of 450 people. At the port, police asked them to give their fingerprints, but he and several others kept refusing. “Forty-five of us refused, all men: three from Eritrea, 10 from Ethiopia and others from Sudan. We were separated from the rest, a policeman told us to put in line, sitting [on the floor].” He explained that, as the first was called and hit with a baton and kicks several times until he cried, others witnessing the scene decided to give their fingerprints. “About 17 went with him to the office and gave their fingerprints, because they were afraid.”

**Adam**,<sup>68</sup> who recounted the violence he suffered at the hands of police officers in Catania, also explained that while he was in the police station, another man was forced to witness the treatment he was being subjected to. “They carried us there three at a time... One of the other two migrants was inside the room, to see and be convinced to give fingerprints.” As described above, after beating him, the police would use an electrical baton to electrocute him. “At this point, the other man decided to give his fingerprints, and left the room.” He also said that, since he managed to withstand the torture he was subjected to without giving his fingerprints, police tried to hide this from others. “As I left the room, a policeman took my hand and told me that I should tell the others that I had given my fingerprints.”

Several testimonies collected by Amnesty International indicated that police officers **denied basic assistance** to individuals, including medical care, food and water, as a means to coerce them into giving their fingerprints.

One such case was reported by **Mariam**,<sup>69</sup> a pregnant 23-year-old woman from Sudan, who travelled together with her 4-year-old son and 2-year-old daughter and arrived in Italy on 6 June 2016, suffering vaginal bleeding due to the difficult sea crossing. Although Mariam gave her fingerprints upon arrival as police told her “it was only for security reasons”, she refused to give them again the following day, when she was transferred to Vibo Valentia, in the Calabria region, as she believed this time they would have hampered her possibility to seek asylum in another country. At this point, despite the fact that she was pregnant, that she had not seen a doctor yet, and that she was travelling with two small children, she was ordered to leave the centre immediately:

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<sup>63</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>64</sup> Interviewed in Ventimiglia on 9 July 2016.

<sup>65</sup> Interviewed in Rome on 3 August 2016.

<sup>66</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>67</sup> Interviewed in Ventimiglia on 11 August 2016.

<sup>68</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>69</sup> Interviewed in Ventimiglia on 9 July 2016.

“It was raining, and I walked towards the train station together with my children. It was only 10 minutes away, but while going there I realized the children were soaked, they were in unbearable conditions. So I went back to the centre. At that time I was also bleeding. When I arrived at the centre, there was a policeman in uniform and an interpreter speaking Arabic with a Moroccan accent. They told me that if I didn’t give my fingerprints they would not let us in. I gave my fingerprints – I did it only for my children, because it was raining. When I said ‘ok’, they took me to get fingerprinted... each finger, then the whole hand, on both hands... Then they called for an ambulance to take me to the hospital. I waited there the whole day... I tried to speak with several doctors but there was no interpreter so no one could understand me and no one visited me... The following day I went back to the hospital, this time accompanied by an interpreter, I was visited and given medicines. They explained that the bleeding was due to the fact that I had travelled in a tight position, and that the baby was alive only because I reported the problem promptly.”

Other people told Amnesty International how they had been denied food and water while kept under police custody, to force them to give their fingerprints or as a form of punishment for resisting fingerprinting.

**Shawgi**<sup>70</sup> stated that upon disembarkation in Catania he was not given food or water until he accepted being fingerprinted. “It was midnight. We had not received any food or water, while those giving fingerprints had been given sandwiches and water. We were afraid the situation would worsen... At that time we are so hungry, we need to eat. So all started giving their fingerprints... Then they put us on a bus and gave us a sandwich with cheese and a bottle of water.” **Salah**,<sup>71</sup> who was kept in a police station in Cagliari, said: “We were detained there for two days, about 20 people in the same room, unable to go anywhere. We were given no food or water for two days, we could only drink in the toilet.” **Djoka**<sup>72</sup> also stated: “I didn’t want to give my fingerprints, so they took me to another room, alone. I had to stay there for three days, no food and no water, for three days. After three days they came and gave me food and water, then they took me again to the ‘electricity room’.” **Ishaq**,<sup>73</sup> who described the torture he suffered in Turin, went on to explain that after the beating he was kept in police custody for one day: “They shackled me and brought me to a cell, where I was kept for one day without food. The day after they freed me and I took the train to come here in Ventimiglia.”

Such actions by police as described in this section, involving the deliberate infliction of physical and psychological pain on individuals to force them to comply with the order of an authority, constitute ill-treatment in violation of the international law prohibition on torture and other cruel, inhuman or degrading treatment.

All individuals in the cases described above were in custody. While some limited use of force may be justified if there is a need to control individuals acting aggressively towards police officials, beatings, slaps and kicks, including on face and head, cannot be justified and caused significant physical suffering. Threats of violence and indefinite detention, as well as exposing individuals to the sight of violence committed on others, caused considerable psychological suffering. All actions described above, in the circumstances, were likely to generate fear, anguish, humiliation and a sense of inferiority instrumental to breaking the physical or psychological resistance of those unwilling to give their fingerprints. The European Court of Human Rights has in the past considered similar treatments inhuman and degrading, and therefore in breach of Article 3 of the European Convention on Human Rights.<sup>74</sup> In fact, the deliberate infliction of physical and psychological pain on individuals to force them to comply with the order of an authority is incompatible with the international prohibition of torture and other ill-treatment.

## **UNNECESSARY AND EXCESSIVE USE OF FORCE**

In dozens of other cases, individuals speaking to Amnesty International reported that the police had used some form of force on them, to coerce them to give their fingerprints. This usually consisted of holding them and pushing their hands onto a fingerprinting machine. Amnesty International considers that, even in cases

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<sup>70</sup> Interviewed in Ventimiglia on 11 August 2016.

<sup>71</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>72</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>73</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>74</sup> European Court of Human Rights, *Sarigiannis v. Italy*, Judgement, 5 April 2011, <http://hudoc.echr.coe.int/eng?i=001-104309>

where actions by the police may not have amounted to ill-treatment, in many cases they constituted unnecessary or excessive use of force.

**Hamid**,<sup>75</sup> a 19-year-old man from Sudan, told Amnesty International that after being disembarked in a Sicilian port of which he did not know the name, he was taken by bus to a closed centre 20 minutes away. There, as he refused to give fingerprints, police took him by force: "Six policemen would come to take each of us and carry him in a room to take the fingerprints. I said I didn't want to, so two of them took me by the legs, two by the hips, and the other two by the hands to push them on the machine. They held me tight and managed to get my fingerprints."

All sources consulted by Amnesty International consistently indicated that, in several instances during 2016, police officials resorted to the use of force in order to obtain fingerprints from uncooperative newly arrived refugees and migrants, when considered necessary. This was also confirmed by a police official working in the hotspot of Taranto, who nonetheless qualified that "the use of force is exercised rarely, proportionately and without violence".<sup>76</sup>

International law and standards require that law enforcement officials must respect and protect human dignity and maintain and uphold the human rights of all persons, and in particular, "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."<sup>77</sup> This means that police must, where at all possible, avoid any use of force, and if there is no alternative to the use of force, any such use should be subject to principles of strict necessity and minimum use of force, and the prohibition of any use of force causing harm that outweighs the law enforcement objective. Police should be trained and required in practice to seek to avoid the need to resort to any use of force, and to proactively seek resolution of problems by other means such as persuasion.

In October 2015, while the European Commission was recommending Italy to adopt and implement coercive practices to obtain fingerprints,<sup>78</sup> the Fundamental Rights Agency (FRA), an EU agency established to provide expert advice to EU institutions and member states on the safeguarding of human rights protected in EU legislation, concluded a study on this very subject by stating: "It is difficult to imagine a situation where using physical or psychological force to obtain fingerprints for Eurodac would be justified."<sup>79</sup>

In any event, even if the use of some minimal degree of force might be considered justified in the event of resistance, that would only apply if all alternative lesser options, that is, all options not entailing any use of force, such as verbal explanation and persuasion, have been attempted and been found to be unsuccessful. On this point the FRA states: "Compliance with the obligation to provide fingerprints for Eurodac should primarily be secured through effective information and counselling, carried out individually as well as through outreach actions targeting migrant communities. To be effective, information should be provided in a language people understand and taking into account gender and cultural considerations."<sup>80</sup>

Amnesty International is aware that on a vast number of occasions when people did not initially cooperate, the police have attempted to obtain fingerprints first of all by negotiating with them, including through provision of information with the assistance of an interpreter, and in most of these instances they have not needed to resort to the use of force. However, in several other cases described to Amnesty International police used force without any demonstrable necessity for it, as they did not appear to have previously engaged in sufficient attempts to obtain the fingerprints by other means. In particular, from dozens of interviews collected by Amnesty International – with individuals who alleged having been subjected to abuses as well as with others – it emerged that provision of information and legal counselling in hotspots and ports of disembarkation has been far from sufficient and adequate (see next chapter for additional details), hence removing any possibility to consider the use of force justifiable.

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<sup>75</sup> Interviewed in Rome on 3 August 2016.

<sup>76</sup> Phone interview with police official working in hotspot of Taranto, name withheld, 28 September 2016.

<sup>77</sup> Code of Conduct for Law Enforcement Officials, Articles 2 and 3.

<sup>78</sup> European Commission, Communication from the Commission to the European Parliament and the Council, First report on relocation and resettlement, Annex IV: Italy – State of Play Report, 16 March 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first\\_report\\_on\\_relocation\\_and\\_resettlement\\_-\\_annex\\_4\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_-_annex_4_en.pdf)

<sup>79</sup> FRA, Fundamental rights implications of the obligation to provide fingerprints for Eurodac, October 2015, <http://fra.europa.eu/en/publication/2015/fundamental-rights-implications-obligation-provide-fingerprints-eurodac#main-conclusions>

<sup>80</sup> FRA, Fundamental rights implications of the obligation to provide fingerprints for Eurodac, October 2015.



After recounting the use of force he was subjected to in a centre in Sicily, **Hamid**<sup>81</sup> added: “Nobody had told me anything about asylum or the reason why I should have given my fingerprints”.

Several people interviewed by Amnesty International, including **Abker**,<sup>82</sup> explained that police used force on them to get fingerprints in the absence of an interpreter, and that when they asked to speak with an interpreter to discuss the reasons why they had to give fingerprints, they were refused the opportunity. As **Adam**<sup>83</sup> told Amnesty International: “I was disembarked at the port of Catania on 26 June... Then buses arrived, in about 30 minutes we were taken to the police station for the identification. There was no interpreter, they only ask you to give fingerprints. I refused.”

On this basis, Amnesty International takes the view that, even in cases where actions by the police may not have amounted to ill-treatment, in many cases they constituted unnecessary or excessive use of force.

Even assuming it might be judged to be necessary, in cases where all lesser measures to secure compliance have been attempted and have been unsuccessful, any use of force should remain minimal – and never amount to torture or other ill-treatment as in some of the cases described above – and should be strictly regulated by law and police regulations. As stated earlier in this chapter, Italian legislation does not provide a statutory basis for the police to use force for the purpose of obtaining fingerprints. In any case, even if legislation was to provide a statutory basis for the forcible taking of fingerprints, it is clear that compliance will not always be secured with the very low level of force that would be proportionate to the aim in question, i.e. establishing the identity of a newly arrived refugee or migrant. In this case, Amnesty International considers that the Italian authorities should treat non-compliance as resisting lawful authority in a manner no different, say, to an individual who declines to provide their identity when requested on the street.

#### **ADDITIONAL EVIDENCE**

Amnesty International considers the testimonies reported in this chapter credible and has been able to obtain corroboration of some of the reported details. The organization reviewed documents shown by several victims, confirming that they were indeed detained in the centres where they alleged having suffered ill-treatment.

All those interviewed had decided not to report abuses to authorities, either for lack of trust or because this may have impeded them from moving on to other European countries. Amnesty International has duly informed the Italian Ministry of Interior of the reports described in this chapter, and encouraged the Ministry to provide information to respond to the reported allegations.<sup>84</sup> However, as of 20 October 2016 the Ministry of Interior had not shared any information. Amnesty International spoke with a police official responsible for law enforcement in the hotspot of Taranto,<sup>85</sup> who denied that any ill-treatment had taken place in the hotspot and that police may have carried or used any stun weapon, and said he had no recollection of incidents specifically taking place on 24 June 2016.

The individuals who reported their ill-treatment to Amnesty International did so during their quick transit through Italy. This has prevented the organization from conducting a more thorough assessment, e.g. through medical examination. Amnesty International was therefore unable to verify all relevant details regarding each case. However, the consistency of these testimonies – collected at different times, in different cities, through the services of different interpreters – is extremely worrying in depicting a pattern of ill-treatment and excessive use of force imposed on refugees and migrants to coerce them to give their fingerprints.

Reports of the kind described in this chapter were also corroborated by a number of testimonies of individuals who reported having witnessed abuses on others.

**Shawgi**,<sup>86</sup> from Eritrea, reported having witnessed abuses on other people who, like him, had just arrived at the port of Catania. “We were separated from the rest, a policeman told us to get in line, sitting [on the floor].

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<sup>81</sup> Interviewed in Rome on 3 August 2016.

<sup>82</sup> Interviewed in Ventimiglia on 11 August 2016.

<sup>83</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>84</sup> Letter to the Minister of Interior, Angelino Alfano, dated 18 July 2016.

<sup>85</sup> Phone interview with police official working in hotspot of Taranto, name withheld, 28 September 2016.

<sup>86</sup> Interviewed in Ventimiglia on 11 August 2016.

A police officer asked the first in the line to go with him inside the office/container, but he refused. So the police started hitting him with a stick on a shoulder. He fell down and the police kept hitting him with the baton on his chest and kicking him with the boot on his back, many times. The Ethiopian man started crying.” **Adam**,<sup>87</sup> explained how at one point police took him to a police station in Savona, together with five more people, including two women. There, as his friend refused to give his fingerprints, “they hit him with the electrical baton on right shoulder and right leg, in front of me.” **Khider**,<sup>88</sup> talking about the incidents in the hotspot of Taranto on 24 June 2016, said about another man: “The last one kept refusing to give his fingerprints and eventually they beat him, they gave him electricity when he was already lying down for five minutes. In the end he said they could do whatever they wanted. I was inside the office... I heard the shouts and saw the scene from the window. When I went out he was still on the floor, unconscious. Four hours later he came back and had problems walking.” **Castro**<sup>89</sup> also confirmed witnessing beatings on others: “After me, I saw other migrants being beaten with a stick. Then another man told me he also had electricity discharged on his chest.” And the same did **Djoka**:<sup>90</sup> “I was there with two others. I saw the police beat them with an electricity stick, after they said they didn’t want to give fingerprints. Eventually they gave their fingerprints. This was before my turn.”

Reports collected by Amnesty International and illustrated in this section also appear to be consistent with testimonies the NGO Oxfam referred to in a report published in May 2016.<sup>91</sup>

Furthermore, representatives of grassroots organizations in Genoa and Ventimiglia, cities through which thousands of refugees and migrants attempting to enter into France have transited during 2016, have confirmed to Amnesty International receiving similar reports. **Elena Prestt**, an independent activist providing legal information to asylum-seekers, told Amnesty International in September 2016: “I spent months speaking with migrants transiting in Ventimiglia. Many told us that they were subjected to ill-treatment to force them to give their fingerprints, for example hits on the head and kicks on the hands. Some also reported cases of torture, including ill-treatment on the genitals and discharge of electricity”.<sup>92</sup>

Other grassroots activists from the same region also confirmed to Amnesty International that they had received during 2016 multiple reports regarding the use of electrical batons, pliers, beatings, and food and water deprivation to force individuals to give their fingerprints. They also shared with Amnesty International copies of medical reports issued in relation to alleged beatings by the police. **Amelia Chiara Trombetta** and **Antonio Curotto**,<sup>93</sup> two medical doctors who have assisted refugees and migrants transiting through Ventimiglia between May and August 2016, documented several cases of ill-treatment.

“We assisted hundreds of migrants, young people open to talk despite the very difficult conditions... Many had psychologic, psychiatric as well as physical problems due to the difficult journey. Many presented evident clinical signs compatible with abuses suffered in transit countries, but also in Italy. They reported to us that they had been subjected to different forms of violence in our country, mostly in police stations or in hotspots, because they refused to give their fingerprints.”

UNHCR stated to Amnesty International that it received few unconfirmed reports regarding the use of force by police during the fingerprinting, although never at the presence of its personnel.<sup>94</sup>

Some of the refugees and migrants interviewed by Amnesty International also reported having collected testimonies from friends recounting similar abuses. **Abdallah**,<sup>95</sup> said that some of his friends were still bearing the signs of ill-treatment on their bodies: “They refused for longer so they beat them with batons, some even with electricity.” **Beca**,<sup>96</sup> 19, from Ethiopia, told Amnesty International about a friend who was with him in a reception centre in Sicily: “A friend of mine managed to resist, and he told me that they

<sup>87</sup> Interviewed in Ventimiglia on 8 July 2016. In relation to this specific instance, Amnesty International reviewed official documents adopted by the Questura (police head office for a province) of Savona and dated 6 July 2016, giving evidence of his presence in that office on that date.

<sup>88</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>89</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>90</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>91</sup> OXFAM, Hotspot: Rights denied, 19 May 2016, [https://www.oxfamamerica.org/static/media/files/Hotspot\\_RIGHTS\\_DENIED\\_\\_ENG.pdf](https://www.oxfamamerica.org/static/media/files/Hotspot_RIGHTS_DENIED__ENG.pdf)

<sup>92</sup> Interview with Amnesty International, 28 September 2016.

<sup>93</sup> Interview with Amnesty International, 30 September 2016.

<sup>94</sup> Interview with representative of UNHCR in Rome, 30 September 2016.

<sup>95</sup> Interviewed in Rome on 3 August 2016.

<sup>96</sup> Interviewed in Como on 11 August 2016.

punched and kicked him. After he gave his fingerprints, he was taken back to the room and then he told me what had happened”.

Amnesty International wishes to emphasize that the ill-treatment and excessive use of force described here would have been inflicted on individuals who in many cases have fled their homes in fear of their lives and safety and are seeking international protection after having been subjected to severe abuses during their journey, and who have endured the extremely dangerous crossing of the central Mediterranean. Even if victims have decided not to report abuses to relevant authorities, this does not relieve Italian authorities from the responsibility to conduct prompt and thorough investigations into such allegations of serious human rights violations. Amnesty International is not aware of any investigation launched by Italian authorities into human rights violations aimed at coercing individuals to be fingerprinted. Acts described in this chapter, if proven, are punishable as criminal acts in Italy, although the country, in breach of its international obligations, has not yet adopted legislation to include the crime of torture in its criminal code.<sup>97</sup>

States have an obligation under international law to ensure that officials suspected of responsibility for committing acts of torture and other ill-treatment are prosecuted under the criminal law, which should provide for appropriate penalties which reflect the gravity of the human rights violation. Commanding and superior officers should also be held liable if they knew or ought to have known that their subordinates were committing such criminal acts and they did not take action to prevent such acts, or if they failed to take measures to bring those responsible for such acts before competent investigative authorities.

In recent years, Italy has already been condemned by the European Court of Human Rights for violating the international prohibition of torture and other ill-treatment. In particular, in April 2015, the Court found in the Cestaro case that police storming the Diaz school, Genoa, during the G8 summit in 2001, had committed torture against demonstrators sheltered therein.<sup>98</sup> In the judgment, the Court found that perpetrators enjoyed a certain level of impunity, underscoring how this was linked to the absence of the crime of torture within the domestic legislation, to the application of the statute of limitations, and to the lack of police cooperation. However, this has not to date led to the introduction of the crime of torture in the Italian criminal code, nor to the adoption of further measures to ensure accountability for such violations.

## **2.2.2 ARBITRARY DETENTION**

Individuals disembarked on Italian territory and transferred to hotspots are detained there while the identification and fingerprinting processes are ongoing. This has been the case even before the launch of the hotspot approach and the conversion into hotspots of the late Centres for First Assistance (CPSAs).

In 2014 and 2015 Amnesty International visited the CPSAs of Lampedusa and Pozzallo – that would later become hotspots – at various times. Police officials working there said that they had authority to detain individuals in CPSAs for a maximum of 48 or 72 hours, but proved unable to precisely indicate the legal grounds for detention in such centres. Strikingly, in July 2015 the police official in charge of the Lampedusa CPSA even tried to explain that the individuals were not being detained in the centre and that they did not go out only because they did not want to, despite Amnesty International delegates clearly observing how individuals were not allowed to exit the gate of the centre.<sup>99</sup>

In fact, no legislation existed at the time, and no legislation was later adopted in relation to the setting up of hotspots, providing a clear basis for the detention of newly arrived refugees and migrants in hotspots.<sup>100</sup> Authorities sometimes referred to pre-existing regulations, adopted in relation to centres for identification and expulsion. However, these regulations provide for the detention of individuals in an irregular migration situation who have been issued an expulsion order, and are therefore not applicable to individuals who have been admitted to the territory as a result of rescue operations and who have not been issued with an expulsion order.

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<sup>97</sup> Amnesty International, Nel 15esimo anniversario dei gravi fatti di Genova, si ferma nuovamente la discussione sul reato di tortura, 20 July 2016, <http://www.amnesty.it/Anniversario-fatti-Genova-ferma-nuovamente-discussione-reato-tortura>

<sup>98</sup> European Court of Human Rights, Cestaro v. Italy, Judgement, 7 April 2015, <http://hudoc.echr.coe.int/eng?i=001-153901>

<sup>99</sup> Interview with police official working in the CPSA of Lampedusa, name withheld, 22 July 2015.

<sup>100</sup> See ASGI, Prime note sul Decreto Legislativo 18 Agosto 2015 N.142, 1 October 2015, [http://www.asgi.it/wp-content/uploads/2015/10/Scheda-recepimento-direttive-asilo\\_-Bonetti-Morandi-Schiavone.1.10.2015.pdf](http://www.asgi.it/wp-content/uploads/2015/10/Scheda-recepimento-direttive-asilo_-Bonetti-Morandi-Schiavone.1.10.2015.pdf)

Under Italian law, if individuals refuse to give their identity or if there are sufficient elements indicating that the identity provided or the documents presented may be false, they can be legitimately detained under police orders for the purpose of identification, “for the time strictly necessary for the sole identification and in any case not beyond 24 hours”.<sup>101</sup> Similarly, if a person is investigated for a crime (including the crime of irregular entry or stay on the territory),<sup>102</sup> police can take steps to establish his or her identity, including through fingerprinting, and if he or she refuses to be identified or presents documents that appear to be false, the person can be compelled to remain in a police station for the time strictly necessary and not beyond 12 hours or, if the identification proves particularly complex or the support of an interpreter or a consular authority becomes necessary, 24 hours.<sup>103</sup> The Prosecuting Office must be immediately informed of the detention and, if applicable, of its extension. Crucially, the person must be released after 24 hours, whether or not the identification and fingerprinting have been completed. If the person has persisted in his or her refusal, he or she can be prosecuted while free for the contravention of “refusing to give indications about one’s identity”, punishable with one month of arrest or a fine of 206 euros.<sup>104</sup> But he or she must be released pending prosecution and trial. The Italian Constitution states that the police may detain a person for a maximum of 48 hours, pending validation of the detention by judicial authorities within the following 48 hours, but police can only carry out such arrests “in exceptional circumstances of necessity and urgency *strictly defined by law*”.<sup>105</sup>

However, as Christopher Hein from the Italian Refugee Council (CIR) put it: “the discussion on whether the maximum length of detention should be 24 or 48 hours under current legislation is merely theoretical, because in fact people are usually detained for over 48 hours.”<sup>106</sup> Indeed, for years Italian police have systematically detained men, women and children disembarked in Italy, for the purpose of identification – and in the vast majority of cases such detention extended well over 48 hours, as observed by Amnesty International in multiple visits to the CPSAs of Lampedusa and Pozzallo between 2014 and 2015.<sup>107</sup>

The resulting human rights violations were laid bare, in September 2015, by the judgment of the European Court of Human Rights in the case of *Khlaifia and others v. Italy*, concerning, among other issues, the detention of Tunisian migrants at the then CPSA of Lampedusa. The Court held that the applicants’ detention had been unlawful, among other reasons because the deprivation of liberty in a CPSA had to have a legal basis in domestic law, and they were unable to challenge it.<sup>108</sup> The case is currently pending before the Court’s Grand Chamber.

While the judgment was delivered, the CPSA of Lampedusa was being converted into a “hotspot”, without any measure being adopted by Italy to address the legislative gaps, and human rights violations, identified by the judgment.

In fact, detention in hotspots has not been specifically regulated in Italian legislation. As the Chief of the Italian Police put it in January 2016:

“If the retention in a hotspot continues for too long, in particular for those who must be expelled, we need to categorize the hotspot as one of the types of centres established under our legislation, thus establish whether it is a CARA [i.e. open reception centre for asylum seekers] or a CIE [i.e. detention centre for identification and expulsion] or something else. With this I want to say that there is a need to fill a legal gap... We are preparing a law to provide for such legal basis.”<sup>109</sup>

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<sup>101</sup> Decree-Law n.59, 21 March 1978, as amended by Law n.191, 18 May 1978.

<sup>102</sup> Irregular entry or stay on the Italian territory is a crime, under Law n.94, 15 July 2009. Although in 2014 the Italian Parliament passed framework legislation (Law n.67, 28 April 2014) instructing the government to adopt delegated legislation to remove this crime from the criminal code, the government did not issue such legislation within the established 18-month term.

<sup>103</sup> Italian Code of criminal procedure, Art.349.

<sup>104</sup> Italian Penal Code, Art.651.

<sup>105</sup> Italian Constitution, Art.13, emphasis added.

<sup>106</sup> Phone interview with Amnesty International, 6 October 2016.

<sup>107</sup> See also Elisa Maimone, *The EU «hotspot approach» and the relocation procedures to the (Italian) test: implementation, shortcomings and critical remarks*, 21 September 2016, <http://immigrazione.jus.unipi.it/wp-content/uploads/2016/09/Maimone-Hotspots-and-relocation-Working-Paper-3-2016.pdf>

<sup>108</sup> European Court of Human Rights, *Khlaifia and Others v. Italy*, Judgement, 1 September 2015, <http://hudoc.echr.coe.int/eng?i=001-157277>

<sup>109</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

In March 2016, the Head of the Department for civil liberties and immigration at the Ministry of Interior, Prefect Mario Morcone, told Amnesty International: “In relation to the detention in hotspots, we are overcoming the problem with a new law (decreto legge), that will be taken to the Council of Minister next week.”<sup>110</sup> However, to date no legislative measure has been adopted in this regard. The adoption of a new law, in any event, would not retroactively provide a legal basis for the deprivations of liberty occurring before it.

Despite the absence of legal grounds, the use of detention to facilitate the identification and fingerprinting of new arrivals has not only continued, but to some extent even increased as a result of the implementation of the hotspot approach. It is true that detention is now limited to the time between arrival to the hotspot and successful conclusion of the fingerprinting procedure, while individuals can freely exit and re-enter the hotspot for the remainder of their stay there – at least in the hotspot of Taranto that Amnesty International visited in May 2016. However, it is also true that under the new approach, and contrary to what happened before, police keep individuals refusing to be fingerprinted under detention for days or weeks – often with the threat of not releasing them until they accept to be fingerprinted. As the Chief of Police, Prefect Alessandro Pansa, stated before a Parliamentary Committee in January 2016, “the longer or shorter period of detention only depends on the taking of the fingerprints”.<sup>111</sup>

This happens without statutory basis, without a formal detention order, and without a judicial review or a chance to challenge the lawfulness of such detention and to seek a remedy against it, in breach of relevant obligations under international and regional human rights law.<sup>112</sup>

As indicated above, arbitrary detention in CPSA was taking place even before their transformation into hotspots, though its duration was not linked to the cooperation of the individual in the fingerprinting process, and in practice it rarely lasted over a few days. As a result of the new approach, individuals may be detained without a legal basis, without a judicial order and without access to any remedy, for as long as they refuse being fingerprinted.

A specific case was documented in a report by the Italian Senate’s Human Rights Commission:

“Currently in the centre of Contrada Imbriacola [i.e. the hotspot of Lampedusa] there are hundreds of people who refuse to be identified through fingerprinting. In particular, 184 Eritreans have been present for weeks... The same applies to some migrants coming from Oromia, a region in Ethiopia, members of an ethnic group heavily discriminated against by the central government, who refuse to be identified and don’t want to seek asylum in Italy although they cannot benefit from relocation programmes because they have a nationality not admissible to redistribution at European level.”<sup>113</sup>

In fact, a group of those people were not allowed to leave Lampedusa for several months, one of them being **Amene**,<sup>114</sup> an Oromo woman from Ethiopia Amnesty International interviewed at a later stage, in May 2016, when she was 2-month pregnant. Having fled conflict in Ethiopia, crossed the desert, and had her family to sell their home to pay a ransom to get her free when she was kidnapped by gangs in Chad, she arrived in Lampedusa in late 2015. “I spent 4 months in Lampedusa. I didn’t want to give my fingerprints, this is why I remained there so long,” she told Amnesty International, before explaining how such protracted detention broke her: “Eventually I understood I had no choice.” Another member of the group was also **Helen**,<sup>115</sup> who recounted to Amnesty International how, having arrived in Lampedusa in December 2015, she was committed not to give her fingerprints and instead join her husband already in Germany. “Five months later, when we had not given our fingerprints yet, we were transferred from Lampedusa to Sicily with a ferry”. There, she said she suffered ill-treatment in a police station, as recounted in the previous section.

Such forms of arbitrary detention do not take place in hotspots only, but also in other reception centres as well as in police stations.

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<sup>110</sup> Interview with Amnesty International, Rome, 15 March 2016.

<sup>111</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016.

<sup>112</sup> See also OHCHR, Italy’s migrant hotspot centres raise legal questions, 2 August 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/LegalQuestionsOverHotspots.aspx>

<sup>113</sup> Italian Senate, Extraordinary Committee for the protection and promotion of human rights, Rapporto sui centri di identificazione ed espulsione in Italia, February 2016, [http://www.asylumineurope.org/sites/default/files/resources/senato\\_cie\\_report\\_2016.pdf](http://www.asylumineurope.org/sites/default/files/resources/senato_cie_report_2016.pdf)

<sup>114</sup> Interviewed in Siculiana (Agrigento), on 18 May 2016.

<sup>115</sup> Interviewed in Rome on 12 May 2016.

**Moti**,<sup>116</sup> a 27-year-old man from the Oromo region, Ethiopia, told Amnesty International in August 2016 that a few weeks earlier, upon disembarkation, police took him by bus to a reception centre in Ancona. There, police started asking new arrivals to give their fingerprints. “I said ‘no’, but the police forced me and everyone else. They ordered many times, saying that if you keep saying ‘no’ you are not allowed to go outside. I was detained for three days, then I said ‘ok’, I gave my fingerprints and I was set free.” Another Oromo man from Ethiopia, 19-year-old **Asladain**,<sup>117</sup> told Amnesty International: “Inside the camp there is a place where they imprison people who don’t give their fingerprints... [When] I said ‘no’ again, they took shackles out, put them on my wrists, and took me to the prison in the camp. There I saw many other Ethiopians, they told me that... there was someone who had been there for a month. I was very stressed, my heartbeat went up, so I told the police ‘OK, I’ll give you my fingerprints’.”

Detention is widely imposed without statutory basis and without access to remedies. Protracted detention in hotspots appears all the graver if we consider that such structures are designed as centres of first assistance, and are therefore not suitable to provide adequate assistance in the medium or long term to anyone – let alone individuals in need of specific care, such as unaccompanied minors, pregnant women and torture survivors, who are detained in the hotspots together with others.<sup>118</sup> Amnesty International visited the hotspots of Lampedusa and Taranto, in March and May 2016 respectively, and the then CPSA of Pozzallo, now hotspot, in July 2015, and has noticed several systemic faults with respect to reception conditions, including for example the absence of communal areas – even of a simple table to eat at –, the fact that in one case at least refugees and migrants sleep in tents, and the widespread overcrowding. In this sense, Amnesty International is particularly concerned by the fact that unaccompanied minors, arriving in 2016 more numerous than in previous years –<sup>119</sup> have to stay in hotspots for weeks due to the lack of space in more adequate reception centres,<sup>120</sup> while not a single unaccompanied minor has benefited from relocation to any other Member State as of 28 September 2016.<sup>121</sup>

Detention without any legal basis amounts to arbitrary deprivation of liberty, which is prohibited under customary international law. This prohibition is set out explicitly in Article 9 of the Universal Declaration of Human Rights and in two key treaties to which Italy is a state party – Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and Article 5(1) of the European Convention on Human Rights. The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states’ parties compliance with that treaty, has stated that any detention in the course of proceedings for the control of immigration must, in order not to be arbitrary, be justified as reasonable, necessary and proportionate in light of the circumstances, considering relevant factors case-by-case. The UN Working Group on Arbitrary Detention has specifically identified that holding asylum-seekers, migrants or refugees in prolonged administrative custody without the possibility of administrative or judicial review amounts to arbitrary detention.<sup>122</sup>

## 2.3 WHY SOME PEOPLE REFUSE TO BE FINGERPRINTED AND WHAT SHOULD EUROPE DO

The vast majority of refugees and migrants arriving in Italy accept to be fingerprinted without any problem, either because they intend to seek asylum in Italy, because they attach little significance to the procedure, or

<sup>116</sup> Interviewed in Como on 10 August 2016.

<sup>117</sup> Interviewed in Como on 9 August 2016.

<sup>118</sup> On the detention of unaccompanied minors see Human Rights Watch, Italy: Children stuck in unsafe migrant hotspot, 23 June 2016, <https://www.hrw.org/news/2016/06/23/italy-children-stuck-unsafe-migrant-hotspot>

On the specific case of Pozzallo see Doctors Without Borders (MSF), Rapporto sulle condizioni di accoglienza nel CPSA Pozzallo, 17 November 2015, [http://archivio.medicisenzafrontiere.it/pdf/Rapporto\\_CPI\\_CPSA\\_Pozzallo\\_final.pdf](http://archivio.medicisenzafrontiere.it/pdf/Rapporto_CPI_CPSA_Pozzallo_final.pdf)

<sup>119</sup> Over 20,500 arrivals as of 27 September 2016, European Commission, Communication from the Commission to the European Parliament and the Council: Sixth report on relocation and resettlement, 28 September 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf)

<sup>120</sup> Human Rights Watch, Italy: Children stuck in unsafe migrant hotspot, 23 June 2016, and Elisa Maimone, The EU «hotspot approach» and the relocation procedures to the (Italian) test: implementation, shortcomings and critical remarks, 21 September 2016.

<sup>121</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Sixth report on relocation and resettlement, 28 September 2016.

<sup>122</sup> UN Working Group on arbitrary detention, Deliberation n.9, Report of the Working Group on Arbitrary Detention, 24 December 2012, para. 38; see also UN Human Rights Committee, General comment n.35, Article 9: Liberty and security of person, paras. 11 and 18.

because they wish to abide to orders by authorities. However, a certain number of individuals refuse to be fingerprinted, as they wish to travel onwards and seek international protection in another European country and fear being returned to Italy.

Individuals travel onwards for a variety of reasons: a significant number of people want to reunite with relatives, with friends, with communities from their country of origin. Others believe the assistance they will be provided with will be better in a country other than Italy, or that they will have better opportunities to find employment or education and be better able to integrate in countries whose language they already speak.

Under international law, asylum-seekers are under no obligation to apply for asylum in any specific country – on the contrary they have a right to seek asylum in any country. EU law, on the other hand, establishes criteria to determine which EU member country is responsible for processing asylum applications.

Aiming to ensure that one member state, and one only, is responsible for an asylum application, the EU Regulation known as Dublin III allocates this responsibility according to a hierarchy of binding criteria.<sup>123</sup> However, the implementation of the Regulation by member states has effectively placed the responsibility on the member state that played the greatest part in the applicant's entry into the territory – i.e. the country of first entry. This approach has been reinforced since the establishment of Eurodac<sup>124</sup> – the database of fingerprints of asylum-seekers – which may conclusively prove that someone entered another EU member state irregularly or already applied for asylum there.

Indeed, the effective functioning of the Dublin system turns to a large extent on the identification of asylum-seekers through the registration of their fingerprints in the Eurodac system. Thus, under Articles 9 and 14 of the Eurodac Regulation, each Member State must promptly take the fingerprints of all fingers of every foreigner of at least 14 years of age who seeks asylum in the country or is apprehended while irregularly entering the country. The Regulation makes no mention of any imposition of coercive measures for taking fingerprints, and is silent on the procedure to be used, which it simply states is to be determined in accordance with the national practice of the Member State concerned and in accordance with human rights safeguards.<sup>125</sup>

Under this system, if a person has previously been fingerprinted in Italy, then any other European country will be in a position to return that person to Italy for the processing of his or her asylum application. For this reason, individuals hoping to leave Italy to seek asylum in a different country have a strong interest in avoiding being fingerprinted by Italian authorities. This has the unintended effect of pushing asylum-seekers to avoid fingerprinting, at a time when European governments are increasingly emphasizing the importance of prompt and effective identity checks, due to heightened security concerns in Europe.

The combined consequences of the Dublin regulations and the difficulties refugees and migrants face in travelling directly to their preferred countries through regular channels, has been to trap large numbers of asylum-seekers and migrants in the few periphery EU member states, primarily Italy and Greece, that they are able to enter illegally. In an attempt to alleviate the obviously disproportionate burden this has created for Italy and Greece, European leaders decided in 2015, in the face of strong resistance from some member states, to establish an ad hoc “relocation” system for the redistribution of asylum-seekers, to share the responsibility for their processing and protection among different member states.<sup>126</sup> The setting up of hotspots in countries facing large-scale arrivals was seen by EU institutions as instrumental to the implementation of a relocation programme.

While the thinking behind the relocation programme was sound, its implementation has fallen woefully short. The potential for an efficient relocation programme to reduce irregular secondary movements within the EU and the incentives on irregular migrants to resist fingerprinting can be seen in the decline in the number of

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<sup>123</sup> However, any state party may decide to examine an asylum application under discretionary clauses even if such examination is not determined by the Dublin Regulation to be its responsibility.

<sup>124</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' (recast), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>

<sup>125</sup> Regulation (EU) No 603/2013, Article 3(5).

<sup>126</sup> European Council Decision (EU) 2015/1523, 14 September 2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_239_R_0011)

European Council Decision (EU) 2015/1601, 22 September 2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL\\_2015\\_248\\_R\\_0014](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL_2015_248_R_0014)

Eritreans refusing to be fingerprinted since the inclusion of Eritrean nationals on the list of those able to apply for relocation.<sup>127</sup>

However, the relocation programme has so far largely failed to achieve its objectives. EU member states have been extremely slow in accepting asylum seekers from Italy: only 1,196 out of a promised 34,953 people have been relocated as of 27 September 2016.<sup>128</sup> Also, relocation is only possible for a handful of nationalities —<sup>129</sup> i.e. individuals from countries with a 75% recognition rate in first instance decisions across the EU —<sup>130</sup> and does not include those most represented amongst arrivals in Italy, apart from Eritreans.

While the number of arrivals in 2016 is in line with previous years, the imposition of the hotspot approach is therefore resulting not in wider responsibility-sharing, but rather in a sharp increase in the number of people who, facing the impossibility of applying for asylum in other European countries, seek protection in Italy.<sup>131</sup> This is putting a strain on the authorities' capacity to adequately assist new arrivals.

Amnesty international has long called for a profound reform of the Dublin system to ensure fair responsibility-sharing among member states and better protection of asylum-seekers' rights, including through strengthened provisions for family reunification and the recognition of freedom of movement within Europe for people whose protection needs have been established by a Member State. Maintaining the current first country of arrival principle to determine responsibility, or even reinforcing it as under current proposals,<sup>132</sup> will continue to lead to unfairness and human rights violations. It will also continue to undermine the effective performance of legitimate identification processes: conversely, agreeing and implementing effective redistribution policies would contribute to a reduction in the number of people unwilling to be fingerprinted.

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<sup>127</sup> Phone interview with police official working in hotspot of Taranto, name withheld, 28 September 2016.

<sup>128</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Sixth report on relocation and resettlement, Annex 2: Relocations from Italy, 28 September 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\\_report\\_on\\_relocation\\_and\\_resettlement\\_annex\\_2\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_annex_2_en.pdf)

<sup>129</sup> Currently nationals of Burundi, Eritrea, Mozambique, Bahrain, Bhutan, Qatar, Syria and Yemen.

<sup>130</sup> Based on the latest available Eurostat quarterly data for decisions at first instance, as established in European Council Decision (EU) 2015/1601, 22 September 2015.

<sup>131</sup> A total of 87,893 people had requested asylum in Italy as of 7 October 2016, more than the total number for 2015, 83,970. Data: Italian Ministry of Interior, National Commission for the right to asylum, Asylum requests for 2016 (as of 7 October), on file, and Italian Ministry of Interior, Asylum data 2014-15, [http://www.interno.gov.it/sites/default/files/modulistica/riepilogo\\_dati\\_2014\\_2015.pdf](http://www.interno.gov.it/sites/default/files/modulistica/riepilogo_dati_2014_2015.pdf)

<sup>132</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council, 4 May 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin\\_reform\\_proposal\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf)



# 3. NEW SCREENING, FEWER GUARANTEES

**“Is this the Europe that says it protects human rights? Where we came to seek protection?”**

Abdallah, 20, from Sudan<sup>133</sup>

## 3.1 THE INTRODUCTION OF A NEW SCREENING UPON ARRIVAL

People attempting to cross the central Mediterranean do so for a variety of reasons, fleeing from conflict, persecution or poverty or looking for better life conditions in Europe. It is legitimate for the Italian government to assess whether each new arrival is entitled to remain in the country, because of his or her protection needs, or not. However, they should do so in full respect of human rights obligations, and while remaining mindful of the fact that the vast majority of individuals arrive having been subjected to severe abuses in the course of their journey – including, very often, arbitrary detention, torture, kidnapping and rape – and having survived extremely dangerous journeys first in the desert and then at sea.

Before the implementation of the hotspot approach, the vast majority of arrivals were automatically channelled to the asylum system, which determined whether each person was in need of international protection and had therefore the right to remain in the country. However, with the introduction of the hotspot approach, one of the priority measures requested by European Commission and governments of Italy was the early identification of “irregular migrants” with a view to expediting their deportation.

The European Agenda on Migration states, in relation to the hotspot approach, that “[t]hose claiming asylum will be immediately channelled into an asylum procedure... For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants.”<sup>134</sup>

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<sup>133</sup> Interviewed in Rome on 3 August 2016.

<sup>134</sup> European Commission, Communication from the Commission to the European Parliament and the Council: A European agenda on migration, 13 May 2015, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

This pressure on Italy has led to the enforcement of a new screening process to distinguish people “claiming asylum”, and amongst them the few who may qualify for relocation to another Member State, from others “not in need of protection”.

While these are genuinely different conditions, giving people falling in each of them different sets of entitlements, in respect of whom it is legitimate to establish distinct procedures, care must be taken to ensure that exhausted, traumatised, poorly advised or ill-informed individuals are not penalised for failing to request asylum immediately upon arrival.

Indeed, irrespective of whether a person has formally submitted a request for international protection or not, any country has a responsibility to respect the principle of non-refoulement, refraining from returning any individual to a country where they would be at real risk of serious human rights violations. The Italian government has established screening procedures that fail to do this.

Following the priorities set out in the European Agenda on Migration as well as in the Council Decisions on Relocation,<sup>135</sup> the Italian Roadmap released in September 2015 stated that in the hotspots “a first separation between people seeking asylum / potential beneficiaries of relocation, and people in irregular position, will take place”.<sup>136</sup> In the absence of any new or existing legislation or regulations, a screening process was set up by the Italian police.

Law enforcement agencies are not generally trained, nor is it their function, to distinguish between migrants and asylum-seekers, or to identify those in need of protection because they are, for example, victims of trafficking, torture survivors or unaccompanied minors.<sup>137</sup> Specific competencies are needed in order to carry out such activities, and while specialized agencies such as UNHCR, IOM and Save the Children are usually present at disembarkation places and in hotspots to support the identification and referral of relevant individuals to the police, they cannot be present in all circumstances. In any case the responsibility for any decision on their status remains with the police.

Before the hotspot approach, police authorities would conduct brief interviews in ports or centres of first assistance, asking each new arrival their full name, age and nationality and taking a picture of each. These activities were instrumental to a first registration, necessary for operational purposes – such as the early identification of family groups and unaccompanied minors. However, with the launch of the hotspot approach in summer 2015, police authorities consolidated this practice in each hotspot or port of disembarkation and, crucially, began to ask an additional question, regarding the reasons for the trip.

Amnesty International visited the hotspot of Lampedusa in March 2016. The Police Commissioner in charge of the structure at the time illustrated the procedure as follows:

“Immediately after disembarkation at the port, 55 people at each time are transferred here by bus. When they arrive they are given tea and a snack. If they arrive wet they are provided with dry clothes, and sit in groups here [in an open area just inside the gate of the centre]. Here UNHCR, IOM and Save the Children explain in various languages, to each group, the norms regarding asylum. Then in smaller groups they move into a room where they are searched, and then they move again outside under a porch where cultural mediators give them a small piece of paper, asking them to write their name, age and nationality. Then, one at a time they pass to a table, where two agents fill the “foglio-notizie” form, copying the data from the small piece of paper, and input the same data on a database. A cultural mediator asks the person why he or she has left the country of origin, and the agent ticks the [relevant] box in the “foglio-notizie”. This is signed and remains in the file, but no copy is released... They then move into the office for the photo and fingerprinting.”<sup>138</sup>

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<sup>135</sup> “Italy and Greece shall each, on 16 September 2015, present a roadmap to the Commission which shall include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of their systems in these areas, as well as measures to ensure appropriate implementation of this Decision. Italy and Greece shall fully implement this roadmap.” European Council Decision (EU) 2015/1523, 14 September 2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_2015_239_R_0011)

<sup>136</sup> Italian Ministry of Interior, Italian Roadmap, 28 September 2016, [http://www.immigrazione.biz/upload/Roadmap\\_2015.pdf](http://www.immigrazione.biz/upload/Roadmap_2015.pdf)

<sup>137</sup> OHCHR, Security at forefront as Italian island receives migrants, 18 July 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/SecurityatforefrontasItalian.aspx>

<sup>138</sup> Interview with police official, name withheld, hotspot of Lampedusa, 19 March 2016.

The information gathered with this very basic interview is noted in a form known as “foglio-notizie” as well as in an electronic database. Crucially, the answer to the question on the reason why one has left his or her country of origin is usually the only information provided by the individual on which basis police authorities establish his or her assumed “status” as asylum-seeker or irregular migrant and adopt relevant decisions, including expulsion orders, in the following hours and days. The same police official continued:

“Then different paths are followed. Those for whom the box “asylum/fleeing conflict” has been ticked, are sent to dedicated centres. For those who don’t state such intention, an order to leave the country is issued by the Questura [i.e. police head office for a province] of Agrigento and notified to them at the port [where they are transferred with a ferry from Lampedusa]... If they are nationals of countries with which there are repatriation agreements, they are repatriated.”

A circular by the Ministry of Interior dated December 2015 explained that within hotspots police should proceed, after identification and fingerprinting, “to assign to migrants an appropriate legal status”.<sup>139</sup>

The Standard Operating Procedures<sup>140</sup> adopted in March 2016 confirmed this approach, indicating that police officials and Frontex would “conduct initial screening interviews” and include information gathered in an ad hoc form, including personal data as well as, “the motivation that induced the person to leave his/her country”. The form, that was already in use at the time of the adoption of the SOPs, included this question formulated as “[r]easons to reach Italy”, followed by a range of options (detailed below). The specific role of Frontex in the screening is not precisely explained, although the SOPs indicate that their support is instrumental to the definition of the nationality of individuals, in case of doubt.

The inclusion of a question on the reasons why a person has left his or her country of origin – linked to the adoption of an official decision by the authorities on the status of the person based on that answer – has in fact transformed the initial registration process into a screening process. This has important consequences, particularly for those people who are issued an expulsion order shortly after the screening.

## 3.2 THE FLAWS OF THE NEW SCREENING

### THE WRONG TIME

The screening is undertaken as soon as individuals arrive at the hotspot, during the day or at night, or if the individuals haven’t disembarked in the proximity of a hotspot, at the port itself, just minutes after their disembarkation. This means that people are asked a question with potentially profound implications immediately after a frightening sea crossing, which sees shipwrecks kill thousands of men, women, and children every year, and, typically, after arduous months in Libya, where arbitrary detention, kidnappings, torture and rape against refugees and migrants are widespread and systematic. People interviewed by Amnesty International explained how upon arrival in Italy they were scared at the sight of a high number of police, and many were in shock or extremely weak.

**Ada,**<sup>141</sup> a 29-year-old woman from Nigeria who lost her parents when she was 10 and was then looked after by an uncle who sexually abused her for years, managed to flee to Libya in May 2015, but was kidnapped by criminal gangs there for seven months. After a fellow prisoner helped pay her ransom and onward journey, she walked many hours at night to reach the beach, where she boarded a dinghy to cross the central Mediterranean, terrified by the shouts of smugglers and the sight of an overcrowded boat. She explained to Amnesty International in May 2016:

“I don’t even know how we got here, I was crying, the Italian people rescued us... When we arrived at the port of Crotone, I saw so many police, I was scared. From there they took us by bus to another centre, where I stayed for four days. There were soldiers checking that no one escaped... I

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<sup>139</sup> Ministry of Interior, Circular n.41807, 29 December 2015, <http://www.asgi.it/banca-dati/23638/>

<sup>140</sup> Ministry of Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, March 2016, [http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots\\_sops\\_-\\_english\\_version.pdf](http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf)

<sup>141</sup> Interviewed in Bari on 15 May 2016.

was asked for name, surname, nationality... But my mind was far, I couldn't even remember the name of my parents..."

It is clear that a great many refugees and migrants have gone through the screening when they were under shock, extremely tired or unable to fully comprehend their situation and participate in an informed dialogue with the authorities. Amnesty International showed dozens of individuals who had gone through the screening a pre-printed copy of the "foglio-notizie" form, similar to the one they were supposed to have filled or at least signed, but not a single one said that they remembered having ever seen the document.

Even the Head of the Department for civil liberties and immigration at the Ministry of Interior, Prefect Mario Morcone, admitted to Amnesty International: "It's clear that a migrant who is tired or frightened may not understand..."<sup>142</sup>

Notably, in a report published in 2010 in relation to a visit to Italy the previous year, the European Committee for the Prevention of Torture reported:

"A Coast Guard Admiral responsible for a large Search and Rescue area stated to the delegation that persons surviving a sea voyage were clearly not in a condition in which they should be expected to declare their wish to apply for asylum. In particular, such persons were often dehydrated, physically and mentally exhausted and their sole preoccupation at the time of rescue was to be brought to safety."<sup>143</sup>

Newly arrived individuals should be explicitly asked whether they intend to seek asylum at different stages, including upon disembarkation. However, their initial refusal to do so should not result in a definition of their status as irregular, nor in the consequent adoption of any administrative decision against them. This should only happen after individuals have had the opportunity to rest, have received the care and assistance they need, have been screened to identify vulnerabilities, and – crucially – after they have received adequate legal information.<sup>144</sup>

## THE WRONG QUESTION

Rather than simply asking newly arrived individuals whether they intend to seek asylum – with a view to speeding up their access to the asylum procedure – police officials are required to ask individuals to explain why they have travelled to Italy – with the aim of separating individuals who may be issued expulsion orders. Police officials have the responsibility and power, not granted by any law, to decide which category the answers they receive should fall under. The categories included in the "foglio-notizie" are "job search", "rejoining family", "fleeing from poverty", "fleeing for other reasons" – none of which correspondent with a legal status under Italian law – and lastly, "to request political asylum".<sup>145</sup>

It should be noted that, under international and domestic law, refugee status is not determined by the reasons why a person has left their country of origin or entered a different one, which may be multiple and change overtime, but by the situation they would face if returned. In particular, a refugee is a person who cannot return to their own country because they would be at real risk of persecution there and their own government cannot or will not protect them. It is therefore possible for someone to state that they have left their country of origin to re-join their family, for example, and at the same time be at risk of persecution upon return.

No legal assistance is provided to individuals undergoing the screening and no independent actor or international organization is present during the screening interview, so there is little evidence on the way the procedure is handled by authorities, and few guarantees against arbitrary treatment.

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<sup>142</sup> Interview with Prefect Mario Morcone, Rome, 15 March 2016.

<sup>143</sup> Council of Europe, Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009, <http://www.cpt.coe.int/documents/ita/2010-inf-14-eng.pdf>

<sup>144</sup> Italian Senate, Extraordinary Committee for the protection and promotion of human rights, Rapporto sui centri di identificazione ed espulsione in Italia, February 2016, [http://www.asylumineurope.org/sites/default/files/resources/senato\\_cie\\_report\\_2016.pdf](http://www.asylumineurope.org/sites/default/files/resources/senato_cie_report_2016.pdf)

<sup>145</sup> Forms are designed and printed by police in each Questura (police head office for a province) and this means that slightly different versions are used in different cities. Information provided here is based on forms for which Amnesty International has obtained a copy, used by police in Siracusa and Vibo Valentia.

**Albert**,<sup>146</sup> a 25-year-old man from Ghana interviewed by Amnesty International in Lampedusa in March 2016, explained: “I was asked for name, age, nationality. A man also asked ‘What brings you here? Did you come here to work or to seek protection?’ I said “international protection”. But we were so tired, some were sick.”

According to testimonies gathered by Amnesty International, in most cases the question was posed in neutral terms (e.g. “What brings you to Italy?”). However, in other cases the police officers seem to have posed the question in ways that could trick the respondent. **Moti**,<sup>147</sup> a 27-year-old man from Ethiopia, was interviewed by the Italian police in an unspecified port in Southern Italy in July 2016: “Someone asked name, nationality, age, whether one was married or not, and they also asked a fifth question, ‘Do you like Italy or do you want to go to another country?’”

Others told Amnesty International that in some cases, particularly during the first months of implementation of the hotspot approach, police officials asked the question in misleading ways (e.g. “Did you come here to work?”) – tricking newly arrived people into confirming the officer’s assumption that they had come to Europe in order to look for work, and that therefore they should be treated as “irregular migrants”. According to local NGOs, such actions would have targeted nationals of particular countries. As Christopher Hein from the Italian Refugee Council put it in March 2016: “Now they are going by nationality, we are very worried. The police says ‘You are from Gambia? You are not a refugee...’”<sup>148</sup>

Oxfam has gathered several testimonies from people “who claimed to have received an order to leave the country despite the fact that during the screening they had explicitly stated their intention to seek asylum.”<sup>149</sup>

In the vast majority of cases, however, individuals told Amnesty International, and particularly those interviewed in mid-2016, that they did not remember being asked any question regarding the reason for their journey. This may mean that either people were clearly not in any state to answer questions, or they were not asked about the reasons of their journey at all. In both cases, they were not able to state their need to claim asylum. This raises questions regarding the basis on which the police establishes the status of the person.

Eritrean **Mohamed**,<sup>150</sup> a 25-year-old man who was rescued by an Italian coast guard vessel at the end of March 2016, was disembarked in an unknown Sicilian port after two days at sea. “The police took our fingerprints, saying that we might be lucky and get sent to other countries”, he told Amnesty International. “They didn’t ask why we came or anything.” Despite this, Mohamed was transferred to a reception centre for asylum-seekers, where he was given the opportunity to seek international protection and relocation.

Things worked out differently for **Batch**,<sup>151</sup> a 28-year-old Gambian man who arrived in Lampedusa in October 2015. “They took us to the centre, gave us coffee, asked our name, date of birth, and took a photo,” he told Amnesty International in March 2016.

“They ask ‘why did you come to Italy?’... I told them I came to Italy because my life was at risk. I didn’t explain further, nor was I asked. Then I had to sign a paper, we just sign, don’t know what that means. I have no copy, I don’t know which box was filled... We stayed in Lampedusa four days, then we were taken to Agrigento by ferry. When we arrived at the port... we were given ‘7 days papers’ [i.e. orders to leave the country within seven days].”

Batch disobeyed the order to leave the country, but found help from NGO ARCI to appeal against the order and get it provisionally suspended by a court, and then to submit an asylum application. In the meantime, he spent months without any assistance from authorities.

**Castro**,<sup>152</sup> from Sudan, was instead among many others who testified to Amnesty International that no question was posed to them about asylum upon arrival. “I arrived by boat from Libya, a big boat from

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<sup>146</sup> Interviewed in Siculiana (Agrigento) on 17 May 2016.

<sup>147</sup> Interviewed in Como on 10 August 2016.

<sup>148</sup> Interview with Christopher Hein, Italian Refugee Council, Rome, 14 March 2016.

<sup>149</sup> OXFAM, Hotspot: Rights denied, 19 May 2016, [https://www.oxfamamerica.org/static/media/files/Hotspot\\_RIGHTS\\_DENIED\\_\\_ENG.pdf](https://www.oxfamamerica.org/static/media/files/Hotspot_RIGHTS_DENIED__ENG.pdf)

<sup>150</sup> Interviewed in Siculiana (Agrigento) on 17 May 2016.

<sup>151</sup> Interviewed in Palermo on 16 March 2016.

<sup>152</sup> Interviewed in Ventimiglia on 7 July 2016.

Germany came to rescue us. They took us to the port of Bari. I was asked my name and where I was from, nothing else.”

An additional element of concern is the fact that in some cases police officials, interpreters working for the police and Frontex officials appear to challenge the nationality declared by individuals providing their personal details, indicating on the “foglio-notizie” a nationality different from what declared. This was confirmed by the Head of the Italian Police,<sup>153</sup> as well as by Frontex officials interviewed by Amnesty International.<sup>154</sup>

The same applies in relation to the age reported in the “foglio-notizie”, which may differ from that indicated by the person and lead to the identification of minors as adults. As Fausto Melluso from the Italian NGO ARCI explained to Amnesty International in Palermo: “Here we have... minors who initially were mistaken for adults, they say they gave a date of birth but a different one was written down, 1 January 1998.”<sup>155</sup>

On the basis of the officials’ assessment, after an interview lasting just a few minutes, the police can attribute to the relevant person a nationality or age different from what he or she declared – with enormous potential consequences for his or her ability to benefit from, for example, the special protection accorded to unaccompanied children or the EU relocation scheme. Amnesty International believes that personal details should be received and processed as declared, and that they should only be challenged in subsequent phases by the appropriate authorities – for example by the Territorial Commissions for Asylum in charge of the relevant status determination – unless a different provisional determination is necessary to protect the best interest of a child.

According to Italian legislation, police authorities have the responsibility to receive asylum applications, but don’t have the power to either refuse them or amend crucial elements underpinning such applications. An assessment of the veracity of the claim can only be undertaken by the Territorial Commissions for Asylum, or by the relevant court in case of appeal.

Refugees and migrants are not provided a copy of their “foglio-notizie” and have no way of challenging the inclusion in the document of information they consider inaccurate, for example in relation to their nationality or age. Moreover, those who express their intention to seek protection during the screening or at any time while within a hotspot, have no documentation of this. In fact, usually they are not allowed to submit a formal request in writing immediately (through the submission of the so-called “C3” form), but they have to wait for several weeks.

## INSUFFICIENT PROVISION OF LEGAL INFORMATION

The provision of accurate and accessible legal information is crucial for people to be able to seek asylum. Asylum-seekers need to know their rights, the different forms of protection they may be entitled to and the legal consequences of an irregular entry or stay in the country. This information should be made available to the individual, in a language he or she fully understands, before he or she is required to provide any information on any issue that may determine a decision on his or her status. The provision of information is particularly important in the context of the central Mediterranean crossings, as in Amnesty International’s experience the vast majority of people arriving to Italy lack a basic understanding of their legal status, their rights and the rules applicable to them.

However, as the screening process takes place immediately after disembarkation, with the limitations detailed in the previous section, it is clear that the time available to provide information to newly arrived people is very short.

Rescued in the central Mediterranean after attempting the crossing from Libya, 16-year-old boy **Djoka**,<sup>156</sup> from Darfur, Sudan, disembarked in a port in Sicily, before being taken to a police station nearby. “At the police station I was asked for my name, age, nationality, and what I had come to Italy to do. But they gave me no paper, nor did they explain anything about asylum.” Similarly, 19-year-old **Solomon**,<sup>157</sup> who fled

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<sup>153</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

<sup>154</sup> Interview with EU Regional Task Force (EURTF), Catania, 18 March 2016.

<sup>155</sup> Interview with Fausto Melluso, ARCI, Palermo, 16 March 2016.

<sup>156</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>157</sup> Interviewed in Siculiana (Agrigento) on 18 May 2016.

Nigeria after his 13-year-old sister was killed and his family home was burnt in an attack by Boko Haram, explained that he received no information when he arrived at the hotspot of Lampedusa. “They asked us so many questions. Why did we come there, where we are from? They wrote it... They had a form. Then they took our fingerprints. They did not inform us why.” Many others reported to Amnesty International that they had not received any or sufficient information on their situation, and Amnesty International delegates were routinely asked basic questions by people interviewed, showing their lack of understanding of their legal status and available options.

As observed by Amnesty International, information on the right to seek protection is mostly provided by UNHCR staff, while IOM and Save the Children offer information on their areas of competence – in particular to potential victims of trafficking and unaccompanied minors, respectively.<sup>158</sup> Information is provided either in ports during the disembarkation, during the bus transfer to a hotspot, or while refugees and migrants receive basic assistance and await to be screened on their arrival at a hotspot. However, these operations may proceed very quickly and involve hundreds of people, therefore IGOs only have time to provide basic information through short presentations in big groups or through the distribution of leaflets.

Such limitations became particularly evident when, in late 2015, expulsion orders started being issued to groups of individuals shortly after their disembarkation in Italy: in several cases local NGOs reported that groups of newly arrived people had been issued expulsion orders without having previously received adequate information on their right to seek asylum in Italy.<sup>159</sup> In fact, even the head of the Italian Police would admit, in January 2016, that something had gone wrong in previous weeks:

“At times, when in a weekend 10 thousand people disembarked, it is impossible to deny that there may have been confusion or an accelerating of procedures, to be able to take people away from ports, where their conditions were precarious. It may have happened, therefore, that some people weren’t adequately informed that they could present an asylum request. However, I repeat that there is always a chance to do that at a later stage.”<sup>160</sup>

The fact that information may not have been provided to a specific person or group is not recorded and does not trigger the suspension of the screening process in relation to that individual or group.

The SOPs adopted by the Italian Ministry of Interior in March 2016 state that a more in-depth exchange of information, also at the individual level, is only possible after the screening and identification process – but this is at a time when the authorities have already gathered the information on the basis of which they will shortly after attribute to the individual the status of “asylum-seeker”, followed by access to the asylum system or to the relocation process, or that of “irregular migrant”, leading to an expulsion.

IGOs, operating in hotspots and ports in virtue of agreements with the Italian government, can only count on a limited number of staff. In particular, as of 30 September 2016 UNHCR’s team covering Southern Italy counted on two field coordinators, seven legal officers and 12 interpreters to provide information.<sup>161</sup> At each disembarkation, of perhaps 700 or 1000 people, there may be one or two legal officers and one or two interpreters present. Despite their availability to engage at short notice, due to their scarce number in comparison with the number of arrivals, it is impossible for UNHCR to have individual sessions with everyone upon disembarkation, and due to the fact that there may be separate disembarkations taking place at the same time, there is no guarantee that UNHCR personnel will always be present. In fact, for logistical reasons, UNHCR is only able to be present during about 80% of disembarkations.<sup>162</sup> UNHCR staff include interpreters, but again their number is low compared with the number of arrivals and the variety of languages they speak, meaning that in many cases individuals, particularly individuals only speaking less common languages, will not be able to access information in their own language.

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<sup>158</sup> EASO offers information on the relocation process to the relatively small number of individuals who are entitled to benefit of it.

<sup>159</sup> See among others: Borderline Sicilia Onlus, Hotspot e respingimenti differiti: il modello Lampedusa, 30 December 2015, [http://www.meltingpot.org/Hotspot-e-respingimenti-differiti-il-modello-Lampedusa.html#.WAS9l\\_krK00](http://www.meltingpot.org/Hotspot-e-respingimenti-differiti-il-modello-Lampedusa.html#.WAS9l_krK00)

ARCI, Respingimenti differiti ai porti siciliani: l’ennesima fabbrica dell’irregolarità, 15 December 2015, <http://www.integrationarci.it/2015/12/15/respingimenti-differiti-ai-porti-siciliani-l-ennesima-fabbrica-dellirregolarita/>

<sup>160</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

<sup>161</sup> Phone interview with representative of UNHCR in Rome, 30 September 2016.

<sup>162</sup> Phone interview with representative of UNHCR in Rome, 30 September 2016.

It is hardly surprising therefore that Amnesty International met dozens of people who were not aware of their own legal situation, despite having been provided with some information by UNHCR.<sup>163</sup> Notably, UNHCR emphasizes that, despite their activities, the ultimate responsibility for providing information remains with the Italian state,<sup>164</sup> while Italian authorities seem to rely heavily on UNHCR for this important part of the processing.<sup>165</sup>

Furthermore, there have been instances, particularly during the identification of nationals of countries with which Italy has bilateral readmission agreements, when police restricted the access of representatives of IGOS to these groups.

The provision of information to anyone who may wish to make an application for international protection is a legal requirement and part of Italy's international obligations to ensure that individuals on its territory can exercise effectively their right to seek asylum.<sup>166</sup> The European Court of Human Rights has emphasized that the lack of access to information is a "major obstacle" in accessing asylum procedures,<sup>167</sup> and jurisprudence of the Italian Court of Cassation has established that expulsion orders should be considered void if they have been adopted without a previous provision of information, in a language understandable by the person, regarding the possibility to seek asylum.<sup>168</sup>

## **SHRINKING SPACE FOR INTERNATIONAL PROTECTION**

The flaws described above have serious consequences on the ability of individuals in need of international protection to exercise their right to seek asylum.

Mindful of these shortcomings, in early January 2016 the Head of the Department for civil liberties and immigration at the Italian Ministry of Interior, Prefect Mario Morcone, adopted a circular to remind police and other officials working in places of disembarkation of the need to ensure adequate information to newly arrived people, and a genuine opportunity to seek asylum, before adopting expulsion orders towards them.<sup>169</sup> Following the adoption of this circular, Amnesty International noticed a slight improvement in the overall situation, in particular a reduction of expulsion orders to big groups of people (for more on this see the next chapter).

However, the problems outlined above continue to hinder the ability of individuals to exercise their right to seek asylum. In fact, the SOPs – adopted two months after the publication of the circular – consolidated the practice of implementing the screening shortly after the disembarkation, hence before the individual provision of legal information.

In their rush to separate out people belonging to different categories and to issue expulsion orders against those deemed to be irregularly present on the territory, Italian authorities are imposing undue restrictions on the ability to seek asylum of individuals rescued at sea and disembarked in Italy. Amnesty International believe that upon disembarkation, rather than performing a screening, authorities should only offer the opportunity to seek asylum. This should be made available at all times, including at the disembarkation but also at later stages. Those expressing such intention should have it recorded immediately, and receive a copy of such declaration.

Instead, by introducing the screening process described in these pages, the Italian authorities have, on the encouragement of the EU, undermined the exercise of the right to claim asylum for men, women and children just arrived in Italy. In fact, shortly after the screening process individuals may be issued expulsion orders – including through forced repatriation to their country of origin – that may expose them to grave human rights violations. This is the subject of the next chapter.

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<sup>163</sup> See also Italian Senate, Extraordinary Committee for the protection and promotion of human rights, Rapporto sui centri di identificazione ed espulsione in Italia, February 2016, [http://www.asylumineurope.org/sites/default/files/resources/senato\\_cie\\_report\\_2016.pdf](http://www.asylumineurope.org/sites/default/files/resources/senato_cie_report_2016.pdf)

<sup>164</sup> Phone interview with representative of UNHCR in Rome, 30 September 2016.

<sup>165</sup> Interview with Prefect Mario Morcone, Rome, 15 March.

<sup>166</sup> See inter alia, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Article 8 and Whereas 26.

<sup>167</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Judgement, 21 January 2011, <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-103050&filename=001-103050.pdf&TID=nubefaxeeep>

<sup>168</sup> Court of Cassation, Section.VI, Ord. n.5926, 25 March 2015.

<sup>169</sup> Ministry of Interior, Circular, 8 January 2016, [http://www.asgi.it/wp-content/uploads/2016/01/2016\\_Ministero\\_Interno\\_accesso\\_asilo\\_garanzie\\_modalita.pdf](http://www.asgi.it/wp-content/uploads/2016/01/2016_Ministero_Interno_accesso_asilo_garanzie_modalita.pdf)



# 4. EXPULSIONS AT ANY COST

**“Now I am afraid if the police is searching for me or if they find me, I don’t know what will happen to me and what to do”**

Yaqoub, 23, from Darfur, returned to Sudan on 24 August 2016

As we have seen in the previous chapter, the screening process is designed to separate each newly arrived person into one of two groups: “asylum-seekers” (and amongst them, those who can be relocated to another European country), and people considered “not in need of international protection”. After the screening, people recognized as asylum-seekers are transferred to dedicated reception centres across the country and channelled into a status determination process that will ultimately determine whether they are entitled to international protection or not. The others, believed to be irregularly present on the territory, are instead issued expulsion orders, usually within days, if not hours. These come in different types, under Italian legislation, but two specific types have been widely used by authorities in recent months: orders to leave the country to be executed autonomously by the individual within seven days (which are deferred rejection orders); and expulsion orders with forcible repatriation.

As in other areas, EU institutions and governments have put considerable pressure on Italy to step up the speed and number of expulsions. Indeed, the EU sponsored hotspot approach is very much complemented by the emphasis that the EU, but also member states, including Italy itself, is placing on securing the cooperation of third countries with the EU’s migration management priorities.<sup>170</sup>

## 4.1 ORDERS TO LEAVE THE COUNTRY

In the first few months of the implementation of the hotspot approach, thousands of people, who had just been disembarked in Italy after their rescue at sea, were issued orders to leave the country within seven days (deferred rejection orders) by Head Commissioners of the Police in different provinces. These became so common, that refugees and migrants started referring to them as “7 days” papers.

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<sup>170</sup> European Commission, Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, 7 June 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication\\_external\\_aspects\\_eam\\_towards\\_new\\_migration\\_ompact\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf)

In many cases, particularly between October 2015 and January 2016, orders to leave the country were adopted against dozens, and sometimes hundreds, of people at a time. Typically, people were handed such documents and then abandoned in front of train stations or even in remote, rural areas, without any form of assistance. Cases of this kind have been reported in several cities, including Agrigento (particularly in relation to arrivals from Lampedusa), Pozzallo, Siracusa, Trapani and Taranto.

**Batch**,<sup>171</sup> who told police he had come to Italy because his life was at risk in Gambia, nonetheless received an order to leave the country within seven days, immediately after police transferred him from Lampedusa to Agrigento:

“They gave it without explaining, we read it. They took us by bus to the train station, then they said ‘go’, and left. We stayed there, a man told us to call the police. We called and they advised us to go to Palermo. We were just asking for a place where to sleep, they told us to sleep at the train station. The following day, I arrived to Palermo... We appealed against the expulsion order, which was suspended by a judge. So in late January I went to the police station to seek asylum, but they gave me an appointment for 25 March”.

These practices were heavily criticized for a number of reasons.<sup>172</sup> In particular, given the inadequate provision of information and the other flaws in the screening process, it was feared that expulsion orders were being issued without an adequate assessment of individual circumstances, in violation of the prohibition of collective expulsions. NGOs also reported complaints from people claiming to have received an expulsion order despite explicitly stating their intention to seek asylum during their initial screening.<sup>173</sup> Furthermore, the abandonment of groups of destitute people, sometimes including people in need of special care such as pregnant women and unaccompanied minors, was incompatible with Italy’s obligation to fulfil the economic and social rights of all within its territory, including, undocumented migrants.<sup>174</sup> The situation created humanitarian emergencies that required the prompt intervention of local charities, but also generated public order concerns.<sup>175</sup>

As mentioned in the previous chapter, criticism by NGOs prompted the Head of the Department for civil liberties and immigration at the Ministry of Interior, Prefect Mario Morcone, to adopt a circular, in January 2016, reminding local prefects and police officials of their duties, particularly in relation to the provision of information and the need to assess the individual situation of each person before adopting any expulsion order against someone.<sup>176</sup> The circular certainly had an impact in reducing mass expulsion orders. However, orders of this kind continue to be adopted, and Amnesty International has seen copies of such documents as recently as July and August 2016, including among individuals stuck in the towns of Como and Ventimiglia, at the border with Switzerland and France respectively. In many cases, people subject to them are individuals who decided not to seek asylum in Italy – not because they do not have a strong claim to protection – but in the hope of reaching another European country where they have relatives or believe they have a better chance of prospering.

Orders to leave the country require the individual to leave Italy by their own means but they are overwhelmingly unfulfilled. Even the Head of Police admitted that the majority of those receiving such orders remain in Italy.<sup>177</sup> In fact, even if they wanted to comply with the order, this would be extremely complicated,

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<sup>171</sup> Interviewed in Palermo on 16 March 2016.

<sup>172</sup> See among others: Tavolo Asilo, Hotspot, luoghi di illegalità, 1 March 2016, <http://www.cir-onlus.org/it/comunicazione/news-cir/51-ultime-news-2016/2001-tavolo-asilo-hotspot-luoghi-di-illegalita>

Doctors Without Borders (MSF), Espulsioni a Pozzallo: Aspettiamo un chiarimento dalle autorità competenti, 16 October 2015, <http://www.medicisenzafrontiere.it/notizie/news/espulsioni-pozzallo-aspettiamo-un-chiarimento-dalle-autorit%C3%A0-competenti>  
OXFAM, Hotspot: Rights denied, 19 May 2016, [https://www.oxfamamerica.org/static/media/files/Hotspot\\_RIGHTS\\_DENIED\\_\\_ENG.pdf](https://www.oxfamamerica.org/static/media/files/Hotspot_RIGHTS_DENIED__ENG.pdf)

<sup>173</sup> Tavolo Asilo, Hotspot, luoghi di illegalità, 1 March 2016.

<sup>174</sup> Doctors Without Borders (MSF), Espulsioni a Pozzallo: Aspettiamo un chiarimento dalle autorità competenti, 16 October 2015.

<sup>175</sup> Authoritative doctrine has also questioned the constitutionality of orders to leave the country, see: Senate Commission on Constitutional Affairs, Hearing of Paolo Bonetti and Lorenzo Trucco (ASGI), 9 February 2016,

[https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=00964469&part=doc\\_dc&parse=no](https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=00964469&part=doc_dc&parse=no)

ASGI, Respingimenti, 14 September 2009, <http://www.asgi.it/wp-content/uploads/public/scheda.pratica.respingimenti.romanotto.bonetti.agg.14.settembre.2009.pdf>

<sup>176</sup> Ministry of Interior, Circular, 8 January 2016, [http://www.asgi.it/wp-content/uploads/2016/01/2016\\_Ministero\\_Interno\\_accesso\\_asilo\\_garanzie\\_modalita.pdf](http://www.asgi.it/wp-content/uploads/2016/01/2016_Ministero_Interno_accesso_asilo_garanzie_modalita.pdf)

<sup>177</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

as individuals subject to them usually have neither the money to buy a flight ticket, nor the documents to be able to cross any border.

#### **KHIDER, 30, FROM SUDAN<sup>178</sup>**

They let us go, saying that if any police had stopped us during the next seven days, we should show that document, but also that after seven days we should disappear. We asked “How?”, they said that if we had managed to arrive to Italy, then somehow we could find a way to go away... Now I want to go anywhere, there is no way I can remain in Italy, where they treated me like rubbish. I want to go to a place where they understand me if I speak English. I don’t understand how they can use my ignorance against me, if you give me a document that has an effect on me, you should explain it.

Individuals who receive an order to leave the country are entitled to submit an appeal against it and to apply for international protection, if they so wish, and in fact Amnesty International is aware that dozens have done so. In many cases, courts provisionally suspended the effects of the orders to leave the country pending a decision on the merits regarding the lawfulness of such orders. However, several problems emerged: first, persons were only effectively able to challenge decisions regarding them when they found NGOs and lawyers ready to assist them; second, in many cases expulsion orders included inaccurate or incomplete information, for example indicating that they could be appealed before a tribunal different from the one actually competent on the matter; third, in many cases individuals had to wait for a decision on the suspension of their expulsion order before being able to formally submit an asylum application; finally, even individuals who managed to get their expulsion order suspended and to apply for asylum were left without any assistance (including food and shelter, to which asylum-seekers are entitled) for several months.<sup>179</sup>

Due to these difficulties, only a few of the many thousands who receive expulsion orders ever challenge them. The overwhelming majority simply leave the city where they received the order. People receiving such orders are therefore forced into a grey area, where they remain physically in the country but are undocumented and unable to receive any form of assistance. This makes them extremely vulnerable to various forms of exploitation.<sup>180</sup>

## **4.2 REPATRIATION ORDERS WITH FORCIBLE ACCOMPANIMENT TO THE BORDER**

As orders to leave the country often remain unfulfilled, European governments have for a number of years tried to establish bilateral readmission agreements with countries of origin, to ease the forcible repatriation of individuals considered to be irregularly present on the territory. Over the years, Italy has negotiated bilateral readmission agreements with many countries, including Egypt, Tunisia, Morocco and Nigeria.

On the basis of these agreements, few of which have ever been published,<sup>181</sup> thousands of nationals of those countries have been repatriated during the past few years. According to police authorities, nationals of some of these countries typically do not ask for protection, and those who do are granted an opportunity to access relevant procedures. However, expulsion orders against nationals of these countries have been issued, typically, only a few hours or days after their disembarkation in Italy – with the European Commission noting

<sup>178</sup> Interviewed in Ventimiglia on 8 July 2016.

<sup>179</sup> Interview with Fausto Melluso, ARCI, Palermo, 16 March 2016.

<sup>180</sup> On the rise of exploitation in Italy see among others: IOM, Per contrastare lo sfruttamento lavorativo dei migranti occorre una presa di posizione forte da parte della grande distribuzione, delle aziende di trasformazione e delle organizzazioni di produttori, 2 May 2016, [http://www.italy.iom.int/index.php?option=com\\_content&task=view&id=357&Itemid=90](http://www.italy.iom.int/index.php?option=com_content&task=view&id=357&Itemid=90)

Save the children, Piccoli schiavi invisibili: Dossier sullo sfruttamento dei minori stranieri in Italia, 4 July 2016, <https://www.savethechildren.it/cosa-facciamo/pubblicazioni/piccoli-schiavi-invisibili>

Fabrizio Gatti, Apocalisse in Puglia, un pezzo del Paese oltre ogni umanità, L'Espresso, 22 August 2016,

<http://espresso.repubblica.it/inchieste/2016/08/18/news/apocalisse-in-puglia-un-pezzo-del-paese-oltre-ogni-umanita-1.280688?ref=HRBZ-1>

<sup>181</sup> The text of the agreement with Egypt is available at the link <https://therightsangle.wordpress.com/2014/03/19/the-2007-italy-egypt-readmission-agreement-in-english-and-italian/>

that such agreements allow for a “48 hour return procedure”.<sup>182</sup> This has raised serious doubts as to whether those people were given adequate information regarding their status and rights and a genuine opportunity to seek asylum.

As stated in October 2015 by Italian NGO ASGI:

“It is known that during the past year a great number of Egyptian and Tunisian nationals disembarked in Sicily were forcibly repatriated immediately after their arrival, having gone through an interview with the police, through an interpreter, from which it emerged that the person did not intend to seek international protection but had arrived in Italy exclusively for economic reasons. The interview took place without the presence of a lawyer or other independent oversight body. It seems almost incredible that none of those foreigners wished to claim international protection, while it may be reasonable to believe that police forces may have induced the foreigner to be misinterpreted.”<sup>183</sup>

These concerns seem all the more relevant at present, as the introduction of the hotspot approach has consolidated this system. Nationals of countries having bilateral readmissions agreements with Italy pass through hotspots as much as others do, but through the screening process are singled out for forcible expulsion. This can be enforced through their direct transfer to the airport within a couple of days, if charter flights have been scheduled, or through their provisional detention in centres for identification and expulsion (CIEs) if more time is needed.

However, the number of forcible repatriations has long been considered insufficient by other governments and European institutions, who have pushed Italy to set up a system allowing more forcible repatriations. In its progress report on the implementation of the hotspots in Italy, the European Commission recommended *inter alia*: “The Italian authorities need to strengthen their dialogue with the main countries of origin of irregular migrants and streamline their administrative procedures in order to guarantee swift forced returns.”<sup>184</sup>

This is also increasingly seen as necessary by the Italian government itself, particularly because the hotspot approach – with the fingerprinting of virtually all arrivals and measures adopted to avoid their irregular movement to other European countries – is resulting in a growing number of refugees and migrants needing assistance in Italy.

The main response to such calls has been the introduction of a new kind of readmission agreement, negotiated directly between the Italian police and their counterparts in other countries. As the Central Director for immigration and border police at the Ministry of Interior, Prefect Giovanni Pinto, put it during a hearing in Parliament: “We are proposing ‘light’ agreements, as I would define them. They are cooperation agreements on identification and repatriation without the tinsels that readmission agreements usually have, which imply limitations of various types.”

Amnesty International fears that the “limitations” that these “light” agreements now eliminate include procedures designed to guarantee the protection of the human rights of the person under expulsion. This concern is compounded by the fact that these readmission agreements are not being submitted to Parliament for approval, raising doubts as to their compatibility with the Italian Constitution.<sup>185</sup> Agreements of this kind are currently being negotiated with different African countries, and two have been concluded already, with Gambia and, more recently, Sudan.

## THE REPATRIATION OF SUDANESE NATIONALS

A new Memorandum of Understanding was signed by the Italian and Sudanese police authorities, in Rome, on 3 August 2016. The agreement deepens the cooperation between the two countries in relation to the

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<sup>182</sup> European Commission, Progress Report on the Implementation of the hotspots in Italy, 15 December 2015, [http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528-01aa75ed71a1.0011.03/DOC\\_1&format=HTML&lang=EN&parentUrn=CELEX:52015DC0679](http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528-01aa75ed71a1.0011.03/DOC_1&format=HTML&lang=EN&parentUrn=CELEX:52015DC0679)

<sup>183</sup> ASGI, *Garantire i diritti degli stranieri soccorsi in mare e sbarcati*, 21 October 2015, [http://www.meltingpot.org/IMG/pdf/2015\\_documento-asgi-hot-spot-road-map-21-ottobre-def.pdf](http://www.meltingpot.org/IMG/pdf/2015_documento-asgi-hot-spot-road-map-21-ottobre-def.pdf)

<sup>184</sup> European Commission, Progress Report on the Implementation of the hotspots in Italy, 15 December 2015.

<sup>185</sup> According to Art. 80 of the Italian Constitution, “Parliament shall authorize by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation.”

management of migrant flows and borders, with articles specifically devoted to the repatriation of citizens irregularly residing on respective territories.<sup>186</sup>

The Italian government did not disclose the text of the agreement upon its adoption, however in early October 2016 MPs obtained a copy from the Italian police and had it published.<sup>187</sup> The agreement includes several provisions on cooperation on border management and returns. It includes the offer of training and equipment for the Sudanese Police. For their part, the Sudanese authorities commit to assisting the determination of the nationality of persons Italy wishes to return to Sudan, confirming their identity and immediately issuing a laissez-passer to allow their quick repatriation. Upon request by the Italian police, Sudanese authorities in Italy, operating not only in consular offices but also in ports, police stations and detention centres, immediately proceed to the identification by means of an interview, with the explicit exclusion of any further investigation into the person's identity. In fact, the agreement explicitly states that a more thorough inquiry to establish the returnee's identity and nationality is only to be conducted in Khartoum, once the person is returned there. What is more, in urgent cases the whole identification process is to take place in Sudan.

The agreement does not permit the return of someone who has requested asylum in Italy. However it provides for an identification process that is so superficial that it should be expected to lead to the rapid transfer to Sudan of individuals who, though not having submitted a request for asylum in Italy, nonetheless risk facing severe human rights violations if returned to Sudan.

In application of the agreement, on 24 August 2016 a group of 40 people identified as Sudanese nationals were repatriated from Italy to Sudan. They departed on an EgyptAir flight from Turin at around 13:00 and arrived in Sudan's capital Khartoum at around 22:00 the same day. Amnesty International understands that the flight was financed by Frontex.

Amnesty International spoke to two Sudanese men from Darfur who were part of the group repatriated on 24 August. Having fled Darfur fearing for his life after surviving three attacks by armed militia (Janjaweed), and taken a boat in Egypt, **Yaqoub**,<sup>188</sup> a 23-year-old man, was rescued at sea and disembarked in Sicily on 18 August 2016. He later moved to Ventimiglia in the hope to get access to France and then the UK, where he has a cousin and where he hoped to be able to seek asylum. However, as he recounted to Amnesty International, his plans were abruptly interrupted when he got detained by Italian police in Ventimiglia, on 21 August. This is what Yaqoub told Amnesty International:

"I was going to the supermarket to buy a mobile card, then the police arrested me and other four Sudanese who were also on the street. The police asked us about our nationality, when they found that we were Sudanese they shackled us and took us to a police station. There were other refugees from different countries, but they were looking for Sudanese nationals only... The next day... the police took us to the court... The judge asked me to tell the lawyer what I wanted, and I told the Egyptian translator that I didn't want to go back to Sudan, as I am from Darfur. The judge said that I should go back to my country. It was very quick, I think they just wanted to deport us. No one gave me any document or told me the decision of the judge, or that I could appeal the decision. They immediately took us to the two Sudanese from the embassy, they wrote down our names, and then back to the police station. We were around seven Sudanese... We spent that night at the same police station... The next day, early morning at around 6am the police took us to Turin airport by bus, we were shackled and accompanied by Italian police until they boarded us into an Egypt airlines plane. Inside the plane we found other Sudanese deportees, around 40 - about 15 from Darfur and the rest from different regions in Sudan. There were Italian police accompanying us in the flight, which stopped in Cairo airport for a while and then continued its route to Khartoum. We arrived at Khartoum airport on 24 August at around 10pm. At the flight door there were security officers, in plain clothes, who received us. They took us to a special area in the airport, they started

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<sup>186</sup> Sudan, Italy sign MoU to stem crime and irregular migration, 4 August 2016, <http://www.sudantribune.com/spip.php?article59832>  
Firmato memorandum di intesa tra Italia e Sudan su migrazione, 5 August 2016, <http://www.stranieriinitalia.it/attualita/attualita/attualita-sp-754/firmato-memorandum-di-intesa-tra-italia-e-sudan-su-migrazione.html>

<sup>187</sup> Memorandum d'intesa tra il Dipartimento della pubblica sicurezza del Ministero dell'Interno Italiano e la Polizia nazionale del Ministero dell'Interno Sudanese per la lotta alla criminalità, gestione delle frontiere e dei flussi migratori ed in materia di rimpatrio, Rome, 3 August 2016, [http://www.asgi.it/wp-content/uploads/2016/10/accordo-polizia-Italia-Sudan\\_rev.pdf](http://www.asgi.it/wp-content/uploads/2016/10/accordo-polizia-Italia-Sudan_rev.pdf)

<sup>188</sup> Interviewed by phone on 27 and 29 August 2016.

beating us... We were interrogated one by one... They asked me why I wanted to leave the country, who were the people who assisted me to travel... Now I am afraid if the security is searching for me or if they find me, I don't know what will happen to me and what to do."

Another member of the group, **Haroun**, was interviewed by Amnesty International in October 2016.<sup>189</sup> Haroun did not confirm allegations regarding ill-treatment and detention by the National Intelligence and Security Service (NISS), whose treatment he considered reasonable. However, he stated that he was interrogated by them upon arrival in Khartoum: "The national security agents received us at the airport. They interrogated me, they asked about personal details such as name, age, tribe, region, and why I travelled to Italy. They also took my fingerprints and made me sign some papers... I think they have some background information about us, as it appears they know about our case."

Amnesty International considers that individuals returned to Sudan, particularly if they are from regions in conflict such as Darfur, are exposed to the risk of abuses by security services upon repatriation. NISS officials have often been responsible for serious human rights violations, including arbitrary detention and torture and other forms of ill-treatment, and it appears that other people who were also returned to Sudan from other countries were subjected to such violations. In January 2016, Amnesty International interviewed 12 Sudanese individuals, mostly from Darfur, who had been repatriated from Jordan the previous month: they alleged that upon return, they were arrested by officials from the NISS, interrogated about their tribal affiliation, accused of being "rebels" who "defamed Sudan's reputation", and beaten and tortured.

Italian authorities did not provide Amnesty International with any information on the repatriation of 24 August 2016. In a letter to the Italian magazine *L'Espresso*, dated 12 September 2016, the Central Director for immigration and border police at the Ministry of Interior, Prefect Giovanni Pinto, explained that each person had been returned on the basis of an individual expulsion order, after a "case-by-case evaluation", validated by a judge.<sup>190</sup> However, Amnesty International understands that individuals to be deported were identified only shortly before the repatriation. At least some of them – including **Yaqoub** – would have been detained in Ventimiglia just 48 hours earlier – and during that time they were registered by Sudanese consular authorities and issued expulsion orders by the Prefect of Imperia and orders for their accompaniment to the border by the Head Commissioner of the Police of Imperia, approved by the Justice of the Peace of Imperia shortly before the airplane took off. Others would have been transferred to Turin by the police after receiving expulsion orders in Taranto.

Furthermore, in his letter Prefect Giovanni Pinto stated that "[t]he Republic of Sudan is not to be deemed a country to which to apply Art.19.1 of Legislative Decree 286/1998." That article transposes into Italian legislation the principle of non-refoulement, prohibiting the expulsion of anyone "to a state where the foreigner may be subject to persecution on grounds of race, gender, language, nationality, religion, political opinions, personal or social conditions, or from where may risk being transferred to another state where he or she would not be protected against persecution".<sup>191</sup> Such statement by a high official of the Italian Ministry of Interior is deeply troubling, for two reasons at least.

On the one hand, the human rights situation in Sudan continues to be of serious concern, as summarized in the box on the next page. In view of the conflicts and grave human rights abuses in Sudan, Amnesty International considers that Sudanese from conflict-affected areas such as Darfur, South Kordofan and Blue Nile States should not be sent back to Sudan, where they would be at real risk of serious human rights violations. People coming from other areas of Sudan, accused of being opposition or anyway at risk of serious human rights violations for other reasons, must not be sent back to Sudan either.

The human rights situation in Sudan is such that even the European External Action Service, while suggesting measures suitable to promote the effective cooperation of the Sudanese government on returns and readmissions, such as lobbying for the easing of US sanctions against Sudan, also warned in a confidential document that "[t]he EU should carefully consider its reputational risks in its engagement with

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<sup>189</sup> Phone interview, 21 October 2016.

<sup>190</sup> Nessuna procedura sommaria per i sudanesi, Giovanni Pinto, *L'Espresso*, 12 September 2016, <http://precisoche.blogautore.espresso.repubblica.it/2016/09/12/nessuna-procedura-sommatoria-per-i-sudanesi/>

<sup>191</sup> Legislative Decree n.286, 25 July 1998, Article 19.

Sudan (ICC indictees in the country, ongoing violent conflicts, lack of political space and widespread human rights violations, US sanctions due to Sudan's status as a “state sponsor of terrorism”).”<sup>192</sup>

On the other hand, it must be emphasized that the principle of non-refoulement – as described in detail in the next section – applies to every country and protects every individual, whatever their country of origin. No country can be considered safe for repatriation in general, without an individualized assessment of the risks the person to be repatriated would face upon return.

### **WIDESPREAD AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS IN SUDAN**

The Sudanese President Omar al-Bashir is wanted by the International Criminal Court (ICC) on charges of genocide, war crimes and crimes against humanity allegedly committed in Darfur from 2003 to 2008. Armed conflicts persist in Darfur, Blue Nile and South Kordofan, with devastating impacts on civilians across Sudan, ranging from loss of life to denial of humanitarian assistance and lack of access to basic social services such as education and health care. Conflicts continue to cause mass displacement and civilian casualties, and human rights abuses have been perpetrated by all parties to these conflicts.

Evidence gathered by Amnesty International indicates that, during the first eight months of 2016, Sudanese government forces committed at least 30 likely chemical attacks against civilians, including very young children, in Darfur. The most recent was on 9 September 2016.<sup>193</sup>

In January 2015, the Sudanese Parliament approved controversial amendments to the 2005 National Interim Constitution. These increased the powers of the National Intelligence and Security Service (NISS) and granted the President greater powers to appoint and remove senior officials, including state governors and other senior constitutional, judicial, military, police and security posts. The police and NISS agents routinely repress freedom of expression, association and assembly, for example by shutting down civil society organizations and preventing opposition political parties from organizing public events.

The NISS maintains broad powers of arrest and detention under the National Security Act 2010, which allows suspects to be detained for up to four-and-a-half months without judicial review. NISS officials often use these powers to arbitrarily arrest and detain individuals, and to subject them to torture and other forms of ill-treatment. Under the same Act, NISS agents are provided with protection from prosecution for any act committed in the course of their work, which has resulted in a pervasive culture of impunity.<sup>194</sup>

Amnesty International considers that people coming from conflict areas such as Blue Nile, South Kordofan and Darfur are at particular risk of persecution in Sudan.<sup>195</sup>

## **4.3 VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT**

The adoption of a bilateral agreement with Sudan and the expulsion of 24 August give reason for concern. Asked about UNHCR views on this matter, a spokesperson for the organization stated “UNHCR is worried by the adoption of a readmission agreement between Italy and Sudan and has officially requested the Italian authorities to provide clarifications and reassurances about the events of 24 August”.<sup>196</sup>

<sup>192</sup> European Commission and European External Action Service (EEAS), Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Sudan, 17 March 2016, <http://statewatch.org/news/2016/mar/eu-com-eeas-readmission-sudan-7203-16.pdf>

See also <http://www.spiegel.de/international/world/eu-to-work-with-despot-in-sudan-to-keep-refugees-out-a-1092328.html>

<sup>193</sup> Amnesty International, Sudan: Credible evidence of the use of chemical weapons to kill and maim hundreds of civilians including children in Darfur revealed, 29 September 2016, <https://www.amnesty.org/en/latest/news/2016/09/sudan-credible-evidence-chemical-weapons-darfur-revealed/>

<sup>194</sup> See for example: Amnesty International, Ten civil society activists harassed by NISS, 17 March 2016, <https://www.amnesty.org.uk/sites/default/files/ua05816.pdf>

<sup>195</sup> For further information see: <https://www.amnesty.org/en/countries/africa/sudan/>

<sup>196</sup> Phone interview with representative of UNHCR in Rome, 30 September 2016.

Speaking with journalists about the repatriation, the Minister of Interior, Angelino Alfano, responded to a question regarding its lawfulness: “The repatriation of the 40 Sudanese was realized fully in line with a police agreement between our countries...”<sup>197</sup>

With that, the Minister did not provide any grounds to support the lawfulness of the expulsion. Indeed whether any expulsion is implemented in line with any bilateral agreement between police forces is irrelevant to its compliance with international law. Italy is bound by obligations under international law that must be abided to at all times, including the principle of non-refoulement. In fact, under international law expulsion orders cannot be issued without an individualized assessment that the person will not be at real risk of serious human rights violations upon return.

The principle of non-refoulement is the cornerstone of refugee law, enshrined in customary international law and codified in different international treaties, including the 1951 Refugee Convention (Article 33) and the Convention against torture (Article 3). Under this principle, all states are prohibited from sending anyone to a country where they would be at risk of serious human rights violations. States must scrupulously observe the principle of non-refoulement, and not forcibly return any person, in any manner whatsoever, to territories where they may face serious human rights violations. As enshrined in Article 19.2 of the Charter of Fundamental Rights of the European Union, the principle of non-refoulement must be observed in respect of anyone in removal, expulsion or extradition procedures, irrespective of whether a person has been formally recognized refugee status or has formally submitted a request for international protection.

Collective expulsions, without an individualized assessment of personal circumstances, are also prohibited by Article 4 of Protocol 4 to the European Convention of Human Rights and Article 19.1 of the Charter of Fundamental Rights of the European Union. Both substantive and procedural safeguards must be put in place by States Parties in order to comply with these obligations. These include laws and procedures to be in place and to be enforced at all times to ensure that the individual circumstances of any individual subject to an expulsion are taken into account.

Amnesty International is deeply concerned that the procedures applied by Italian authorities to issue expulsion orders, described in the previous sections, were not in line with international law, including European human rights law, and that they may have therefore breached the principle of non-refoulement and the prohibition of collective expulsions.

Amnesty International considers that expulsion orders were adopted in a rush, without ensuring an accurate assessment of the individual circumstances of each person. The Memorandum of Understanding between Italy and Sudan provides for an identification process that is summary and mostly limited at the establishment of an individual's nationality. By its own admission, the procedure detailed in the Memorandum cannot even guarantee the correct determination of a person's identity – in a process externalized to a government whose human rights and humanitarian law violations are at the roots of the displacement of millions of Sudanese people.

In this context, it is extremely hard to imagine that – unable to simply confirm one's identity – the Italian government may be able to conduct a thorough assessment of the risks a person would face upon repatriation, particularly as relevant procedures are carried out in a few hours despite involving tens of people to be returned. Moreover, the provision to Sudanese officials of access to the ports and police offices where newly arrived people are supposed to have a chance to seek asylum represents a violation of the confidentiality obligations pending on Italy, and may deter individuals wishing to seek asylum from seeking protection, in view of the consequences they or their families may face once their identity is disclosed to the Sudanese government. Amnesty International is therefore concerned that the implementation of the Memorandum is likely to result in violations of the principle of non-refoulement.

Amnesty International has reviewed the documents regarding the expulsion of one of the 40 Sudanese nationals returned to Khartoum on 24 August 2016, including the expulsion order by the Prefect of Imperia, the order to execute the expulsion through accompaniment at the border by the Head Commissioner of the Police of Imperia, and its validation by the Justice of the Peace of Imperia. While the documents explicitly

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<sup>197</sup> Il Fatto Quotidiano, video interview with the Minister of Interior, Angelino Alfano, 3 September 2016, <http://tv.iffattoquotidiano.it/2016/09/03/migranti-alfano-riabilita-i-rimpatri-collettivi-tutto-regolare-anzi-calchero-la-mano/556944>  
See also a relevant interview with the Head of the Italian Police, Franco Gabrielli, in L'Avvenire, *Migranti rimpatriati in Sudan, «tutto regolare»*, 28 September 2016, <http://www.avvenire.it/cronaca/pagine/migranti-rimpatriati-in-sudan-gabrielli.aspx>



mention the fact that the person decided not to seek asylum in Italy, as he intended to do so in another country, the documents do not include any information on any inquiry conducted by Italian authorities with respect to, for example, the individual's place of origin within Sudan, his membership of a particular ethnic, religious, political or other group, or any other element relevant to determine his personal circumstances and risk of human rights violations upon return to Sudan.

Similar arguments apply to other expulsion orders and orders to leave the country.<sup>198</sup> Documents of which Amnesty International has seen copies, include generic sentences such as "it was established that the person was not in need of international protection, as foreseen by art.10 c.4, D.L. 286/98". However, such orders did not report any information on the actual presence of elements underpinning such conclusion, nor of the procedures followed to reach it. Relevant sentences are so generic that in fact one could believe that they may be already present in forms to be filled each time; whether this may be the case or not, however, is in fact irrelevant. In the absence of such individualized assessment, expulsion orders should be considered not motivated, and therefore unlawful.

In relation to the expulsion on 24 August, Amnesty International is also concerned by reports according to which the police may have carried out the expulsion of some individuals without presenting the relevant orders for validation by the Justice of the Peace. Barrister Alessandra Ballerini, representing some of those returned, told Amnesty International: "I formally requested the registrar of the Justice of the Peace of Imperia to give me access to the documents regarding all my clients. Shockingly, in relation to some of them they told me that there was no trace of any validation by the judge in their archive."<sup>199</sup>

In recent years, Italy has already been found to have forcibly returned individuals potentially in need of international protection and exposing them to the risk of being subjected to ill-treatment in another country. In the latest case, *Khlaifia and Others v. Italy*, the European Court of Human Rights found that the applicants had suffered a collective expulsion (among other violations), as the order for their repatriation to Tunisia did not refer to their personal situation.<sup>200</sup> Although over one year has passed since the adoption of that judgement, Amnesty International is not aware of any measures adopted by the Italian government to amend legislation, procedures and practices related to expulsions, to bring them in line with the substantive and procedural safeguards imposed by international and European human rights law.

Questioned about the regularity of such expulsion orders, Italian authorities have repeatedly emphasized that individuals issued expulsion orders have anyway a chance to seek asylum for as long as they are in Italy, including after the adoption of an expulsion order and "while they are boarding the airplane that will bring them back to their country".<sup>201</sup> Representatives of EU institutions interviewed by Amnesty International have also offered similar explanations.<sup>202</sup> However, the issuing of an expulsion order can indeed represent a serious obstacle to seeking asylum as the ability to do so is contingent upon the provision of legal advice and representation to effectively challenge the adverse decision.

First of all, it must be noted that individuals who would run a risk of serious human rights violations upon return cannot be returned, in application of the non-refoulement principle, and this is not in any way dependent on whether the person expresses an intention to seek asylum or not. As Italy was reminded by the European Committee for the Prevention of Torture in 2010: "In any event, the absence of an explicit request for asylum does not necessarily absolve the Italian authorities of their non-refoulement obligations under Article 3 of the ECHR."<sup>203</sup>

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<sup>198</sup> "The rejection orders issued by the Police Commissioners are scantily motivated, without any precise and individualized of the situation of the person, who may nonetheless be non-removable due to circumstances that authorities must assess autonomously, independently from whether the person has expressed an intention to seek asylum, for example because in their country they would be subjected to persecution (prohibition of expulsion or rejection provided for under Article 19.1 of Legislative Decree 286/1998) or to violence or conflict or torture or inhumane and degrading treatment (prohibition imposed on all countries under art. 3 ECHR)." ASGI, *Garantire i diritti degli stranieri soccorsi in mare e sbarcati*, 21 October 2015, [http://www.meltingpot.org/IMG/pdf/2015\\_documento-asgi-hot-spot-road-map-21-ottobre-def.pdf](http://www.meltingpot.org/IMG/pdf/2015_documento-asgi-hot-spot-road-map-21-ottobre-def.pdf)

<sup>199</sup> Phone interview with Alessandra Ballerini, 5 October 2016.

<sup>200</sup> European Court of Human Rights, *Khlaifia and Others v. Italy*, Judgement, 1 September 2015, <http://hudoc.echr.coe.int/eng?i=001-157277>

<sup>201</sup> Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, Alessandro Pansa, 20 January 2016, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice\\_stenografico.0037.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html)

<sup>202</sup> Interview with EU official Mark Arno Hartwig, Rome, 15 March 2016.

<sup>203</sup> Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009, <http://www.cpt.coe.int/documents/ita/2010-inf-14-eng.pdf>

The state has the responsibility to verify the individual situation of the person and to refrain from deporting him or her to a country where he or she risks facing serious human rights violations, whether the person applies for asylum or not. This is particularly relevant as in recent months, Italian authorities have issued expulsion orders against individuals who – despite originating from conflict areas and being therefore not returnable in principle – had decided not to formally seek asylum in Italy but to transit through the country in the hope to reach another European country and seek asylum there.

Second, individuals who decided to seek asylum after receiving an expulsion, found difficulties in getting their request across and to have a chance to formally request asylum. Changes in the status of some individuals were realized in some circumstances, however there is no defined process to ensure this happens. The speed at which the expulsion orders are sometimes implemented renders recourse to effective remedies provided by law virtually impossible. For example, in May 2016 Amnesty International interviewed a Nigerian man who had been returned to Nigeria three months earlier, while he was awaiting a hearing before the court where he had appealed a first instance refusal to grant him international protection.

Third, under legislative amendments introduced in 2015,<sup>204</sup> individuals who submit an asylum request “too late” are in fact penalized by the system. For example, while anyone subject to an expulsion order can be detained in a centre of identification and expulsion for a maximum of 30 days, this term extends to one year if the person applies for asylum after his or her detention in the centre.

Fourth, an expulsion order normally triggers a dialogue with the consular authorities of the country of nationality, which at that point are provided information on the identity of the person to be returned, as they are called to confirm his or her nationality. In fact, expulsion orders seen by Amnesty International explicitly indicate that copies of the same documents are shared by the adopting authority with the relevant consular representations. The fact that expulsion orders of potential asylum-seekers are shared with consular authorities of countries from where those very asylum-seekers are fleeing, heightens the risk that those people, and perhaps even their relatives, will suffer serious human rights violations. This seems particularly concerning in relation to governments that are responsible for serious violations of human rights and humanitarian law, as well as those of countries where penalties are imposed on individuals who have left the country without the authorities’ permission. In fact, the presence of consular representatives of those countries in police stations, if not already in ports, may even deter individuals with valid asylum claims from seeking international protection in Italy, for fear of retaliation.<sup>205</sup>

For these and other reasons, Italian authorities must strictly abide to the principle of non-refoulement, ensuring that expulsion orders are only issued after an individualized assessment of the risks the person would face upon return. Amnesty International is concerned by the fact that, rather than committing to take decisive steps in this direction, commenting on the repatriation to Sudan of 24 August, the Italian Minister of Interior has recently stated that “on the returns we will continue with an even tougher approach”.<sup>206</sup>

## **COLLECTIVE EXPULSIONS FROM FRANCE AND SWITZERLAND**

As already explained in previous chapters, during 2016 as in previous years, thousands of men, women and children who decided not to seek asylum in Italy continued their journey northbound, in the hope to seek protection in other European countries. However, as one of the key objectives of the hotspot approach is precisely to limit irregular border crossings of refugees and migrants from Italy to neighbouring countries, several measures were adopted to hamper such movements. These included not only the fingerprinting of all arrivals, but also identity checks in train stations throughout the country, particularly on hubs on the railway towards border towns, to discourage refugees and migrants from approaching the borders with neighbouring countries.

In this context, during 2016 Amnesty International also documented several cases of refugees and migrants forcibly returned to Italy by France and Switzerland through “simplified” border procedures, or no procedure at all, either through rejection at the border or after their presumed irregular entry into those countries.

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<sup>204</sup> Legislative Decree n.142, 18 August 2015.

<sup>205</sup> Senate Commission on Constitutional Affairs, Hearing of Paolo Bonetti and Lorenzo Trucco (ASGI), 9 February 2016, [https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=00964469&part=doc\\_dc&parse=no](https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=00964469&part=doc_dc&parse=no)

<sup>206</sup> Il Fatto Quotidiano, video interview with the Minister of Interior, Angelino Alfano, 3 September 2016, <http://tv.iffattoquotidiano.it/2016/09/03/migranti-alfano-riabilita-i-rimpatri-collettivi-tutto-regolare-anzi-calchero-la-mano/556944>

**Salah**,<sup>207</sup> a 26-year-old man from Sudan trying to reach his brother in the UK, was stopped by French authorities and returned to Italy through “simplified” procedures in early June 2016. “I was caught by French police in Nice. They brought us to the border, gave us a paper and then handed to the Italian police.” Similarly, **Abdallah**,<sup>208</sup> a 20-year old man also from Sudan, was stopped by French police while he was in the Mosque of Nice in late July 2016, and immediately transferred back to Italy. “They took me to the border, gave me an expulsion document and told me to walk towards the Italian side of the border, where the Italian police took my fingerprints and made me board a bus.” Several individuals showed Amnesty International a document issued by French authorities, ordering their rejection at the border (“refus d’entrée”). Such documents did not refer to any assessment carried out to ascertain the risks faced by each person to be returned to Italy, including the risk of further refoulement from Italy.

Dozens of individuals who spoke to Amnesty International in Como also reported having been sent back to Italy by Swiss authorities through similar, “simplified” procedures. **Moti**,<sup>209</sup> a 27-year-old Oromo man from Ethiopia trying to reach his uncle in Switzerland, was among them:

“I tried to go to Switzerland once, but the Swiss police sent me back. I took the train here, at the Swiss border the police took me out of the train and asked for my documents. I didn’t have any, I said I am a refugee. I told them I wanted to seek asylum in Switzerland... They only said ‘no’, nothing else. It was two weeks ago. The Swiss police took me to the Italian police by minibus and gave them a document. The Italian police told me to go back to Como. We were about 30 people, we were all sent back.”

Unaccompanied minors reported having been returned to Italy in the same way by Swiss authorities.

**Fatimah** and **Semira**<sup>210</sup> are two 17-year-old girls from Eritrea, fleeing military service in their home country<sup>211</sup> and travelling together in the hope to reach Germany. In July 2016 they tried to cross into Switzerland: “We tried to go to Chiasso by train twice. But the police caught us on the train, without documents, and told us to get out. The Swiss police handed us to the Italian police.” Contrary to the French police, the Swiss police did not provide people returned to Italy with any documentation.

Once transferred to the custody of Italian authorities, in both Ventimiglia and Como refugees and migrants were often transferred by bus to cities in Southern Italy – again with the aim of discouraging people from approaching the border with neighbouring countries again. Such transfers were carried out several times per week, during the Summer 2016, in particular with buses departing from the cities of Ventimiglia and Como, at the border with France and Switzerland respectively. Buses usually took refugees and migrants to the hotspot of Taranto, where they were expected to undergo again the whole identification process from the outset. In other cases, groups were transferred by airplane, particularly to the island of Sardinia.<sup>212</sup> **Salah**,<sup>213</sup> for example, ended up in Sardinia. “At the police station at the border, they put me on a bus to the airport of Genoa, and there on a plane to Cagliari.” There, he was detained and subject to threats to coerce him into giving his fingerprints, as detailed in chapter 3. Similarly, **Abdallah**<sup>214</sup> was taken by bus to the hotspot of Taranto, where he gave again his fingerprints “for fear of being beaten”. In the case of **Ahmed**,<sup>215</sup> a 20-year-

<sup>207</sup> Interviewed in Ventimiglia on 7 July 2016.

<sup>208</sup> Interviewed in Rome on 3 August 2016. Amnesty International saw a document proving his arrival at the hotspot of Taranto on 28 July 2016.

<sup>209</sup> Interviewed in Como on 10 August 2016.

<sup>210</sup> Interviewed in Como on 10 August 2016.

<sup>211</sup> Amnesty International, Eritrea: Refugees fleeing indefinite conscription must be given safe haven, 1 December 2015,

<https://www.amnesty.org/en/latest/news/2015/12/eritrea-refugees-fleeing-indefinite-conscription-must-be-given-safe-haven/>

<sup>212</sup> See interviews with the Minister of Interior, Angelino Alfano, in *Migranti*, Alfano: “Contro il governo polemiche pretestuose”, *Repubblica*, 8 August, 2016, [http://www.repubblica.it/politica/2016/08/08/news/alfano\\_ventimiglia\\_polemiche-145575591/?ref=HREC1-8](http://www.repubblica.it/politica/2016/08/08/news/alfano_ventimiglia_polemiche-145575591/?ref=HREC1-8) and with the Head of Police, Franco Gabrielli, in Ventimiglia, Gabrielli: “migranti da spostare, ma no a parallelismo con terroristi”, *Repubblica*, 8 August 2016,

[http://genova.repubblica.it/cronaca/2016/08/08/news/ventimiglia\\_gabrielli\\_migranti\\_da\\_spostare\\_ma\\_no\\_a\\_parallelismo\\_con\\_terroristi\\_-145614819/?ref=HREC1-1](http://genova.repubblica.it/cronaca/2016/08/08/news/ventimiglia_gabrielli_migranti_da_spostare_ma_no_a_parallelismo_con_terroristi_-145614819/?ref=HREC1-1)

See also: European Commission, Communication from the Commission to the European Parliament and the Council: Sixth report on relocation and resettlement, 28 September 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf)

<sup>213</sup> Interviewed in Ventimiglia on 7 July 2016. Amnesty International saw a copy of expulsion orders against him adopted by authorities in Cagliari on 17 June 2016, proving his presence there at the time of the abuses he recounted.

<sup>214</sup> Interviewed in Rome on 3 August 2016.

<sup>215</sup> Interviewed in Como on 10 August 2016. Amnesty International saw documents proving he was registered twice in the hotspot of Taranto, on 16 and 27 July 2016.

old men from Ethiopia, told Amnesty International that in July he was stopped by German and Swiss police at the border between the two countries, sent back to the border with Italy in Chiasso, and there handed over to the Italian police, that would immediately transfer him to the hotspot of Taranto, where he had already been identified once only a few days earlier.

The Italian government confirmed such practices and claimed that they were instrumental to protecting the stability of the Schengen area – reducing the need for neighbouring countries to re-establish controls on relevant borders.<sup>216</sup> However, once more governmental actions aiming at migration control resulted in human rights violations.

Indeed, such operations demonstrated an advanced cooperation with police authorities of neighbouring countries to facilitate simplified returns without giving sufficient consideration to the individual circumstances and risks upon return of those being returned to Italy, in violation of the international obligation of non-refoulement. Testimonies collected by Amnesty International clearly indicate that people were returned to Italy on the base of extremely summary processes excluding an assessment of the risks faced by each individual upon return to Italy. And in fact, Amnesty International was reported that individuals regularly residing in France, including some with recognized international protection status, were also caught in the net of police operations and were mistakenly transferred to the Taranto hotspot, where their regular status was confirmed.

On this basis, Amnesty International reminds France, Switzerland and other member states of their obligation to proceed to an individualized assessment that the person will not be at real risk of serious human rights violations upon return, before returning anyone to the jurisdiction of any other country. As demonstrated in this document, risks of ill-treatment and other serious human rights violations, including through refoulement to Sudan and other countries, are far from being merely theoretical in relation to returns to Italy.

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<sup>216</sup> Interviews with the Minister of Interior, Angelino Alfano, in *Migranti*, Alfano: "Contro il governo polemiche pretestuose", *Repubblica*, 8 August, 2016, [http://www.repubblica.it/politica/2016/08/08/news/alfano\\_ventimiglia\\_polemiche-145575591/?ref=HREC1-8](http://www.repubblica.it/politica/2016/08/08/news/alfano_ventimiglia_polemiche-145575591/?ref=HREC1-8) and with the Head of Police, Franco Gabrielli, in *Ventimiglia*, Gabrielli: "migranti da spostare, ma no a parallelismo con terroristi", *Repubblica*, 8 August 2016, [http://genova.repubblica.it/cronaca/2016/08/08/news/ventimiglia\\_gabrielli\\_migranti\\_da\\_spostare\\_ma\\_no\\_a\\_parallelismo\\_con\\_terroristi\\_-145614819/?ref=HREC1-1](http://genova.repubblica.it/cronaca/2016/08/08/news/ventimiglia_gabrielli_migranti_da_spostare_ma_no_a_parallelismo_con_terroristi_-145614819/?ref=HREC1-1)

# RECOMMENDATIONS

In light of the findings above, Amnesty International makes the following recommendations:

## TO THE ITALIAN AUTHORITIES

On the fingerprinting of newly arrived people

- Ensure that refugees and migrants are not subject to torture or other ill-treatment by law enforcement officers, by carrying out fingerprinting and other related operations in strict compliance with domestic legislation and international law and standards.
  - The law and police regulations must make clear the circumstances and purposes where law enforcement officials may be authorised to use force, which must be subject to the strict application of the principle of necessity and minimum use of force and the prohibition of any use of force causing harm that outweighs that legitimate objective.
  - After all less intrusive options for gathering fingerprints have been attempted, in good faith and with adequate time, and exhausted, the lawful requirement to gather fingerprints from uncooperative individuals only grants for the use of a minimal amount of force — beyond which resistance to authority should be treated according to legislation, rather than resolving it through the application of ever greater force to resisting migrants.
- Establish measures to safeguard the physical integrity of individuals subjected to fingerprinting, both in hotspots and police stations, including the presence of lawyers or independent monitors, the wearing of individualised name or number tags by all law enforcement officials, the filming for the record of all procedures, and the creation of dedicated confidential procedures to enable refugees and migrants to submit complaints against abusive treatment.
- Ensure that law enforcement officials are trained and required in practice to seek to avoid resorting to the use of force, and to proactively seek resolution of problems by other means such as persuasion.
- Ensure that law enforcement officials are not exempted from criminal liability for unlawful acts committed in the course of duty. In particular, all allegations of torture or other ill-treatment must be promptly, thoroughly and impartially investigated by a body independent of the alleged perpetrators, with the officials suspected of committing such acts suspended from active duty during the investigation. If there is found to be sufficient admissible evidence, those suspected of responsibility must be prosecuted and if convicted given penalties which reflect the gravity of the violations; this applies also to any superior officers who knew or ought to have known that their subordinates were committing such criminal acts and who did not take action to prevent such acts, or report them to the relevant investigative authorities. Disciplinary measures against officials may be required if the conduct did not amount to a criminal offence, or to determine additional disciplinary measures in case of a criminal offence, but should never preclude or replace criminal proceedings.
- The victims of such treatment must be afforded prompt and effective reparations.
- Apart from investigations into individual cases, establish an independent inquiry into arbitrary

detention, excessive use of force and torture and other ill-treatment to coerce refugees and migrants to provide fingerprints, mandated to make structural recommendations with a view to reforming the system for detention and fingerprinting of newly arrived people, to ensure it complies with Italy's international human rights obligations.

- Ensure that any detention for migration purposes is lawful, necessary and proportionate, including decided on an examination of individual circumstances, with all the procedures and safeguards set out in international standards.
- Publish and constantly update data on the number of individuals under detention in each hotspot, indicating the day of arrival of each person.
- Adopt legislation to ensure that acts of torture as defined in Article 1(1) of the Convention against Torture, as well as attempts to commit torture and acts of complicity or participation in torture, are offences under the criminal law, punishable by appropriate penalties taking into account their grave nature, and establishing universal jurisdiction over such offences.
- Prohibit the production, promotion, trade, transfer and use by law enforcement and security forces of electrical batons.

#### On the screening of newly arrived people

- Ensure that all people entering Italy are provided with a genuine opportunity to seek asylum and access a fair and effective asylum process. In particular, ensure that all arrivals are explicitly offered an opportunity to seek asylum at all times, upon arrival as well as during the following days, and that anyone expressing an intention to seek asylum at any point during their stay in Italy have their request immediately recorded and is immediately provided with a receipt.
- Review and amend the Standard Operating Procedures for hotspots, to ensure systematic and individual provision of adequate information to all refugees and migrants arriving in Italy, including on asylum procedures and family reunification possibilities, *before* they are required to undergo any screening leading to a definition of their status. Ensure that no individual is required to provide information on their status or reasons for travelling to Italy, or any other information that may influence the adoption of decisions on their status, upon disembarkation or in any case before they have been able to rest, receive adequate assistance according to their needs, and receive information and independent legal advice on an individual basis.
- Increase the capacity to provide adequate information, in a language that they understand. Authorities should facilitate independent legal advice and representation, including by the provision of legal aid. People with family links in other countries must be promptly identified, provided with adequate information about legal ways to reunite with their families, and assisted to access such legal opportunities.
- Ensure that the provision of information to each specific person is recorded and that while such information is yet to be provided no decision can be adopted on their status and no information can be gathered from the person that will influence the adoption of decisions on their status.
- Refrain from attributing to any newly arrived person a nationality or age different from what he or she declared as a result of the initial screening, unless a different provisional determination is necessary to protect the best interest of a child.
- Facilitate the deployment of independent monitors to oversee the screening process.

#### On expulsions

- Scrupulously observe the principle of non-refoulement, by not forcibly returning any person, in any manner whatsoever, to any country where they may face serious human rights violations.
- Amend expulsion procedures to ensure that no individual can be issued with an expulsion order without an individualized assessment that the person will not be at real risk of serious human rights violations upon return. Procedural guarantees must ensure that the individual circumstances of each person for whom authorities seek an expulsion are adequately assessed on an individual basis, and duly recorded, *whether the person is seeking asylum or not*. This must take place before a decision is taken and before any information is shared with consular or other authorities of the country of origin. No expulsion order should be adopted before without having first provided the

person with adequate information on their rights, including the right not to be subjected to refoulement and to claim asylum.

- Amend legislation to ensure that any appeal against a negative asylum decision automatically suspends the effects of related removal decisions in all circumstances.
- Suspend the execution and scrap the current Memorandum of Understanding with Sudan, as well as any other bilateral readmission agreement providing for return procedures that breach the principle of non-refoulement and Italy's obligations under international law. Refrain from establishing new bilateral readmission agreements that provide for similar return procedures.
- Ensure the publication of all readmission agreements with third countries and of information in relation to any expulsion realized. Ensure that all readmission agreements are ratified by Parliament.

#### On assistance to vulnerable people

- Ensure that special processes and services are put in place to immediately and systematically identify vulnerable people upon arrival and guarantee that their basic rights, safety and security are protected.
- Ensure that officials working in hotspots are provided with training in the identification of refugees and migrants in need of special protection and care, including torture and rape survivors, trafficked people, and unaccompanied minors.
- Significantly increase the permanent shelter space and assistance available for unaccompanied minors and other groups in need of special care.

#### TO OTHER EU MEMBER STATES

- Offer more safe and regular routes to refugees to access protection, including by increasing resettlement, humanitarian admission places and humanitarian visas, and facilitating family reunification for those who have family members living in the EU, by applying a broad definition of family members to include extended or non-nuclear families, and applying flexibility as to documentary or other requirements.
- Engage in the current revision of the Dublin Regulation in a way that ensures fair sharing of responsibility and swift and effective access to asylum, and protects asylum seekers' human rights.
- Amend the current relocation measures to ensure the redistribution of a larger number of asylum-seekers from Italy, including by offering more places for relocation and removing restrictive selection criteria.

#### TO THE EUROPEAN COMMISSION AND FRONTEX

- Revise the hotspot approach to ensure it is compliant with member states' human rights obligations and respects the dignity of refugees and migrants, enables them to access fair procedures and fully abides to the principle of non-refoulement.
- Withdraw the financing of return operations from Italy until the Italian government adopts measures to ensure that returns are carried out in full compliance with international and regional human rights obligations.

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# HOTSPOT ITALY

## HOW EU'S FLAGSHIP APPROACH LEADS TO VIOLATIONS OF REFUGEE AND MIGRANT RIGHTS

Thousands of men, women and children, fleeing conflict, persecution and poverty, keep crossing the central Mediterranean in search of protection or a better life in Europe. Italy, leading efforts to save lives at sea, disembarks rescued people in its ports almost daily.

To address the challenges presented by such arrivals, in 2015 European institutions and governments presented, as a flagship EU response, the “hotspot approach”. This would uphold the Dublin system – whereby people should in principle seek asylum in the countries of first arrival – but temper it with the relocation of some asylum-seekers to other member states.

One year on, it is clear that European solidarity is failing, as only few people have been relocated to other countries, while the law enforcement elements of the hotspot approach have been aggressively put in place: the systematic fingerprinting of all arrivals, their summary screening to separate asylum-seekers from others considered to be irregular migrants, and the expulsion of the latter. This has happened at a very significant cost to the rights of refugees and migrants.

Amnesty International's research, based on testimonies collected across Italy in 2016, paints a worrying picture, described in this report: the implementation of the hotspot approach has led to serious human rights violations, including excessive use of force, arbitrary detention and collective expulsions, and to a pattern of serious allegations of ill-treatment and even torture. Human rights violations, committed against people already scarred by war and abuse, for which Italian authorities have a direct responsibility, and European leaders a political one.