Work Package 3: Constructing the crisis: actors, representations and narratives

Deliverable D3.4 - Policy Brief

Some considerations on recent national and European policies around border control and asylum governance in Italy since 2015

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Abstract

Border control and asylum governance have been represented as a major challenge for European and Italian policy makers since 2014 when applications for asylum have significantly risen. The increase of asylum seekers has been accompanied by the reluctance of European member states to share the burden of refugee reception within an already problematic legislative context for Southern European countries due to the enforcement of Dublin conventions. This has been predominantly framed as “refugee crisis”, and, in front of this, several legislative initiatives at both European and Italian level have been taken to primarily guarantee the control of EU (Italian) sea borders and the efficient identification of those arrivals deserving the status of asylum seeker, and, secondarily, to improve the reception system. The most important of these are considered the so-called hotspot approach within the Common European Asylum System on the one hand, and the national laws adopted during the mandates of the two last Italian government coalitions on the other.

This policy brief critically presents the impacts of these policies on the asylum governance and proposes some actions to address the challenges.
**The hotspot approach in Italy**

The so-called “refugee crisis” of 2015 pushed European institutions to adopt both short and long term measures in order to address the issue of migration management at the Southern borders of Europe.

The *hotspot* approach is a short-term measure established within the “European Agenda of Migration” – a communication not legally binding for national countries – adopted in May 2015 by the European Commission; the main goal of *hotspots* is the provision of support to Italy and Greece in order to respond to high influx of migrants and asylum seekers towards Europe. In Italy, alongside physical structures (mainly ancient first reception or pre-removal centres) the *hotspot* approach indicates a method of work for the reception, identification and properly process of people arriving at the Southern country’s shores.

The *relocation* program has been adopted in order to support Italy (and Greece) in managing asylum applicants. It has been conceived as strictly complementary to the *hotspot* approach and it ended in the autumn of 2017. The *relocation* foresaw the redistribution of people categorized as “in clear need of international protection” (mainly in reason of their nationality) towards other European countries. This measure failed in reaching the established goals for two main reasons: 1) the lack of will of several European states to take their part of responsibility; 2) the slow implementation of the program also by governments that accepted to participate.

Yet, the ambitious goals to efficiently address immigration through the *hotspot* approach have been criticized by advocates of human rights. These actors held a crucial role in monitoring and denouncing illegitimate practices and migrants’ rights violation occurring in *hotspots*. Amnesty International denounced *hotspots* as places of systematic violation of human rights and other migrants’ rights’ advocates observed the lack of a legal framework that would regulate the functioning of *hotspots* in Italy.

The ambiguous legal framework contributes to the perpetuation of unlawful practices that undermine people’s access to the right of asking for international protection. The main critical aspects are represented by the informal regime of prolonged detention, the lack of interpreters and the lack of legal assistance and legal information.

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3 See European Commission (2015), “Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the regions. A European Agenda of Migration”, Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf
4 Four *hotspots* centres have been activated in Italy since the end of 2015, three in Sicily (Lampedusa, Trapani, and Pozzallo) and one in Apulia (Taranto). Furthermore, in the autumn of 2017 a fifth *hotspot* centre has opened in Messina.
5 This approach involves the cooperation of Italian and European authorities as well as of international and humanitarian organizations. In this sense *hotspot* procedures could be put to work in other areas of disembarkation, as has been the case for the harbours of Catania and Augusta in Sicily.
6 Alongside the permanent presence of European agencies (*Frontex* and *Easo*) the main operational novelty introduced has been the systematic collection of migrants’ fingerprints carried out by the Italian police at the border. See Ambrosini, M. (2018), Irregular Immigration in Southern Europe. Actors, Dynamics and Governance. Palgrave McMillan, p. 164.
7 https://www.unhcr.org/it/14061-unhcr-calls-eu-relocation-scheme-continue.html
10 Oxfam (2016b) “Hotspot, Rights denied. The lack of a legal framework is threatening the rights of migrants reaching the Italian shore”, Oxfam Briefing Paper, pp. 1–40. Available at: https://www.cdn.oxfam.org/s3fs-public/file_attachments/bp-hotspots-migrants-italy-220616-
Between the end of 2015 and the beginning of 2016, unlawful practices carried out on the ground produced indiscriminate deferred and collective returns\(^1\). While the frequency of these illegitimate practices seems to have been gradually reduced over time, unlawful procedures and violations of migrants’ rights still occur and raise concerns\(^2\), mainly in relation to people who are arbitrarily considered by authorities as coming from “safe third-countries” (such as Tunisia, Morocco or Algeria)\(^3\).

It is worth to recall that the legislative measures recently adopted by the two previous government coalitions (2015 – 2019) have not contributed to provide a clear legal framework to the functioning of hotspots\(^4\). Instead, third-sector actors underlined how the first so-called “Salvini” decree adopted in October 2018 has been oriented to the legitimation of unlawful procedures put to work in the hotspots (for example introducing the possibility to detain asylum seekers at the border up to 30 days for reasons of identification)\(^5\).

**Securitization of sea borders and criminalization of NGO rescuers**

The increasing number of applications for asylum from those arriving to the Italian coasts since 2014\(^6\) and the debate on “bogus” and trustworthy applicants\(^7\) triggered also a discussion around how to securitize Italian sea borders and “curtail illegal immigration”. Aiming at reducing the number of inflows, one of the actions taken by the then Italian government - consistently with the framework of EU policies on externalization of migration governance outside the EU territory - was the establishment of a new memorandum on cooperation with Libya. This agreement provided that the Libyan authorities would prevent sea crossings by efficiently guarding their borders and coasts. Another point regarded the functioning of the NGOs involved in migrants’ rescue operations at sea. The Italian government invited third sector actors to sign a code of conduct in order to prevent possible cooperation between NGO rescuers and human smugglers as controversial news reports had insinuated\(^8\).

NGOs operating rescues ships in the Mediterranean have been even more at the centre of criticism of the following government coalition between Five Stars Movement (Movimento Cinque Stelle - M5S) and League (Lega). Both leaders of

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\(^1\) https://drc.ngo/media/5251031/rights-at-risk_drc.pdf


\(^4\) Ambrosini, M. (2018) (op.cit.)


\(^6\) On 15 December 2016 Financial Times reported that Frontex had issued two confidential documents accusing NGOs in the Mediterranean of cooperating with human smugglers.
these two parties continued to accuse NGOs of cooperating with human smugglers targeting them of being the main pull factor for the rising number of migrants arriving to the Italian coasts. That government voted measures (Salvini decree I and II, Law no. 132/2018) sanctioning NGOs rescuing people at sea with heavy fines (from 150 TEUR to 1 MEUR). Italian authorities have also taken the decision to deny ships carrying rescued migrants entering Italian waters, while NGOs boats involved in search or rescue operations could be confiscated. In particular, the Minister of the Interior has now achieved the power to bar migrant rescue boats from docking in Italian ports, or limit transit or stop in Italian waters for security reasons in the case in which rescue operation is considered a possible crime in that facilitating clandestine immigration.

Although the M5S – League coalition claimed triumph around the reduction of inflows to Italy due to its rigid stance against NGOs and politics of “closed ports”, the sharpest reduction of inflows to Italy took place after the implementation of the agreements with Libyan authorities. Rather than considering though exclusively the drop of arrivals, it is necessary to reflect on some controversial points emerged after the enforcement of recent laws.

On the one hand, several reports questioned the capacity of Libyan navy to guarantee the principles of UN Convention on the Law of the Sea and taking migrants to safe places. Not only is the lack of means specialized in such operations putting at risk rescued migrants, but it is rather the numerous denunciations about the conditions in holding centres where migrants have faced tortures, abuse and rapes. As for NGO rescuers, on the other hand, the investigation recently run by an Italian prosecutor has not demonstrated any proof of wrongdoing, whereas recent academic research shows that there is no push-pull effect between the presence of NGO rescuers in the Mediterranean Sea and encouragement of inflows. The distorted image on NGOs’ role at sea caused their stigmatization and criminalization in the public debate, although their indispensable contribution in rescuing lives of people crossing the sea.

The evolution of the Italian reception system: cut of financial resources for reception facilities and criminalization of reception providers

After the identification at the hotspot centres, individuals who intend to lodge an asylum application should move to facilities in which they are offered not only accommodation and food, but also opportunities for integration. Until 2014, reception to refugees was principally provided by the SPRAR centres that is a network of facilities run by local governments. Due to the increasing number of arrivals, on the one hand, and the scarce willingness of many local governments to adhere the SPRAR network on the other, the Italian

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19 Not only political parties, but also some institutional actors have adopted negative stance against see operations undertaken by NGOs. One example is the continuous efforts by the Catania Public Prosecutor’s Office (Procura di Catania) to prove links between NGOs and human smugglers.


21 https://www.osservatoriodiritti.it/2019/02/08/accordo-italia-libia-migranti/


24 (Sistema di Protezione per Richiedenti Asilo e Rifugiati, SPRAR centres for short).

25 Campomori and Ambrosini (2019) “Beyond multilevel governance: the implementation of asylum seekers’ reception in Italy as a battleground” (Forthcoming)
Government created an extraordinary network of reception, the so-called CAS (Centri di Accoglienza Straordinaria). These facilities are managed by various private actors, namely NGOs, hotel owners and other conventional employers, and bypass local authorities. However, occasional cases of misconduct or collaboration with criminal organizations discredited the whole reception system and have been used as reasons to justify unfavourable legislative measures for refugee reception. This signified the further decline of the Italian reception system, as the previous government coalition ruled by the M5S and the League promoted an amendment excluding asylum seekers from the SPRAR network, thus making CAS centres the only facilities that can host them. The same amendment provided also the limitation of a series of services offered in the CAS centres (psychological and medical assistance, lessons of Italian language, orientation to the labour market), as well as the fare that covers asylum seekers’ daily needs, namely from 35 to 20 euros per day. Once again, these measures had criminalizing effects on the actions of the third sector organizations.

Abolishing humanitarian protection
The main negative provision of the Law no.132/2018 regards the protection of people seeking asylum under the status of “humanitarian protection”. In particular, it concerns those who are not able to prove that have suffered persecution, and come from unstable or non-democratic countries in which they are equally at risk. With the new amendment, the possibility to obtain the status of humanitarian protection is narrowed only to those facing serious health problems, coming from countries suffering natural disasters, or those who have been abused. In this way, people in vulnerable conditions such as single mothers with minors, for instance, are now excluded. This change raised many doubts about the constitutionality of the amendment, both in relation to its contents and the methods with which it was approved.26 Finally, it introduced the prolongation of the administrative detention period of people who are to be repatriated.

Key recommendations for Italian and European policy makers
- Italian and European authorities must guarantee for all people passing through hotspots: a) the access to fair asylum procedures; b) clear information about their situation; c) the access individual legal assistance.
- Review the agreement of collaboration with Libyan authorities and ensure International Institutions (e.g. UNHCR) and NGOs’ presence and monitoring in host facilities in Libya.
- Repeal the amendment providing the abolition of humanitarian protection and extending administrative detention.
- Repeal the amendment excluding asylum seekers from SPRAR facilities and valorize the SPRAR network experience as a positive practice of refugee reception.
- Ensure availability of economic resources for reception facilities
- Repeal recent laws criminalizing NGOs actions in rescuing people in the Mediterranean Sea
- Organize communication campaigns to restore the reputation of NGO rescuers and those operating in reception facilities.
- Enhance human corridors innovative initiative as a best practice for refugee reception.
- Reactivate relocation programs and share responsibility of asylum governance among EU members.