

Asylum Criminalisation in Europe and Its Humanitarian Implications

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Executive Summary

Over the last few years, a growing trend among some EU politicians, government officials, media outlets, journalists, and various other actors has been to link asylum seekers¹ with social disorder and criminal activity, thus contributing to a climate of fear and hostility towards them. The criminalisation of asylum seekers has also increasingly affected humanitarian action that has emerged around the EU's external borders and in its Member States. By the end of 2018, maritime search and rescue (SAR) activities in the Mediterranean had become emblematic of the criminalisation of humanitarian assistance for those who are forced to flee and who are trying to reach European shores. Several individuals from European SAR NGOs (non-governmental organisations) as well as fishermen and crew members of trade vessels were publicly defamed and charged with collaborating with smugglers, refusing cooperation with the newly trained and equipped Libyan Coast Guard (LCG) or lacking formal registration. On land, humanitarian actors, rights activists and engaged citizens assisting asylum seekers across the EU have fallen victim to accusations, arrests and intimidation for supposedly facilitating illegal entry and transit or assisting illegal residence and/or other charges specific to EU Member States' immigration laws. These actors and their organisations have been alleged to undermine national sovereignty, and thus have become victims of criminalisation themselves.

Against this background, United Against Inhumanity (UAI) commissioned this report to gain a better understanding of the factors driving criminalisation in the context of asylum in the EU in recent years.² Following the escalating violence and instability in countries in North Africa and the Middle East, hundreds of thousands of asylum seekers arrived on European shores and at border check points during the summer of 2015. The EU Commission and several Member States have responded with an agenda that prioritises security-related instruments to fight 'unwanted migration' and thus retreated from their responsibility to protect these people on their way to or in Europe. In contrast, thousands of individuals and organisations have provided humanitarian assistance through conducting maritime search and rescue (SAR) activities at sea, distributing food, offering clothing, housing and transportation as well as medical and psychological treatment. Many EU citizens acted in the defence of the right to seek asylum and the right to humane treatment and opposed the restrictive measures put in place by the EU and its Member States.

While the criminalisation of asylum seekers to signal state control has characterised EU's and Member States' policies for decades, the enforcement of laws targeting third parties who assist asylum-seekers has reached a new level in recent years. Several reports have concluded that the current situation amounts to a systematic and Europe-wide campaign to effectively compromise assistance to asylum seekers.³ While the two trends – the criminalisation of asylum seekers in Europe and the criminalisation of those assisting them – differ in regards to who is being criminalised and on what basis, they both reflect the perception that immigration is harmful to our societies. Thus, this paper highlights the widespread and systematic use of criminal law and public defamation against NGOs and citizens as an expansion and intensification of the wider criminalisation process against migration in the EU.

The first part of the report reviews existing literature on policies that promote asylum criminalisation in Europe to highlight the dimensions of the criminalisation process. As the report argues, several EU and Member State asylum policies of the past 20 years are dominated by concerns that frame the movement of certain groups into Europe in criminal terms. Pushbacks, mass detentions and deportations of asylum seekers to countries such as Iraq and Afghanistan have been facilitated by policies that place asylum determination

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procedures outside Europe and hence out of the public gaze while failing to offer sufficient protection to those most affected by violent conflicts. The EU's adoption of a 'securitisation' rather than a human-centred approach towards migration has come at the expense of those seeking international protection. The paper argues that the rationale underlying the EU's approach rests on the manufactured narrative that asylum seekers pose unacceptable risks – 'an existential threat' – which justifies the use of criminal law to 'manage' them.

The second part of the report gives several examples of initiatives that have emerged to counter the criminalisation of asylum seekers and those assisting them. Research by Donatella della Porta (2018) highlights the socio-political mobilisation of support for asylum seeking in Europe which is characterised on the one hand by acts of resistance by asylum seekers against imposed constraints (including bypassing of registration, non-compliance with movement restrictions and erupting protests). On the other, acts of resistance by EU citizens who – individually and collectively - defied instructions to refrain from assisting them often paralleled the demands of asylum seekers with the claim for political accountability and policy change⁴. Besides the delivery of humanitarian aid, actors working with asylum seekers have also become alternative sources of information about the situation of people affected by the EU's asylum agenda, including asylum law and human rights violations. One key aspect of their work now includes the documentation and collection of information to counter allegations that link humanitarian action in the context of asylum with criminal offences. The result is a complex landscape that includes various stakeholders with, at times, differing goals, activities, structures, resources and operating experience.

While it is difficult to assess when and why certain initiatives are successful given the numerous motives for expressing the political will to protect asylum seekers as well as their local and temporal contexts, the following report highlights some of the often-complementary strategies via which initiatives seek to change asylum policies in Europe. A paper by former UNHCR policy expert Jeff Crisp (2018) explores the means of political mobilisation for improving refugee protection policies. According to him, appealing to the humanitarian interest of governments as well as pointing out the moral or financial rewards for states can be successful in generating political will.⁵ Important non-governmental actors such as civil society, the media or the judiciary can generate public pressure for political decision-makers to ensure that the rights of asylum seekers are respected. Informed by consultations with stakeholders from civil society organisations, media and academia who shared their perspectives and insights on the challenges inherent in mobilising support for asylum seekers in Europe, the report concludes that a combination of sustained international advocacy work and campaigning, based on the exchange of information and collaboration with existing and emerging initiatives can lead to stronger public engagement and to political change that is essential to avoiding further harm to asylum seekers and the criminalisation of humanitarian action.

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Abbreviations

AI – Amnesty International

AYS – Are you Syrious?

CEPS – Centre for European Policy Studies

CJEU – Court of Justice of the European Union

CoC – code of conduct

CRRF – Comprehensive Refugee Response Framework

ECRE – European Council on Refugees and Exiles

ECtHR – European Court of Human Rights

EPAM – EU NGO Platform on Asylum and Migration

ERCI – Emergency Response Centre International

EU – European Union

FRA – European Union Agency for Fundamental Rights

GCM – Global Compact for Migration, the negotiated outcome resulting from the New York Declaration for Refugees and Migrants September 2016 and adopted during the UN Summit (December 10–11, 2018) on safe, orderly and regular migration in Marrakesh, Morocco

GCR – Global Compact on Refugees proposed during the New York Declaration for Refugees and Migrants September 2016 and adopted by the UN-GA on 17 December 2018.

GNA – Libyan Government of National Accord

HRW – Human Rights Watch

ICRC – International Committee of the Red Cross

ICVA – International Council of Voluntary Agencies

IFRC – International Federation of the Red Cross and Red Crescent Societies

IHL – International Humanitarian Law

IOM – International Organisation for Migration

IRC – International Rescue Committee

IRR – Institute for Race Relations

LIBE – Committee on Civil Liberties, Justice and Home Affairs

MEP – Member of European Parliament

MOAS – Migrant Offshore Aid Station

MPG – Migration Policy Group

MRCC – Italian Maritime Rescue Coordination Centres

MSF – Médecins Sans Frontières (Doctors Without Borders)

NGO – non-governmental organisation

OBS – Observatory for the Protection of Human Rights Defenders

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OHCHR – Office of High Commissioner for Human Rights, United Nations

PICUM – Platform for Cooperation on Undocumented Migrants

RRE – Refugee Rights Europe

ReSOMA – Research Social Platform on Migration and Asylum

SAR – search and rescue

SAROBMED – SAR Observatory for the Mediterranean

UAI – United Against Inhumanity

UN-GA – UN General Assembly

UNHCR – United Nations High Commissioner for Refugees

UNSMIL – United Nations Support Mission in Libya

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1. Displacement as an ‘Essential Threat’ and Asylum Criminalisation in Europe

Today’s protracted wars, conflicts and inhumane living conditions force millions of people to flee their homes and risk their lives in search of refuge. The 2018 Global Peace Index reported that the rate of people being forcibly displaced worldwide tripled between 2005 to 2015, with conflicts in the Middle East and Central Africa mainly accounting for the increase.⁶ Testimonies and first-hand reports from Iraq, Afghanistan, Yemen and Syria vividly display the life-threatening situation of people in their countries of origin. Conflicts with less coverage in the media, such as in the Democratic Republic of Congo, Mali, Burundi, South Sudan, the Central African Republic or Somalia, also caused the deaths of hundreds of thousands of people and forced millions to leave their homes. In its 2017 Global Trends Report, the United Nations High Commissioner for Refugees (UNHCR)⁷ counted 68.5 million people currently forced from their homes and in need of international protection.⁸

Against this background, the UN General Assembly (UN-GA) held a summit in September 2016 in New York to address the shortcomings and gaps in existing international refugee protection frameworks and institutions to safeguard the right to seek asylum. During the summit, all 193 Member States unanimously adopted the New York Declaration for Refugees and Migrants, which seeks to mobilise international commitment to support the international protection regime – including upholding the rights of refugees and migrants, providing predictable and sustainable support to refugees and the communities that host them, and expanding opportunities to achieve durable solutions for those forcibly displaced.⁹ Based on the new Comprehensive Refugee Response Framework (CRRF), the declaration also set in motion a two-year negotiation process of two non-binding compacts dealing with the protection of refugees and migrants – namely the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR). Both were adopted by the UN-GA at the end of 2018.¹⁰

While the EU Commission as well as EU Parliament for the most part welcomed the adoption of the GCM by the UN-GA on 17 December 2018 as an important tool for international cooperation, several EU governments as well as opposition and anti-migration parties lobbied against it. For example, Jussi Halla-Aho, member of the European Parliament for the European Conservatives and Reformists Group, who spoke on the GCM during an EU parliamentary debate in November 2018:

“In terms of content, the GCM is a misguided and dangerous document. What Europe is facing is a century of massive migratory pressure from Africa and the Middle East. This is an existential threat to our societies. You simply cannot tackle this kind of a problem with a migration policy that is only focused on the rights of the individual migrant or by opening new legal avenues to Europe or by silencing criticism with hate speech legislation”.¹¹

The debates on the GCM have highlighted the existence of a broader coalition of conservatives, EU sceptics and right-wing populists within EU Member States who have made their appearance on various political and social platforms. The political mobilisation against the GCM was based on the accusation that it would undermine national sovereignty of states to control migration, promote uncontrolled immigration to the EU by claiming a ‘human right to migrate’, and that participating stakeholders and governments would take decisions against national interests behind closed doors and out of the public gaze.¹² These accusations came despite the fact that for two years a variety of stakeholders – including state

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and intergovernmental representatives, NGOs, diasporic communities and actors from related fields – had commented on and reworked the drafts. Different UN and EU institutions have tried to challenge criticisms of the GCM, noting that it is not legally binding and that it respects national sovereignty and the right of states to determine their national migration policies.¹³

In the end 152 countries out of 193 UN members approved the GCM by acclamation during the UN summit on 10–11 December 2018 in Marrakesh, Morocco, while the governments of the Czech Republic, Hungary, Poland, Israel and the United States voted against; and Australia, Italy, Austria, Switzerland, Latvia and Bulgaria abstained.¹⁴ To understand this opposition and its possible effects on current asylum policies in the EU, one needs to take a closer look at how asylum seekers and those defending their rights have become pawns in domestic political debates as well as in the EU's own struggle to cope with anti-European forces promoting national go-it-alone actions by Member States.

When the number of arriving asylum seekers in Europe increased dramatically in 2015, the EU Commission responded with an agenda that prioritises security-related instruments to fight 'unwanted migration' and reduce the number of arrivals. But while several EU Member States have retreated from their responsibility to protect asylum seekers on their way to or in Europe, thousands of individuals and organisations have provided humanitarian assistance to asylum seekers arriving on European shores and at border check-points. Through conducting maritime search and rescue (SAR) activities at sea, distributing food, offering clothing, housing and transportation as well as medical and psychological treatment, many EU citizens acted in the defence of the right to seek asylum and the right to humane treatment.

Regardless, the deaths of people trying to cross the Mediterranean continued in 2018 and asylum seekers take ever longer and more dangerous routes to reach Europe. Those who succeed are held in overcrowded reception facilities and detention centres, often without adequate access to food, sanitation, water, and medical assistance. At the end of 2017, teams of the International Federation of the Red Cross and Red Crescent Societies (IFRC) noted that four of the five reception camps on Greek islands are double to triple their planned capacity, leading to severe gaps in the provision of health-related and other essential services.¹⁵ These chaotic conditions have confronted the European Union with a severe political dilemma.

Alessandro Spina, professor of criminal law at the University of Palermo, argues that there is an inherent contradiction between the EU's deterrence policies and its professed commitment to human dignity and human rights, freedom, democracy, equality and the rule of law.¹⁶ On the one hand, the EU Commission opened infringement procedures against Greece, Croatia, Italy, Malta and Hungary in December 2015 for failing to adhere to EU asylum procedures and reception conditions. In July 2018, the EU indicated that it will refer Hungary to the Court of Justice of the European Union (CJEU) for its illegitimate detention procedures in so-called 'transit zones' and for breaches of the *non-refoulement* principle.¹⁷ On the other hand, the EU Commission together with EU leaders stressed the need to more strictly enforce existing measures that deter people from entering the EU via the central, eastern and western Mediterranean routes. To this end, the EU Commission at the Council Summit in late June 2018 announced it would triple its spending on controlling the EU's so-called external borders by Frontex.¹⁸ Further, the EU sets out to continue its arrangements with host and transit countries outside the EU and to explore options that place asylum determination procedures outside its territory.¹⁹ The 2016 EU-Turkey deal²⁰ set incentives for diplomatic relations (e.g. visa liberations) and development cooperation and has become a blueprint for collaborations

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with non-EU transit and hosting countries to outsource Europe's responsibility to address global displacement.²¹

But even though most people who were forced to flee in 2017 found protection outside the EU and the number of people in the EU without legal documentation dropped significantly,²² several EU governments remain extremely hostile towards asylum seekers while countries such as Italy, Hungary, Poland and the Czech Republic refuse entry to individuals who attempt to lodge asylum claims at their borders. The stated rationale underlying the EU's approach rests on its policies that posit that asylum seekers are a risk – even an 'existential threat' – which justifies the use of criminal law to 'manage' them.²³ Research conducted by Joanna Parkin within the framework of the EU project 'FIDUCIA – New European Crimes and Trust-based Policy' (2012–15) concluded that the line between administrative and punitive measures has become increasingly blurred as more and more EU citizens and their governments regard asylum seekers as being linked to, or even engaged in, social disorder and criminal activity.²⁴ The use of food deprivation, detention and violent pushbacks at European borders have been justified by some EU governments in order to reduce the number of asylum seekers arriving by irregular means in Europe – despite the lack of alternatives and the fact that this does not release states from their obligation under international refugee and human rights law to grant every person the right to asylum procedures as well as access to essential, lifesaving services including basic health care, shelter and food, regardless of their legal status.²⁵

Hence and in addition to providing direct humanitarian assistance, several organisations have in the past three years published reports documenting how these deterrence policies pursued by the EU and individual EU Member States have contributed – indirectly and directly – to an increase in deaths of asylum seekers in the Mediterranean and to overcrowded and inhumane reception and detention facilities in the EU and third countries. Organisations such as Refugee Rights Europe (RRE), Médecins Sans Frontières/Doctors Without Borders (MSF) or the Platform for Cooperation on Undocumented Migrants (PICUM) reported that in several EU countries thousands of asylum seekers are denied access to essential assistance, leaving them vulnerable and often without any means to report or communicate violations of asylum and human rights law.²⁶ Human rights and refugee groups such as Human Rights Watch (HRW), Amnesty International (AI) and the European Council on Refugees and Exiles (ECRE) denounced the strategic use of pushbacks and arbitrary violence by the police and local authorities along the EU's external borders and at sea, as well as on the systematic human rights abuse and exploitation in detention centres and informal camps.²⁷

This civic engagement around asylum seekers in the EU has shed light on the complex relationships between individuals and civil society actors and the state in humanitarian settings. Parkin suggests that the EU's restrictive security approach towards asylum seeking has led to a system in which "various groups from the public and private sector are co-opted into the role of border or law enforcement agent, obliged to police the mobility or actions of irregular migrants or to report their presence to the authorities if they are to avoid sanctions themselves".²⁸ Five years later – and in addition to administrative and punitive sanctions to strengthen surveillance and control measures – several EU Member States adopted or enforced legislation that constrains the scope of action of non-governmental organisations (NGOs) and individuals who assist asylum seekers on their way to or within the EU.

In Italy, Spain and Malta, NGO SAR vessels operating in the Mediterranean have been either seized or had their licenses withdrawn, while crew members have been arrested and subjected to investigation for alleged collaboration with smugglers, facilitating illegal entry, refusing

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cooperation with the EU sponsored Libyan Coast Guard (LCG) or lacking formal registration.²⁹ On 6 December 2018, MSF declared the suspension of their SAR Aquarius ship which they had jointly run with SOS Méditerranée, due to ongoing obstruction by Italian authorities backed by the EU and other Member States.³⁰ As of 4 January 2019, the last remaining SAR ships in the Mediterranean – Sea-Watch 3 and Sea Eye – have been denied permission to dock at EU ports even when they had rescued people onboard.

In numerous EU countries such as France, Italy, Hungary, Germany, Greece and Spain laws and regulations increasingly hinder NGOs from accessing reception and detention facilities, as well as informal camps and transit zones between borders.³¹ So far, the EU Commission has only taken steps against Hungary for criminalising activities in relation to asylum and residence applications, stating that the new legislation introduced by Prime Minister Viktor Orbán leads to the infringement of the “asylum applicants’ right to communicate with and be assisted by relevant national, international and non-governmental organisations”.³² In addition to the criminalisation of NGOs’ work, citizens across the EU have been arrested and charged for giving lifts, providing housing and shelter, or distributing food to asylum seekers.³³ As the Institute for Race Relations (IRR 2018) notes, 99 volunteers giving humanitarian assistance to, or trying to hinder the deportation of asylum seekers, were brought under investigation in 2018 alone.³⁴

Against this background, United Against Inhumanity (UAI) commissioned this report to gain a better understanding of the factors driving criminalisation in the context of asylum in the EU in recent years.³⁵ The objectives of this report are to (a) provide an overview of the rapidly evolving European situation regarding asylum and forced migration; (b) highlight acts, processes or organised initiatives that seek to counter deterrence measures pursued collectively or individually by European governments and (c) bring into focus the criminalisation of these acts of resistance performed by people on the move as well as those who strive to rescue or safeguard their physical safety (see annex I for the terms of reference for this paper).

This report begins by exploring how the EU has become one of the key drivers for criminalising asylum seekers in and on their way to Europe. It looks at criminalisation as resulting from the social and political dynamics within societies, in the sense that “what is deemed to be criminal and who is defined as an offender involves a social process in which officials of the state formally intervene and designate certain acts and certain actors as warranting a criminal label. Until an act, or actor, has been processed in particular ways by the state, there is no ‘crime’ as such”.³⁶ In this understanding, the sanctioning by the state of specific acts and/or persons (e.g. asylum seekers for ‘illegal entry’ and third parties for its facilitation) is not rooted in the criminal justice system itself, but is the result of the larger negotiation about what and who causes considerable harm to society.

By outlining some of the dimensions of asylum criminalisation in Europe, the report takes a close look at how this has also affected humanitarian action and civic engagement around asylum seeking in general. The literature by scholars Joanna Parkin (2013) and Sergio Carrera et. al (2015), among others, suggests a trend in which narratives on mobility, crime and security have become increasingly meshed, influencing discourses and practices not only by EU institutions and member state governments, but also by the media and segments of the population.³⁷ As such, the criminalisation of migration is closely related to the wider issue of the EU’s security driven governance policies. By summarising the findings of existing studies by organisations such as the IRR,³⁸ PICUM,³⁹ the Research Social Platform on Migration and Asylum (ReSOMA),⁴⁰ European Union Agency for Fundamental Rights (FRA)⁴¹ and the

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Observatory for the Protection of Human Rights Defenders,⁴² this paper addresses criminalisation from a broader European perspective and identifies some links between countries and trends. This approach facilitated analysis of developments at the EU and local levels in which criminalisation is also embedded. Focusing on the examples of SAR NGOs in the Mediterranean and a few cases from NGOs and individuals in Greece, France, Sweden, Germany and Italy, this report explores the complex relationship between civil society actors and the state in situations of humanitarian concern.

Chapter 3 maps out several initiatives and their approaches in challenging criminalisation trends within the EU and its Member States. Several examples of monitoring, strategic litigation and campaigning were selected, although often initiatives and organisations are engaged in more than one area of action. The selected examples are the result of desk research based on publicly available information such as reports, policy briefs and newspaper articles. Additionally, this section is informed by consultations with stakeholders from civil society organisations, media and academia who shared their perspectives and insights on the challenges inherent in mobilising support for asylum seekers in Europe. The report concludes with reflections and recommendations for UAI's engagement and points out research gaps.

2. Dimensions of Asylum Criminalisation and its Implications for Humanitarian Action

Criminalisation in the context of humanitarian settings is not a new phenomenon and constitutes one of the central categories of the so called 'securitarian turn'.⁴³ The EU, in response to the increase in displaced people arriving in the EU, has given priority to the perceived or manufactured security concerns of its Member States about migration. This included strengthening border controls and military operations at sea and in third countries, combatting criminal networks of smugglers who are often portrayed by Member States as the main cause of irregular migration, inhumane treatment of asylum seekers already in the EU and swiftly returning those who are seeking or denied asylum (e.g., due to a negative decision on their asylum application, their registration in another EU member state, resettlement).⁴⁴

Parkin identifies three interrelated trends on the criminalisation of migration in Europe that have attracted research interest over the past two decades: discursive criminalisation of migration, the intertwining of criminal law and policing for migration management, and the large-scale use of immigrant detention as a way of controlling specific groups of people identified as posing a risk.⁴⁵ According to Parkin, discursive criminalisation refers to the process in which the idea of threats posed by migration is manifested in narratives which assume deviant behaviour on the part of the asylum seeker. The most salient example is the use of the terms 'legal' and 'illegal migrants' denoting that a person has (willingly or unwillingly) bypassed official documentation and procedures in the country of current residency. While these terms refer to the process of *how* a person has crossed a border (by regulated or unregulated means) and hence are not related to the reasons of flight which determine the eligibility for refugee protection mechanisms, the lack of official registration in one state's bureaucracy not only impairs people's right to direct claims towards the state, but has become associated with the absence of legitimate reasons for seeking asylum.⁴⁶

Another stream of research deals with criminal law as an effective means of the state to demonstrate control over human mobility. Like the governments of Australia, the US, Malaysia and China, the European Union and many EU leaders claim to 'take a tough stance on migration' by responding to the arrival of more than one million asylum seekers in 2015

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with security-related migration deterrence mechanisms that effectively reduced the number of people lodging asylum claims within the EU.⁴⁷ Abuse and neglect in countries of origin, during transit, and upon arrival have been ignored by those concerned with ‘managing migration’ while giving the protection needs of vulnerable and at-risk people, whatever their status, limited if any appropriate attention.

Demonstrations of strength and efficiency – through deploying police or military personnel in camps and detention centres or by regulating national borders and their laws – have also a symbolic nature in that they seek to create the notion of the (re)appearance of the sovereign state towards the public.⁴⁸ In this understanding, states enforce criminal penalties in the context of asylum to demonstrate national sovereignty in times of social unrest. In fact, while there exist no evidence linking criminalisation trends with an actual increase in crimes committed by asylum seekers, research suggests that a correlation exists between intensified criminalisation trends and moments of perceived crisis.⁴⁹

Worth mentioning here is that several studies and policy experts have questioned the effectiveness of securitisation in regulating migration – leaving aside its ethical implications for people forcibly displaced. In this context, Carrera et al. (2015) suggest that there is little political accountability for promoting a securitisation agenda on migration, especially in relation to its financial costs and desired outcomes.⁵⁰ Furthermore, the widespread detention of asylum seekers across the EU points to the institutionalisation of deterrence practices in which criminal and asylum or immigration laws are merged (also referred to as ‘crimmigration’).⁵¹ This has given way to the practice of imposing criminal sanctions arbitrarily on asylum seekers as well as those assisting them. As such, reasons to restrict personal liberty are not necessarily based on any specific criminal offence but are justified in terms of managing an ‘unwanted group’. The strategic decision to maintain bureaucratic obstacles and provide insufficient resources for those awaiting the outcome of their protection applications adheres to the questionable logic that denial of basic support and inhumane treatment works as an appropriate disincentive to would-be migrants to Europe. Richard Ericson, professor and director of the Centre of Criminology at the University of Toronto, adds that these measures can be understood as “counter-laws” intended to “erode or eliminate traditional principles, standards, and procedures of criminal law that get in the way of pre-empting imagined sources of harm”.⁵²

The criminalisation of asylum is also shaped by the wider context of populism, narrow notions of belonging, nationalistic far-right politics, downward democratic trends, and dysfunctional governance that have gained momentum in the EU in recent years.⁵³ Disrespect for the rule of law and infringements of fundamental rights – including but not limited to those of asylum seekers – have facilitated criminalisation trends in Hungary and Italy.⁵⁴ This environment has provided anti-refugee movements and militia groups with political opportunities to mobilise a wider network among EU citizens who protest against the ruling elite and growing inequality in the distribution of resources.⁵⁵ Invoking the narrative of the ‘invading others’ who pose a risk to security, cohesion and culture has served as a major political resource to fuel negative sentiments against asylum seekers as well as political actors who oppose the framing of asylum seekers as an ‘existential threat’.⁵⁶ These developments seriously endanger asylum seekers’ effective protection and social inclusion.

While laws that criminalise asylum seeking have characterised EU’s and Member States’ policies for the last decades, the enforcement of laws targeting third parties who assist them has reached a new dimension within the last three years.⁵⁷ Since both categories of laws are related to each other and reflect the perception that migration is harmful to one’s society (and

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ergo criminal), the following sections highlight the widespread and systematic use of criminal law and public defamation against NGOs and citizens as an expansion and intensification of the wider criminalisation process against migration in the EU.

2.1 Criminalisation in the Context of Crisis: Humanitarian Action and Political Solidarity

Diverse actors regularly invoke representations of a ‘refugee crisis’ in Europe but do not necessarily share opinions on what caused the situation, what or who is to blame, and how it affects peoples’ lives. For some, the term ‘refugee crisis’ describes the bureaucratic and administrative chaos that results from insufficient resources – financial, political and personnel – dedicated to ensuring a humane asylum process. In order to address problems that result from the policies of the EU and its Member States, thousands of individuals, initiatives and organisations have provided humanitarian support to asylum seekers through SAR activities at sea; distributing food, clothing and housing; providing medical and psychological treatment; offering transportation and campaigning for recognition of the rights of asylum seekers and others in need of protection.

Yet for others, migration is the cause of political crisis, threatening inner cohesion among and within EU Member States. The EU’s focus on ‘refugee flows’ and how to contain them resulted in the arbitrary enforcement of border arrangements and fanned *ad hoc* policy decisions that caused wide-spread insecurity among asylum seekers, local authorities and civil society actors alike.⁵⁸ In addition to enforcing administrative instruments and sanctions against asylum seekers to ensure their surveillance and control, EU and national laws punish the facilitation of unauthorised entry, transit and residence of non-EU citizens. But although the 2002 EU Facilitations Directive also gave Member States the option to exempt sanctions against individuals if the “aim of the behaviour is to provide humanitarian assistance”, the 2014 report by FRA pointed out that only eight EU Member States have included this exemption in their national legislation.⁵⁹ To the contrary, various EU governments have instituted or promoted measures in recent years that criminalise individuals and organisations who assist people seeking asylum in the EU⁶⁰.

The presence of long-established humanitarian organisations as well as self-organised citizens have highlighted the political actions of European states in compounding the dangers and difficulties of those fleeing violent conflict. By calling for respect of asylum and human rights law, humanitarian principles and human dignity, among others, various humanitarian organisations have added their voices to the larger chorus of groups protesting the degrading treatment and marginalization of asylum seekers and migrants in Europe. While humanitarian organisations tend to be reluctant to have – or to be used for – political motives that could undermine their credibility as impartial life-savers and ultimately reduce their scope of action on the ground, many humanitarian NGOs argue that to address or challenge measures that undermine the safety and dignity of those in need through advocacy and publicising testimonies forms a central part of humanitarian action (e.g. MSF’s principles ‘soigner et témoigner’).⁶¹

Researcher Sarah Willen (2011) argues that advocating for the humanitarian imperative – besides its legal, symbolic and practical implications – serves as “a recognizable, branded strategy for advancing a particular set of ethical or political commitments – what we might call a contemporary idiom of social justice mobilization”.⁶² This is also due to humanitarianism’s notion of ‘crisis’, which suggests an urgency to act in response to dire circumstances and therefore serves as a powerful tool to mobilise for political action. In this

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sense, civic engagement around asylum seeking in the EU has also shed light on the political component of humanitarian action which is revealed by the complex relationships between civil society actors and the state in humanitarian settings.

Criminalisation of humanitarian action point to the thin line between offering humanitarian assistance to certain groups of people on the one hand and political solidarity with them on the other.⁶³ In 1994 the International Federation of Red Cross and Red Crescent Societies (IFRC) and the International Committee of the Red Cross (ICRC) together with several NGOs laid out several fundamental principles in a Code of Conduct (CoC) that seeks to ensure that humanitarian action aligns with the principles of humanity, independence and impartiality, among others.⁶⁴ Although not spelled out in the CoC explicitly, the principle of neutrality – not taking sides in a political conflict - is included in the statutes of the International Red Cross and Red Crescent Movement⁶⁵ and is probably the most contested in practice. This is because it prohibits humanitarian actors from engaging in partisan political, racial, religious or ideological controversies for the benefit of access to a population of concern and acceptance by the local authorities.

In the context of asylum seeking in Europe, a key activity of several organisation has been to collect and disseminate information about the inhumanity resulting from the EU's asylum agenda, including asylum and human rights violations. Medical and humanitarian organisations such as MSF often refer to the “policy-made crisis”⁶⁶ to denote the political failures in protecting the lives of asylum seekers in the Mediterranean and within Europe. Organisations such as IFRC or PICUM report that thousands of asylum seekers in several EU countries are denied access to essential assistance, leaving them in vulnerable situations and often without any means to report or communicate violations of asylum and human rights law.⁶⁷ Human rights groups such as RRE, Pro Asyl, HRW, AI and ECRE have publicised the strategic use of pushbacks and arbitrary violence by police and local authorities along the EU's external borders and at sea, as well as the systematic human rights abuses and exploitation in detention centres and informal camps.⁶⁸

Several EU governments have responded to the work of such organisations by attempting to delegitimise their work, arguing that it serves as an incentive for further migration and stirs political crisis in Europe.⁶⁹ Findings from the ongoing research project ‘Anti-Smuggling Policies and Their Intersection with Humanitarian Assistance and Social Trust’⁷⁰ highlight how the current policing of humanitarian assistance to asylum seekers has contributed not only to formal criminal charges against humanitarian actors, but also to their intimidation, disciplining, and self-restraint.⁷¹ Long taken for granted, the imperative to assist those in need of protection has become a question of political position in most European countries while obligations and commitments under international, EU and national laws are bypassed and ignored. As such, the progressive normalisation in Europe of asylum criminalisation points to the tensions inherent in humanitarian settings where the state's demonstration of control and defence of sovereignty clashes with the perspective of humanitarian and human rights actions.⁷²

2.2 The Criminalisation of NGO Search and Rescue Operations in the Mediterranean

When the Italian-led Mare Nostrum SAR operation ended late 2014 the role of EU states in SAR effectively came to an end. Meanwhile, the EU revised its strategy in the Mediterranean in accordance with its political and military policies to fight ‘illegal migration’. First, it launched the maritime operations Triton (Frontex) and Sophia (EUNAVFOR – MED) to

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investigate human smuggling activities in the south-central Mediterranean Sea. While the UN Convention against Transnational Organized Crime (2000 Palermo Protocol) established the means to detect and punish trafficking in persons and smuggling of migrants, international and asylum law experts have long questioned whether reducing the dangers of those falling victim to trafficking or smuggling – as stated in the Protocol – is truly given priority.⁷³ In this line, operation Sophia was criticised early on by humanitarian and human rights groups for serving the purpose of crime control rather than rescue at sea.

Indeed, figures from the International Organisation for Migration (IOM) show that in 2018 the deaths of 2,242 people – half of all migrant fatalities worldwide – were recorded in the Mediterranean.⁷⁴ The lack of committed SAR gave rise to NGOs launching privately-funded SAR operations in the Mediterranean and the Aegean Sea. Between early 2017 and May 2018, almost half of the rescues (40 per cent) were carried out by NGOs such as Save the Children, Migrant Offshore Aid Station (MOAS), SOS Méditerranée, MSF and Sea-Watch.⁷⁵

In 2017 Italy, with EU support, struck a deal with the UN-backed Libyan Government of National Accord (GNA) which expanded operation Sophia to Libyan coastal waters and included the training and equipment of the LCG to intercept boats carrying asylum seekers to Europe and bring them back to Libya's notorious detention centres. Since then, the relationship between state and humanitarian actors at sea deteriorated. The European Court of Human Rights (ECtHR), UNHCR and various other sources have repeatedly stated that Libya is not a designated place of safety for the purposes of returning and disembarking people rescued at sea.⁷⁶ Hence, several humanitarian and human rights organisations argued that the situation in Libya puts the whole EU operation as well as arrangements between EU Member States and Libya on legally questionable grounds.⁷⁷ Yet, in early 2017, the head of Frontex lamented NGOs' insufficient cooperation with Libyan authorities to identify and combat smugglers and accused them of serving as a pull-factor for migration to Europe.⁷⁸ In the following years, several SAR NGOs reported violent encounters and harassment from the LCG, reaching a peak on 6 November 2017 when the LCG violently intercepted a raft with asylum seekers outside Libyan territorial waters, resulting in the deaths of at least 20 people.⁷⁹

In what can only be described as a smear campaign against NGOs and individuals seeking to defend the rights of asylum seekers at sea and those refusing that rescued people are brought back to Libya, several European politicians such as Italian Minister of Interior Matteo Salvini and German Minister of Interior Horst Seehofer have trivialised the deadly crossings of the Mediterranean as some sort of 'asylum tourism' for which SAR NGOs serve as 'shuttles'.⁸⁰ Other politicians, journalists and right-wing groups have followed this line, accusing SAR NGOs of colluding with and even financially benefiting from the trafficking networks.

In July 2017, Italy set out a code of conduct that SAR NGOs must sign to be allowed to disembark at Italy's ports.⁸¹ The code required NGOs to stay away from Libyan waters and to fully collaborate with investigations by operation Sophia against smugglers as well as with the LCG during their rescue operations. Initially several NGOs refused to sign, arguing that these investigations at sea could delay rescue operations and ultimately impair their performance in saving lives.⁸² Further, the code was seen by some as a means to create divisions within the SAR NGO community and to imply that those refusing to sign are linked to trafficking networks and part of a criminal enterprise.

In August 2017, a couple of days after the German SAR NGO Jugend Rettet refused to sign the proposed Italian draft, their boat IUVENTA was seized by Italian authorities in Lampedusa and, at the end of 2018, it was still under investigation.⁸³ During a rescue on 15 March 2018, the crew of the NGO vessel Open Arms was informed by the Italian Maritime

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Rescue Coordination Centres (MRCC) that the general coordination of the rescue now rested with the Libyan authorities and the arriving LCG.⁸⁴ When the crew refused these instructions and instead disembarked in Pozzallo, Italy, local authorities seized the vessel and initiated investigations against its captain for alleged human smuggling. In July 2018, Italian prosecutors in Trapani started investigations against more than 20 crew members of ships from MSF, Save the Children and Jugend Rettet.⁸⁵ Legal measures were also used against the captain of the vessel Mission Lifeline in Malta.⁸⁶

By 2018, dozens of individuals from SAR NGOs, fishermen and crew members of trade vessels had been arrested and/or publicly attacked and accused of collaborating with smugglers, refusing cooperation with the newly trained and equipped LCG or lacking formal registration.⁸⁷ The NGO vessel Aquarius had been one of the last remaining ships dedicated to SAR operations in the Mediterranean. However, in October 2018 the Aquarius was stranded in Marseille after first Gibraltar and then Panama revoked its registration, leaving it unable to undertake operations at sea. The latest attempt was to sail under the Swiss flag, but the Swiss government rejected a parliamentary proposal, arguing that “in this context, isolated actions risk compromising rather than encouraging the necessary cooperation between states”.⁸⁸ On 6 December 2018, MSF declared the suspension of their operations onboard the vessel Aquarius which they had jointly run with SOS Méditerranée due to ongoing obstruction by Italian authorities backed by the EU and other Member States.⁸⁹

Reaffirming his tough stance on migration, Italy’s Minister of Interior Matteo Salvini justified his decision to close Italian harbours in order to send an important signal:

“While we are standing here, the third boatload of slaves in a single month is not arriving in Italy, but heading in another direction . . . the warning has arrived for the human traffickers, as for the *mafiosi* and *camorristi*: the carnival is over”.⁹⁰

The result is that fishermen and cargo ships report fear of being punished if they rescue people at sea.⁹¹ Several other Member States such as Malta and Spain announced the closure of their ports to the disembarkation of rescued people. In the second half of 2018, NGO ships had to spend several days shuttling between European countries begging for permission to dock. This practice had severe consequences for the lives of people onboard, and also for the act of sea rescue in general. As MSF project coordinator Aloys Vimard, on board the Aquarius, aptly summarised:

“It seems the very principle of rendering assistance to persons in distress at sea is now at stake. Ships might be unwilling to respond to those in distress due to the high risk of being stranded and denied a place of safety”.⁹²

2.3 Citizens’ Defence of Asylum in Europe and the (Re)Claiming of State Control

While the SAR NGOs’ operations as well as their subsequent criminalisation have received the bulk of media attention, numerous NGOs and citizens across Europe have responded to the needs of asylum seekers who began arriving in increasing numbers in Europe in 2015. While the arrangements with non-EU countries such as Libya (2017) and Turkey (2016) as well as strictly enforced border controls have led to an overall decrease in the numbers of arriving asylum seekers in Europe, thousands of people are still being held in overcrowded detention facilities and informal camps within European states.⁹³ By offering lifts within and across EU borders and providing shelter, medical care, water, food, sanitation, housing, legal support and counselling to those asylum seekers, NGOs and citizens have been fulfilling the

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tasks that states are unwilling or unable to do. In an open letter dated September 2018, MSF clinical psychiatrist Dr. Alessandro Barberio referred to the situation in Moria camp on Lesbos as a “state of emergency” which could soon witness “an escalation of violence that would plunge the island into extreme chaos”.⁹⁴ Similarly, the International Rescue Committee (IRC) in September 2018 reported that almost 30 per cent of asylum seekers in Moria – among them many minors – had attempted suicide, calling for immediate transfer of people from Lesbos to the mainland.⁹⁵

And yet, states are very cautious about appearing weak or not in control of the asylum and overall migration situation.⁹⁶ It is thus that some researchers have described the ways in which the EU, Member States and local authorities – after their initial absence from the local sites where asylum seekers started to arrive during the summer of 2015 – have tried to regain control over the management of asylum seekers; often by restricting mobility, policing, creating large-scale databases and profiling by security professionals.⁹⁷

Greece introduced legislation in 2016 which foresaw the close monitoring of, and restrictive access for, volunteers and NGOs assisting asylum seekers and placed humanitarian assistance under the supervision of the military.⁹⁸ This suggests the explicit targeting of NGOs working with asylum seekers and those individuals standing in close social proximity to them in efforts to assert greater control over the asylum procedures in Greece. Instead of responding to the alarming accounts of above-mentioned NGOs on the conditions for asylum seekers, humanitarian actors and rights activists working with asylum seekers across the EU have since fallen victim to accusations and arrests for allegedly facilitating illegal entry and transit, assisting illegal residence or other charges specific to a member state’s immigration laws.⁹⁹ In August 2018, three staff members from the Emergency Response Centre International (ERCI) in Greece were arrested and charged with people smuggling, espionage and membership in a criminal organisation.¹⁰⁰ Among them was the Syrian refugee Sara Mardini, previously celebrated by the press and public as an elite swimmer who gained world-wide attention for pulling a boat with engine failure safely to the Greek island of Lesbos. Similar cases come from France, Germany, Hungary, Spain and Italy where laws and regulations increasingly hinder NGOs from accessing reception and detention facilities or transit zones between borders.¹⁰¹

Although states may exempt acts of humanitarian assistance from punishment under the 2002 EU Facilitations Directive, a study carried out for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament in 2016 found a “substantial implementation gap” regarding the exemption of sanctions for humanitarian assistance and urged Member States to monitor the criminalisation of humanitarian assistance in the context of migration and its consequences, which could amount to breaches of human rights and EU laws.¹⁰² In its own evaluation of the Directive from 2017 the EU Commission likewise stated that “the main areas for improvement that have emerged as a result of the evaluation concern the perceived risk of criminalisation of humanitarian assistance”.¹⁰³ But while the commission noted the LIBE study, it concluded that due to a lack of evidence regarding the prosecution of people assisting refugees, a revision of the directive was not necessary.¹⁰⁴ This is surprising given that the before-mentioned FRA report as well as numerous NGOs such as *Délinquants Solidaires*,¹⁰⁵ *PICUM* or *Borderline Europe*¹⁰⁶ have been at the forefront in collecting and making available evidence of criminalisation against humanitarian assistance to asylum seekers.

But asylum criminalisation is not limited to the work of NGOs and civil society actors. Legal prosecutions against individuals assisting asylum seekers in their private capacity are likewise

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increasingly pursued. In several instances, cases were closed due to lack of evidence, while some individuals have been successful in challenging first-instance judgements. Such as Cedric Herrou of the NGO Roya Citoyenne who assisted asylum seekers in entering France via the French-Italian border and was fined €3,000 in 2017. In July 2018 the Constitutional Council of France revoked the judgement, stating that Herrou's actions were protected under the constitutional principle of *fraternité*.¹⁰⁷ But many others remain in custody or under investigation, such as the Swedish student Elin Ersson who received global admiration after live-streaming her refusal to sit down in an aircraft which was to transport an Afghan asylum seeker back to Kabul.¹⁰⁸ While her actions eventually led to the halt of the deportation of the asylum seeker on that plane and Ersson was praised for her act of civil disobedience, Swedish prosecutors have now indicted her for violations of the Swedish Aviation Act, and she could now face a fine or prison sentence.

Politicians who advocate for asylum seekers' humane treatment are not being spared. In early October 2018 Italian mayor Domenico Lucano, who set up an integration model for asylum seekers, refugees and migrants in the town of Riace, was put under house arrest for alleged tax fraud and aiding refugees, among other accusations.¹⁰⁹ Similarly, when the mayors of Florence, Naples, Palermo and Parma refused (January 2019) to implement the new anti-immigration laws of Matteo Salvini, he demanded their resignation, arguing that their behaviour was anti-Italian and an incitement for civil disobedience.¹¹⁰ Like Salvini, several politicians in EU Member States participate in the framing of humanitarian action as running counter to national and European security interests in order to delegitimise their opponents and those refusing to disregard legal, political and social obligations towards people seeking international protection.

The reports and studies cited above conclude that, currently, there is a systematic and Europe-wide campaign to effectively compromise assistance to asylum seekers and shrink the space for civil action.¹¹¹ Interviews with humanitarian workers in Greece and Italy (2018) emphasised the increase of fear of legal prosecution for people interacting with asylum seekers, while others worry about attacks and intimidation by self-proclaimed vigilante groups. Often, the lack of clarity – not knowing if and for what reason a person assisting asylum seekers in Europe is accused of committing a criminal offence – serves as a powerful tool to inhibit citizens from engaging with people whose legal status is uncertain but whose humanitarian needs are obvious.

3. Resisting Asylum Criminalisation: A Mapping of Actors and Their Approaches

Initiatives and individuals have sought in multiple ways to challenge the ongoing criminalisation of asylum seekers as well as of those offering them support. Besides delivering humanitarian aid, one key aspect has been the documentation and collection of information to counter smuggling allegations and to provide alternative sources of information about the situation of people affected by the EU's asylum agenda, including asylum law and human rights violations. In general, the activities, initiatives and networks fighting the criminalisation of humanitarian action are similar and complementary to those defending the rights of asylum seekers: monitoring, research, political advocacy, campaigning and strategic litigation. Depending on the type of initiative or organisation and its underlying rationale, they challenge politicians, law enforcement and the public by calling for respect for asylum and human rights law, humanitarian principles, human dignity and principles of humanity.

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According to Jeff Crisp (2018), appealing to the humanitarian interest of governments as well as pointing out the moral or financial rewards for states can be successful in generating political will.¹¹² Further, important non-governmental actors such as civil society, the media or the judiciary can generate public pressure for political decision-makers to ensure that the rights of asylum seekers are respected. While various monitoring initiatives, which collect and publicise cases of criminalisation against humanitarian action have been established, several people interviewed for this study expressed frustration about the lack of a political response. Respondents from NGOs considered the provision of information to EU representatives, their governments and state authorities to be one of the central elements of their advocacy efforts. However, they pointed to two main reasons that make mobilisation in the current context difficult: (1) the politicisation of migration and the related high political costs for politicians to address the issue and (2) the climate of open hostility and mistrust between states opposing the universal right to seek asylum in Europe and civil society organisations defending it.

Research carried out for ICVA in the summer of 2018 indicates that many NGOs struggle to comprehend the views of governments and other state authorities and to find the right tone and content to address them.¹¹³ Also, the positions on asylum-related policies vary greatly between and within political parties and state institutions, making it harder to identify allies.¹¹⁴ Jeff Crisp among others points to the importance, when mobilising support for asylum seekers, of local and regional authorities, who often oppose the decisions taken by their national governments and thus can play a vital role for protecting the rights of asylum seekers in practice.¹¹⁵ On 8 December 2018, on the margins of the intergovernmental conference to adopt the GCM, more than 150 mayors and city leaders from across the globe participated in the 5th Mayoral Forum on Human Mobility, Migration and Development. The Marrakech Mayoral Declaration ‘Cities Working Together for Migrants and Refugees’ which was adopted during the forum emphasises the key role of cities and urban spaces in implementing the GCM, as regional authorities, not national representatives, are mainly in charge of providing fundamental services and support to asylum seekers and migrants on the ground.¹¹⁶ Similar initiatives can be observed in the EU, where several cities have offered to host asylum seekers rescued by SAR NGOs while EU governments remain silent or obstructive on the issue. Churches, the pope and faith-based organisations likewise condemned the indifference and ruthlessness encountered by people forced to flee.

Interviewees pointed to the challenges inherent in collaboration between different actors – politicians, activists, humanitarian workers, media and citizens – and across borders. On the one hand, a common belief is that collaborations and alliances are central in mobilising larger protests and reaching more people. Thus, several initiatives have formed coalitions or created web-based platforms to exchange views and pool resources and knowledge, drawing together different actors and networks. The umbrella organisations (CIRÈ,¹¹⁷ CIVICUS,¹¹⁸ Toward a Coalition of Solidarity – For the Right to Mobility and Equal Rights for All¹¹⁹ and the Citizen’s Platform for Refugee Support – Plateforme Citoyenne de Soutien aux Réfugiés¹²⁰) coordinate and support grassroots initiatives and organisations to enhance the collaboration of social-movement actors. At the European level, the European Citizens’ Initiative #WelcomingEurope¹²¹ collected one million signatures to pressure the EU Commission and Parliament to decriminalise citizens’ actions carried out in solidarity with asylum seekers. Coordinated by the Migration Policy Group (MPG) for the EU NGO Platform on Asylum and Migration¹²² (EPAM), the coalition includes more than 170 civil society organisations that advocate for an EU asylum agenda based on the principles of solidarity, dignity and human rights. What can be viewed as the first effective joint action on EU level, the European

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Parliament in July 2018 adopted a resolution to end the criminalisation and punishment of organisations which assist asylum seekers.¹²³

Other interviewees concluded that the multitude of claims and goals as well as asymmetrical power relations between actors have hampered the development of a strong unified voice. Tensions are particularly visible between humanitarian professionals working within established international organisations on the one hand and volunteers and grassroots activist networks on the other.¹²⁴ Disagreements were also highlighted in regard to proposed actions and solutions, though this applies to a lesser degree to the obstruction of humanitarian assistance than to more general social rights of asylum seekers.

3.1 Monitoring and Documentation

In the current situation regarding asylum in Europe, the role of organisations and UN agencies has become similar to that of a ‘watchdog’ in guarding the rights of asylum seekers. In the case of Libya, several reports substantiate the inhumane and life-threatening conditions for asylum seekers. A country report on Libya by UNHCR states that in 2018 the LCG intercepted 14,949 refugees and migrants during 120 sea operations.¹²⁵ Subsequently, the number of people held in detention centres in Libya under the most inhumane conditions has more than doubled, since March 2018.¹²⁶ Back in 2017, then UN-High Commissioner for Human Rights, Zeid Ra’ad al Hussein, attacked the EU for pursuing the agreement with Libya, calling it “an outrage against humanity”.¹²⁷

But according to refugee policy expert and former UNHCR official Jeff Crisp, the agencies responsible for the maintenance and implementation of protection mechanisms for asylum seekers such as UNHCR have forfeited much of their political clout due to their dependence on government funding and cooperation with local authorities.¹²⁸ A report jointly published by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in December 2018 described patterns of serious human rights violations and abuses of migrants and refugees in Libya, committed by both state officials and members of armed groups, as well as smugglers and traffickers.¹²⁹ While visiting Libyan detention centres, the UN teams documented torture, ill-treatment, forced labour and rape by guards. But up to the time of writing this report, the arrangements between the EU, Italy and Libya remain in place.

Other initiatives, such as Watch the Med Alarm Phone¹³⁰, monitor the deaths of asylum seekers and violations of their rights at the maritime borders of the EU. They have also set up an online mapping platform for activist networks and civil society actors in Europe and Northern Africa. Since early 2017, the German SAR NGO Sea-Watch together with the Swiss humanitarian pilot initiative (hpi) operate the #Moonbird, a civil reconnaissance aircraft to facilitate the search for boats in distress, coordinate rescues and document human rights violations in the Mediterranean.¹³¹ A workshop held at Queen Mary University in London in 2017 brought together stakeholders from SAR NGOS, EU and UN institutions and academia to establish a SAR Observatory for the Mediterranean (SAROBMED).¹³² Via an online platform, the independent, research-led observatory collects, stores, exchanges and disseminates search and rescue and interdiction incidents regarding human rights violations in the Mediterranean. The deadly interception by the LCG on 6 November 2017 was well documented by the nearby NGO vessel Sea-Watch that gathered video material of the incident. Complemented by interviews with the crew and rescued persons, the research groups Forensic Architecture and Forensic Oceanography reconstructed the incident and produced The New York Times Opinion piece and short film ‘It’s an Act of Murder’.¹³³

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In the Balkan region, the Croatia-based NGO #Are you Syrious? (AYS) and the initiative Moving Europe provide humanitarian actors but also journalists with a daily news digest about the situation on the ground. This proved particularly helpful in the context of the chaotic ad hoc border closures in 2015. In December 2018, AYS published a long article documenting the criminalisation of their work in Croatia and on violence, intimidation and demolition of their buildings.¹³⁴ The aforementioned French NGOs *Délinquants Solidaires* and *GISTI*¹³⁵ as well as the networks RRE, *Borderline Europe* and *Bordermonitoring.eu*¹³⁶ have created data-bases and research tools to collect and visualise details of cases and judgments dealing with rights violations of asylum seekers as well as those who assist them.

3.2 Strategic Litigation

Besides the appeals by individuals against charges of assisting asylum seekers, organisations such as ECRE¹³⁷, *Pro Asyl*,¹³⁸ the *AIRE Centre*¹³⁹ and ECCHR¹⁴⁰ use information provided by monitoring initiatives for compiling strategic litigation cases before international as well as EU courts, for example the CJEU and the ECtHR. While European institutions and Member States are obliged to ensure that European law is respected and to take the necessary steps when it is violated, few expect the EU Commission or national governments to initiate action against other Member States without being pressured to do so. The announcement by the EU Commission to refer Hungary to the CJEU for its illegitimate detention procedures, breaches of the *non-refoulement* principle and criminalisation of activities in support of asylum applications can be attributed, in particular, to the advocacy work of the Hungarian Helsinki Committee as well as ECRE, which provided evidence on cases and established contacts.¹⁴¹

NGOs can lodge complaints with the EU Commission in cases where a member state is in violation of EU law or, in cases of violations of the European Social Charter, with the Council of Europe Collective Complaints. Several legal and policy experts have emphasised that the arrests of the crew members of SAR NGOs' and the seizure of rescue vessels cannot be justified on legal grounds and should be dismissed.¹⁴² Dr. Violeta Morena-Lax, senior lecturer at Queen Mary University London, argues that conversely all coastal states are obliged to prosecute captains who fail to carry out SAR.¹⁴³ But judicial cases that hold state officials accountable for the effects of their political decisions are generally rare, especially if they lack backing from other state actors as well as a wider public.

Nevertheless, respondents indicated that the arrangements between Italy, the EU and Libya provide scope for intervention as they prove legally, politically and morally problematic. In response to the charges brought against the vessel *Open Arms* and its captain, 29 international law academics released a public statement on 29 March 2018 calling on the UN Security Council to address Italy's role in illegal pushbacks to Libya.¹⁴⁴ In its 2012 ruling, the ECtHR stated that forcibly returning people to Libya where they are at risk of human rights abuses is illegal under the European Convention of Human Rights.¹⁴⁵ The case referred to events in 2009 when Italian authorities intercepted a boat with 200 people fleeing from Libya and forced them to return. The court argued that Italy had violated the rights of these people, which included having "access to an individualised procedure as well as remedies to challenge the decision to return them to their country of departure". By providing training and equipment to the LCG, Italy might have violated the principle of *non-refoulement*, as it remains responsible for identifying a place of safety where the rescued should disembark.¹⁴⁶ The above mentioned academics also appealed to the International Criminal Court to investigate Italian authorities' complicity in crimes against humanity taking place in Libya.

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Several NGOs are committed to helping the case of Sea-Watch that has supported survivors of the deadly incident on 6 November 2017 to file an application with the ECtHR against Italy.¹⁴⁷ Information already provided by UNHCR and the UN OHCHR gives a detailed picture of the situation in Libya. However, a staff member of a German asylum rights NGO stated that the main challenge is to locate people who have been forcibly returned to Libya on the basis of the EU-Italy-Libya agreement and subsequently become victims of human rights violations. Given the limited scope of action that national as well as international actors have in present-day Libya, identifying and bringing victims out of the country to participate in an international or European Court will prove difficult.

An interviewee commented that the current situation in general represents a setback for asylum rights organisations and groups as they are busy trying to prevent further damage to existing law rather than promoting a progressive model to improve the situation of asylum seekers. Additionally, the legal categorisation of systematic human rights abuse is time-consuming and complex, while the needs of asylum seekers often require immediate redress. The respondents also noted that even jurisprudences which acknowledge the violation of asylum laws (e.g. the 2012 ECtHR ruling against Italy) have, so far, not induced states to change their practices and violations of the rights of asylum seekers continue. Nevertheless, it was stressed that the decisions deriving from these cases will have legal significance for the interpretation of EU and national laws and are important milestones for political pressure and advocacy.

3.3 Campaigns and Civil Disobedience

Since the mid-late 1990s, campaigns by various movements in France and other European countries have denounced the withholding of fundamental rights in the absence of legal documentation. They have promoted the use of alternative terminology, for example, ‘regular/irregular’ or ‘documented/undocumented migrants’¹⁴⁸. Building on slogans such as ‘No one is illegal’ and terminologies such as the ‘sanspapiers’, these campaigns sought to highlight the social exclusion resulting from asylum criminalisation.

Recent campaigns call on EU citizens to resist the deterrence policies pursued by their governments. When, in August 2015, German Chancellor Angela Merkel waived the Dublin Regulation and chose not to enforce controls on asylum seekers at the country’s borders with Austria, the artist collective *Peng!* launched its campaign *Fluchthelfer* (German term for those helping people to escape their countries of origin) in which EU citizens were encouraged to give lifts to people in flight to Germany.¹⁴⁹ Underlying the campaign was the plea for civil disobedience, which the artists honoured with the ‘EU Cross of Merit’ during a political stunt organised at the Brandenburger Tor in Berlin, Germany, on 7 August 2015.¹⁵⁰ Among the eight women and men honoured for helping asylum seekers enter or transit a European Member State was Theodora Tsongari, a Greek resident of the island of Lesbos who drove a group of asylum seekers who had arrived by dingy on the eastern shore of the island to the registration centre in the capital Mytilene, 40 kilometres away. At that time, the transportation of undocumented people was prohibited by Greek law and Tsongari was arrested and charged with facilitating illegal entry.¹⁵¹

In Germany, the term *Fluchthelfer* summons memories of people who helped residents of the former German Democratic Republic (GDR) to escape during the Cold War and who later were awarded the German Federal Cross of Merit. Burkhard Veigl, who features on the campaigns’ website and who facilitated the flight of many people from the former GDR, notes:

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“I don’t see a difference between what I have done and what a Syrian escape agent today is doing. Persons in danger have their own laws. And if nobody else is helping them, we need to do it”.¹⁵²

While accurate assertions about public opinion regarding asylum seekers and its effects on citizens’ actions or on political decision-makers are difficult to make, interviewees from the media and from humanitarian and civic organisations view public campaigning essential in mobilising support for asylum seekers and legitimising assistance by humanitarian actors.

Dempster and Hargrave (2017) argue that value-based argumentation that posits a shared humanity might be more successful in changing public perception about asylum seekers than the distribution of facts and numbers.¹⁵³ While the scope of this paper does not allow for an in-depth elaboration on the different approaches used for social mobilisation, it can be noted that most of the campaigns reviewed in this report seek to counter the criminalisation of assistance for asylum seekers by casting their work in the humanitarian framework – the obligation to save lives and ameliorate human suffering – which resonates with the conviction of a shared humanity and finds expression in terms such as empathy, solidarity and compassion.¹⁵⁴

In reaction to the public defamation of SAR NGOs in German media in Spring 2018, SOS Méditerranée started their photo series #TogetherForRescue,¹⁵⁵ which is now used by German celebrities who pose with the hashtag and a life vest. The criminalisation of the humanitarian imperative underlies many campaigns of humanitarian and SAR NGOs, but also those of rights activists, international lawyers, politicians, civic and political groups, activist networks and citizens. When in the summer of 2018 several EU Member States refused to allow the Aquarius and other vessels to dock at their ports, organisations and networks mobilised their supporters across the EU for safe escape routes and sea rescue. The trans-European movement #Seebrücke – Creating Safe Harbours¹⁵⁶ brought together various associations and civil society actors to protest in European cities. Mayors of several European cities also expressed their solidarity with the NGOs; the German cities of Cologne, Düsseldorf and Bonn wrote an open letter to Chancellor Merkel noting their commitment to resettle the people rescued at sea.¹⁵⁷ Since then, many others have followed, most recently Naples’s mayor Luigi de Magistris, who stated he would allow the vessel Sea Watch 3 dock to disembark the rescued people still on board.¹⁵⁸

But the question remains of how much ‘message tailoring’ organisations are willing to do to appeal to the wider public. Highlighting the benefits of an open approach towards displacement and migration for the host state (e.g. moral rewards for accepting people fleeing civil wars such as Syrians, or gaining work force for the state’s economic well-being) might contribute to a positive view of the public on human mobility. But it also bears the risk of creating an unrealistic persona of the ‘deserving migrant’, while disqualifying others who don’t fit this profile. In this sense, it was suggested embedding refugee protection claims within the broader quest for social justice and equity so as not to reinforce already existing inequalities between people with different legal and socio-economic status.

4. Conclusions and Recommendations

Over the past 20 years, the asylum policies of the EU and some of its Member States have been dominated by agendas that frame the mobility of certain groups in criminal terms. The criminalisation of asylum seekers on their way to and within Europe has, moreover, increasingly affected humanitarian action around the EU’s external borders and in Member

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States. While the EU as well as Member States regularly describe their actions as humanitarian, their current policies follow the securitisation dogma which fails to address the exclusion, neglect, starvation, drowning, torture, rape and slavery experienced by asylum seekers today. Additionally, EU and national officials together with several politicians have started and/or supported smear campaigns against NGOs and individuals who refuse to comply with policies that endanger asylum seekers.

SAR NGOs have been accused of collaborating with smugglers, dumping toxic waste in the Mediterranean, and lacking formal registration.¹⁵⁹ Effective SAR by NGOs, fishermen and trade vessels alike has almost disappeared in the Mediterranean, despite information on the deplorable situation in Libya and the deaths of many attempting to reach safety in Europe. Humanitarian actors, rights activists and engaged citizens assisting asylum seekers across the EU have fallen victim to accusations, arrests, and intimidation for facilitating alleged crimes such as ‘illegal entry and transit’, ‘illegal residence’ or other charges specific to a Member State’s immigration laws. Several reports have concluded that the criminalisation trend has amounted to a systematic and Europe-wide campaign to effectively compromise assistance to asylum seekers and shrink the space for civil action.

At the same time, there has been a mushrooming of civil society activism that challenges and struggles to mitigate the effects of these EU policies. This civic engagement around asylum seeking in the EU has shed light on the complex relationships between civil society actors and the state in relation to humanitarian concerns. To understand these diametrically opposed perspectives and their implications for current asylum policies in the EU, this report situated the criminalisation of asylum seekers and those assisting them in the wider socio-political context of humanitarian action being framed as antagonistic to the EU and national interests.

To counter these trends, several organisations and initiatives monitor and publicise international and asylum rights violations, often using online data-bases accessible to a wider audience. Others focus on compiling strategic litigation cases before international as well as EU courts to uphold existing laws protecting the right of asylum seekers in Europe. While public opinion varies greatly across the EU and Member States, organisations also see the need to mobilise larger parts of the population to challenge governments and their policies. Based on the literature reviewed and the insights from existing initiatives and organisations, this paper gives the following recommendations to UAI.

Recommendation I: Mapping Asylum Criminalisation and Supporting Existing Initiatives

Given the vast amount of different civil society activities and organisations already engaged in challenging EU and Member States policies, UAI should link up with existing networks and exchange ideas with other entities to identify where it can best help to counter criminalisation of asylum seekers and humanitarian activists. For this purpose, the author of this report compiled in a live document examples of the work of organisations – local, national and regional – concerned with the criminalisation of asylum seekers and those intent on providing help to people in distress.

While several organisations have themselves conducted mapping studies of the different initiatives and actors engaged in the asylum issue in Europe, they have done so from multiple perspectives and a comprehensive overview is currently lacking.¹⁶⁰ This is also due to the fast-changing environments – both political and geographical – in which the topic of asylum criminalisation is embedded. Given UAI’s broad network of supporters in several EU as well

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as non-EU countries, a first suggestion would therefore be the exploration of existing materials and collaborative instruments to map and exchange on the issues involved.

In terms of political advocacy, UAI should start by considering supporting the following existing activities:

- Sign petitions and Calls to Action to end asylum criminalisation (e.g. of the European Citizens Initiative #WelcomingEurope)¹⁶¹
- Monitor and support resolutions of the European Parliament on asylum criminalisation (e.g. resolution 2018/2769(RSP) ‘Resolution on guidelines for Member States to prevent humanitarian assistance from being criminalised’).¹⁶²
- Monitor and lobby for EU Parliament Legislative Proposals (e.g. for establishing a European humanitarian visa, giving access to European territory – exclusively to the member state issuing the visa – for the sole purpose of applying for international protection)¹⁶³
- Track the legal cases and advocacy regarding the EU and Member State arrangements with refugee hosting as well as transit countries (esp.in relation to Libya, Turkey and Niger) as well as with countries of origin

Recommendation II: Increase Awareness of Asylum Criminalisation Beyond its Effects on Humanitarian Action

Preventing humanitarian action for asylum seekers and hostility and intimidation towards those who insist on the universal obligation to assist people in need of safety challenge the core principles of international refugee law and human rights law. As such, legal agreements and related judicial activities to secure state accountability are, unquestionably, of critical importance. The close link between the humanitarian situation of asylum seekers and their political-legal status is providing grounds for mobilisation against asylum criminalisation among humanitarian, human rights and civil society actors.

However, some interviewees pointed to the importance of moving beyond the humanitarian and human rights jargon. Violent manhunts of perceived immigrants as well as threats and harassment of people working in shelters, schools or medical posts or providing legal counsel for asylum seekers have far-reaching social and political implications beyond humanitarian concerns. Engaging with journalists through interviews and contributing articles will help to publicise asylum criminalisation and its implications for society at large (and not only of those directly affected). The polarisation witnessed today in several EU countries and among Member States regarding asylum policies and the tense atmosphere between NGOs and state actors constitute major barriers to develop and implement human-centred approaches. Thus, including actors from different sectors and with different perspectives may lay the grounds to facilitate joint action. For this, engagement with the concerns of affected communities and refining messages is essential.

Joining and/or initiating campaigns and events or small projects in collaboration with civil society organisations, academics, diaspora groups, artists and committed individuals can lead to a larger social engagement to press for political change. A combination of sustained international advocacy work and campaigning with initiatives geographically dispersed would further broaden UAI’s network outside of Europe and highlight the relationship between origins of involuntary displacement and European policies in places of origin (e.g. arms trade, engagement in particular wars and violent conflicts).

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A challenge for many grassroots initiatives is their lack of resources such as political and communication channels. With its dispersed civil society networks and pool of supporters, UAI should seek to offer these initiatives platforms to actively participate in the discourses on asylum criminalisation. More generally, keeping track and ensuring exchange between actors from different sectors and countries would be a good way to develop comprehensive advocacy that is able to challenge asylum criminalisation through approaches at various levels.

Recommendation III: Fill Research Gaps

Despite the vast amount of literature that deals with the criminalisation of the asylum process, important research gaps remain regarding how different manifestations of criminalisation are related to each other, as well as case studies that demonstrate the impact of these trends on EU and Member State policy. Over the coming months and years, UAI, in its work with partners, may wish to promote or sponsor targeted research to fill any gaps that may emerge or become evident in the area of asylum criminalisation.

Though some scholars have explored ways in which criminalisation discourses in politics and the media have contributed to punitive policy measures to deal with asylum seekers in the EU, research that focuses on the social perception of humanitarian action in the context of asylum seeking and its effects on both the humanitarian endeavour as well as related policy making could inform advocacy efforts that promote a human-centred approach to forced displacement, asylum seekers and those whose legal status is uncertain or questioned.

Another research area relevant to UAI concerns questions raised about the EU's accountability for its securitisation of the asylum and migration regime. Accountability for EU's financial spending in relation to migration have partly been addressed by monitoring initiatives such as the project MigrantFiles (2013–16), a consortium of journalists across Europe.¹⁶⁴ However, research that further highlights the human costs of the externalisation of migration control especially in relation to Africa is important in order to challenge the narrow security perspective of the EU and Member States.

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Endnotes

¹ The various terms used to refer to human mobility have attracted a large body of critique due to their deficiencies in practice and their socio-political implications for claiming universal rights. Anthropologist **Liisa Malkki** emphasises that the modern international asylum system follows the logic of a world in order, imagined – geographically, but also socio-politically – as consisting of nation states and citizens with clear cut rights and responsibilities governing their relations in the form of domestic and international laws. In this framework, by crossing borders, people enter into a hybrid regime that falls outside of the national/non-national dichotomy, thus potentially disrupt the ‘national order of things’ and becoming a matter of humanitarian concern. See **Liisa Malkki 1995**, ‘Refugees and Exile: From “Refugee Studies” to the National Order of Things’, *Annual Review of Anthropology* 24 (1995): 495–523. For this paper I have chosen to use the term asylum seekers rather broadly to refer to people who seek international protection upon arrival in Europe, regardless of whether they meet refugee criteria put in place by the respective Member State.

² United Against Inhumanity (UAI) is a non-profit organisation with a growing network of individuals and groups who seek to counter the atrocities of war and erosion of the global asylum regime. By asserting pressure on governments and international organisations UAI calls on political actors to actively address both war-related atrocities and the mistreatment of people fleeing for their lives. <http://www.against-inhumanity.org/> (accessed 20 February 2019).

³ Compare **Transnational Institute 2018**, ‘The Shrinking Space for Solidarity with Migrants and Refugees: How the European Union and Member States Target and Criminalize Defenders of the Rights of People on the Move’, https://www.tni.org/files/publication-downloads/en_theshrinkingspace.pdf.

⁴ **Donatella della Porta 2018**, *Solidarity Mobilizations in the ‘Refugee Crisis’*. Cham: Springer International Publishing.

⁵ **Jeff Crisp 2018**, ‘Mobilizing Political Will for Refugee Protection and Solutions. A Framework for Analysis and Action’. World Refugee Council Research Paper No. 1, June 2018. Centre for International Governance Innovation.

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⁷ The UN agency UNHCR is tasked with the identification and effective protection of forcibly displaced people. It does so by assessing people in need of international protection in accordance with existing legal frameworks as well as socio-geographical categories. In addition, the UNHCR is responsible for offering and putting into practice the respective protection schemes in collaboration with the responsible regional and/or national authorities. Among others, UNHCR’s protection mandate to protect includes refugees, returnees, internally displaced people (IDPs), stateless people and asylum seekers (also called ‘prima facie’ refugees).

⁸ **UNHCR Global Trends Report 2017**, ‘Global Trends: Forced Displacement in 2017’, 25.4 million refugees (including UNCHR and Palestine refugees under UNRWA’s mandate); 40 million internally displaced (including ‘returnees’); 3.1 million asylum seekers, <http://www.unhcr.org/globaltrends2017/>.

⁹ See **UNHCR**, ‘New York Declaration for Refugee and Migrants’, <https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>.

¹⁰ **UN Global Compact on safe, orderly and regular migration (2018)**: <https://refugeesmigrants.un.org/migration-compact>; **UN Global Compact on Refugees (2018)**: <https://refugeesmigrants.un.org/refugees-compact> (accessed 7 January 2019).

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¹² **EU Observer**, **Eszter Zalan 2018**, “EU in sudden turmoil over UN migration pact”. 4 October 2018, <https://euobserver.com/migration/143597> (accessed 07 January 2019).

¹³ **EU External Action**, ‘Speech Delivered by Commissioner Stylianides on Behalf of HR/VP Mogherini, during the EP Debate on the Global Compact on Migration, 13 November 2018’, 14 November 2018, EUEA, Strasbourg, https://eeas.europa.eu/headquarters/headquarters-homepage/53754/speech-delivered-commissioner-stylianides-behalf-hrvp-mogherini-during-ep-debate-global_en (accessed 7 January 2019).

¹⁴ **UN 2018**, ‘General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants’, press release, 19 December 2018, <https://www.un.org/press/en/2018/ga12113.doc.htm> (accessed 7 January 2019).

¹⁵ **IFRC Summary Report 2018**, ‘New Walled Order: How Barriers to Basic Services Turn Migration into a Humanitarian Crisis’, Geneva, July 2018, <http://media.ifrc.org/wp-content/uploads/sites/5/2018/07/180628-Migration-policy-report-A4-EN.pdf>.

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¹⁶ **Alessandro Spina 2018**, 'Where Are We Going? Italy (And Europe) at the Crossroads between Xenophobia and Hospitality', *Border Criminologies Blog*, 11 July 2018, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/07/where-are-we> (accessed 7 January 2019).

¹⁷ **European Parliament 2018**, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', press release, 19 July 2018, http://europa.eu/rapid/press-release_IP-18-4522_en.htm (accessed 7 January 2019).

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Annex I: Terms of References

25th June 2018

UAI Consultancy

Analysis of the Criminalisation of Asylum/Migration and Acts of Resistance to Deterrence Measures

Background

Protracted wars, conflicts and inhumane living conditions currently force millions of people to flee their homes and risk their lives in search of refuge. The international response has failed to protect those obliged to flee their homes, while various governments and international institutions have, individually and collectively, instituted or promoted measures that criminalise people on the move and those who strive to rescue or safeguard their physical safety. Similar to the governments of Australia, the US, Malaysia and China, the European Union and other European governments have pursued a policy of deterrence and detention that inhibits many of those pursuing their right to seek asylum from making a claim.

Simultaneously, recent years have witnessed a rise in racism, xenophobia and anti-immigrant sentiment that is a factor in the growth of populism, narrow notions of nationalism, far-right politics, a downward democratic trend, and dysfunctional governance.

To challenge deterrence and related measures new and long-standing human rights, refugee and asylum groups, as well as academia and think-tanks, have reacted in order to ameliorate the situation of respective groups including in particular those who are forced to flee and are at imminent risk of becoming subject to inhumane treatment and undignified living conditions.

Against this background, it is unclear to what extent, if any, traditional and innovative approaches have been effective in (a) challenging Europe's deterrence and detention policies (and mechanisms) and (b) securing support for interventions aimed at changing the situation for those in need (legal status, physical safety, undignified living conditions) including in particular those seeking asylum.

Rationale

UAI has identified the erosion of the global asylum regime as one of its main concerns. As global contexts play a decisive role in shaping asylum policies and their enforcements, there is a need to better understand how global trends, pressing issues and interventions are relevant to the situation of forced migrants and asylum seekers.

In the European context, a variety of initiatives and organisations as well as individuals have expressed their disapproval of EU policies that put people on the move at risk. Advocacy campaigns as well as rescue interventions challenged the deterrence mechanisms installed by the European Union and European governments, but their impact for policy change remains unclear.

In sum, UAI needs to identify where it can most usefully engage and add its voice to the larger chorus of concern that has been triggered by the shifting and evolving scene concerning asylum seekers in the European context in recent years.

An important starting point for UAI to determine how best it can be of value on the issue of forced migration and asylum is a broad understanding of the

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- (a) evolving situation and policy debate within Europe relevant to the erosion of the asylum system
- (b) acts of resistance (undertaken in solidarity with, or on behalf of, asylum seekers and others on the move) geared to challenging or changing laws or procedures at odds with international law and the rights of those in need of protection.
- (c) criminalisation of these acts of resistance performed by people on the move as well as those who strive to rescue or safeguard their physical safety

Objectives

The objective of this consultancy is to (a) provide an overview of the rapidly evolving European situation regarding asylum and forced migration; (b) highlight acts, processes or organised initiatives that seek to counter deterrence measures pursued collectively or individually by European governments and (c) bring into focus the criminalisation of these acts of resistance performed by people on the move as well as those who strive to rescue or safeguard their physical safety

Activities

1. Briefly analyse pertinent and readily available literature relevant to the current policy debates on asylum in the European context, including in particular, studies and grey literature, if available, of civil society organisations and coalitions (e.g. ECRE, Refugees Deeply, national refugee councils, etc) as well as research institutes;
2. Undertake a small number of interviews with a few key individuals and stakeholders to ascertain perspectives and insights on pertinent concerns including gaps, if any, in the struggle to counter the erosion of the asylum system in Europe; and
3. Prepare a draft report for review by a small peer group knowledgeable on this subject area and the UAI 'secretariat'. Prepare a finalised report (15-20 pages max), with an Executive Summary, taking into account, as deemed appropriate, all available feedback on the draft.