EURAFRICAN MIGRATION

Legal, Economic and Social Responses to Irregular Migration

Edited by

Simon Massey and Rino Coluccello

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Eurafrican Migration: Legal, Economic and Social Responses to Irregular Migration

Edited by

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Introduction

Simon Massey and Rino Coluccello

Abstract: *The spike in the number of irregular migrants attempting the sea crossing from Libya to Italy at the start of 2015, and the concomitant rise in the number of people drowning, led to a reversal of the European Union's policy to scale down search and rescue operations in the southern Mediterranean. However, as of June 2015, the strategies proposed by the EU and by individual member states to address irregular migration flows continue to emphasise securitisation over humanitarian responses. The contributions to this edited volume, based on evidence gathered through first-hand research, emphasise the failure of the EU's simplistic and reactive policies to stem the flow of migrants, which has in fact markedly increased, whilst leaving the EU open to accusations of adopting an unethical, and potentially illegal, immigration regime.*

> The scenes we have witnessed in the Mediterranean in recent months, with people risking their lives to reach Europe, are hugely distressing...When people are risking life and limb – not just their own, but those of their loved ones too – it is clear that they are caught in a desperate situation...Since Italy launched its Mare Nostrum operation in October 2013, there has been an unprecedented increase in illegal immigration across the Mediterranean and a fourfold increase in the deaths of those making that perilous journey...we believe that the operation is having the unintended consequence of placing more lives at risk. (Hansard 2014)

Speaking at the dispatch box of the House of Commons on 30 October 2014, the United Kingdom's Minister for Security and Immigration, James Brokenshire, was responding to an urgent question concerning the rescue of irregular migrants in the southern Mediterranean Sea. In particular, he was called upon to defend the British government's support for the replacement of the Italian navy's *Operation Mare Nostrum* with a new EU-led mission, *Operation Triton*. *Mare Nostrum* had, for a year, been sweeping the entire migration route between the North African coast and Italy searching for vessels in distress, and in so doing rescuing on average 400 people a day. *Operation Triton*, under the control of the European Union's border management agency Frontex, is designed to operate under a revised mandate 'protecting' a 30-mile zone around the Italian coast. Thus, a humanitarian operation which had been established in response to two particularly deadly capsizes off the coast of the Italian island of Lampedusa has transmuted into an operation to close a maritime gateway into, what has become known in some quarters as, 'Fortress Europe' (Fortress Europe 2015). In effect, in arguing that smugglers were transporting more people, more regularly, in the expectation that the Italian navy would ensure their safe arrival in Italy, the British minister was arguing that *Mare Nostrum* had saved too many lives.

Globally, people are increasingly driven by, amongst other factors, poverty and violence, and are enticed by the prospect of a safe and prosperous existence, to abandon their homes, travelling to countries where prospects appear brighter, often countries in the developed world. The emigration of sizeable numbers of young, skilled and talented individuals exercises the minds of politicians, whilst testing the ingenuity and tenacity of would-be migrants who are increasingly forced to embark on highly dangerous and circuitous journeys to circumvent the measures put in

place to block irregular migration. Many irregular migrants are so-called 'over-stayers' who arrive by air, or by other means, with valid travel documentation, for example a student visa, and fail to return home when it expires. However, increasing numbers are willing to risk arduous land and sea journeys to fulfil their ambitions. Yet, irregular migration has heavy costs. Exploitation is common, the journey is often traumatic, and can be lethal, and the irregular migrant is far from guaranteed secure residence and employment in the destination country. The scale of the harm caused to its victims makes the trade in people one of the leading causes of human insecurity. The United Nations High Commission for Refugees (UNHCR) estimates that in 2014, at least 348,000 people travelled to destination or transit countries by sea intending to migrate or claim asylum, making it a record year for seaborne irregular migration. Sea routes span the globe with large numbers migrating across the Gulf of Aden, the Indian Ocean and the Caribbean. Europe exerts the strongest pull. The largest number of seaborne migrants, 207,000 in 2014, sought to enter Europe by crossing the Mediterranean, at least a further 15,000 attempted to enter Europe by landing on Mayotte, a French overseas department in the Indian Ocean, whilst at least 4,775 migrants sought to navigate to overseas territories of EU member states in the Caribbean (UNHCR 2014).

In International Law, a distinction is drawn between trafficking in persons, involving the 'exploitation of the migrant often for forced labour or prostitution' and smuggling of persons which implies 'procurement, for financial or material gain, of the illegal entry into a country of which that individual is neither a citizen nor permanent resident'. There is a distinction between these types of illegal migration made in the UN Protocols on the Trafficking in Persons and Smuggling in Migrants – in the former the victim is the trafficked individual, whilst in the latter the victim is, ostensibly, the state whose immigration regulations and procedures have been infringed. The consequences in terms of physical danger and exploitation are conspicuous in cases of trafficking, and the sexual and labour abuse that underpins this crime is often characterised as 'modern slavery'. However, in criminalising the irregular migrant, the UN Protocols arguably underestimate the level of risk to which smuggling exposes the migrant and the ease with which smuggling can become trafficking. The smuggled migrant implanted into a destination country may not be under the absolute control of a trafficker, but often has few options beyond working for gangmasters in low paid, and frequently dangerous, employment or selling illicit goods on the street,

risking arrest. Such undocumented migrants are, typically, excluded from a state's health, education and welfare provision and their wages are sequestered for, often squalid, housing provided by the employer, forcing the migrant into debt-bondage.

In the European context, rulings as to whether an irregular migrant has been trafficked or smuggled are governed by the Council of Europe Convention against Trafficking in Human Beings. There are clear benefits to the migrant in being designated as trafficked rather than smuggled, and clear costs to the arrival country. If an individual is declared by the 'competent authority' tasked with deciding migratory status to have been trafficked, he or she is entitled to a minimum of 45 days where all removal action is held in abeyance whilst victims consider their options, as well as a temporary, and potentially renewable, residence permit. To avoid these financial and policy implications, states parties to the Convention have adopted a narrow definition of trafficking requiring that a victim has been explicitly coerced into being transported and then unambiguously exploited. Coercion is deemed to mean 'the threat or the use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of benefits to achieve the consent of a person having control over another person'. Exploitation should include at a minimum 'the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practises similar to slavery, servitude or the removal of organs'.

Thus, the dichotomy of coercion and consent lies at the heart of distinguishing between smuggling and trafficking, a distinction that also delineates the nexus between irregular migration and human security. An early, and contentious, definition of human security made in the 1994 Human Development Report characterises the concept as 'safety from chronic threats such as hunger, disease and repression', and 'protection from sudden and hurtful disruptions in the patterns of daily life, whether in jobs, in homes or in communities'. The shocking paradox is that whilst irregular migrants are willing to risk their lives in order to escape from conditions that are the apotheosis of human insecurity, the migration process often exposes them to similar, or worse, levels of insecurity. Whilst the self-interest of destination countries has restricted the application of the trafficking protocol to instances of explicit compulsion, those advocating on behalf of forced migrants, and concerned jurists, are lobbying for extreme poverty to be re-categorised as a form of coercion. If accepted, many cases currently dealt with as smuggling should be

reclassified as trafficking and the migrant treated as victim rather than perpetrator.

Should desperation and vulnerability be reappraised as coercive factors? If 'push factors' such as endemic poverty, internal demographic pressures, political instability and conflict, natural disasters and climate change place individuals in positions where they fear for their lives or well-being, or that of their family, are they constrained, or in the terminology of the Protocol 'coerced' into accepting transportation to safety offered by smugglers, no matter how exploitative? Jacqueline Bhabha and Monette Zard have long argued that, in the absence of 'acceptable options',

> formal consent in these situations (because the migrant sees no other way out) does not alter the coercive nature of the agreement. In assessing "coercion" and "consent", policy makers and advocates are forced to engage in moral decisions about which types of conduct are acceptable or permissible in a society and which are not. Slavery and slavery-like work are clearly not acceptable, but neither is lack of access to essential food, medicine and shelter. (2006: 8)

Fundamentally clandestine, it is difficult to accurately chart the number of irregular migrants from Africa entering Europe by land and sea. The UN Population Division estimates that in 2013, the migrant stock in Europe from Africa was 8.9m. Whilst around two-thirds of Africans in Europe are from the Maghreb countries, increasing numbers are arriving from West African states such as Nigeria, Ghana, Senegal and The Gambia, as well as from the Horn of Africa, notably Eritrea and Somalia.

Whilst the contributors to this book thoroughly, and critically, engage with the scholarly literature in their respective specific and geographical areas, a particular strength is the incorporation of first-hand evidence and data, mainly gathered through semi-structured interviews with migrants, as well as practitioners whose jobs include preventing irregular migration, but also, in many cases, involves alleviating the humanitarian fallout from this desperate trade. By prioritising the voices of those with intimate experience of irregular migration, the dichotomies that permeate the scholarly discourse that surrounds irregular migration are challenged. The evidence advanced in each chapter, substantiates Julia O'Connell Davidson's contention that 'the effort to accommodate these migrants' experience into the orthodox conceptual binaries of trafficking/ smuggling, forced/voluntary migration, and slavery/freedom generates

an oxymoron – we find ourselves looking at 'voluntary slaves' and 'free choice trafficking' (Davidson 2013).

The first chapter by Monica Massari explores the perilous nature of the land and sea journeys taken by irregular migrants travelling from Africa to Europe, focussing, in particular, on the routes to Italy from western, northern and eastern Africa. Challenging the orthodox narratives and the proscriptive lexicon employed by states, Massari stresses the lived experience of the migrants, expressed in their own words, drawing on detailed witness accounts of migrants who made, and survived, the journey. Their accounts are cross-checked to produce physical maps of the routes across the desert, but also mental and emotional maps of the migrants' experiences and their relationships with those that facilitate the journeys.

The second chapter by Derek Lutterbeck and Cetta Mainwaring emphasises the response to seaborne irregular migration of an individual state, in this instance Malta, a small island state with limited capacity to handle the many components of large-scale irregular migration. Most migrants land in Malta, or are rescued in its waters, having unintentionally been forced off-course or foundered on the way to Italy. Handling the cyclical waves of irregular migration over the past several years has put stress on Malta's relations with the EU to which it acceded only in 2004 and for which now it is one the most southerly gatekeepers. In keeping with the other chapters in this book, Lutterbeck and Mainwaring also explore the impact of national policies, themselves framed in response to the island's limited resources and capacity, on migrants, stressing their marginalisation in a claustrophobic, and often xenophobic, environment and the limited potential for employment and constrained life chances for people caught in limbo.

Concentrating on the migrant's insertion into a destination country, Paola Monzini draws on the testimony of practitioners from non-governmental organisations, but also, in particular, law enforcement agencies, to explore the relationship between irregular migrants and the black economy in Italy. Monzini takes two case studies from different regions of Italy and divergent sectors of the labour market, in which migrants have been exploited, drawing on documented criminal proceedings to analyse the disparate specificities of the exploitation and the responses of the migrants, the wider communities in which they lived and worked, and the Italian authorities, uncovering similarities, but also marked distinctions in the outcomes of the two cases.

Another, distinct, incidence of labour exploitation is examined by Olufunke Aluko-Daniels in her evaluation of the consent versus coercion debate in the movement of women for prostitution between Nigeria and Italy. Again the evidence on which the chapter's argument is constructed has been largely assembled from semi-structured interviews with law enforcement and criminal justice practitioners; governmental and non-governmental organisations; scholars and journalists from Nigeria and Italy. Highly visible on the streets of Italian towns and cities, as well as in other parts of Europe, the migratory status of Nigerian women moved to work as prostitutes is controversial. With reference to the scholarly literature, and notably the debate between liberal and radical feminists concerning the place of consent and agency in the process of migrating for prostitution, Aluko-Daniels assesses the arguments advanced by her sources to determine whether these women should be seen as trafficked or smuggled, victims or criminals.

Media accounts of irregular migration into Europe, notably high profile, large-scale arrivals by sea and across land borders, have driven the issue of immigration to the top of the political agenda in many EU member states and across Europe in general. The tensions within societies that large-scale immigration has the potential to provoke have been exacerbated by the economic pressures caused by the steep economic downturn in the wake of the 2008 global financial crisis. Salvatore Coluccello and Lefteris Kretsos explore the connections between irregular migration, the economic crisis and xenophobia in Greece, the EU member state most affected by the crisis, but also one of the core destination countries and points of entry for irregular migrants from Asia and Africa. The chapter assesses the additional risks and vulnerabilities that apply to irregular migrants seeking work in a constricted labour market, and how the combination of migrant inflows and austerity policies has driven xenophobia and political polarisation, especially the rise of an extreme right party, Golden Dawn, as a new force in the Greek political landscape.

The final chapter by Simon Massey investigates an example of significant irregular migration by sea from an African nation into a member state of the EU that, since it is happening in the Indian Ocean rather than on the edge of Europe, attracts only marginal attention in the media and the scholarly literature. In this case, the flow of migrants travelling in small and dangerous vessels is between one island of the Comoros archipelago to another island in the same group which is claimed and

treated as sovereign territory by France. The chapter firstly disentangles the complex and ambiguous relationship that exists between France and its former colony, whereby France has sought to export the Fortress Europe strategy to the maritime boundary between a developing world nation in the Union of the Comoros and a quasi-developed territorial entity in Mayotte, an island which it designates a full department of the Republic.

Faced with persistent conflict and deprivation in Europe's neighbouring regions, in particular the implosion of Syria, the response of governments and the EU to growing migratory pressure on Europe's southern borders has been reactive and simplistic. The ruthlessness of those involved in transporting the migrants should not be under-estimated, and, as Massari highlights, during *Mare Nostrum* the smugglers, apparently deliberately, used extremely unseaworthy boats to invite rescue by the Italian navy. Yet, early indications suggest that the conversion of Europe's response to seaborne irregular migration from search and rescue to a securitisation exercise was driven by prevailing neo-liberal interpretations of security within the EU and its member states rather than human security. The argument that *Mare Nostrum* acted as a push factor is belied by the spike in the numbers of irregular migrants arriving in European waters since the end of *Mare Nostrum* and the start of *Triton*. The exponential increase in the numbers attempting the crossing between Libya and Italy was highlighted by two extremely lethal capsizes in mid-April 2015 in which an estimated 400 and 700 people drowned.

The arguments made by the British government, amongst others, that *Mare Nostrum* was a cause of increased migration proved baseless. Faced with criticism from the UN, allies such as the US, as well as humanitarian NGOs, the initial response of the EU was to triple the funding for Triton and increase the number of ships engaged in sea patrols, essentially restoring the mandate of *Mare Nostrum*, but on an EU-wide basis rather than dependent on Italian assets. The EU's High Representative and Vice-President Federica Mogherini and Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, issued a joint statement:

> We need to show that same collective European sense of urgency we have consistently shown in reacting in times of crisis. The dire situation in the Mediterranean is not a new, nor a passing, reality … The ten actions we have agreed upon today are the direct, substantial measures we will take to make an immediate difference. All of these actions require our common effort, the

European institutions and the 28 Member States ... This is what Europe taking responsibility is – all of us working together. (European Commission 2015)

Migrant flows have remained high in the months following the two lethal capsizes. However, the increased capacity of *Triton* has seen a return to large-scale sea rescues by ships from across the EU. Yet, some of the actions outlined by the EU have caused consternation both within the organisation and internationally. Initial proposals for a voluntary scheme to more equitably share the resettlement of refugees from Italy and Greece amongst the EU's 28 member states were replaced by a mandatory relocation policy, accepted by some member states including Germany and France, but opposed by, amongst others, many eastern member states and the UK. At the time of writing, the division within the EU has stalled the proposal which is unlikely to be discussed again until October 2015.

A further EU proposal which has proved even more controversial calls for military action against the smugglers. A document put before the EU's Political and Security Council on 18 May 2015 discusses a possible military operation 'to disrupt the business model of the smugglers, achieved by undertaking systematic efforts to identify, seize/capture and destroy vessels and assets before they are used by smugglers' (EU Political and Security Council 2015). The proposal envisages not only the destruction of smugglers' boats at sea, but also ashore with a high probability of casualties amongst smugglers, migrants and EU member states' armed forces. That the document recognises the potential for casualties acknowledges the growing militarisation of the smuggling trade in Libya with the involvement of well-armed Libyan militias and, potentially, foreign elements connected with the Islamic State terrorist group. Debate continues as to whether this action would require the authorisation of the UN Security Council and, at the time of writing, a draft proposal to the Council remains paused until it is clear that such a mission would have the support of the five permanent members of the Council. However, the proposal has been rejected by the internationally recognised Libyan government in Tobruk, whose agreement would be legally required for a resolution to come into force, although in reality the government is only one 'authority' amongst many, and does not control the coastal areas from where the boats leave.

The response of the EU to the capsizes in April whilst superficially a victory for those calling for a humanitarian response to the crisis in

that an effective search and rescue operation has been restored, in reality underscores the continuation of the EU's securitisation of its southern borders. *Triton* is rescuing more migrants in peril than during its previous incarnation, but the vessels involved stand ready to be redeployed as the spearhead of the proposed military action. Moreover, the EU's initial ten-point plan is largely devoted to protecting its borders through increased intelligence gathering, new return policies and agreements with countries of origin and transit, as well as proposed military action against the smugglers. The humanitarian proposal to share responsibility for resettling refugees has, currently, foundered. Military action, if successful, would leave many would-be migrants, at least temporarily, stranded in the hostile environment of Libya. It would likely relocate the crisis to the eastern Mediterranean, already struggling to cope with high numbers of irregular migrants. It would also, most likely, further destabilise the precarious political equilibrium in disjointed and dangerous Libya. Yet, would this stem the flow of migrants from war-torn counties such as Syria and Libya, countries with dire human rights regimes such as Eritrea or countries in sub-Saharan Africa that offer few opportunities to their young people? For such people the push/pull factors outweigh the dangers.

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At the Edge of Europe: The Phenomenon of Irregular Migration from Libya to Italy

Monica Massari

Abstract: *The chapter reconstructs in detail the alternative itineraries taken by migrants moving from Africa to Italy. Identifying their shared experiences, it explores the violence and danger faced by irregular migrants, concluding that the relationship between those making and those facilitating the journey is intrinsically asymmetrical. In arguing that the securitisation of Europe's territory is a failing policy, the chapter recommends the adoption of the more flexible response to immigration taken by developing countries in Europe's neighbouring regions.*

Introduction: humans not just migrants

After the explosion of the Arab Spring in 2010 and the revolutions that spread from Tunisia to other Northern African and Levant countries, the massive and dramatic rise of irregular migration between the African and European coasts of the Mediterranean Sea has acquired renewed visibility and public debate. Italy's southern coastline and, more crucially, Sicily and the small island of Lampedusa – after the partial 'dismantling' of the sea-route from Libya due to the entry into force of the agreements between Italian and Libyan authorities in May 2009 – have once again become emblematic physical and symbolic places. In 2014, the number of undocumented migrants willing to risk the perilous sea journey to reach Europe reached a peak of around 207,000, while in the same year more than 3,000 migrants died following the so-called Libyan route in their attempt to cross the Mediterranean sea (UNHCR 2014b; Ministry of Interior 2014a).

So far, scientific analysis of the phenomenon of irregular migration by sea has mostly attempted to present the main changes to the routes, methods of transportation and organisation of smuggling networks, as well as the impact of policies aimed at deterring irregular migratory flows and combating smuggling in migrants. These studies, which also contain analysis of the modus operandi of smuggling networks operating in countries of departure, are mostly based on the analysis of the official data available, the outcomes of judicial and police records, media coverage and interviews with law enforcement officers, prosecutors and organisations involved in this field. Hence, research on undocumented and forced migration has been often effectively formulated and conducted from the standpoint of the state (De Genova 2002: 421), whilst, so far, very little scientific analysis from the perspective of migrants who have been smuggled by sea has been carried out.

This chapter will attempt to challenge more prescriptive, state-oriented and officially pre-established research on irregular migration by sea – in other words, the governmental definition of irregular human mobility by sea – by assuming a different perspective which mostly relies on the standpoint of the migrants themselves. Based on the findings of field research involving interviews with 30 irregular migrants who arrived in Italy by sea during the past few years, mostly following the Libyan route, the chapter aims to provide an overview of the phenomenon of irregular migration to Italy by sea, devoting particular attention to the

migrants' experience and expectations, as well as their relationships with both fellow migrants on the journey and those who provide them with *ad hoc* services along the way: mediators, go-betweens, *dallala*, *passeurs* and smugglers.[1]

The extremely dangerous conditions on the journey, dramatic experiences of the migrants and sheer number of people who have drowned, estimated at more than 21,000 from 1988 to October 2014 (Fortress Europe 2014), have led the media to frequently return to this phenomenon, eliciting both sympathy for the migrants' plight and alarm at the numbers involved (IOM 2013). Those who survive are often deeply psychologically scarred by the abuse, violence and inhumane conditions they experience during the various phases of the long journey from home to the destination country. Traumatic accounts given by refugees, by those who escaped from conflicts and persecutions, and by so-called *clandestine* exiles often recall the memories of those who survived the most notorious massacres of the twentieth century. These narratives are often self-censored as they cannot be easily detached from the trauma that they reawaken (Massari 2013). Migrants' stories not only relate dramatic individual experiences, but also ineluctably lead us to face the historical, social and political roots of their suffering, as well as the asymmetrical power structures which actually *produce* illegality, clandestinity and the condition of de-humanisation to which irregular migrants are often confined. These narratives confirm that complex social phenomena, such as irregular migration, lie within an intricate web of relationships and dynamics that cannot be properly investigated without an adequate understanding of the crucial human dimension which can be best explored by assuming the perspective of the migrants themselves.

The geography of irregular migration by sea

The phenomenon of irregular sea crossings began to affect Italy at the beginning of the 1990s in the months immediately following the collapse of the Soviet Union and Yugoslavia when restrictive policies on immigration first started to be implemented. Since then, scientific analysis of the phenomenon has mostly explored the evolution of the migratory routes, methods of transportation and the organization of smuggling networks (Monzini 2007 & 2008; Pastore *et al.* 2006; Coslovi 2007; Coluccello and Massey 2007) as well as analysing the impact of some policies aimed at

deterring irregular migratory flows to Italy and combating smuggling in migrants (Andrijasevic 2006; Cutitta 2008; Delicato 2009a & 2009b).

During the past two decades, Italy has faced a growing diversification of routes. In this regard, the country might be considered both a destination and transit country along a wider migration route directed toward other Western European countries including Germany, the Netherlands, United Kingdom and France, as well as, increasingly, Northern Europe. The growing restrictions imposed on international migration have actually increased and diversified the ways, strategies and modalities in which individuals migrate illegally or without legal safeguards. As a result, journeys have become more *difficult,* because of very stringent migration controls and visa issuance policies, more *dangerous,* due to the risks which migrants run, and more *expensive* given the role played by actors and networks who provide their 'grey' and/or illegal services. However, it should be noted that sea crossings are one of the cheapest ways to reach the West, although one of the longest (Monzini 2007: 165–166).

Since the late 1990s, the eastern and southern parts of Sicily, including Lampedusa, have seen increasingly significant landings, reaching their highest peaks in 2008 (36,951 migrants), 2011 (62,692), 2013 (35,085) and 2014 with more than 170,000 migrants reaching Italy by sea, as a result of movements prompted by events in North Africa, in particular in Libya, and Syria (UNHCR 2013: 2; De Bruycker *et al.* 2013: 15; IDOS 2014).[2] However, if we except the peak reached in 2014, an average of almost 40,000 persons per year reached the sea shores of the European Union from 1998 to 2013 (De Bruycker *et al.* 2013: 3). In 1999, the Ionic part of Calabria also started to become a destination for migrants coming from Middle Eastern countries: Turkey, Afghanistan and Iraq. This route has been mostly managed by increasingly specialised Turkish organisations which transport migrants through motherships often filled with hundreds of people, who are then transferred onto smaller, dilapidated or very old boats out at sea. Migrants are usually abandoned once they have landed and left to undergo controls by the Italian authorities, while crew members are usually allowed to return (Monzini 2007). The journey along this route is usually longer since it takes several days or even weeks to cover such a long distance with stop-offs in order to take on supplies and involves very hard travel conditions because of the lack of space due to the high number of migrants being transported. In particular, the coastal areas of Crotone, Catanzaro and Reggio Calabria, as well as the southern part of Apulia,

have been recently affected by the return of irregular landings mostly originating in Turkish or Greek ports, as confirmed by the increase in migrants landing in these areas since 2010 (De Bruycker *et al.* 2013: 15). Most of the Syrian migrants landing in Apulia and Calabria depart from the ports in South-East Turkey, such as Mersin, sail across the Aegean Sea, often via Cyprus and Crete where migrants are often transferred to smaller fishing vessels, towards Italy (Frontex 2013: 21). The cost of a place on a freighter from Turkey to Italy is at least three times the cost of a place on the route from Libya. According to Frontex, a migrant can pay US $6,000, plus the 'fees' paid by Syrian refugees to the militias controlling the border with Turkey (2014). However, this route avoids having to travel through Libya which is currently considered very dangerous, even for criminal networks.

During the past decade, Italy has become both a destination and transit country for large flows of migrants originating from different regions: the Balkans, the Black Sea, the Indian sub-continent, China, the Middle East as well as North and sub-Saharan Africa. Since 2002, coinciding with the overall re-articulation of the sea routes to Italy due to the growing importance acquired by Libya as the main hub for Mediterranean sea-crossings, an increase has been recorded in migrants from the Horn of Africa, Tunisia (with a peak of 28,047 migrants arriving in 2011), Morocco, Libya, Egypt and Algeria, some West African countries, such as Nigeria, Ghana and the Ivory Coast, and, most recently, Syria (De Bruycker *et al.* 2013: 16–18; Triandafyllidou 2014: 12). The latest data available show that in 2014, Syrians were the largest group to arrive in Italy by sea (almost 40,000 people), followed by Eritreans (nearly 34,000 people: a threefold increase compared with the same period in 2013), and migrants from Mali, Nigeria and The Gambia (UNHCR 14 November 2014; ISMU 2014; Frontex 2015).

Beside the significant increase in the numbers, data concerning the main nationalities involved confirm that countries affected by conflict, war and political instability are the main places of origin of migrants and asylum seekers, while the political turmoil that has affected Northern Africa since the civil war in Libya, the explosion of the Arab Spring and the on-going conflict in Syria has significantly contributed to the modification of traditional mobility patterns and to the emergence of composite migratory fluxes. Conventional distinctions among economic migrants, forced and irregular migrants, and refugees have become increasingly blurred, since most migrants who already were in the area, especially in

Libya, became refugees, while transit migrants saw a drastic downscaling of their opportunities of moving somewhere else (CESPI 2011: 15).

The heterogeneity of migratory routes that have emerged since 2011 has drastically challenged traditional schemes and taxonomies used at institutional as well as scientific level in order to label and define migrants. The definition of 'refugee' contained in the main international conventions, for example, is at risk of becoming inadequate as the intricate web of links composing individual lives and personal trajectories, depending on opportunities and constraints arising during the migratory process, makes it more difficult to fix clear borders between forced or conflict-induced and voluntary migration. Even in apparently forced migration patterns, new subjectivities and unedited expressions of agency often emerge as a result of personal choices and conducts, as well as wider social and cultural transformations which challenge traditional definitions used by scholars and policy-makers. Hence the need to problematise the fundamentally *governmental* language used to categorise migrants which seems to have little utility other than to comply with the State's need to control migration according to institutional narratives.

Routes and organisation of migrant smuggling

Several factors play a role in the dynamics of irregular migration patterns and migration controls. In 2009, increased surveillance by the Italian government through the adoption of agreements and strengthened cooperation with several North African countries, most notably Libya, were among the key factors which contributed to the drastic decrease in the number of irregular migrants landing on Italian coasts. From nearly 37,000 people arriving in 2008, strengthened border control measures, increased cooperation with southern Mediterranean countries intended to stop departures and facilitate return procedures and, most notably, the implementation of a push-back policy aimed at intercepting migrants' boats on the high seas and returning them, collectively, to Libya led to a significant decrease in arrivals from 37,000 in 2008 to 9,600 migrants in 2009 and 4,400 in 2010 (Council of Europe 2013: 5).[3] With the explosion of the so-called Arab Spring, however, and the revolutions which led to the dissolution of the long-standing regimes in Libya, Tunisia and Egypt, thousands of people again started to flee from conflict and uncertainty about their future. In 2011, as a result of the tensions in the southern

Mediterranean countries, a total of 62,692 non-nationals managed to land on Italian shores mainly from Tunisia and Libya causing the so-called 'North African Emergency' which saw Italy confronted with large-scale arrivals (Council of Europe 2013: 6).[4] In August 2011, following the end of the Gaddafi regime and the displacement of Libyan smugglers close to his apparatus, the migratory pressure along the central Mediterranean route dropped off greatly (Frontex 2013). A few months later, in Autumn 2011, the Tunisian route was also dismantled due to a lower demand for smuggling services coming from young Tunisians, the implementation of the strict repatriation policy between Italy and, most notably, the free movement agreement signed by Tunisia and Libya which facilitated migration of Tunisians to the neighbouring country (Del Grande 2013). However, although arrivals went down in 2012, they picked up again in 2013 and reached their highest peak in 2014.

Since 2011, unstable political conditions in Tunisia, Egypt and Libya have influenced the overall organisation of migrants smuggled by sea to Italy. This has resulted in an increased differentiation and diversification of migration routes, often due to the counter-effects of migratory policies implemented on both sides of the Mediterranean, with the usual routes often being replaced by longer, more dangerous and more expensive routes. Although Libya is not the only country of embarkation, it still plays a crucial role as the main country of departure. It is, however, just the last stop on a journey which is particularly hard and tortuous, can last several months and, most notably, includes the often traumatic experience of desert crossing. As stressed by a member of the Eritrean community living in Rome, when migrants arrive in Libya 'it seems that the worst has already happened, you have already left so many people dead along the journey that the risk of dying on a boat looks like nothing' (*Del Grande* 2013). The following paragraphs outline – on the basis of data collected during interviews with 30 migrants arrived by sea – the routes taken by migrants, mostly through sub-Saharan countries, to Italy.

African routes through the desert

For sub-Saharan migrants land journeys to reach Libya are particularly harsh and dangerous, especially since they include the desert crossing. There are two main desert routes to Libya from Sub-Saharan Africa: one

through Niger, the other through Sudan. The Nigerien city of Agadez, on the western side, and the Sudanese capital Khartoum, on the eastern one, are the main starting points for these journeys through the desert. Migrants often cross-corroborate their accounts, describing taking the same desert tracks, similar ways of crossing borders, as well as using the same strategies for finding the *passeurs*, brokers and intermediaries that facilitate the irregular border crossings.

The western routes

For migrants coming from West African countries, especially Nigeria and Ghana, but also Ivory Coast, Burkina Faso and Togo, the main route to the Libyan coast goes through Niger (see Figure 1.1). From Niamey or, for Nigerians Zinder, migrants travel to Agadez which acts as a major hub where migrants can obtain the services of the intermediaries needed to continue the journey. Many migrants interviewed mention two main routes through the desert: one through the mountains close to the Algerian border via Arlit, which usually taken on foot, and a second route via the oasis of Dirkou, usually taken by car. The first route is cheaper, about
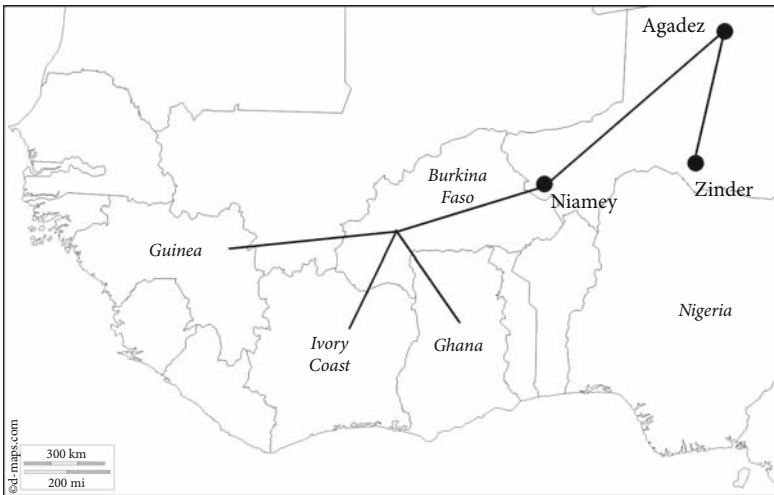
FIGURE 1.1 *Routes from western African countries to Agadez*
Source: Original map from d-maps.com.

US $120, but more difficult and dangerous than the second route. One migrant interviewed explained the difference between the two routes,

> When we arrived in Agadez, the *passeur* brought us by car to his house, gave us food, we could wash ourselves, then he said: "If you want to continue the journey there are two routes: if you have money you can go by car, if you don't have it, there is another route, which can be made only by foot, you must walk through the mountains, where you can die." I didn't want to go there, so I took the first route. (Interview with migrants n.4)

The journey via Arlit is undertaken by migrants with less money to invest in the journey (see Figure 1.2). Part of the journey is made by walking, with the help of guides who, according to the interviewees, sometimes leave migrants alone in the desert, exposing them to the risk of falling prey to robbers and bandits,

> We reached a place and the driver told us that we should have stopped there. They put us into the hands of a person, the local name is *ghide*, who should have accompanied us by foot and showed the route. We followed him, and went through the mountains. The guide travelled with us for about two days and then he vanished, so we had to continue on our own. We followed the footsteps of others, we saw other people who had walked and had died on the way. While we were walking we saw some robbers, they took out weapons and asked everyone to lie down. They took all our clothes, all our money, all
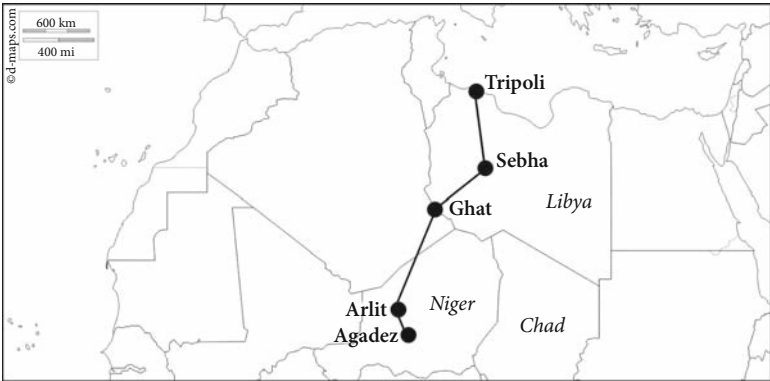
FIGURE 1.2   *Route from Agadez to the Libyan coast via Arlit*
Source: Original map from d-maps.com.

our food. They also checked if we had hidden money in the water. You lose everything ... because they know that sometimes people hide their money even in the anus, they give you something to drink and you eject everything, you know? You lose everything. It's the guide who brings you to this ... he has links with the robbers (Interview with migrants n.11).

This route leads to Ghat, the entry point to Libya. The migrants then travel onwards to Sabha, an important southern Libyan hub, from where they can get to Tripoli.

The second route consists of two main parts: the first one goes from Agadez to Dirkou, travelling inside big trucks carrying up to 300 people; the second one goes from Dirkou to Qatrun in Libya, with the means of transport usually being pick-up trucks carrying 30–50 people. In this case, the journey can last around one week, but can take even longer, because often the pick-up trucks struggle with the desert terrain, particularly the sand dunes,

> Our journey lasted three weeks, because there are points in the desert where the truck cannot pass, because the dunes are high, so you have to get out and push the car. There was too much sand, in one day you might need to do it twenty times. And then when the car gets going again, it cannot stop, because otherwise it locks again ... so you must run in order to get in (Interview with migrants n.4).
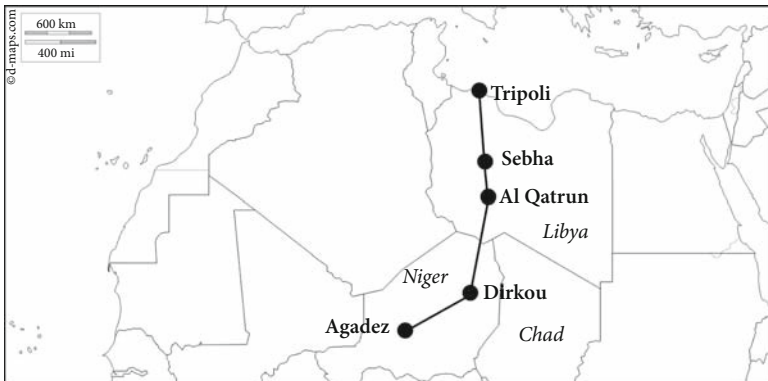
FIGURE 1.3   *Route from Agadez to the Libyan coast via Dirkou and Al Qatrun*
Source: Original map from d-maps.com.

The eastern routes

From the countries of the Horn of Africa (Somalia, Eritrea, Ethiopia and Sudan), the starting point of the journey to Libya is usually Sudan, and in particular its capital Khartoum, which for migrants coming from Eritrea, Somalia and Ethiopia can be either a city of transit on the journey to Europe, or a destination, at least provisionally.

There are several routes to Khartoum. From Somalia some migrants take the highly dangerous route across the Ethiopian border between Dolo Odo and Feerfeer and onwards to the capital Addis Ababa from where the journey continues to Qadarif in Sudan through Gondar (see Figure 1.4). This is also the route usually followed by Ethiopian migrants. However, some migrants prefer to go by plane to Hargeysa in Somaliland and then to go to Addis Ababa through Jijiga (see Figure 1.5).
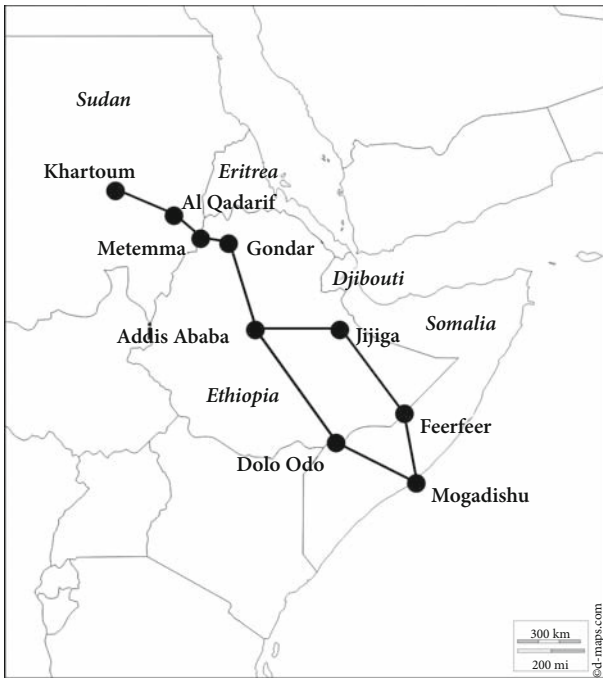
FIGURE 1.4   *Routes from Somalia to Khartoum via Ethiopia*
Source: Original map from d-maps.com.
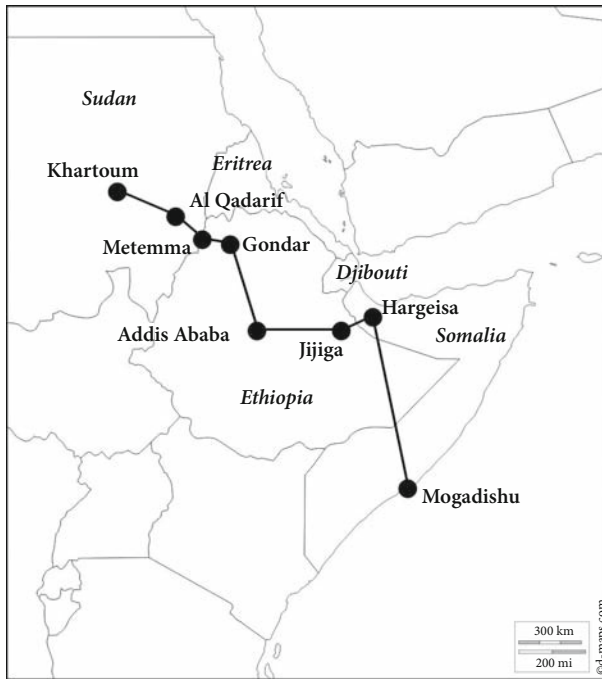
FIGURE 1.5   *Route from Somalia to Khartoum via Hargeisa*
Source: Original map from d-maps.com.

Others reach Sudan from the South, crossing Kenya and Uganda (see Figure 1.6). According to a woman interviewee, 'going directly to Ethiopia was very dangerous, while crossing the borders between Kenya and Uganda and Sudan and Uganda is easier without documents' (Interview with migrants n.29).

For their part, Eritreans generally enter Sudanese territory by crossing the border between Teseney and Kassala, but also by crossing the Northern border near Karora from where they reach Khartoum passing through Port Sudan (see Figure 1.7). These routes are extremely dangerous, especially for Eritrean soldiers escaping National Military Service. Once in Khartoum migrants try to collect the money needed to get to Libya by working or receiving money from relatives and friends.

In Khartoum, it is usually Somali, Eritrean or Ethiopian intermediaries that manage the onward journey: people are transported out of
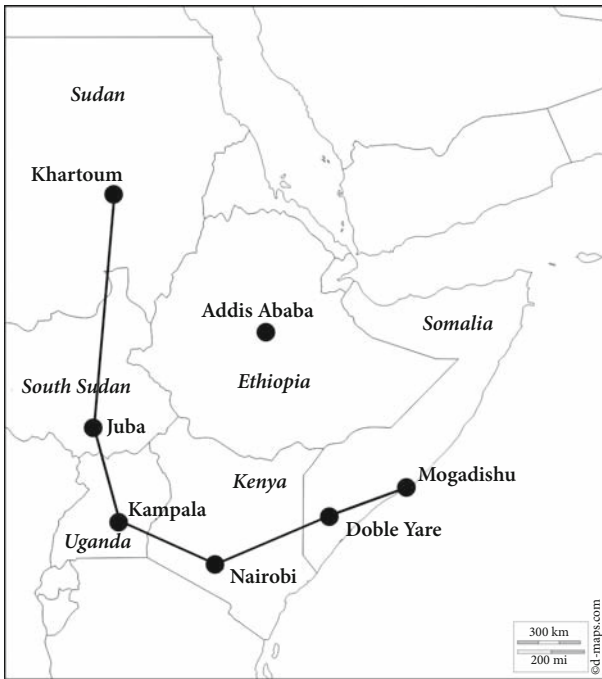
FIGURE 1.6 *Route to Khartoum via Kenya and Uganda*
Source: Original map from d-maps.com.
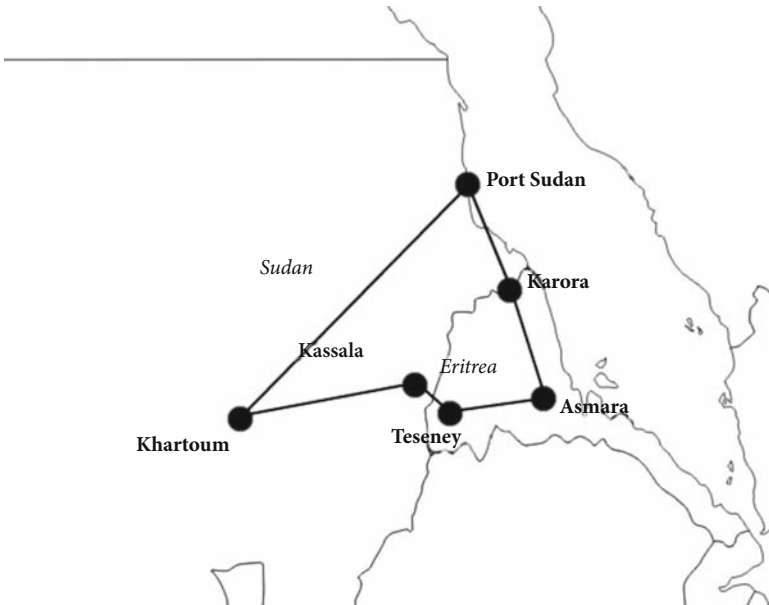
FIGURE. 1.7 *Routes from Eritrea to Khartoum*
Source: Original map from d-maps.com.

Khartoum in small cars, and once in Omdurman, are moved to the edge of the desert where the journey continues by full-sized freight trucks, sitting on top of piles of packaged goods. The initial drivers are generally Sudanese, but when the migrants change vehicles in the middle of the desert, they are usually replaced by Libyans or Chadians. There are two main threats for migrants travelling along this route: one is crossing the Darfur region, where there is the risk of encountering armed rebels or bandits; the second is extortion by the Libyan and Chadian drivers who very often stop in the desert and ask people to pay additional sums of money. Drivers are also known to leave migrants who fall from the trucks to die in the desert.

The journey toward the Libyan coast

Having crossed the Libyan border, arriving in the oasis of Cufra, migrants still have a very arduous journey to the Northern coast ahead of them. The main dangers are the desert crossing, and the continuing risks of being stopped by bandits, being cheated by brokers and *passeurs* or being intercepted by the authorities. According to some interviewees, and especially in the past, migrants were often stopped by the police and returned to Cufra where they were imprisoned and required to pay additional costs for their release. Apparently, smugglers, corrupt police officers and, following the collapse of the Gaddafi regime, militias, collaborate to maximise the extortion of the migrants' resources.

Prior to reaching Tripoli, migrants normally used to stop at smaller urban centres to work and raise the money needed for the sea journey. Migrants from the east normally stopped at Ajdabiya and Benghazi, while from the west they stopped at Sabha. This phase could last weeks, but sometimes months or years. The fear of being arrested by the police, or militias, and then falling back into the system of 'imprisonment and payment' still makes staying and travelling in Libya especially dangerous.

The sea journey

Migrants who embark in Libya to cross the Sicily Channel usually sail to Lampedusa which was, until the end of 2013, the main point

of arrival for smuggled migrants arriving in Italy by sea. Since the beginning of 2014 the small island has been replaced by other villages mostly located in the southern part of Sicily. Once in Libya, migrants coming from North Africa, the Horn of Africa and West Africa are usually accommodated in houses and shelters near the sea, mostly near Tripoli, Misrata and Zuwarah and then transported on the day of their departure, in small groups to a secluded area near the beach where the boats are moored.

Experiences of the sea journey reported by the migrants vary considerably, generally depending on the weather conditions, one of the most important factors determining the hazardousness of the journey. These are two reports of the sea journey given by migrants,

> We were lucky, the journey lasted only one night, the sea was calm. We left at 7 pm, during the journey the fuel ran out, and we had little credit on the satellite phone. We phoned a young Eritrean to ask for help, then another Eritrean boy called his brother in Switzerland, then they…they spoke English, I spoke in English, too, to indicate the direction…longitude and latitude…how many people were in the boat. Then, after a few hours, 5 hours, three big ships arrived. (Interview with migrants n.23)

> The sea journey cost me US $1,300 and lasted two days. Two days at sea. There were 26 people on the boat, people from Nigeria, Ghana, Mali: they were all men except for one Nigerian woman. And it was terrible, like a kind of suicide. It lasted two days and two nights. If you have strong legs you can resist, because you're sitting and you must hold strongly in order to avoid falling into the sea. But many people felt ill, because at the end they were obliged to drink sea water, which left them feeling ill. (Interview with migrants n.7)

The length of the sea journey cannot be exactly estimated, since it depends on a number of circumstances: weather conditions being among the most important, as well as the state of the boat, often old and unseaworthy with mechanical troubles. Migrants report that the sea journey as one of the most difficult phases of the journey,

> The boat was broken. The engine was broken. We just waited to die. Everybody has to die. Let's pray. We were all frightened, we cried and we prayed God to save us. During the night we were even more terrified, without light…then, on Saturday morning we saw some big ships, everybody tried to attract their attention. But they did not see us since we were like a shoe floating on the water. We were too small…. (Interview with migrants n. 18)

The organisation of migrant smuggling

Methods used by smugglers to transport migrants through the various phases from the country of origin to Libya vary a lot depending on the routes followed, the means of transportation used and the length of the journey. However, once in Libya, most migrants describe similar narratives concerning the methods adopted by smugglers to accommodate them inside houses or shelters located near the main departure hubs, waiting for the right time to leave. Well-organised groups and networks in Libya, mostly composed of Libyan smugglers, intermediaries and brokers, but also traffickers apparently closely linked to Islamic terrorist organisations, such as Islamic State and al Qaeda, manage these phases which precede the embarkation of the migrants.

The coastal areas near Tripoli and Bengazi are the busiest places for smuggling operations from Libya to Italy. Here migrants are crowded into safe-houses for days, weeks and sometimes even longer periods waiting for embarkation. This is a crucial phase of the journey since large numbers of people are usually collected together, thus the risks of being intercepted by the police, and more recently by the various militias, or being observed by local people increase. Regarding the latter risk, the migrants interviewed often underline the racist attitude of Libyan people towards black migrants, who are treated and exploited as servants, and the fear which accompanies this waiting. With the explosion of the civil war, black migrants living in Libya experienced an increase in racist attacks from the local population since most of them were initially considered supporters of the Gaddafi regime.

During this time spent waiting, migrants usually live locked inside shelters or houses and cannot go out. Because of their illegal status they are particularly afraid of the Libyan police and militias which are notorious for being particularly brutal and violent with migrants, especially those coming from the Horn of Africa and West Africa, as well as inclined to bribery. The Libyan brokers employ intermediaries to provide food and water, and as overseers, often intervening violently to solve any disputes between migrants. These intermediaries are the only contact that migrants have with the external world, since due to their illegal status and the fear of being intercepted, they cannot go out. During this period any need such as food, telephone cards or cigarettes is usually paid at a very high cost since migrants are basically viewed as

a source of money to be exploited. Key hub cities such as Zuwarah have benefited significantly from this business. In order to avoid problems related to tensions among different groups, migrants are usually lodged on the basis of nationality or language and, sometimes, sex.

Whilst migrants await their departure, the intermediaries continue to seek other clients to maximise the numbers on a single boat, and liaise with the Libyan smugglers, who manage and control the business, to organise the details of the crossing. When the boat is ready, migrants are transported overnight by the smugglers in small groups, usually in the countryside where there are no controls and then, finally, embarked. In this regard, most migrants report that in the case of small boats, the pilot is usually a migrant selected some time before the departure to perform this role. This person is usually chosen by the national intermediary, separated in advance from the rest of the group, lodged in a place where intermediaries live and briefly trained by Libyan brokers to pick up some basic skills. In recompense, the pilot is not usually charged for the journey and, according to some interviewees, might even receive some money for his services (Interview with migrants n. 2). Other migrants report that their pilot was entitled to make the journey for free and to bring with him other two people who did not pay (Interview with migrants n. 18). Most recently, during the *Mare Nostrum* operation from the end of 2013 to November 2014, several smuggling operations were organised using very old fishing boats which were overcrowded and usually rescued by the Italian authorities just a few hours after departure.

Smuggling networks and smuggler profiles

The journey from the home country to Libya and then to Italy is usually organised, as described above, through a wide network of individuals, intermediaries, travel agents, acquaintances, so-called *friends*, go-betweens, brokers and *passeurs* strategically located along the hubs of the major routes and border crossings. In most cases, these people, usually young and mostly male, share the same nationality as the migrants or, in any case, speak the same language. Shared nationality and language seems to be one of the crucial assets facilitating the emergence of trust-relationships between migrants and service-providers.

The main service provided by intermediaries and brokers is the facilitation of the phases of the journey, providing the suitable contacts,

information and/or facilities needed and, in many cases, personally accompanying the travellers along shorter or longer stages of the journey. Their business often consists in going up and down the same route, accompanying groups of people across the border and then coming back looking for another group of migrants willing to make the same journey. This stage is usually self-organised, since most of them work on an independent basis, and their services seem to be unplanned, without the form of hierarchical coordination found within a more structured criminal network. In most cases these intermediaries benefit greatly from existing relationships with corrupt officials, especially border police, and most recently the militias.

As mentioned above, in Libya, there are usually intermediaries and brokers from the same countries as the migrants who reside there and establish contacts with co-national migrants transiting Libya looking to go to Italy. These intermediaries play a crucial role since they speak the same language of the migrants and are able to provide them with all the organisational arrangements required to make the sea journey.

Intermediaries who reside in Libya are usually young men without a criminal background. They are often described as 'sharp' guys, who speak several languages and, consequently, are able to easily operate in different social and cultural settings. The knowledge of local languages represents one of their most important assets allowing them to create an effective network of contacts and service providers. Some of these intermediaries were would-be migrants themselves who decided to settle in Libya or in other transit countries and establish their own business related to irregular migration. As one Somali cultural mediator stressed: 'once you begin to make money, you do not want to move somewhere else.'

For migrants from the Horn of Africa, the organisation of the journey usually involves a number of contacts and relationships with several intermediaries, locally called *dallala*, who supervise and manage the various phases of the journey to Libya. These are the people who provide contacts, information and advice, but who also guide the migrants across the borders or procure clients for the drivers who transport the migrants across the desert. Sometimes *dallala* are migrants themselves who have picked up the necessary knowledge from their own attempts to migrate and who are in a position to exploit other migrants, in the process collecting the money they need to complete their own journey.

Migrants vs. smugglers

The relationships existing between migrants and smugglers resemble a typical client-service provider arrangement although it is strongly influenced by an asymmetric power balance. Due to their illegal status, lack of knowledge and inability to arrange their own journey, migrants are invariably on the weaker side of the relationship. Given that throughout the journey most of the migrant's efforts are expressly devoted to *actively* looking for contacts and facilitators who can provide them with the services needed in order to continue the travel, their capacity to negotiate and define the conditions of the relationship are necessarily very limited.

Smugglers are usually viewed by the migrants with contradictory feelings and expectations. Although they are the crucial actors who might fulfil their ambitions, they are also a source of further fear, apprehension and distrust. In particular, fear is the feeling migrants most often associate with the smugglers. As the people most closely associated with providing personal support and help in organising their journeys, the relationship with co-nationals involved in the migration process is highly ambivalent. However, in general, the migrants' feelings toward the brokers and professional *passeurs* who handle the desert crossing are more unequivocally negative. This trepidation translates into a silence that falls over the migrants during the land journeys, partly through fear of being intercepted by the police, but also through the terror engendered by the experience which often has lasting psychological repercussions.

Irregular migrants are often treated as exploitable, since they have no legal status or hope of redress. As one interviewee observes: 'they are a perfect commodity, since *they are flesh which self-transports itself.*' Even smugglers described by the migrants as more humane might, nonetheless, suddenly change their behaviour and become abusive and violent.

Despite the disequilibrium in the relationship between migrant and smuggler, some migrants manage to overcome this *passive* role, exploiting their capacity to negotiate either the conditions by which they are moved, or, most often, the price paid for the smugglers' services. As one migrant interviewee remarks, in some cases there even emerges a form of business partnership, 'he [a friend] did not have the money [for the sea journey] and we talked with him [the smuggler]. We [a small group of friends travelling together] can gather several people who could pay more than US $1,000, but you should do us a favour. And you do this

favour for our friend' (Interview with migrants n. 19). The friend was allowed to make the sea journey for free.

Concluding remarks

Information gathered from migrants about the journeys they have made across the desert and the sea in their effort to reach Europe's borders provides a unique insight into the phenomenon of irregular migration which contrasts with official representations and state-oriented accounts which are often ideologically biased and more inclined to assess the successes or failures of legislative strategies and administrative and enforcement tactics (De Genova 2002: 421). Besides contributing to the elaboration of a critical perspective on the phenomenon, this approach allows social scientists to combine analyses of legal codes, government policies and bureaucratic procedures with the understanding of migrants' perspectives and experiences. Hence, the narratives that the migrants interviewed for this study relate, reconstructing their journeys across the desert and the sea, naming places and events they went through during one of the most traumatic experiences of their life, cannot be disconnected from the shock that these memories still provokes and the feeling of disorientation that it induces in those who hear their tragic stories (Massari 2013). The violence, humiliation and suffering that women and men experience on their journeys to Europe, require a critical synthesis of the historical and social matrices and asymmetrical power structures which contribute to produce the idea of *clandestinity* and which have made the Mediterranean Sea a maritime cemetery.

On 3rd October 2013, near Lampedusa, one of the worst maritime disasters of recent years took place when at least 366 people, mainly Eritreans and Somalis, drowned in their attempt to reach Italy (Del Grande 2013). One year later, in February 2015, at least 344 migrants died on the same route. Given the current circumstances, these tragic incidents will not represent the last time that Europe stands witness to this horror. Many migrants' corpses remain undiscovered, whilst others, rescued from the sea, lie unidentified in Sicilian cemeteries. The flow of people from Africa looking to come to Europe for a better future, or to escape war and human rights abuse, continues at increasing levels. In the long history of human migration, attempts to securitise sea and land borders, and to staunch irregular migration through repressive legislation have

frequently proved to be ineffective. Besides criminalising migrants and encouraging an 'economy of clandestinity' (Agier 2013), limiting the free movement of people produces tragic human costs which are not reflected in official statistics (Lunaria 2013: 7; Fargues and Bonfanti 2014). In 2011, as a 'humanitarian' intervention led by Western powers unfolded in the Libyan skies, increasing numbers of migrants left for Italy. This resulted not only in the increase of migrants arriving on the Italian coasts, but also in the steady and worrying increase in the numbers of those who die at sea (De Bruycker *et al.* 2013: 4). The overcrowding of the boats used for this journey, and the poor condition of the vessels used by migrants departing from Libya and other northern African countries, such as Egypt and Tunisia, are at the origin of the ongoing catastrophe which has been occurring in the Mediterranean during the past decade. The risk of dying at sea has increased, according to recent estimates, from an average of 0.4 percent between 1998 and 2002 to an average of 2.1 percent since 2003 (Fargues and Bonfanti 2014: 6). If we consider the latest data available, in 2014 more than 3,000 migrants died in the Mediterranean Sea on their way to Italy. Thus, the Mediterranean Sea has become 'the most dangerous border in the world between countries that are not at war with each other' (Fargues and Bonfanti 2014: 2).

In this regard it should be mentioned that the implementation of the operation *Mare Nostrum* by the Italian government – which lasted from October 2013 to October 2014 – with the aim of reducing the risk of mortality at sea, due to the exceptional inflows of migrants, contributed to rescue an impressive number of people: 100,250 migrants in one year (Ministry of Interior 2014b). However, it did not reduce the risk taken by migrants both because of the massive number of people being smuggled in 2014, and because of the systematic surveillance dimension to *Mare Nostrum* which discovered wrecked boats and drowned persons that otherwise would not have been collected' (Fargues and Bonfanti 2014: 13).

Moreover, the implementation of new measures of surveillance along migration routes, with consequent route diversion, has resulted in the adoption of longer and riskier routes. Although Libya continues to play a crucial role as main port of departure for the majority of migrants aiming to reach Italy, the small islands of Lampedusa and Linosa have lately seen many fewer migrants landing on their coasts (around 4,000 people); in most cases migrants arrive in other areas of southern Sicily (around 87,000 people), Apulia (around 15,220 people) and Calabria (around

8,500 people) (ISMU 2014). The launch of the so-called Joint Operation *Triton* by Frontex on November 2014, mostly focused on border control and surveillance, raises increasing concern among humanitarian associations in particular as far as rescue operations are concerned, since *Triton* has a mandate to intervene only within 30 miles from the Italian coast, and not beyond, as *Mare Nostrum* had. The tragic effect of this inadequate replacement for Italy's *Mare Nostrum* operation are already visible at the time of writing, a few months after *Triton*'s launch. The number of people fleeing conflicts and persecutions in Syria, the Horn of Africa and other sub-Saharan African countries, given the current overall situation, is destined to increase, as confirmed by the high number of migrants arriving at the beginning of 2015 when, within just the month of January, more than 3,500 people arrived on the Italian coasts, 60 percent more than the year before (Redattore Sociale 2015) and many others have died trying to reach Europe from Libya (UNHCR 2015).

Given the problematic political situation in most of migrants' countries of departure, anarchy and war in Libya, the ongoing flow of migrants smuggled at sea is expected to continue. In Eritrea, compulsory military service for men and women, together with a further deterioration in the rights of its citizens, drives continued irregular migration, whilst the war in Syria has caused over 3 million refugees, now living in camps in Lebanon, Turkey, Iraq, Jordan and Egypt (UNCHR 2014).

Despite the increased numbers, many migrants remain in Libya, accommodated near the main points of embarkation, waiting for the right weather conditions. Other migrants are stopped at Libya's southern borders and forced to return to their country of origin regardless of the human rights record of that country posing juridical, ethical and humanitarian questions.

In 2013, in Italy there were 26,620 asylum applications, a number which increased to 56,485 as of November 2014 (Ministry of Interior 2014b). These numbers, however, do not provide an accurate picture of the actual amount of asylum seekers landing in Italy since, especially in 2014, Italian civil servants have facilitated, or at least not discouraged, migrants' attempts to move from their places of arrival in southern Italy to countries in the north, 'without leaving administrative traces, so they can lodge their applications in other European countries, where migrants think they will receive better treatment' (Fargues and Bonfanti 2014: 13). In this way, Italy has sought an *empirical* solution to the problem of how to deal with the burden of both rescuing migrants at sea and providing

them asylum, since northern and other western European countries have traditionally been the preferred destination of migrants landing on Italy's shores.

Over the past several years, European governments have implemented a 'politics of refusal', closing and militarising frontiers, forcibly deporting migrants to their countries of origin, building detention centres to facilitate expulsion, and negotiating and then implementing cooperation and readmission agreements with countries of origin and transit, as well as reinforcing the legal barriers to regular migration (Lunaria 2013: 7; Agier 2013). The *hostility* of European governments toward migrants, however, is just one dimension of the current migration environment. As mentioned before, most countries bordering Syria, Libya and Somalia have shown solidarity with their neighbours, hosting millions of refugees and displaced people. As anthropologist Michel Agier stresses, 'what happens in the southern part of the Mediterranean, in Libya, in the Middle East, in Egypt may offer the opportunity to show international solidarity' (2013: 21). Taking a cue from the response of the developing countries of the South, the developed world should investigate more flexible responses to irregular migration: widening regular entry channels; providing safe and legal alternatives to dangerous boat journeys; adopting measures to allow the regularisation of migrants already arrived in the countries of destination; facilitating refugee re-settlements programmes; and, most crucially, ensuring migrants' access to the protection of the existing international asylum process. Whilst these measures would not eradicate the inequalities within the current migration regime, they would be concrete steps toward a new, and more just, approach to international migration.

Notes

1   This chapter is partly based on the outcomes – totally revised and updated – of a research project carried out in 2010 by the author, in collaboration with Gianluca Gatta, in the framework of the UNODC project 'Strengthening the Criminal Justice Response to Migrant Smuggling in North Africa'.

2   Data concerning the phenomenon of irregular migration and its tragic consequences, especially in terms of human losses, are strongly underestimated, because of the large dark number which affects official or semi-official statistics and the on-going drownings which daily occur along the main sea routes.

3   On 23 February 2012, Italy was condemned by the European Court of Human Rights for its 'push-back' practices in a judgement in the case of *Hirsi and Others vs. Italy*. Collective push-back practices, although in contravention of the European Convention on Human Rights, have been widely implemented by the Italian police, even on the mainland, especially toward Egyptians and Tunisians who, on the basis of existing readmission agreements, have been collectively repatriated to their countries of origin from the airports of Catania, Palermo and Bari without any chance to approach representatives of international and humanitarian organisations, such as UNHCR, IOM and Save the Children (Vassallo Paleologo 2012).

4   A 'state of humanitarian emergency' was declared by the Italian government on 12 February 2011 and then extended until 31 December 2012 (Council of Europe 2013: 6).

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2

The EU's 'Soft Underbelly'? Malta and Irregular Immigration

Derek Lutterbeck and Ċetta Mainwaring

Abstract: *The rise, since 2002, of irregular migrants arriving on Malta has become a serious challenge for Maltese society and a top policy priority. The chapter traces the evolution of migratory flows from Libya to Malta, analysing the relationship between the deterrence policies of successive Maltese governments in the context of Malta's status as a gatekeeper for the European Union. The chapter concludes that Malta has, to date, received little support for its handling of the migratory influx from fellow member states or the EU as an institution. It is in this light, that the plight of irregular migrants on Malta, accommodated in temporary camps with limited opportunities for work or education, and little prospect of leaving the island, should be seen.*

Introduction

The Maltese archipelago is located in the central Mediterranean, at a crossroads between east and west and north and south. Historically, its geostrategic position has enticed many foreign conquerors who used the island as a base for trade and further military conquests. Malta also lies on Europe's southernmost periphery, an area that has been referred to as Europe's 'soft underbelly' – originally within the context of World War II, but subsequently as part of the EU's discourse on irregular migration (Haynes 1999: 19; Katrougalos and Lazaridis 2003: 169). More recently, Malta has been characterised by its own government and others in Europe as vulnerable to the increase in irregular immigration flows seen on the island since 2002. However, these new flows have given Malta some political clout within the European Union as it has portrayed itself as key to securing the EU's southern border against irregular immigration.

This chapter looks at this small island state's response to new flows of irregular immigration in the 21st century. It contextualises the response within the political dynamics and regional policies of the European Union, which place a high level of responsibility on Malta, at least discursively, to act as a migration gatekeeper for the Union. The regional context has greatly influenced Malta's response to the irregular immigration flows over the last decade, a response also informed by Malta's position as a small member state with limited political clout on the EU's periphery.

In order to bring to light the migration control dynamics on the southern edge of Europe, Malta's migration patterns and policy responses over the past decade are reviewed. First, the chapter turns to the migration history of the island in the 21st century, including the flows seen in Malta in 2011 as a result of the popular uprisings in North Africa. The second section considers Malta's policy response to these irregular immigration flows, focusing on national policies and their implications, the situation at sea, and the island's relationship with the European Union. The third section examines Malta's immigration policies and practices from the perspective of migrants and refugees on the island. Finally, we conclude with some thoughts as to the future of migration and migration controls in Malta.

Irregular immigration in the 21st century

In the 20th century, migration in Malta consisted primarily of emigration and limited return migration, especially after the physical and economic destruction inflicted on the island during World War II. Since this time, the island developed a successful tourist industry, which, along with the prevalent use of the English language, now results in a large number of tourists and language students arriving on the island for short stays.

Irregular immigration to the island has historically been minimal, with, for example, an annual average of approximately 100 such arrivals in the late 1990s and early 2000s. However, in 2002 the island unexpectedly saw the arrival of 1,686 irregular migrants, an almost 30-fold increase from the 57 migrants who arrived without authorisation the previous year. The reasons for the dramatic increase in landings on the island at this time are not entirely clear, but this seems to have been at least in part due to stricter immigration controls in other areas of the Mediterranean – such as Italy's Adriatic coast and between Spain and Morocco – which led to a diversion of migratory flows towards the Central Mediterranean region. As a consequence, Libya emerged as one of the most important transit countries for irregular migrants seeking to reach Europe from the African continent (Cuttitta 2006; Lutterbeck 2006).

En route between Libya and Europe are the Maltese islands which have continued to see such high levels of irregular immigration after the initial increase in 2002. The number of arrivals dropped to 500 in 2003, but then remained at between one and two thousand until 2008 when they peaked at 2,775. In 2008, Italy signed a Treaty of Friendship with Libya, which among other things allowed Italy to return migrants intercepted at sea to Libya without giving them access to asylum in Europe. This Treaty came into effect the following year and caused a significant decline in migrant arrivals in both Italy and Malta in 2009 and 2010. However, the onset of the political uprising in Libya in 2011 reversed this trend and arrivals surged again. Nevertheless, Italy's policies and border control practices remain significant in influencing arrivals in Malta. For instance, although around 2,000 people arrived in 2012 and 2013, the *Mare Nostrum* operation caused arrivals to drop again in 2014,

The migrants and refugees comprising these flows are predominantly nationals from sub-Saharan countries, with Somalia and Eritrea being the main countries of origin. As such, the vast majority of migrants apply for asylum once they arrive on the island. Between 2004 and 2010,

the top five nationalities of asylum applicants were Somali, Eritrean, Nigerian, Sudanese and Ivorian. These migrants and refugees travel through Africa to Libya, where many remain for months or years, working until the opportunity or necessity arises to travel across the Mediterranean. Before 2011, migrants travelled in groups of between 20 and 30 people on small, fibreglass boats. The majority were male adults. However, in 2011, the popular uprising in Libya caused many migrants, who were under attack from Muammar Gaddafi's forces or rebel groups, to flee the country. The flows caused by the protracted conflict in Libya, of which Malta only received a fraction, were made up of more families, including women and children. The ones making the journey across the Mediterranean travelled in larger groups of hundreds of people on wooden fishing vessels (Mainwaring 2012).

The reasons given by migrants and refugees in Malta for leaving Libya throughout this decade were both economic opportunities and a desire for safety. Indeed, even before the political uprisings in Libya, migrants in the country were often the target of violence and racism. Moreover, the recent appearance of more Syrian and Palestinian refugees in these flows indicates the lack of other available legal channels into Europe. The vast majority, at least initially, intended to travel to Italy when they left Libyan shores, mainly because Italy offers easier access to the rest of the EU. However, the boats they travel on are often unseaworthy, which along with severe weather results in them needing to be rescued in Malta's Search and Rescue (SAR) area before they reach their intended destination (authors' interviews with migrants in Malta, 2010–2012).

Malta's SAR region is an important factor in these migration patterns as it stretches across a large portion of the central Mediterranean. A relic of Britain's colonial rule on the island, the SAR region comprises over 250,000 km^2, approximately 800 times the size of Malta's landmass of 316 km^2. Effectively, the expansive SAR region means that any boat leaving Libya must pass through the area before reaching Italian shores. While Malta's responsibility lies in rescuing migrants (and others) in distress in its SAR region, it may allow other migrant boats to pass through without intervening.

However, once a rescue has occurred, EU and international obligations stipulate that Malta is then responsible for the migrants' disembarkation, as well as providing them access to the national asylum system. In contrast, prior to joining the EU in 2004, Malta's informal policy was to help migrants in distress, but then allow them to continue on the Italy.

Malta also previously had no national asylum system. Until 2002, the office of the United Nations High Commissioner for Refugees (UNHCR) in Rome processed any asylum applications made on the island, as well as overseeing the resettlement of those successful in their claim. As part of the EU accession process, Malta enacted the Refugees Act and established its own system in 2001 under the auspices of a national Refugee Commissioner.

The new system was initially ill-equipped to manage unexpectedly high numbers of asylum applicants that increased steadily after 2002, causing long delays and large backlogs. More broadly, the government appeared unprepared for the sharp increase in the number of arrivals seen in 2002. The next section turns to the government's response in the wake of these new irregular immigration flows. It starts with the response at the national level, before examining the relationship between Malta and EU and its influence on migration policies and practices.

Malta's policy response on land, at sea and within the EU

Malta's response to the flows of irregular immigration, in terms of policies and politics, can be divided into three spaces: (1) domestically, on the island; (2) at sea, where national boundaries and responsibilities are often less clear; and (3) vis-à-vis the European Union, which has significant influence over the policies and politics adopted in Malta. The sections that follow consider each of these three spaces.

Controlling irregular immigration in Malta

On the island, Malta's policy response is characterised by a focus on deterrence and control. Perhaps the most controversial policy that Malta continues to uphold is mandatory immigration detention. The policy allows for the detention of all migrants arriving without authorisation on the island. The first detention centre was opened in 2002 with a capacity to hold 80 people, revealing the government's assumption that migration flows would continue to remain relatively small. This assumption was challenged the very same year when 1,686 migrants arrived on the island without authorisation.

Previously, no legal limit existed on the length of detention. Indeed, it was only due to pressure from local NGOs and the Council of Europe that Malta set a limit in 2005. Today, irregular migrants may be held in detention for up to 18 months. Asylum seekers are also detained, but are released once their claim has been processed if they are successful, or after 12 months if their claim is still under review. Unsuccessful asylum seekers and other migrants are routinely held for the entire 18 months.

The government has justified the detention policy by pointing to various factors. First and foremost, politicians highlight Malta's small size. Although the number of arrivals is modest in absolute terms, the government has underlined the size of these flows relative to the small size of the island and its population, along with its high population density. The government argues that these factors amplify the effects of the arrivals, and place a 'disproportionate burden' on Malta as a member state on the EU's southern periphery.

Alongside the narrative of a small island overwhelmed by migrant arrivals, the government has also pointed to security concerns and bipartisan political support when justifying the detention of migrants arriving without authorisation. These arguments similarly rest on an interpretation of the number of people arriving on the island as somehow 'disproportionate'. Portraying the arrival of irregular migrants to the island as accidental reinforces the narrative that Malta cannot cope with the recent migration flows. Indeed, Malta does have one of the highest rates of irregular migrant arrivals per capita in Europe. Moreover, the Dublin III Regulation, discussed below, certainly places more responsibility for migration control on member states along the EU's external border. Nevertheless, the focus in Malta on the number of migrants arriving per capita is politically convenient as it endorses a particular narrative. For example, if one considers the number of migrants arriving in relation to GDP per capita, Malta drops from having the second highest number of arrivals out of 44 industrialised countries to having the 24th highest between 2004 and 2009 (UNHCR 2009, 2010).

Moreover, considering that the number of arrivals in Malta dropped significantly in 2009 and 2010, and that the government nevertheless maintained the detention policy, it appears that the reasons for the detention policy lie elsewhere. Indeed, government officials have clearly stated that they believe the policy acts as a 'powerful deterrent' to potential migrants, despite the fact that International Law stipulates that states should avoid using detention as such, especially as this

measure might deter asylum seekers within mixed migration flows (e.g. Council of Europe 2005; c.f. interviews carried out by author with government officials, Malta, 2007). Cetta Mainwaring has also argued that the policy reinforces and is symbolic of the interpretation of irregular immigration as a crisis on the island, a narrative that the government employs in order to gain further support from the European Union (Mainwaring 2012a).

Detention continues to be criticised by various actors and organisations on the island and across Europe. For example, *Médecins Sans Frontières* published a scathing report detailing the conditions they found in detention, which caused them to suspend their work in the centres in 2009 (MSF 2009). More recently, in July 2012, the death of a 32-year-old Malian man at the hands of immigration detention staff spurred renewed criticism (Nielsen 2012; c.f. HRW 2012a; 2012b). Despite calls for its review, and the many alternatives to detention available (e.g. UNHCR 2006a), the government remains steadfast in its defence of the policy.

Detention not only undermines the physical and mental health of detainees, it is also detrimental to the integration process in Malta. Indeed, the government has thus far almost wholly disregarded the issue of integration of migrants, and practically no government policies exist in this area, while NGOs and international organisations provide the limited services they can. Within this context, it is unsurprising that there is little willingness among the Maltese population to integrate migrants from outside the EU, who are perceived as a burden rather than as a potential contribution to the country. Thus, according to a recent Eurobarometer survey, only 32 percent of Maltese think that immigration enriches the country economically or culturally, whereas 52 percent consider that immigrants do not contribute at all, making Malta the fifth least likely country among all EU countries to have a positive attitude towards immigration (Debono 2012). In general, the policy focus has remained squarely on deterrence and control in Malta and at sea.

Saving lives at sea?

As has been noted, Malta's search and rescue area is very large, stretching across the entire central portion of the Mediterranean Sea. Moreover, Malta's assets are very limited: the maritime squadron of the Armed Forces of Malta has a total of only three offshore patrol vessels for controlling this vast area. While in many parts of the Mediterranean,

there has been a general trend towards the 'militarisation' of immigration controls in the form of the deployment of a growing amount of military-style hardware to block the unwanted migratory flows from the south (Lutterbeck 2006), in the case of Malta it has rather been the country's limited resources as well as its unwillingness or at least reluctance to more effectively monitor the seas which has often put migrants' lives at risk.

Malta's informal policy before joining the EU was to help migrants in distress and then to allow them to continue on to Italy, but EU membership brought with it new obligations to bring these migrants ashore and allow them access to the asylum system on the island rather than facilitating their passage to Italy. While the Maltese government has pointed to its large SAR area as another indication of the heavy burden the country faces in controlling irregular migration, it has at the same time refused to consider suggestions by some Maltese and Italian politicians that the area should be reduced. This is primarily because the SAR area corresponds with Malta's Flight Information Area, from which the country earns over €8 million in air traffic control fees each year (Grech & Sansone 2009).

Within the SAR area, Malta has maintained that its responsibilities lie in the coordination of rescue missions, and that migrants who are saved should be disembarked at the nearest safe port. This is more often than not the Italian island of Lampedusa, which lies inside Malta's SAR area between Malta and Tunisia. On the other hand, the Italians have argued that Malta should take in all migrants rescued within its search and rescue area. Tensions between Malta and Italy over their respective responsibilities in accepting seaborne migrants have thus periodically erupted. Such conflicts have often resulted in migrants being stranded at sea, while Italy and Malta have argued over who is responsible for the rescue and disembarkation. One such case was the so-called tuna pen incident in 2007, which momentarily caught the attention of Europe. The incident involved 27 men who clambered onto the small walkway surrounding a tuna pen being pulled by a Maltese trawler, after their own boat began to sink. The crew refused to allow the migrants aboard, but informed the Maltese authorities. They in turn maintained that responsibility lay either with Libya, from where the migrants had departed, or with Italy because Lampedusa was the nearest safe port. The disagreement over responsibility lasted for three days, during which time the migrants remained stranded on the tuna pen according to their own reports. Italy

finally agreed that the migrants be transferred to Lampedusa (Italian Refugee Council 2007; Popham 2007; Malta 2007).

Similar incidents have occurred: in 2006, when a Spanish trawler rescued 51 migrants, who remained stranded onboard for five days while Spain, Malta and Libya negotiated responsibility for their disembarkation (UNHCR 2006b); in 2009, when a Turkish cargo ship, the Pinar, rescued migrants in Malta's search and rescue area (Ministry of Foreign Affairs 2009); in 2011, when a Spanish frigate under NATO control rescued 100 migrants at sea ('Update 5' 2011); and in 2013 when a tanker rescued 102 migrants at sea close to the Libyan coast (BBC 2013). These incidents culminated in calls for the clarification of responsibility at sea. As a result, the renegotiation of the EU's Schengen Borders Code in April 2010 included a provision in Article 2 that noted:

> [w]ithout prejudice to the responsibility of the Rescue Coordination Centre, and unless otherwise specified in the operational plan, priority should be given to disembarkation in the third country from where the ship carrying the persons departed or through the territorial waters or search and rescue region of which that ship transited and if this is not possible, priority should be given to disembarkation in the host Member State unless it is necessary to act otherwise to ensure the safety of these persons (EU Council 2010a).

The legislation thus made Malta's preference for disembarkation at the nearest safe port an exception rather than the rule, reinforcing Italy's position on the subject. As a result, Malta refused to continue to host Frontex's mission in the central Mediterranean in 2010 (e.g. Xuereb 2010). More significantly, one Maltese member of the European Parliament, Simon Busuttil, spearheaded a move to refer the amendment of the Schengen Borders Code to the European Court of Justice on grounds that the amendment exceeded the initial scope of the legislation and that the Commission had not followed the appropriate procedures in passing the legislation. The case was ultimately successful and the amendment nullified (ECRE 2012; EU 2010: 34–35). Despite this temporary victory, a new amendment in 2014 reintroduced the language seen above and the obligation to disembark rescued people in the host member state. Nevertheless, it also more explicitly prioritises disembarkation in the 'country from which the vessel is assumed to have disembarked' (EU 2014).

A less publicly discussed but equally crucial factor in saving migrants' lives at sea is the role of Maltese (and other) fishermen in this area. Given the much larger presence of fishing vessels at sea, migrants are often

spotted or encountered first by fishermen rather than state-run vessels. However, in the current situation there are strong disincentives for fishermen and commercial vessels to come to the rescue of migrants at sea. As the authorities are often slow to respond to alerts sent by fishing boats or migrants' distress calls, and governments spend time wrangling over their respective responsibilities, the fishermen on site are often left to care for these migrants for lengthy periods of time. For the fishermen, this not only entails a considerable loss of revenue, as they are unable to pursue their work, but there are also safety concerns involved as they fear being overwhelmed by the large numbers of migrants which typically travel in a boat. As a consequence, fishermen are generally very reluctant to rescue migrants in situations of distress, and admit that, when they encounter migrants at sea, they prefer to leave the area as quickly as possible rather than assist the migrants (author interviews conducted with Maltese fishermen, Malta, 2011).

This at least partially explains the large death toll of migrants drowning each year in the Mediterranean, deaths that are often avoidable. According to a report by the Council of Europe, more than 1,500 migrants lost their lives at sea in 2011 alone (Council of Europe 2012). The report highlights that this loss of life occurred during a time when there was a significant presence of military ships in the Central Mediterranean due to the conflict in Libya, which too often failed to respond to distress calls by seaborne migrants. Moreover, the report reminds states of the judgement made in March 2012 by the European Court of Human Rights, which found that Italy's aforementioned 'push-back' policy violated the principle of non-refoulement. The case reinforced the wider legal casework that has argued that states' obligations to human rights do not stop at their territorial borders (c.f. European Court of Human Rights 2012, 2011).

Despite the clear legal judgement on returning migrants and refugees to Libya, the newly elected, Maltese Prime Minister, Joseph Muscat, went one step further in July 2013. After the arrival of 102 migrants who had departed from Libya by boat, Muscat threatened to immediately return the adult male passengers, 45 Somalis, to Libya without allowing them access to asylum procedures. In this vein, the government booked tickets on Air Malta to return the Somalis to Tripoli. Outrage at the disregard for the principle of non-refoulement and the illegality of the decision prompted NGOs on the island to submit an application to the European Court of Human Rights for an interim order to suspend the returns. The

application was successful and the returns were halted. In the aftermath, Muscat and his government claimed the decision was made in order to send a message to the European Union that Malta would not accept more migrant arrivals without further support form the EU (ECRE 2013).

Since the European Court's judgement, the number of migrant deaths in the Mediterranean has only continued to increase. For instance, in 2014, over 3,000 migrants and refugees died at sea, accounting for 75 per cent of all migrant deaths worldwide. In the Central Mediterranean, 2014 was one of the deadliest years on record despite Italy carrying out an extensive search and rescue mission, *Mare Nostrum*, that year (IOM 2014).

Looking to Europe

As Malta's recent push-back (or repatriation) attempt illustrates, much of its policies are set within the broader, regional framework of the European Union. Significantly, the Schengen Agreement calls for the relaxation of internal border controls, coupled with compensatory measures at the external borders. Moreover, the Dublin III Regulation stipulates that asylum seekers must apply for asylum in the first member state they reach. The Regulation and the Schengen Agreement place more responsibility for asylum and immigration control on member states along the EU's external border, such as Malta.

A particular challenge for Malta has been the Dublin III Regulation, which provides for Malta's responsibly to process asylum claims of all migrants landing on the island. While the initial rationale of this Regulation has been to prevent 'asylum shopping' within the EU, the Maltese government has considered it to be unfair as it 'penalises' countries such as Malta which happen to be located at the EU's outer border. As a consequence, Malta together with other 'frontline' states, such as Cyprus and Greece, has been one of the main advocates of a revision of the Dublin III Regulation.

While amending this Regulation has thus far proven politically impossible, the Maltese government has insisted on greater solidarity and 'burden sharing' among EU countries when it comes to receiving asylum seekers. Malta made some headway in this area when a clause on 'voluntary burden sharing' was included in the European Pact on Immigration and Asylum, which was adopted by European leaders in 2008. While the Pact falls short of stipulating an obligation on EU countries to accept

refugees from other member states and is itself not a legally binding document, it does encourage providing support to EU countries which are 'faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation' in the form of 'voluntary reallocation' of refugees and other persons benefiting from international protection (EU Council 2008). Similar references have also subsequently appeared in other documents, such as the mandate for the European Asylum Support Office, established in Malta in 2010 (EU Council 2010b).

Within this regional context, Malta has an incentive to portray the arrival of irregular immigrants on the island as a crisis and the island as vulnerable to these flows in order to attain further support and funds. In recent years, other EU countries have indeed shown at least a modest degree of solidarity with Malta in resettling refugees who have landed on the island. In 2009, the so-called Eurema (European Relocation Malta) project was launched under which refugees and other persons benefitting from international protection could be reallocated from Malta to other EU countries. However, even though almost half of all EU member states have made pledges under the Eurema project, the number of resettled refugees has remained relatively small. Between 2009 and 2012, some 600 migrants were resettled from Malta to other EU countries within this framework. Somewhat ironically the USA has been more generous than Malta's fellow EU member states, as it has taken a considerable number of refugees who have landed on the island, in particular from the Horn of Africa. Of a total of around 2,000 migrants who have thus far been resettled from Malta to other countries, around two thirds have been accepted by the USA.

Migrants' perspectives

What has been the impact of Malta's policies, as described above, on the migrants who have landed on the island? And how have immigrants and asylum seekers in Malta perceived these policies? The first point to note here is that, for most migrants landing on the island, the journey from sub-Saharan Africa to Libya and from there to Europe has been a traumatic experience. During the trip from their country of origin to Malta, migrants are often confronted with extreme hardship, ranging from hunger and thirst to severe physical abuse at the hands of both

state officials and migrant smugglers. Migrants usually identify travelling across the Sahara and crossing the Mediterranean by boat as the most difficult parts of their journey, where many of them say they came close to perishing (Lutterbeck 2012).

There are at least three aspects of Malta's immigration control policies, which can be said to further exacerbate the plight of irregular migrants en route to Malta: the country's maritime patrol efforts, its migrant detention policy, and the general lack of migrant integration policies in Malta.

Accounts of migrants who have travelled by boat from Libya to Malta often highlight the slowness of Maltese authorities' rescue efforts and response to migrants' distress calls. Some migrants interviewed by the authors claimed that they drifted for many days – sometimes more than a week – at sea without food or water, before they were rescued, even though they seemed to have been spotted by patrol boats in the area or had sent distress signals. Moreover, migrants have argued that Maltese maritime officials tend to focus more on dissuading immigrants from coming to the island rather than on rescuing them. Similarly, many migrants in Malta have pointed to the unwillingness of fishermen to come to their rescue, and there have even been cases where fishermen have forcefully tried to prevent migrants from boarding their boat, despite the fact that the migrants' vessel was sinking (authors' interviews with migrants in Malta, 2011).

Even though there is no evidence of cases where Maltese officials outright refused or failed to rescue migrants when they had clear information about a boat in distress, there have been instances where Maltese authorities let an unseaworthy boat carrying migrants pass through its SAR area, which then encountered severe problems. In 2009, for example, a boat carrying five Eritreans arrived at Lampedusa after travelling through Malta's SAR region. The migrants claimed that there were, originally, more than 70 people on the boat, and that all but the remaining five had drowned. Indeed, Maltese officials themselves admit that their interpretation of a 'situation of distress' is narrower than that used by other countries, and that, therefore, the Armed Forces of Malta are generally reluctant to carry out rescue operations (author's interviews with AFM officials, Malta, 2011).

Once on the island, Malta's indiscriminate detention policy is particularly detrimental to migrants on the island. For most immigrants in Malta it is difficult to comprehend how a European country, which upholds

human rights and the rule of law, can put migrants in prison even though they have committed no crime. Immigrants in Malta often highlight that they fled from countries where their basic rights were abused only to find themselves in a country where their human rights are also violated in the form of arbitrary detention. Moreover, even though the conditions in Malta's detention centres have improved in recent years, migrants in Malta continue to condemn shortcomings in this area, such as the insufficiency of basic health care provision in detention, the substandard quality of food, and the almost complete absence of opportunities for migrants to engage in meaningful activities while in detention (authors' interview with migrants in Malta, 2011).

Finally, and at least partly as a result of the absence of migrant integration policies in Malta, the large majority of migrants feel they have practically no prospects of starting a meaningful life in Malta. Similarly, the possibilities of finding adequate employment in Malta are very scarce. As has been pointed out by a recent study on the situation of migrants in the Maltese labour market, immigrants generally have access to only a very limited number of jobs. Moreover, these tend to be jobs, which 'offer the lowest wages, which are the most difficult from a physical point of view, and which have a negative image attached to them (for example collecting refuse)' (Suban 2012).

Given their limited prospects in Malta, many migrants intend to leave the island in one way or another. While some hope to be included in a resettlement programme to another EU country or the USA, for which the waiting lists are usually many years long, it is very common for migrants in Malta to try their luck in other EU countries, despite the fact that this is prohibited under the aforementioned Dublin Regulation (author interviews with migrants in Malta, 2011). It is not known how many migrants who originally landed on Malta are living in other EU countries without authorisation, but the numbers are probably significant. One indication is the number of migrants returned to Malta from other EU countries. While official figures are difficult to ascertain, those published show an increase over the four years between 2006 and 2009: 59 in 2006, 37 in 2007, 131 in 2008, and 470 in 2009 (data provided to the author by the Ministry for Justice and Home Affairs, 2010; c.f. Eurostat). Although the number returned is low in absolute terms, the spectre of return remains a powerful reality in the lives of migrants and refugees in Malta, who report their frustration in being returned to a country that they feel does not want them.

Conclusion: trouble ahead?

Given the country's small size, and its status as a mainly 'accidental' destination for irregular migrants, the future evolution of migratory flows to Malta will be shaped first and foremost by developments beyond the island. Apart from the situation in countries of origin south of the Sahara, the evolution of Libya after the fall of Gaddafi will play a crucial role in this respect. Libya has currently resumed its previous role as a transit country. However, Italy and the EU more broadly have clearly stated their interest in Libya patrolling its own border in order to stop such irregular flows. It remains to be seen whether they will be successful in providing an incentive for Libya to do so, and whether they will be able to sidestep the legal argument against returning people to Libya after interception at sea.

The evolution of policies within the EU will also have an impact. Although currently there is little political will to renegotiate the Dublin III Regulation, there are on-going discussions and negotiations about the tangible implications of 'solidarity' between member states with regard to migration as well as other issue areas. Currently, there is a perceived incentive for Malta to maintain its image as gatekeeper on the EU's southern border, as well as an island overwhelmed by irregular immigration. However, such a crisis narrative may not be effective in the long run in Europe.

Moreover, the narrative has detrimental effects on the migrant and refugee population in Malta. Some have been on the island for more than a decade and still remain economically and socially marginalised. The lack of integration policies on the island, along with the focus on deterrence and control by the government reflected in the mandatory detention policy, greatly impairs their ability to find adequate employment and to establish their lives on the island. Instead, they remain in limbo with hopes of moving on to another country, but with few opportunities to do so.

The combination of the migration flows seen in the 21st century in Malta, along with the immigration policies and practices adopted by the government have produced a population of migrants and refugees on the island with very few opportunities for integration. They have also resulted in an increase in racism on the island, and a lack of acceptance of this new migration reality by the wider Maltese population. Although Malta, as a small island state, has limited control over external factors

that shape these migration flows, the island does have control over how it responds to the arrival of asylum seekers and migrants on its shores. There are alternatives to the current response, which has created marginalisation and tensions that are harmful to the Maltese society as a whole.

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3

Exploitation of Nigerian and West African Workers and Forced Labour in Italy: Main Features and Institutional Responses

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Paola Monzini

Abstract: *The chapter explores the labour exploitation of West African migrants in Italy and the institutional response of the authorities. Reconstructing two case studies: one in the agriculture sector located in Rosarno, Calabria and the other in the photovoltaic industry in Lecce, Apulia, the article distinguishes the passive vulnerability of the Rosano migrants set against the pro-active stance taken by the exploited migrants in Lecce, arguing that there is a need for consistent labour law strategies embedded in a broader framework, combined with a comprehensive approach based on the reduction of vulnerabilities and a 'decent work' approach.*

Introduction

The opening years of the 21st century have witnessed the growing prevalence of labour exploitation. According to recent estimates by the International Labour Organisation (ILO), in 2005 the total amount of extremely exploited persons globally was 12.3m, while in 2012 the number was calculated at almost 21m persons: a proportion of three people in every thousand being extremely exploited. Among these, around 68 percent are exploited in labour markets, 22 percent in sex markets, and 10 percent are coercively exploited by the state, mainly as prisoners of war (ILO 2012). Although the total share of workers exploited in labour markets is high, and the problem of labour exploitation seems to loom large, it, nonetheless, often remains invisible at the public level. As the ILO reports, limited information is available, there is very little robust, factual evidence concerning labour exploitation and the knowledge gaps are wide. In European countries, the most interesting recent studies have been focussed on racial and ethnic discrimination in the labour markets and workplaces; on the exploitation of migrants and on the issue of migrant rights. Research highlights how new migrants, including seasonal and undocumented workers and refugees, are vulnerable to severe exploitation and unregulated working environments. Migrants without regular status and without contracts are particularly vulnerable to exploitation: long working hours; no rest days; confiscation of passports; non-payment of salaries and the sale of migrant workers from one employer to another are among the most frequent abuses of migrant rights (Van der Anker 2004; Moritz and Tsourdi 2009; Andrees and Besler 2009; Skrivankova 2010). In 2012, a comparative study conducted in nine European countries concluded that in Europe 'forced labour is thought to largely involve non-citizens, who do not share the rights and freedoms of national citizens' (Clark 2012: 58).

At the same time, in the last decade, a section of the scholarly literature has been devoted to exploring the experience of migrants moving from Africa to Europe, and the relationships between smugglers and the various kind of exploitation that irregular migrants encounter during their travels (Monzini 2010, 2012). The issue of migrants' human rights has become central to this discourse on African migration and on irregular migration from African to European countries (De Haas 2008; Adepoju & Van der Wiel 2010). Research shows how irregular migrants

may come in contact with an interconnected, transnational, informal network of, more or less, specialised middlemen who exploit them. Also, the flows of migration crossing the Mediterranean countries are 'mixed migration flows', meaning that a varying, but relevant, percentage of migrants in this region comprises asylum seekers and other vulnerable migrants, such as victims of trafficking and refugees (UNHCR 2006). In most cases these vulnerable categories tend to share the same migration processes as economic migrants, they undertake the same journeys and receive the same treatment, despite their divergent situations. Smuggled migrants who are deported can be, at the same time, trafficked persons and/or asylum seekers, and shifting from one category to another may also be common. More specifically, research in the Mediterranean region has demonstrated that African irregular migrants who are on the move may pass form one intermediary to another, often voluntarily, effectively becoming disposable people during their journey. Migrants along this route meet all the pre-conditions which Kevin Bales has identified as the foundations of the new forms of slavery (Bales 2009).

As in other parts of the Mediterranean, irregular migrants in Italy are often transit migrants. In the geography of irregular migration, Italy is not only a destination country, but also a transit country for West African migrants whose target destination lies elsewhere in Europe. In this context, an investigation of the exploitation of West African workers in Italy needs to take into account the shape of irregular labour markets, the interconnection with the irregular migration process and the measures adopted by the Italian state to control migration.

Against this background, the chapter explores the mechanisms of severe labour exploitation of Nigerian and other West African workers in Italy, mainly through the lens of the law enforcement approach. Exploitation in the Italian sex market is not considered in detail (for an analysis of the transportation/trafficking of Nigerian women to work as prostitutes in Italy, see Chapter 5). The main sources of evidence and data are interviews with the institutional actors involved in countering the phenomenon and judicial proceedings. First-hand information has been mainly gathered as part of a research project promoted by the ILO through 25 semi-structured interviews with law enforcement officials, mainly police officers and magistrates, in Italy's southern and central-eastern regions, in the North East and in Rome, Turin, Milan and Naples, as well as through interviews with trade union officials working at the national or local level in Italy (ILO 2010). Twelve interviews were

conducted face-to-face and 13 by telephone, using the 'snowball sample technique'.

Based on these sources, and on the information collected from secondary sources such as institutional and NGO reports, the first section briefly illustrates the main features of the exploitation of West African workers in Italy as understood by NGOs and experts on one side of the debate, and by law enforcement agencies on the other side. The second section reconstructs two different case studies involving exploited workers from Nigeria and other West African countries. At the end of the article, some concluding remarks are advanced with reference to the current European debate on migrant exploitation.

The state of the debate: exploitation of West African migrant workers

In Italy, the most detailed research into severe labour exploitation has been conducted by non-governmental and inter-governmental organisations (Medici Senza Frontiere 2008; Amnesty International 2012) or trade unions (CIGL 2012); a few other studies present a scholarly perspective of the problem (Bussadori 2009; Carchedi 2010). Research has demonstrated that severe forms of exploitation are widespread in several areas of southern Italy (Pugliese *et al.* 2012) and in the North of the country, not only in agriculture, but also increasingly in the construction industry, mainly involving irregular migrants. The extent of exploitation is higher in areas with significant numbers of 'black' irregular migrants. In 2011, according to government data, there were almost 165,000 unregistered workers (Ministry of Labour and Social Policy 2012). On average, it has been calculated that irregular migrants receive 40 percent less in wages than Italian workers. Research in the areas of Caserta and Latina in Southern Italy has uncovered the prevalence of long working hours and the abuse of the migrants' legal and social rights (IOM 2010; Amnesty International 2012; Pugliese *et al.* 2012).

There is some quantitative data concerning financial assistance paid by the state to those severely exploited in the workplace. Since 2007, migrants subjected to violence at the workplace have been able to receive financial assistance, a benefit initially only put in place for women exploited in the sex market.[1] The number of migrants from North and sub-Saharan Africa receiving financial assistance between

2002 and 2012 was as high as 13,200, although out of this number, 66 percent were women, mostly Nigerian and mainly exploited as part of their work as prostitutes. Men receiving payments were also mostly from Nigeria, and mainly exploited in labour markets such as agriculture and the construction industry, but also in illegal economies such as the drugs market, or in begging for the enrichment of others (Carchedi 2012). More recently, between 2010 and 2011, financial assistance was provided to a total of 997 trafficked people from the ECOWAS area, notably from Nigeria, Senegal and Ghana.

By law, severe exploitation becomes a criminal offence when the relationship between employer and worker not only gives raise to labour disputes, but breaches the fundamental rights of the worker concerned. Such violations, amounting to the crimes of forced labour and severe exploitation, require different responses, sometimes combined, applying labour law and/or criminal justice approaches. In Italy, there is not yet specific legislation to prevent and suppress the crime of severe labour exploitation. Rather, a range of legal instruments are used, most of them put in place in the last decade. The crime is mainly prosecuted using a set of trafficking instruments introduced in 2003, however, according to law enforcement officers and magistrates, to define a case as severe labour exploitation is often difficult due to the lack of evidence and employers are often prosecuted for lesser offences such as extortion or other types of coercion (Amnesty International 2012).[2] Specific legislation was also introduced in 2003 to punish 'illegal intermediation in the employment of labour', and since 2012 aggravating factors can be taken into account if conditions of particularly severe exploitation exist.[3]

However, law enforcement agencies do not keep specific data on the severe exploitation of West African workers, as the country of origin of exploited workers is not recorded. An exception is the data collected by the *Direzione Nazionale Antimafia*, the Anti-Mafia Investigation Department, on victims of trafficking which indicate the nationality of victims and defendants, however, again the data mostly concerns trafficking for sexual exploitation and are, therefore, not useful for the purpose of this chapter.

Qualitative research has proved more valuable in providing insight into how the exploitation of migrant workers takes place. A reconstruction of exploitation patterns based on 19 interviews with severely exploited workers from Nigeria delineates the existence of traffickers who organise the departure and exploitation of workers in Italy (Carchedi

2013). More specifically, a recent investigation has revealed a complex trafficking network that moved irregular immigrants from North and West Africa, recruited predominantly in Tunisia, to Sicily and then onto the mainland for seasonal agricultural work in Pachino, Siracusa and Lecce. The migrants had the money they had brought with them taken, were housed in accommodation with no running water, sanitation or electricity, and forced to work shifts of 10–12 hours (TGCom24 2012). In general, labour exploitation of West African workers has been found in local labour markets where workers of different nationalities co-exist. It is quite rare that specific patterns of exploitation involving West African workers are recorded by law enforcement agencies. The head of the police agency dealing with the protection of labour rights, and all 13 magistrates interviewed by the author, indicate that there is no evidence of a specific network established to severely exploit migrants from West Africa. According to police sources, the crimes in Italy concerning West Africans that are most commonly investigated remain trafficking of women for prostitution and drug smuggling. These illegal businesses are, in general, run jointly by Nigerians with Italian and/or Senegalese accomplices (Interviews with an Interpol officer, Rome; Officer in the Police HQ, Rome).

Operations targeting severe labour exploitation are rarely launched, proactive investigation is not undertaken and crimes are usually not reported. According to informed sources, law enforcement agencies do not have sufficient human resources to investigate labour exploitation, especially since these agencies are already over-stretched addressing high levels of domestic organised crime in the areas of southern Italy where much of the severe exploitation takes place (Medici senza Frontiere 2007; Amnesty International 2012). The social invisibility of undocumented migrants and their unwillingness to report their exploiters further militates against effective investigation (International Organisation for Migration 2010). As one interviewee notes, 'if someone reports their employer, they will not find anyone else willing to employ them as they will be considered as a destabilising element' (Interview with the Carabinieri, Head of the Command for the Protection of Labour, Rome). This unwillingness to report exploitation is also further entrenched by the criminal offence of illegally entering and staying in Italy, introduced in 2009, which renders irregular migrants open to deportation.[4] Some police officers and labour inspectors are predisposed to treating severely exploited migrant workers not as victims but as criminals. One magistrate

sums up the plight of the migrant worker as 'being an illegal immigrant and not knowing the language, the culture, one's rights, and with having absolutely no awareness of the rights which the worker, despite being an immigrant, may exercise' (Mancini 2010).

Often, migrant workers are unable to identify themselves as victims of exploitation. Evidence points to most cases of migrant exploitation being reported by local solidarity organisations, as well as hospitals which are required by law to report illegal immigrants (Interview with the Carabinieri, Head of the Command for the Protection of Labour, Rome). Trade unions, despite attempting to raise public awareness, are not often involved in reporting individual instances of abuse.[5] An official at the Nigerian Embassy also reports few cases of exploitation being reported unless they involve serious injury or death, in which case compensation is often being sought (Interview with an officer at the Nigerian Embassy in Rome).

The chapter continues by reconstructing two cases of exploitation in different labour sectors involving, amongst others, West African workers, in order to demonstrate the dynamics of the abuse.

Exploitation in the agriculture sector: the case of Rosarno, Calabria

A revolt by hundreds of migrant workers against police and locals in the Calabrian town of Rosarno in 2010 resulted in the police launching 'Operazione Migrantes' (Court of Palmi 2010). The revolt was a reaction to the shooting and wounding by local youths of two African fruit pickers. The revolt received wide media coverage (*Economist* 2010). The result of the investigation following the clashes led to the arrest of thirty people including local farm owners and gangmasters accused of conspiracy to exploit irregular labour and fraud. The prosecution was made possible by the testimony of around 15 immigrants who were working on the plain of Gioia Tauro. Law enforcement officers discovered an effective system of recruitment and forced labour across the whole of the plain, particularly during the orange harvest (Court of Palmi 2010).

The judicial proceedings demonstrate a high level of coercion and intimidation. None of those who testified came forward of their own volition, but rather became witnesses only after having been directly questioned by police. In particular, the proceedings indicate that the

Nigerians and Ghanaians involved spoke about their living and work-ing conditions hesitantly and with trepidation, reporting that they lived in very precarious conditions, had been threatened and warned not to speak of the conditions under which they were forced to live and work. Police sources describe their stories as 'common to all African irregular migrants, consisting of poverty, and exploitation on the part of landowners and gangmasters' (Court of Palmi 2010: 368). Specifically, the statements of two Nigerian workers describe how they had been directed towards farm work two years previously by fellow Nigerians. The recruitment practices are not reported, but a detailed description of their working days, which were always the same, is given. Every morn-ing at 6.30am they got on to a truck with an Italian driver together with other Africans to be transported to the fields. The working day started at 7am and finished at 5pm. At the end of the day they were taken back to their accommodation on the same truck which picked them up in the morning. The work was generally done in teams of 5 to 7 or 10 to 15 workers. In the field they were not equipped with gloves or protec-tive headgear as their safety was not a concern. As a result of this lack of protection, one of the two individuals questioned had a finger on his left hand permanently disabled. Another worker testified how they were forced to work without food and in bad weather. A police source reports that 'lunch breaks were never taken and the pickers ate only oranges' (Court of Palmi 2010: 373).

Agricultural landowners in Rosarno have adopted a business strat-egy of reducing labour costs by using the services of gangmasters. It is the gangmasters who control the labour force. Under their direction, workers have to harvest in all weather conditions and live in inhumane conditions. The workers usually do not meet their employers, only intermediaries. Levels of intermediation are twofold, and sometimes threefold: usually there is one Italian gangmaster who monitors the overall process and deals with the owner of the land, and one or more non-Italian gangmaster, known as a 'caponero', who recruits and controls the workforce of their own ethnicity, staying with them all day. Workers' accounts reveal, for example, that for them a Nigerian 'caponero' was responsible for paying daily wages on behalf of the owner. He paid the workers €25 a day and kept €3 per worker for himself for 'transport costs'. The workers were aware that he received additional pay from the owner, although he only transported the workers and never worked in the fields (Court of Palmi 2010: 375).

Gangmasters are described in the judicial proceedings as men willing to use intimidation to impose exploitative conditions on the workers. Any worker who tries to rebel is threatened with death and often physically assaulted. Moreover, at the gangmaster's discretion, daily wages can be withheld. One worker reports that 'if we had rebelled, we would have been driven away without being paid' (Court of Palmi 2010: 383). In some cases, gangmasters provided counterfeit documentation to cover for the workers' irregular status. Promises by gangmasters to arrange residence permits for irregular migrants are also used as a means of coercion, the promises are used to induce compliance with the exploitative conditions, but the promise of arranging residence permits is never kept. In addition, the investigation discovered systematic social security fraud whereby local Italian workers were, on paper, declared as the labour hired to pick the fruit and their national insurance contributions paid, whilst in reality the migrant workers did the work for a meagre daily wage paid 'cash-in-hand'. The local labourers would then claim unemployment benefit.

One year after the trial, in February 2012, Amnesty International returned to the area to find at least a thousand migrant workers still employed during the orange-picking season, reporting that 'while the housing available to migrant workers had improved to some extent, thanks to the involvement of local authorities and pressure from civil society, the circumstances of their employment had not improved' (Amnesty International 2012: 22). Ninety percent of the migrant fruit pickers had no contract and 24 percent had found their job through a gangmaster. According to another NGO, the men were mainly from sub-Saharan Africa (22 percent from Mali; 15 percent from Senegal; 13 percent from Guinea; and 12 percent from Côte d'Ivoire); the average age being 29; and 72 percent of them did not have a residence permit. Moreover, the NGO discovered that over 80 percent of the immigrant population in Rosario and its surroundings had made application for international protection (Rete Radici Integration Foundation 2012).

Exploitation in the photovoltaic solar panel industry: the case of Lecce and Brindisi, Apulia

A second investigation in Apulia has uncovered a system of exploitation in the industrial labour sector, in the so-called high-tech 'green economy' (Court of Lecce 2011). The investigation brought to light the exploitation

of immigrants working in private companies. Invisible to the public, and working in fenced-off areas, the exploitation of the migrants became visible only when the workers themselves reported it to trade union officials and the police. Through research in the field, and the collection and cross-checking of evidence from different sources, it has been possible to reconstruct the mechanisms of this exploitation (Interviews conducted in Lecce with trade unions and NGOs representatives, police officers, magistrates, journalists; articles in the local press).

Information first emerged from Tunisian workers in December 2010, just few days after the beginning of the 'Arab Spring', and indeed most likely encouraged by the stand against the abuse of human rights being taken in their home country. The workers had been employed a few months before to work on the installation of photovoltaic solar panel arrays. The company involved, Global Solar Fund, backed by the China Bank Corporation, obtained authorisation and financial support from the regional authorities to undertake the work. A Spanish company, Tecnova, was subcontracted to construct the sites. In 2010, Tecnova obtained permission to build 17 sites in Apulia, in the provinces of Taranto, Brindisi and Lecce, for which it would need at least 500 unskilled labourers to fit silicon solar panels. To build these installations, Tecnova employed hundreds of workers, mainly non-Italians, some of whom did not have residence permits, including several dozen from West Africa. Through 'word of mouth', but also through gangmasters and intermediaries, migrant workers came to this region from all over southern Italy. The incentive was a promised salary of €1,300 a month for seven hours work a day. In order to get the job, some of the workers paid hundreds of euros to intermediaries from their own country (Court of Lecce 2011).

From the first, they discovered that the actual conditions of work were very different from those promised. After being hired on a standard employment contract for factory workers in the engineering sector, the workers saw their expectations evaporate. In spite of the contract, overtime and holidays were not paid; social security and health insurance contributions were not made; and accidents were neither prevented nor reported. Work often started at 5am when a truck took them to the various installations, the location of which they were often unaware. Usually, the working day was 12 hours, six days a week, but they were also asked to do a lot of overtime, and some days worked 18 or even 24 hours. Generally, they were allowed to rest only on Sunday afternoon. Moreover, the one-month contract signed by most of the workers was

then replaced by an oral arrangement and wages of about €50 a day. Tecnova frequently did not pay the workers and flouted safety regulations. When a secretary pointed out that the size of the safety footwear was too small, he replied 'let them cut their feet! Let them cut the front of their boots off with their feet sticking out!' (Court of Lecce 2011: 13–20). Anyone who objected or stood up for their rights was sacked immediately. Migrant workers often received threats, and those who tried to report their employers were immediately threatened with dismissal or were sacked on the spot.

In response to the growing number of complaints being brought to the Brindisi police, an investigation was launched, including the use of telephone tapping. The investigation spread to Lecce, and trade unions also became involved in compiling evidence. The UGL trade union in Lecce discovered that the workers' contracts were not legal having not been declared to the state social security agency; having an invalid duration of one month and having not been renewed. Workers without a residence permit had also been threatened (Interview with a trade union representative, UGL). To raise awareness, a sit-in was organised in the centre of Lecce. Meanwhile, having been formally indicted, the directors of Tecnova disappeared. It was left to the parent company, Global Solar Fund, to negotiate with the trade unions. In order to prevent the solar panel arrays being seized, compensation of €1,500 a month was offered, and the Global Solar Fund offered to pay irregular migrant workers the same amount. In all, the company paid over 450 workers a total of €500,000 to cover unpaid wages. At least 22 workers who had been exposed to violence obtained access to social assistance (Interview with a social worker, director of Associazione Libera, Lecce; Police officers in Lecce Police Headquarters).

From a criminal justice perspective, 20 managers from Tecnova were initially charged with criminal conspiracy to reduce individuals to slavery. Ultimately, the charges were altered to extortion, aggravated fraud at the expense of the State and abetting the employment of individuals without a residence permit in Italy.

Concluding remarks

An exploration of the two cases of labour exploitation detailed above reveals a number of similarities and dissimilarities. In both cases,

migrant workers are engaged in low wage employment, are abused and manipulated. They face similar challenges. During their employment they are not given access to nutritious food; they work in often dangerous conditions with no training, safety equipment of access to health care. The migrants are not free to choose to leave their abusive employment and the conditions of exploitation are based on hierarchical structures in the workplace. In Rosarno, it is quite clear that the vulnerability of migrant workers to exploitation is exacerbated by their irregular status and gangmasters use blackmail to take illegal deductions out of the migrant worker's wages because of this vulnerability. Moreover, the exploitation of the migrants brings financial and social benefits not only for the employers and gangmasters, but for the community at large. The job of fruit picking in Rosarno is today done by migrants rather than locals who, nonetheless, continue to profit by receiving state unemployment payments.

In both cases, fundamental labour rights were violated. However, the paths taken to seek justice have been quite different. In the Rosarno case, the migrants' employment was outside of any regulation, it was completely undeclared work and the workers had no perception of having legal rights. Access to justice was not pursued by the workers themselves, but as a result of police investigation. Even then, fearing reprisals by their employers, the workers did not volunteer their testimony, but were approached by the police. Whilst some did ultimately receive financial assistance from the state, they have not received compensation or restitution for their exploitation. The case of Rosarno explicitly demonstrates that repressive policies alone cannot solve the problem and that the criminal justice approach, when applied in isolation, is insufficient. As NGOs working in the region have discovered, the labour situation in the Rosarno area remains the same as it was before the trial (*Le Monde n'est pas Rond* 2013).

In the Tecnova case, however, the migrant workers moved beyond victimhood to being social actors able to seek justice on their own behalf. A key difference is that, unlike in Rosarno, there was a legal basis to their employment, albeit fraudulent. Having realised that the contracts that they had signed were intrinsically dishonest, and were, in any case, not being honoured, the migrant workers first approached the police to seek to indict their employers and then received the support of local trade unions. Again, unlike the workers in Rosarno, there was a comprehensive settlement that saw both regular and irregular migrants

compensated and unpaid wages reimbursed. In this case, the migrant workers were pro-active rather than victimised, and the response of state and non-state actors was positive. In particular, the Tecnova case emphasises the importance of a concrete outcome in the form of financial restitution. Although there is an emerging awareness about the right to compensation for severely exploited persons, and despite the existence of compensation mechanisms in the legal frameworks of European countries, the actual receipt of compensation is extremely rare (OSCE 2008; Comp.act 2014).

To conclude, this chapter, and specifically the case studies, raise some key issues relevant to an effective response to labour exploitation of irregular migrants. Firstly, there is a need for consistent labour law strategies embedded in a broader framework combined with a comprehensive approach based on the reduction of vulnerabilities and a 'decent work' approach. In this respect, coherence between legislation and policies on migration and labour is especially relevant in order to guarantee protection for the exploited person, even in cases when the migrant is in an irregular position.

The situation in Italy typifies what happens in the majority of European countries where immigration control and the punishment of irregular migrants outweighs the labour and human rights of the migrant. In the United Kingdom, for example, Andrees and Besler (2009) and Skrivankova (2010) note that rather than addressing the fundamental causes of abuse within the labour market, the state exceptionalises this abuse by treating it as human trafficking. In Europe on the whole, providing assistance to victims is preferred to providing appropriate support to workers who want to defend themselves. Resources are available to assist victims, but not to monitor the functioning of the labour markets. Labour inspections, enforcement of minimum wage legislation, regulation of recruitment agencies and other tools are not promoted enough, and investigations usually are not proactive. Clark (2012: 3) points out with regards to labour exploitation within the EU, the problem is 'imperfectly understood ... it is approached as being caused by the vulnerability of victims, rather than by deficiencies in the regulation of labour markets or the economy'. The empowerment of those being exploited within the labour market is often the driving factor in accessing justice. Checks by local institutions on immigrants' working conditions need to be increased.

In terms of the subject matter of this edited volume, both of the case studies examined in this chapter involved irregular migrants from Africa

seeking to earn a living wage in Europe, in this instance in Italy. These migrants found themselves confronted by deception, exploitation, abuse and violence. The issue of African migrants' labour rights needs to be central to the discourse on African migration to European countries, especially in the context of irregular migration. Migrants often make fortunes for intermediaries and employers who take advantage of their vulnerabilities. There is a growing acknowledgement that the exploitation of migrant labour is embedded in European societies and economies, and that more research is needed in this area in order to better inform effective policy formulation to address the issue.

Notes

1   Article 18 of Legislative Decree no.276/2003.
2   Law no. 228, 21 August 2003, reformulating partially articles 600, 601 and 602 of the Penal Code, concerning slavery, servitude and trafficking, and art. 18, see footnote 4.
3   Legislative decree 109, 16 July 2012.
4   Criminalisation of irregular migration was introduced in 2009, as article 10-bis of the Consolidating Act concerning immigration makes 'illegally entering and staying in Italy' a criminal offence.
5   See for example the CGIL campaign against racism and undocumented labour: http://no-lavoronero-cgil.it/index-it.htm.

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4

At the Margins of Consent: Sex Trafficking from Nigeria to Italy

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Abstract: *The chapter examines the process of recruitment and implantation in Italian cities of Nigerian girls and women for prostitution, specifically investigating the issue of consent, arguing that the coercive practices used by the pimps and madams would negate any consent given by the prospective migrant sex worker at the time of recruitment, regardless of wider legal questions as to whether an individual can consent to exploitation. The severity of the methods used to coerce compliance amount to serious crimes and human rights abuses in themselves that should be acted upon by law enforcement agencies and the criminal justice systems of both Italy and Nigeria.*

Introduction

Sex trafficking from Nigeria to Italy was first identified in the mid-1980s. As is the case with sex trafficking in other parts of the world, the number of women moved into prostitution from Nigeria to Italy remains unclear. A recent figure based on research undertaken by the United Nations Interregional Crime and Justice Research Institute (UNCRI) estimates that between 2000 and 2009, about 8,000–10,000 Nigerian women were involved in street prostitution in Italy. In terms of the broader phenomenon of trafficking in human beings (THB), Nigeria is commonly identified as simultaneously a country of origin, transit and destination (UNODC 2012; USDOS 2012), whilst in the specific category of sex trafficking, it is often identified as purely a sending country (UNICRI 2010) leading to sex trafficking in the country being conflated with THB (Cole 2006).

The adoption in 2000 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, referred to as the Trafficking Protocol, is widely held as a juncture in international efforts to address sex trafficking. Both Nigeria and Italy are signatories and responded to its adoption by enacting anti-trafficking legislation and amending existing legislation in this area. Yet, the international effort to combat sex trafficking through international treaties, as well as new domestic legislation, are dismissed by a number of scholars, including Kara (2009) and Todres (2011: 451), as inadequate, misdirected and ineffective.

Much of the evidence presented in this chapter is first-hand. It was gathered through semi-structured interviews with experts in the area of sex trafficking from Nigeria and Italy, from law enforcement and criminal justice practitioners; governmental and non-governmental organisations; scholars and journalists.

A key question is whether the movement of women from Nigeria to Italy to work as prostitutes should be treated as *trafficking* with the women being moved treated as victims, or as a form of *smuggling*, where the victim is the Italian state whose immigration laws are being circumvented? The chapter further explores the position of consent through the prism of the continuing debate amongst feminist scholars regarding the right of women to choose, or rather choose to be transported into, prostitution. In so doing, the current legal status of consent in this area will also be investigated.

Sex trafficking, consent and the feminist debate

Whilst sex trafficking effects people from different parts of the world in diverse ways, in Todres' words, 'the gross violations of human rights and human dignity are constant' (2011: 499). Although there has been an increase in international and national legislation to address sex trafficking, there is no concrete evidence to indicate a reduction in its scale. The inadequacies of the international response to sex trafficking became a core issue for the women's movement in the 1980s, laying the foundations for the drafting of the Trafficking Protocol (Jeffreys 2009). The Protocol defines trafficking as:

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Moreover, the Protocol explicitly states that the idea of *consenting* to be trafficked is irrelevant when any of these 'means elements' have been used. However, as ever, it is in the interpretation of the legislation that complications arise.

Whilst Jeffreys (2009) notes that the position of most feminists on the issue of sex work was broadly unanimous during the 1980s, the debate subsequently diverged with radically different positions being taken during the period leading to the adoption of the Protocol. This debate, albeit increasingly complex and fragmented, continues. The broad position taken by liberal feminism stresses the right and capacity of women, indeed all human beings, to consent to sex work (Nussbaum 1999; Kempadoo & Doezema 1998; and Doezema 2010). From this perspective, sex work is conceived as an expression of a woman's right to self-determination. Therefore prostitution, as the core expression of sex work, should be decriminalised in conjunction with the extension and adoption of legal measures to safeguard the working conditions of women involved in it. Prostitution is held to be economically liberating and a positive assertion of a woman's sexual autonomy. It follows that those who migrate to work as prostitutes, as long as they agree to that employment, are labour migrants rather than victims of trafficking (Agustin 2005: 2007). A vigorous opponent of those who seek to either

prevent or rescue migrants from taking employment as prostitutes, Laura Agustin, contends that,

> few sex workers are attracted by 'exit strategies' or 'diversion programmes'. They hate being low-paid, disparaged, disrespected cleaners, nannies and maids. They don't want to return to their countries as failed migrants. They don't want to be poorer again. The sex act may be something they adapt to, learn to enjoy or close their eyes and endure, but if doing it provides more freedom, autonomy, flexibility or hope then it can be preferred, whether people were born in France, China, Nigeria or Brazil. The majority have *consented* to sell sex, somehow or other, to some degree. (Agustin 2013)

In response, the position of radical feminism is that there is no difference between forced and consensual prostitution (Jeffreys 2009; Barry 1995; MacKinnon 2011 and Leidholdt 2003) and that state legalised prostitution is equivalent to rape. Radical feminism, therefore, advocates the criminalisation of prostitution and all those involved in enabling prostitution from pimps to clients, with the exception of the prostitutes themselves (Farley 2004; Raymond 2004; Balos 2004). Weighing the right of a woman to consent to sell sex and the serious intrinsic harm involved in working as a prostitute, radical feminism argues that consent in these circumstances is a deception, critiquing the liberal feminist position as knowingly putting sex migrants 'in harms way' (Farley 2004; Balos 2004).

The major flaw with both these positions is the supposition that women moved across borders for sex can be regarded as either consenting or non-consenting. The feminist debate also tends to deal in absolutes, ignoring cultural and ideological diversity. In practice, there exists no universal legal response to sex trafficking. Even a mature supra-national organisation such as the European Union has no fixed legal response to sex work or trafficking. Indeed, in the context of this chapter, whilst Nigeria criminalises prostitution, and by extension migration for prostitution, Italy criminalises sex trafficking but permits prostitution.

Exploitation and coercion

Can Nigerian women consent to be moved to Italy to work as prostitutes or, from a radical feminist perspective, consent to their own exploitation? Moreover, to what extent is that putative consent influenced by a spectrum of coercive means and methods. The main common characteristic

linking Nigerian sex migrants in Italy is poverty. This commonality is interpreted in strikingly polarised ways by those interviewed as part of this study. Some interviewees accept the desperation of those seeking an escape from deprivation for themselves and their extended family as a core driver of sex migration, and as such a form of coercion, whilst others deny absolute need, downplaying this form of economic coercion, but rather emphasising an individual's personal economic motives, sometimes characterised as 'greed', as the main incentive.

Interviewees indicate gradations of deception. Some report many women totally deceived as to the nature of work that they will be required to undertake with sex work not being mentioned. For example, Gabriel Odu of the Nigerian Television Authority argues that,

> Most Nigerian women agree to migrate to Italy without understanding the full implications of what they are getting into. Look at the recent cases of Nigerian women trapped in Mali *en route* to Europe, some of whom have been deported, and when you interact with these women they tell you they were told that they were going to work as nannies, hairdressers, all kinds of jobs but not prostitution.

The evidence indicates that Nigerian women are frequently recruited by family, friends and acquaintances rather than strangers. According to an interviewee from the International Labour Organisation (ILO),

> The recruitment pattern used by the Nigerian traffickers is such that usually there is a middleperson between the madams and the women. It is usually like a chain. Most women are recruited by people who know them, it could be a friend, a friend's friend, an uncle, a cousin, or somebody that knows somebody within the chain. And the common method used is usually the idea of a job as a nanny, working in the restaurant or some other unskilled job and then they are given the impression, or they portray, how the streets of Italy are lined with euros and how it is easy to make money.

Thus, the impression is given of readily available, well-paid, employment in Italy. Most interviewees relate examples of the recruiters' deception, how they build a façade of authenticity by insisting on seemingly standard business practices such as requiring a recruitment fee to be paid; the signing of 'legal' agreements drafted by genuine solicitors; travel arrangements made in apparently authentic travel agents, and how they eloquently describe the future that awaits the recruit in Italy, 'an *Eldorado*' where 'the streets are paved with gold'.

That a majority of women are deceived as to the nature of their ultimate employment is, however, challenged. For the majority of interviewees, most recruits are aware that they will be required to work as prostitutes. The pivot is the extent to which they are aware of what this entails. This can vary from a fundamental ignorance of the nature of prostitution to total ignorance of the conditions, often manifestly exploitative, under which they will be working in Italy. A representative of an Abuja-based NGO, Children Youth Protection Foundation (CYPF), as well as an officer from Nigeria's National Agency for the Prohibition of Trafficking in Persons (NAPTIP), raised the specific issue of recruitment from Edo, a Nigerian state with a long history of sex migration (Adesina, 2005). The extent of recruitment in Edo, as well as the associated media and social publicity, has led to the state being targeted by law enforcement and criminal justice agencies. On these bases, the CYPF and NAPTIP interviewees are sceptical of claims that those recruited could be unaware of the specifics of their intended employment. Indeed an interviewee from the Nigerian Immigration Service (NIS) gives examples of women from Edo state paying their own way to work as prostitutes in Italy.

A key distinction, however, needs to be made between a general understanding that the employment opportunity in Italy will be sex work and a more specific understanding of the relationship between sex workers and their madams and pimps, and the reality of the activities that they will be expected to undertake. This reality often includes more customers than they expect or are led to believe; a violent and constrained working environment; as well as financial rewards that are much less than anticipated, controlled by the madams and pimps and from which 'repayments' are directly taken. Rebecca Sako-John of Nigeria's League of Democratic Women (LEADS) accepts that there are women who agree to be moved into prostitution, but argues that 'the reality is that they are still deceived in some other way and are also ill-treated when they arrive the destination country'. Njau Mumbi of the United Nations Office on Drugs and Crime (UNODC) in Abuja, stresses that the level of accurate information that a woman receives when recruited and moved out of Nigeria differs and, owing to intrinsic methodological constraints, is very difficult for practitioners and researcher to determine. However, Njau cautions against conflating human smuggling with human trafficking merely because, ostensibly and intuitively, the procurement of women for prostitution seems to suggest exploitation.

A further, and related, factor complicating an assessment of exploitation is the role of coercion, whether physical, psychological or economic. A particular form of coercion, repeatedly cited by the interviewees in cases of Nigerian women moved to Italy for prostitution, is the use of voodoo or 'black magic' in the form of a 'juju' oath administered by juju priests employed by the recruiters. Although there is no uniform way of administering the oath, the process often involves the use of plants or herbs which are mixed with other substances, including blood from animals or birds, to make a mixture which the women are made to drink. Personal items like hair, nails and body fluids are also taken from the women and retained by the juju priest. According to an interviewee providing care to former prostitutes, prior to leaving Nigeria,

> the women are usually taken to meet a *juju* priest who oftentimes is resident in an isolated environment; some have their shrines in the bush or forest and even those that live among other people use a room that is especially dedicated as a shrine for an idol. The very environment of the shrine is enough to make anybody afraid. Sometimes it involves the use of sacrifices that involves the killing of goats and chicken and the women may be asked to eat some of the flesh raw.

Another care provider with the Italian NGO Caritas describes the pact between women and recruiters as 'backed by an oath where some personalised items of the girls such as panties, nails, menstrual blood, pubic hair and hair from the armpit are taken from the women to seal the agreement'.

The importance of the juju oath in the functioning of the transnational movement of women for prostitution from Nigeria to Italy, as well as other destinations, has been recognised by researchers and practitioners for some time, although details remain imprecise. Amongst those interviewed for this study, a regular response was to stress the ubiquity of juju in Nigeria, and Edo state in particular, and its habitual and daily practice as an ancient traditional religion that pre-dates the arrival of Islam and Christianity which continues as a parallel ritualistic activity observed by many as sacred and socially cohesive. For example, albeit in diminishing circumstances, oaths administered by juju priests retain some status in Nigerian customary law. Indeed, one interviewee emphasised the distinction between the system of oaths traditionally used to guarantee contracts, particularly in Igbo communities, and the rites that are given to migrant sex workers which do not always include the explicit taking of an oath. The use of juju is intended to draw on the atavistic beliefs inculcated through family and community, reinforced by intimidating

rituals combined with the promise that serious harm or death will befall those who transgress the rules or disobey their madams and pimps. According to one of the care providers,

> Harm will come upon the person who tries to play smart with the other. It is this practice that traffickers now use to instil fear in their victims and because the victims also believe in the fact that the juju will work they are afraid to do anything contrary to what they agreed with the madam.

The strength of juju as a coercive mechanism is emphasised by an interviewee from the Italian Ministry of the Interior,

> We know that almost all Nigerian women trafficked into Italy are subjected to the juju oath which stops them from speaking out on their experiences. When we try to provide them with some support they will usually escape, only to return to the trafficker again. Our understanding of it is that trafficked women who take the juju oath virtually lose the will to act for themselves as they live in fear of doing anything that will break the oath.

Another interviewee, however, returns to the common and customary practice of juju oaths to seal contracts, claiming that women who wanted to travel and work in Italy would expect to have the financial settlement for transport and employment formalised by juju. In these circumstances, whether or not the woman was later exploited, the juju ritual should be seen as customary rather than coercive,

> The purpose of the *juju* oath is no different from what it had always been used for. It is not meant to enthral the women, but as a means to seal a contract which is traditionally acceptable in Nigeria. Yes, it also instils fear in the women, but only to the extent that they keep to their side of the bargain. Don't misunderstand me because I can see the look on your face, I am a woman and having worked with victims of human trafficking I don't deny that the women suffer abuses and are exploited. But I have heard people say that ah it is the oath that kept the women in a condition of slavery. And I would usually ask them if the women were forced to take the oath. Like I have said before, the oath is simply a way of protecting a mutual agreement between two people.

Yet, other interviewees, stress the unequal nature of these 'mutual agreements' as being far short of quasi-legal 'contracts' with consideration on both sides. The woman is required to take on a heavy debt for her transport, accommodation and subsistence regardless of whether she consents or agrees to the sums demanded. The size of the debt is often not disclosed. Most interviewees agree that Nigerian woman moved into

prostitution in Italy are not aware of the amount of money they will need to pay once in Italy. Because, even in the few cases where the women are aware of an obligation to repay some money in Italy, the exact amount is never disclosed and the women are led to believe that the amount will be readily repaid from their earnings. According the interviewee with the Italian Ministry of the Interior,

> Another common practice with Nigerian women trafficked into prostitution in Italy is that they are also subjected to debt bondage and until they fully pay the debt they cannot regain their freedom. Although some of the women from Edo state are known to have paid their way to be moved to Italy, the proceeds of their prostitution is moved back home through their pimps and Western Union and the first few years in Italy is spent earning money in prostitution for the trafficker. In the long run, if they are not deported they get more and more involved with other criminal activities such drug trafficking.

In addition to the psychological and economic coercion of the juju oath and debt bondage, interviewees, including Sako-John and Richmond Iheme of Nigeria's National Human Rights Commission, detail physical violence, or the threat of violence, by madams and pimps against Nigerian prostitutes working in Italy. This use of violence to punish or enforce compliance includes rape. Beyond physical pain, Manuel Carballo, the executive director of the International Centre for Migration, Health and Development (ICMHD) in Geneva, emphasises the deliberate psychological impact of rape on the women, degrading their self-worth and, since women who have been raped are traditionally ostracised from the community, emotionally tying the victim to her rapist/pimp. So beyond, or alongside, the fear engendered by the juju oath, this variation on the Stockholm Syndrome, a psychological condition whereby victims subconsciously develop positive feelings for their abusers, represents a further mechanism to maintain compliance.

Smuggling or trafficking: the issue of consent

Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) defines human smuggling as

> the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Definitive interpretations of international legal documents are notoriously elusive. However, a consensus amongst scholars indicates that in order for an irregular sex migrant to be identified as trafficked, it should be demonstrated that she did not willingly travel or had no reasonable alternative than to submit to recruiter's demands because of coercion (Mattar 2006). Concurring, Obokata (2006) and Buckland (2009) argue that the coercion or deception to enter into exploitation might include migration for sex work. Conversely, the smuggled migrant consciously agrees to being transported and pays for the services of someone to transport them across borders without legal travel documentation. For McCabe (2008) and Nagle (2008), smuggling is hence better understood as a commercial agreement that concludes when the migrant is delivered to the destination. In short, 'the underlying idea behind such a distinction is that the freedom and agency of those "trafficked" are violated (as they are "exploited"), while smuggling is simply arranging the consensual (and presumably non-exploitative), facilitated (often irregular), entry of a migrant into a chosen country' (Askola 2007).

Seeking to determine where consent is, and is not, legitimate, Festus Okoye, executive director Human Rights Monitor Nigeria compares two scenarios,

> As to whether after being trafficked, a person can give consent in a foreign country to cover conditions that were not disclosed to her before leaving Nigeria. My answer is no, they can no longer give consent because they are already held hostage or facing a situation that may lead to suffering or arrest as an illegal immigrant, deportation or death. It is impossible to give consent at that time and the consent may appear voluntary, but in the true sense of the word it cannot be voluntary consent, because the situation under which the consent was given makes it impossible to give genuine consent. Whether it is possible for a woman of her own volition to leave the shores of this country and go to a foreign country to engage in prostitution as work? My answer is yes. Despite the fact that there is poverty and unemployment, the moment you have attained the age of majority and out of your own volition you leave the country in order to go and engage in prostitution, then you cannot set up the issue of poverty and unemployment as consent-nullifying variables.

This analysis tends towards the radical feminist position, prioritising the prospective sex migrant's agency over supposed intrinsic, and consent-nullifying, exploitation. A specific issue of Nigerian law, the proscription of foreign travel, complicates Okoye's analysis, but his position in the overarching debate remains clear. However, the evidence amassed from

those interviewed for this study, both in sum and in the detail, testifies to the physical and psychological harm and suffering caused to many migrant sex workers and the panoply of deceptions used by the recruiters, madams and pimps who persuade women to follow this route. In this context, the issue of 'consent' becomes both highly complex and questionable as the measure of whether the irregular crossing of borders for sex work is smuggling or trafficking.

The interviews indicate that three core factors influence the experience of the Nigerian sex work migrant in Italy: their illegal status, multiple and diverse incidences of exploitation and the insidious nature of the coercive methods used by recruiters, madams and pimps. In respect of the former, it is clear that consent does not connote legality. For liberal feminist Agustín (2005: 98), 'their [Nigerian sex work migrants] status as "illegal" migrants, without permission to work in Europe, is, for them, the single overarching problem to solve, and their irregular status, not sex, is the heart of the issue'. However, for Nagle (2008), the key impact on Nigerian women working as prostitutes in Italy is exploitation. Indeed, Kelly (2003) argues that the position of consent in migration for sex work mis-locates the debate since the nature of the multiple instances of exploitation that the majority of migrants encounter is the most striking element of the process. According to an IOM office interviewed in Italy,

> It is more complex than you think, I will try to demonstrate that. Yes, Nigerian women know. Yes, they sign a contract. Yes, they believe they are going there to make money. But, at the end of the day they don't, and this is a violation of their rights. If we don't protect them, no matter how much they knew, no matter their consent, they are exploited and their position of vulnerability is exploited because you cannot contract to do this. This is not two parties at the same level. The madam is at a higher level, while the trafficked woman is below. When she is in the country of destination she has no contractual power and this is a violation of human rights. She is no longer acknowledged as a person but as a thing. Consent is only relevant as far as the exploitation is concerned, not the movement and not the awareness of being involved in prostitution.

Thus, in the context of the day-to-day existence and struggles of the migrant sex worker, the debate over the position of consent becomes a legal diversion. For Ojukwu,

> The things that we need to look out for in cases like this are whether there are human rights violations, such as the deprivation of liberty, torture and rape.

> You may consent to be moved to Italy for prostitution but you cannot consent to a violation of human rights...consent cannot be used to justify a human rights violation.

And yet, extracting the migrant sex worker from an exploitative situation is seriously hindered by the layered coercion that ties her to her madam or pimp through the psychological hold of rape, the fear of juju and the constant use of physical force and the threat of violence.

Conclusion

This chapter has examined a specific case study in which sizeable numbers of women are moved from Nigeria to work as prostitutes in Italy. In examining whether these women consent to be moved and hence are smuggled or whether they are, in essence, moved against their will, oral evidence collected in interviews with experts in this area has been prioritised. The debate over migration for sex work also has long been informed by feminist theory, and the arguments of theorists from liberal feminism who support a woman's right to choose prostitution as a livelihood and from radical feminists who argue that sex work is intrinsically exploitative have also been evaluated. There also exist legal documents, measures and sanctions to address migration for sex work on a national level in Italy and Nigeria, as well as in International Law. In particular, the Palermo Protocols were drafted in the light of the moral and jurisprudential debates on this issue.

The evidence indicates that many of the women are aware that they will be involved in prostitution, although there is also some evidence that a minority of women are thoroughly deceived as to the type of employment that awaits them in Italy. However, the reality of the activities that they will be expected to undertake as prostitutes is usually not made clear prior to their arrival. Moreover, in order to ensure the compliance of the women once their work conditions and the reality of what is required of them becomes apparent, the pimps and madams who are now in a position of power over the migrant women, employ diverse mechanisms of coercion, both psychological and physical. Liberal feminists argue that it is their poverty, and not the sex work that they undertake, or even the conditions under which they work, that drives most prostitutes to continue working. The weight of evidence gathered from those interviewed for this study, however, substantiates the argument that the

force of the coercive practices used by the pimps and madams would negate any consent given by the prospective migrant sex worker at the time of recruitment, regardless of wider legal questions as to whether an individual can consent to exploitation. Furthermore, the severity of the methods used to coerce compliance, amount to serious crimes and human rights abuses in themselves that should be acted upon by law enforcement agencies and the criminal justice systems of both Italy and Nigeria.

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5

Irregular Migration, Xenophobia and the Economic Crisis in Greece

Salvatore Coluccello and Lefteris Kretsos

Abstract: *In the context of human security, the chapter explores irregular migration into Greece investigating current trends and routes, and analysing the 'push' and 'pull' factors underpinning the rise in immigration. The 2008 economic crisis influenced the response to large-scale irregular migration of a Greek polity and society already under stress. With the informal sector no longer providing sufficient employment, irregular migrants face increased stigmatisation leading to a rise in societal risk, including violent attacks against migrants, and exclusion. There has also been a lasting change to the fabric of Greek society, notably the xenophobic trajectory of political discourse including the rise of the extreme right.*

Introduction

Harrowing stories in the media about migrants losing their lives attempting to cross the Aegean Sea to Greece cast a spotlight on the unresolved issue of the perils of irregular immigration to Greece. However, the situation for those migrants who survive the long trip to Greece is also alarming and worrying. Xenophobia has created a predictable narrative in which Greece has become a byword for human rights violations against migrants. Both the police and gangs of extreme right activists commit racist crimes with impunity. Indicative of this are three critical incidents of racist and xenophobic violence over the last three years.

The first incident concerns widespread anti-immigrant violence following the murder of Manolis Kantaris who was stabbed after a theft and assault in a deprived suburb of Athens in May 2011. His murder fuelled three days of racist attacks by the supporters of the extreme right political party Golden Dawn against migrants and asylum seekers despite the identity of his assailants having not been substantiated (Institute of Race Relations 2011). The second incident involved the shooting of 28 undeclared migrant strawberry pickers by local farmers in Manolada in March 2013 (*Enet English* 2014). The migrant workers were abused, and ultimately shot, by their employers when they demanded their overdue wages. The third incident does not involve the killing of a third-country migrant, but rather the murder of Pavlos Fyssas, a 34-year-old anti-fascist musician who was stabbed to death by Golden Dawn supporters in the working class area of Keratsisni on 17 September 2013 (*World Post* 2013). This brutal murder resulted in the arrest of Golden Dawn's leader Nikos Michaloliakos on the charge of creating and belonging to a criminal organisation, involvement in murder, physical assault, money laundering and other charges, revealing in full the activities of his party.

Despite this level of violence against migrants, every year thousands transit through Greece attempting to travel towards northern Europe (Papadopoulou-Kourkoula 2008). This small southern Mediterranean country still remains one of the major entry points into Europe for people escaping persecution, endemic poverty from war-torn parts of Asia and Africa. The arrival of boatloads of poor and desperate migrants from Somalia, Syria and Eritrea is often associated with rescue operations by the Greek coastguard. In this context, neither the street terrorism of

Golden Dawn, nor the former government's tough immigration policies designed to seal Greek borders, have stemmed Greece's popularity as a transit and destination country for non-EU migrants. Indeed, as a result of the conflicts in Syria, Iraq, Libya and elsewhere, numbers are rising fast (*Economist* 2014).

To a significant extent, Greece's popularity for migrants is a result of its geographical proximity to Africa and Asia. The Greek-Turkish border is the location of some of the key crossing points into Europe (Morehouse and Blomfield 2011; Frontex 2012). Structural elements of Greece's economic and political framework also encourage irregular migration. Prior to the global financial crisis, Greece enjoyed buoyant growth rates encouraging migrants who perceived Greece as a viable destination country. Although, Greece has suffered during the crisis, the size of its informal economy, the significance of the agricultural, construction and tourism sectors, as well as the seasonal nature of its economic activities continues to encourage irregular migration.

Irregular migrants often make decisions on their future according to challenges and opportunities that they encounter in transit. The role of social networks, both local and transnational, is crucial during this phase and to the way in which migrants adapt to structures and conditions found in the country. As Papadopoulou-Kourkoula (2008) argues, irregular migration in Greece is characterised by long periods spent transiting the country, during which migrants experience great uncertainty and vulnerability. The deep economic crisis and draconian austerity measures, combined with rising xenophobia as evidenced by the electoral success of Golden Dawn have resulted in a climate described by human right organisations as a 'humanitarian crisis' (United Nations High Commission for Refugees 2010; Human Rights Watch 2012). Migrants are trapped in a semi-collapsed economy. Society has been traumatised by harsh welfare cuts resulting in extreme unemployment rates, poverty and anger leading to a section of the population being seduced by xenophobic populism (Triandafyllidou and Maroukis 2012).

This chapter examines the intersections between irregular migration, the economic crisis and xenophobia in contemporary Greece. The chapter firstly examines the evolution of irregular migration to Greece since the early 1980s. Secondly, it analyses the impact of the economic crisis on the labour market and investigates the risks faced by migrants. Finally, the chapter explores the rising xenophobia and the emergence of Golden Dawn as a force in Greek politics.

Immigration to Greece

Over the past three decades, Greece has shifted from a country of origin to a transit and destination country (Maroukis 2008). Mass migration of Greeks in the 1950s and 1960s resulted in labour shortages in specific sectors, leading to African and Turkish workers being employed during that period as private servants, hotel workers and dockyard labourers (Baldwin-Edwards 2011; Nikolinakos 1973). In the early 1970s and 1980s, refugees and asylum seekers from Lebanon, Vietnam, Eastern Europe and the Middle East found jobs in the large informal Greek economy and played an important role in attracting yet more immigrants (Papantoniou *et al.* 1996; Baldwin-Edwards 2011). The collapse of the 'communist' regimes in the Balkan Peninsula in the late 1980s and the early 1990s triggered even larger migration flows to Greece. Since the early 1990s, Albanian and Bulgarian migrants, a considerable number of co-ethnic returnees from the republics of the former Soviet Union and to a lesser extent other East Europeans have further expanded the immigrant population in Greece, setting new policy challenges.

Between 1991 and 2001, the immigrant population more than tripled reaching almost 7.3 percent of the total population (Baldwin-Edwards 2004). Albanians accounted for by far the largest migrant ethnic community, often attracting the attention of the populist media and extreme right parties. Weak border controls, as well as corruption, criminal networks and mountainous terrain between Albania and Greece facilitated large-scale irregular migration. Legalisation programmes in 1998 and 2001 failed to address the issue (Levinson 2005; OECD 2006; Papantoniou-Fragkouli and Leventi 2000).

Correspondingly, Greece's island geography and extensive coastline has hindered effective maritime patrolling, contributing to large-scale waves of economic migrants and asylum seekers from Asia and Africa. The eastern Mediterranean route (Frontex 2013; International Organisation for Migration 2014) has become, since the early 2000s, one of the main routes for irregular migration into the EU. More recently, conflict in Iraq and Syria has seen the Greek-Turkish border become a major point of irregular migration into the EU.

Membership of the EU has also affected migratory flows into Greece, as the country is now responsible for the EU's south-eastern border, and hence is the first entry point into the EU for many irregular migrants from Africa and Asia. According to the Dublin Regulation (2003), the

country where asylum seekers first set foot is responsible for managing their claim. Bigo argues that the Dublin Regulation reflects an EU discourse that explicitly securitises migration (Bigo 2000). In the past, Greece has been a victim of this discourse, but more recently has also been a perpetrator of this rhetoric.

According to official data, currently most economic migrants and asylum seekers come to Greece from Afghanistan, Syria, Iraq, Palestine and northern, eastern and western Africa. To some extent, Greece's attraction as an EU entry point over the past several years is a reaction to increased securitisation of borders by other EU Mediterranean states. Spain has fortified Ceuta and Melilla, putting in place a sophisticated surveillance system, increased patrols between the African coast and the Canary Islands and has negotiated repatriation agreements with key African states. Similar measures by Italy had, until the fall of Muammar Gaddafi, pushed potential irregular migrants to the east, crossing by sea from Egypt directly to Greece or, in most cases, travelling through Turkey in order to enter the EU by land or sea from the south-east.

The shift in migratory routes across the Mediterranean reflects securitisation policies and concomitant activity on the ground. Likewise, immigration policies and border controls in the eastern Mediterranean have influenced where and how migrants cross into Greece. Since 2010, irregular maritime migration across the Aegean Sea gradually switched to the Greece-Turkey land border. This shift has been attributed to a number of factors including a closer collaboration between Greek and Turkish coastguards demonstrated by the joint Rapid Border Intervention Team (RABIT) operations, as well as other operations under the aegis of Frontex such as the *Poseidon* land and sea operations. The UN Rapporteur for the Human Rights of Migrants considers the shift in points of entry from the Aegean Sea to the Greece-Turkey border region of Evros as mainly attributable to demining operations on the Greek side of the land border and recent cheaper smuggling prices in Evros (UN General Assembly 2013). According to the Greek authorities and Frontex, 90 percent of irregular migrants and asylum seekers entering Greece between 2012 and 2013 used the Evros land crossing.

Although the 185km border between Evros and Turkey constitutes almost the entire frontier between the two countries, migrants mainly cross at the narrow strip of land in the north where the Evros River comes to an end. At the end of 2012, a 12.5km steel fence was constructed in order to close off this strip. The fence combines with

other surveillance devices in the Evros region including helicopters, night vision apparatus and thermal imaging (*Swiss Info* 2014). The launch of Operation *Aspida*, 'Shield' in English, required the recruitment of 1,800 additional border guards, as well as extra assets and equipment. According to Frontex, *Aspida* has resulted in a 'remarkable drop in the number of apprehended migrants in the Evros region' (Frontex 2014). However, as a result, of the new fence and other efforts to seal the Evros region, migrants have returned to the more dangerous maritime route across the Aegean, where they are often exploited by smugglers (Crepeau 2013; IOM 2014).

In parallel with *Aspida*, Greece initiated Operation *Xenios Zeus*, ironically named after the ancient Greek god of hospitality. This operation is aimed at detecting undocumented migrants in Greek urban areas. Figures for the number of undocumented migrants in Greece vary. The Greek Refugee Council estimates that around 1m such migrants live in Greece, often in highly impoverished circumstances. An updated and detailed report for the CLANDESTINO project has calculated the presence of approximately 350,000 irregular migrants in the country for 2011 (Maroukis 2012). Conversely, a recent publication by the UN Rapporteur on Human Rights estimates around 470,000 irregular migrants currently living in Greece (Crepeau 2013), whereas, according to the recent Ministry of Interior data 473,124 foreigners have a valid permit to reside in the country (RIEAS 2014). Between August 2012 and June 2013, police stopped and detained a total of 123,567 third-country nationals to verify their documents. Yet only 6,910 persons, or 5.6 percent, of the total of those stopped were found to be residing irregularly in Greece, raising concerns about the use of discriminatory ethnic/racial profiling (Amnesty International 2014).

The UN Rapporteur, Human Rights Watch and numerous Greek NGOs have strongly criticised the way in which the *Aspida* and *Xenios Zeus* operations have been conducted by the police citing brutality, unlawful arrest and detention. The inhumane manner in which many irregular migrants are treated means that the majority do not regard Greece as a destination, but rather a transit country. The habitual inference of irregular migration is that the quality of life in the countries of origin is so poor that the migrants feel compelled to migrate to seek a better life in affluent European countries. However, whether these assumptions apply to irregular migrants in Greece will be tested in the next section.

The impact of the current economic crisis

Greece benefited from high economic growth and increased prosperity between 1995 and 2008. During this period the country joined the euro area and, in 2004, successfully organised the Olympic Games in Athens. Improved infrastructure and higher standards of living implied that Greece was moving away from its Balkan past and gradually joining the club of the rich countries of central and northern Europe (Kretsos 2010).

When the supply of documented foreign labour does not match the demand for labour, the result is increased irregular migration, and the informal economy is the natural point of insertion into the labour force. Informal work constitutes a defining feature of the Greek employment system, setting Greece apart from other members of the Organisation of Economic Cooperation and Development (OECD) and other more advanced developed economies. During the boom years, irregular migrants were also part of this story. Many migrants found jobs in the construction, service and agricultural sectors. Prior to the economic crisis, Greece had one of the largest underground economies amongst the 21 members of the OECD, and the largest in Europe. Between 1999 and 2001, the rate of undeclared work stood at 30 percent of GDP (Schneider and Enste 2000 & 2002; Schneider & Klinglmair 2014). A more recent study calculates that the shadow economy was about 24.3 percent of GDP amounting to unreported transactions amounting to €27b (Schneider 2012).

However, the growth in migrant labour was not accompanied by improved working conditions. Indeed the growth in consumption was predicated on widespread violation of labour laws and the wage exploitation of a large pool of unskilled migrants. The acid attack on the Bulgarian immigrant union leader Konstantina Kounieva in 2008 is typical of the relationship between migrant labour and sections of the host population. The precarious position of irregular, but also regular, migrants from Africa and Asia within Greek society was reinforced by the absence of basic citizenship rights: no voting rights; no right to unionise; labour law violations; unsafe working conditions and wage exploitation. Many employers began to develop a system of direct control over their irregular migrant labour force which, in some cases, amounted to a pre-capitalist feudal relationship between employer and employee (*Guardian* 2013).

The economic crisis transformed the already highly disorganised nature of immigration in Greece. In 2010, the coalition government of Antonis Samaras accepted a bailout package from the so-called 'troika' of the European Commission (EC) on behalf of the EU, the European Central Bank (ECB) and the International Monetary Fund (IMF) in return for implementing drastic austerity measures, including widespread public sector job and salary cuts. Since then, precarious work arrangements and welfare state retrenchment have expanded the number of people at high risk of poverty and social exclusion (Kretsos 2014).

Unemployment, in turn, has risen to almost 30 percent across the workforce, while young workers face a hostile work environment and a bleak job future with unemployment rates higher than 60 percent (Kretsos 2014). The measures stipulated by the initial and subsequent loan agreements include wage cuts; pay freezes; large-scale dismissals in the public sector; restructuring of public enterprises; a lower minimum wage for young workers and increases to retirement age thresholds.

For example, a few months after the first loan agreement in May 2010, the Greek government introduced further dramatic labour market reforms by forcing the decentralisation of collective bargaining and the relaxation of restrictions on the number of collective dismissals at company level. Accordingly, the minimum wage, determined by the national general collective agreement, was lowered by 22 percent at all levels based on seniority, marital status and daily/monthly wages.[1] A further 10 percent cut in wages for workers under the age of 25 was also introduced, and for apprentices the minimum wage now stands at 68 percent of the level officially agreed.[2]

In general, financial support from the troika, and especially the IMF, has been conditional on reductions in public deficits and public spending, initiating drastic labour market reform and a welfare retrenchment unprecedented in the post war period (Hall 2011). Structural reforms and labour market reorganisation have been undertaken in line with the troika's argument that labour market regulation and social protection in Greece has constituted a significant barrier to growth and a main driver of public debt (Koukiadaki and Kretsos 2012).

For Deakin and Wilikinson (2011), far-reaching changes in industrial relations and labour law in Greece have established a neo-liberal model of economic governance. The result of budgetary cost-cutting is that social risks are transferred from government and employers to individual citizens. A dismantling of social insurance fails to guarantee job or

income security. Not surprisingly, precarious work becomes widespread in such an economic context.

In early 2015, as poverty continues to bite, migrants and asylum seekers are finding it harder to make ends meet. Gaps in the formal immigration policy (Baldwin-Edwards 2011), as well as severe limitations in enforcing the law in a wide range of areas from the labour law to taxation (Koukiadaki and Kretsos 2012), a large underground economy and a high unemployment rate are pushing irregular immigrants to their limits. Indicative of this are the data found in a recent parliamentary review. Between 2009 and 2012 the number of migrants with papers decreased by 80,000 to 100,000, while, as mentioned earlier, the total number of irregular migrants is no more than 350,000 (Παπαγεωργίου και Τάκου 2014; Maroukis 2012). While this situation demands a focussed and holistic response from policy-makers, the actual reaction, at least on the part of the Samaras government, has been tougher border controls and stricter anti-immigration laws.

Government rhetoric criminalises and scapegoats the migrant, contributing to a steep rise in racism and xenophobia (Global Detention 2014). This is made clear by the UN Special Rapporteur on the Human Rights of Migrants in Greece,

> I am deeply concerned about the widespread xenophobic violence and attacks against migrants in Greece, and I strongly condemn the inadequate response by the law enforcement agencies to curb this violence, and to punish those responsible. I have also been informed of several cases of police involvement in these attacks. Many of these cases go unreported as irregular migrants fear they will be detained and deported if they contact the police. (Crepeau 2013)

To summarise, the economic crisis instigated more virulent anti-migrant discourse and activities. Such sentiments are fed by political parties such as Golden Dawn that gain political capital and power out of fear of the 'other'. Not surprisingly, immigration has become the dominant feature of Greece's political debate. The next section will explore how this hostility towards migrants is expressed.

The perfect storm and the rise of xenophobia

Many of the undocumented migrants arriving in Greece over the last decade have been asylum seekers from conflicts in Asia and Africa. The

system in place to handle migrants and claims for asylum, even prior to the economic recession, was not fit for purpose (Kanellopoulos *et al.* 2006). This situation has become worse since 2010. For example, on 21 January 2011, the European Court of Human Rights condemned Greece for the mistreatment of an Afghan immigrant. At the same time, Greece has been urged as part of the Dublin III Regulation, as well as the wider anti-immigration sentiment across Europe, to better protect its borders because of its geographical proximity to areas of conflict and instability, and to prevent third-country nationals from travelling irregularly across its borders which are also EU borders.

A crucial step to deal with the issue took place in April 2011, when Greece started receiving support from the European Asylum Support Office (EASO). A new Asylum Service and First Reception Service became operational in June 2013. In addition, Appeals Committees have been set up to process asylum appeal cases in an attempt to clear the backlog.

Asylum seekers and irregular migrants in Greece are often denied access to basic public services resulting in high rates of social exclusion. At the same time, welfare state retrenchment and austerity policies have increased the numbers of vulnerable workers and the unemployed. As analysed earlier, the recent economic crisis has turned the lives of ordinary workers upside down in a matter of a few months. This was coupled with the acute emergency created by the upsurge of irregular migrants and asylum seekers.

In 2010, Greece was the EU member with the most undocumented migrants, accounting for 90 percent of all irregular border crossings into the EU, with over 115,000 migrants and asylum seekers apprehended, including 55,000 at the land border with Turkey. The numbers slightly decreased in 2011 (88,000) and 2012 (74,000), but rose again in 2013. Greece is now second to Italy in terms of irregular migration into the EU. Greek migration policies and the asylum system still suffer from systematic shortcomings, as thousands of irregular migrants apprehended at land borders, or at sea, are normally detained for several months in locations not suitable for long-term detention including police, border patrol and coastguard stations. Many asylum seekers find themselves trapped in what a Human Rights Watch report has called 'a revolving door'.

Since the launch of Operation *Xenios Zeus*, the Greek government has adopted a policy of prolonged detention of up to 18 months for undocumented migrants and refugees,[3] even though the UN Working Group

on Arbitrary Detention condemned the policy of systematic detention and highlighted that this policy 'appears to be a serious violation of the principle of proportionality which may render the deprivation of liberty arbitrary' (Global Detection 2014). One of the main problems of *Xenios Zeus* is related to the disproportionately low capacity for asylum seekers in open reception centres, resulting in extremely poor humanitarian conditions for detained migrants, especially those detained at the Greece-Turkey border. *Medécins sans Frontières* (MSF) states that the detention centres are, in many cases, completely overcrowded and do not screen immigrants to determine their health needs (WHO 2014). Nevertheless, the government plans to build four additional first reception centres and pre-removal centres.

Greek law is unsympathetic to the interests of the migrants, the Council of Europe reports that ill-treatment of migrants 'appears to be growing and there is little evidence that allegations of ill-treatments are investigated promptly and thoroughly, leading to some police officers feeling that they can act with impunity' (Council of Europe 2014). Irregular migrants who report these crimes often risk detention and deportation (Παπαγεωργίου και Τάκου 2014). At the same time, the presence of destitute migrants living on the streets has transformed the working class districts of Greek cities, in particular Athens and Piraeus, where Golden Dawn enjoys the most popularity.

Golden Dawn, a populist and extreme right political party, has experienced a meteoric rise. In the 2012 general election, the party went from 0.45 percent to 7.2 percent of the vote by taking advantage of anti-immigrant sentiment and the current economic despair. Furthermore, Golden Dawn managed to secure nearly 10 percent of the vote in the 2014 European elections, despite the fact that almost all Golden Dawn Members of Parliament, and many other party officers, had been in jail for several months after the murder of Pavlos Fyssas. The party's share of the vote dropped back to 6.3 percent in the 2015 legislative election, although the drop in the share of the vote of other parties raised Golden Dawn to third place in the poll.

The political influence of Golden Dawn is perhaps more important than its actual electoral performance. All too often the Samaras government adopted heavy-handed immigration measures in an effort to win back voters. In the 2012 general election, Samaras campaigned, in part, on a pledge to reclaim Greek cities from immigrants: 'Greece today has become a centre for illegal immigrants … we must take back our cities …

there are many diseases and I am not only speaking about Athens, but elsewhere too' (HRW 2012).

To a significant extent, Golden Dawn has shaped the agenda and public discourse of migration over the last four years. Equally, it is important to note that according to media reports, Golden Dawn has infiltrated the police and army at various levels. For example, the popular political journal *HotDoc* recently published a recording of comments made by the Greek Chief of Police, Nikos Papagiannopoulos, to a gathering of top police officers: 'we aimed for increased periods of detention … we increased it to eighteen months … for what purpose? We must make their life unbearable' (*HotDoc* 2014). Yet, there is some reason for muted optimism. The recent appointment of a specialised prosecutor for hate crimes in Athens and the enactment of a long-overdue hate crime bill, dismissed by Golden Dawn as a satanic plot and an insult to Greek history, provide a fragile basis for combating hate and racist crimes. Nonetheless, there is still long way to go to restore respect for the rights of migrants in Greece (*Venitism* 2014).

Following the legislative election in January 2015, called as a result of the failure of the Greek parliament to elect a new president, a new populist coalition government led by Alexis Tsipras, comprising his leftist Syriza party and the right-wing Independent Greeks Party (ANEL), defeated the incumbent coalition government, pledging to renegotiate the conditions of the troika's bailout package and reverse some of the most stringent austerity measures imposed by the Samaras government. Just short of an outright majority, Tsipras was forced to seek a coalition partner, favouring ANEL as the most distinct anti-austerity party in the new parliament, despite its right-wing agenda including a staunch anti-immigration platform built on an innate nationalism and xenophobia.

Tsipras, seemingly, diagnoses the rise of anti-immigrant sentiment in Greece as a symptom of the despair brought about the extreme austerity policies of the last several years. During the election campaign Syriza advocated pro-migrant policy changes including accelerating the asylum process; repealing EU rules restricting migrants travel within the region; ensuring the human rights of detained migrants and facilitating the reunion of immigrant families (*The Nation* 2015). At the time of writing, Greece's political and economic future remains uncertain, as does the fate of the migrant population and the direction of immigration policy.

Conclusion

The impact of the economic crisis on irregular migrants and asylum seekers has been profound. However, the dilemma faced by these groups should not be conceptualised only as a consequence of the crisis, as many of the issues that impact irregular migrants, such as the preponderance of seasonal labour and weak labour laws that are often not enforced, pre-date the onset of austerity. Nonetheless, the fallout from the measures put in place to address the crisis has amplified the pressure on irregular migrants. The informal sector no longer provides sufficient employment for all irregular migrants in the population. Beyond economic survival, the rise in xenophobia has led to a rise in societal risk, including violent attacks against migrants and exclusion. There has also been an apparently lasting change to the fabric of Greek society, notably the xenophobic trajectory of political discourse including the rise of the extreme right and the illiberal enforcement of the rule of law by the security forces.

However, securitisation is no longer limited to individual EU member states, and Greece has been under great pressure from the EU to prevent irregular migrants from entering its territory, while simultaneously filtering asylum applications. The large number of irregular migrants and asylum seekers trapped in Greece is partly attributable to EU policies and legislation. The Dublin Regulation, even in its revised form Dublin III, continues to penalise Greece, the first 'safe country' which irregular migrants enter, as it logjams the Greek asylum system. There has been very little solidarity and responsibility-sharing demonstrated so far within the EU to ensure the upkeep of the migrants' full human rights.

Moreover, the attempt to seal the external borders has resulted both in the loss of life, for example the drowning of 22 migrants when two small boats capsized off the island of Samos in May 2014, but also has driven irregular migrants into the arms of unscrupulous human traffickers. The EU's attempt to build a more 'open and secure' Europe, as stated in the recent Stockholm Programme has, so far, been limited to building 'walls' on the periphery of the continent. This securitisation of migration is well illustrated by the use of Solidarity and Management of Migration Flows (SOLID) funds and Frontex operations. Most of the SOLID funds given to Greece have been part of the External Borders Fund (EBF) used to secure the land border with Turkey; the construction and operation of detection centres and to support the forced and voluntary return of irregular migrants.

Notes

1   Art 1(1) of Act 6 of 28 February 2012 of the Ministerial Council. The lowest minimum wage is set at €586.
2   On the basis of an amendment of art 74(9) of Act 3863/2010.
3   Detention of migrants or asylum seekers, and detention on public health grounds is currently established through art 59 of Law 4075/11.04.2012.

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6

A Hidden Catastrophe: Irregular Migration within the Comoros Archipelago

Simon Massey

Abstract: *The decision by France to definitively incorporate Mayotte as part of its sovereign territory has had a negative impact on the Union's political, security and economic development. The introduction of a rigid visa regime preventing the free movement of people between the islands that comprise the Comoros archipelago has resulted in large-scale irregular migration from the three islands of the Union of Comoros to Mayotte. The chapter examines France's rationales for retaining Mayotte; the impact of its policy on the inter-island politics of the Union and on the lives and livelihoods of the peoples of all four islands. It concludes that whilst the status quo is detrimental to all involved, the current French government is determined to retain the securitisation policy favoured by previous governments.*

In keeping with the other contributions to this book, this chapter will examine the journeys and experiences of irregular migrants from an African country of origin to a member state of the European Union, in this case France. However, rather than crossing the Mediterranean Sea, this migration is taking place between islands in the Indian Ocean, nearly 7,500 km from the French mainland. The Comoros archipelago lies about 300 km off the northern coast of Mozambique and 350 km north-west of Madagascar. It consists of four main volcanic islands: Grande Comore, also known by its name in the local language Ngazidja, Anjouan (Nzwani), Mohéli (Mwali) and Mayotte (Maoré). The first three of these islands constitute the independent Union of the Comoros which attained independence in 1975, whilst the fourth island, Mayotte, retained its ties to the colonial power, becoming in 2011, France's 101st department.

On a clear day, the hills of Mayotte are visible from the shores of Anjouan, just 70km away. The 'pull factors' for migrants undeniably include the possibility of wages much higher than those in the Union islands and potential access to European-standard health and education systems. Indeed, the chronic incapacity of the Union to construct a viable economy has led to a reliance on remittances from emigrants running at US $147m in 2012 or 23 per cent of GDP (da la Cruz *et al.* 2004; Diabate & Meddeb 2014). Moreover, out of a Union population of about 1m, up to 200,000 live abroad, with between 85–150,000 in metropolitan France and a further 45,000–60,000 on Mayotte (United Nations 2011). However, the motivation to travel to Mayotte goes beyond economic ambitions, and equally there exists an innate desire amongst Comorians to maintain links with family and friends, or to conduct business on, what they take to be, one of the four islands of the archipelago. As in the other cases explored in this book, the strength of these pull factors leads to significant numbers willing to attempt the perilous, and too often fatal, sea journey. For example, in just one weekend in January 2014, 352 people were intercepted off Mayotte by the French coastguard in 12 flimsy craft. In this regard, the dangers of migrating by sea to Mayotte are as pronounced as in the Mediterranean with an estimated 7000–10,000 perishing since 1995 (Sueur *et al.* 2012).

This chapter will investigate the ambiguous nature of the Comorian nation and the complex relationships between France, Mayotte and the Union. The experience of the irregular migrant is then explored from the push and pull factors, to the mechanisms for making the journey

and the reality of life as an irregular migrant on Mayotte. The chapter concludes by examining the rival proposals that have been elaborated to address the 'Mayotte question' since the French presidential and legislative elections of 2012.

A country divided

Whilst a sovereign state under International Law, the distance by sea between the four islands, as well as their disparate colonial experiences, have resulted in an ambiguous sense of Comorian nationality. Whilst the inhabitants of the four islands share key elements of a national identity including a mutually comprehensible language in Shikomoro, the Shafi'i Sunni Islamic faith, diet, dress and music, there is a sense that distinction outweighs similarity (Ottenheimer 2008; Walker 2007; Massey 2013). For Iain Walker, 'the lack of a subjective sense of nationhood explains why these differences are exaggerated in a denial of the socio-cultural unity that would imply, or so it is feared, a homogenised space and the domination of one island over the others' (Walker 2007: 600). And yet despite, or perhaps in response to, this diversity, it is French culture that acts as the thread that weaves the islands together. It is in the light of this cultural heterogeneity that the relationship between Comorians from the Union and those from Mayotte, at once envious and resentful, should be understood.

   This insularity also partially explains the instability that has characterised the Union's political history since independence. Depending on definition, the country has suffered between 19 and 25 successful or attempted *coups d'etat*, four of which were organised by the notorious French mercenary Bob Denard who it is widely assumed was acting on concealed orders from Jacques Foccart, the perennial, and Machievellian, head of the French president's *cellule africaine* (Renou 2006). Arguably, and despite the current president, François Hollande, and his government signalling otherwise, this impulse on the part of France to shape the direction of the Union's governance persists. Pierre Caminade, a member of *Survie*, an organisation that is highly critical of French African policy, argues that France has sought to 'sabotage' the three islands of the Union whilst 'protecting' its interests in Mayotte (2004).

   Denard's coups safeguarded the primacy of France as the Union's closest external partner, a position that continues to be reinforced by the

French Treasury guaranteeing the Comorian franc. In 1997, there was an unprecedented attempt to reverse independence. The combination of distinct island identities, a perception of marginalisation within a Union dominated by Comorians from the largest island, Grande Comore, and France's enduring influence led to Anjouan and Mohéli seeking to secede from the Union and 'reattach' themselves to the former colonial power (Alwahti 2003; Cornwell 1998). Although, formally rejected by the then French president, Jacques Chirac, France continued to be accused of meddling in the disputes between the islands of the Union, notably by tacitly supporting Mohammed Bacar, the former island president of Anjouan, who, in 2007, once more attempted to withdraw from the Union when his term of office came to an end. Union authority on Anjouan was only restored following a military intervention by the African Union to oust Bacar's forces. Fleeing to Mayotte, the French authorities refused requests to send Bacar to the International Criminal Court in The Hague, rather dispatching him to exile in the West African state, and former French colony, Benin.

Following the attempted secession, legislation was passed to limit island self-government and bolster the authority of the federal Union government. Under the presidency of Ahmed Abdallah Mohamed Sambi, Comoros sought to reach beyond France for external cooperation, becoming one of very few countries with cordial relations with both the US and Iran. However, neither Sambi, nor his successor, Ikililou Dhoinine, have been able to break the political, economic and, in particular, cultural ties with France. Indeed, as discussed later in the chapter, the government of François Hollande, has sought to bind the Union still closer to France.

Yet, if France assumes the archipelago to be within its 'sphere of influence', it is the island of Mayotte that has been singled out for preference. France orchestrated the, reasonably substantial, but not overwhelming, vote against independence on the island at the time of the Union-wide referendum in 1974. As colonial power, France had already transferred the seat of power within the archipelago from Mamoudzou to Moroni, the capital of Grande Comores, prefiguring the dismemberment of Comoros as a unified entity. During the referendum campaign, the French used Mahorais soldiers from Mayotte (inhabitants of Mayotte are known as Mahorais) enlisted in the French army to 'encourage' voters in their home villages to support the 'no' campaign (Fouillet 2007). On a turnout of 93 percent of the electorate, the vote for independence across

all four islands was 94.5 percent and 5.5 percent against. However, nearly all the votes against independence were cast on Mayotte where 64 percent of the island's electorate voted to remain part of France. Thus, when unilateral independence was declared on 6 July 1975, France accepted the independence of Grande Comore, Anjouan and Mohéli, but reneged on the original rules of the referendum to accept the decision of the archipelago's electorate as a whole, and opted to retain control of Mayotte as a *collectivité territorial*. For ordinary Comorians with relatives, friends, or a need to visit or do business on Mayotte, the key juncture, however, was the adoption by the French government of Edouard Balladur of a new visa regime applicable to all Union citizens wanting to travel to Mayotte. Detailed the following year, and still in force, the stringent conditions required to obtain this 'Balladur visa' makes legal entry into Mayotte for Comorians all but impossible.

French overseas policy in this part of the Indian Ocean, given bureaucratic authority by the Balladur visa, was ultimately endorsed in a referendum by nearly all Mahorais. On 31 March 2011, the island became a full overseas department and region of France. The decision to actively press the Mahorais to remain part of overseas France was based on France's enduring priorities in its dealings with its former colonies and overseas territories: status, strategic advantage and an abiding impulse to preserve its cultural legacy.

The predictable outcome of the split has been two divergent development trajectories for the Union islands and Mayotte. In 2012, the Comorian GDP per head was measured at US$858 per capita, whilst in 2011, on Mayotte GDP per head was US$10,270 (UN 2014; INSEE 2014). It is this gulf in incomes that acts as the chief pull factor for migrants who travel in the hope of earning enough from Mayotte's black economy to remit money home and, possibly, to save enough to engineer a way to metropolitan France or another EU member state. The other main pull factor is the potential to obtain French, and hence European, citizenship for the next generation through the exercise on Mayotte of the traditional French legal practice of *jus soli,* birthright citizenship. A child born on Mayotte is French at birth if one of the parents is French or, if both parents are non-French, can apply for French citizenship on attaining adulthood.

The numbers involved in this irregular migration are large, but even more dramatic given the relatively small populations of Mayotte and the Comoros as a whole. Estimates of the number of irregular migrants on

Mayotte vary from 60,000 to 100,000, with over ninety per cent originating from the Union islands. Between 7,000–10,000 have drowned attempting the crossing although this number is an under-estimate, since France does not count deaths that occur outside its maritime boundaries. However, given that the population of the three islands of the Union was estimated at 718,000 in 2012, the death toll represents, at least, one per cent of the Comoros national population since the introduction of the Balladur visa. Likewise, a report for the French Senate compiled in 2012 estimates that about a third of the population of Mayotte's population, 212,645 in 2012, is irregular.

The migrant experience

The large majority of Comorian migrants arrive by sea in small boats known as *kwassa kwassa* named after the swaying Congolese dance rhythm. Would-be migrants from other countries including Madagascar, Rwanda, Burundi and Somalia also transit Anjouan seeking transportation to Mayotte. Historically, unlike on the central Mediterranean crossing, the majority of migrants are not looking to claim asylum on arrival, although the numbers of asylum seekers has risen sharply over the past three years, but more often to avoid interception by the French authorities and seek to become embedded in Mayotte's irregular migrant communities. The small boats have the advantage of being readily navigable into Mayotte's remote coves and beaches. The trade is operated by tight networks of so-called *passeurs*, sometimes children, occasionally Mahorais, but more often Anjouanais (Legeard 2012/13; Godard and Kaufmant 2001). Legeard estimates the price of the journey to be as little as €250 if the boat is full, but as much as €1,000 for a journey with only two or three passengers, potentially making for a safer voyage (2012/13: 637). In order to evade interception the *kwassa kwassa* often attempt the crossing at night to evade interception. One swindle perpetrated on migrants by the *passeurs* on these night crossings is to tell passengers that landfall has been made on Mayotte, when, in fact, the *kwassa kwassa* has only reached the shores of the small islet of Mtsamboro seven kilometres north of the main island of Mayotte. These stranded migrants are then forced to outlay further funds to local fishermen to complete the journey (*France 24* 2015). If the boat makes landing, the majority of migrants seek to make contact by mobile telephone with relatives and friends,

mainly living in the shanty towns on the edge of Mamoudzou. Targets of police surveillance, they are transported by unregistered taxis driven by irregular migrants, again usually under cover of darkness. For those who do not have contacts on Mayotte, especially vulnerable women and children, this part of the journey entails the further risk of sexual violence and exploitation (Legeard 2012/13).

Extensive, and expensive, border control measures including maritime patrols by the gendarmerie, helicopter surveillance, four land-based radars and a mobile radar to detect *kwassa kwassa* entering its territorial waters have seemingly stabilised the numbers attempting to reach Mayotte, with deportations peaking at 26,405 in 2010, when that figure amounted to over half of all deportations from France. This figure decreased to 15,908 in 2013, but rebounded to 19,991 deportations in 2014. The number of interceptions also increased significantly in 2014 with 60 percent being made at sea and 40 percent on land. Of the interceptions at sea, the maritime gendarmerie intercepted 164 *kwassa kwassa* (up 121 percent from 2013), whilst the navy stopped 588 boats (up 23.5 percent on 2013). On being intercepted migrants are given a health check and, if clear, transferred to the main holding centre, the *Centre de rétention administrative* (CRA) at Pamandzi on the adjacent island of Petit Terre for detention prior to deportation. The facility at Pamandzi has been the target of long-standing and consistent criticism. In 2012, the *Tribunal administratif* of Mayotte ruled that the Centre was guilty of 'inhuman and degrading confinement' in the case brought by a father and his two young children held at Pamandzi. Calling for the closure of the Centre, the migrant rights organisation, *Cimade,* report overcrowded and insanitary conditions, as well as a lack of segregation between sexes and between adults and children (2012). During periods when Pamandzi can hold no more, temporary, and unsuitable, holding centres, such as police cells, are used.

A further issue that has been consistently raised by pressure groups and human rights organisations is the position of 'foreign' children left alone on Mayotte by their parents. This is usually as a result of the parents being deported and refusing to reveal the existence or whereabouts of their child(ren). The number of children in this position on Mayotte remains inexact with estimates varying from 1,000 to 6,000. The non-governmental organisation TAMA, meaning 'hope' in Shimaoré, that addresses issues of social exclusion on the island estimates that there are around 500 totally abandoned and 3,000 long-term abandoned

children (Sueur *et al.* 2012: 87). The report to the Senate completed in 2012, emphasises the age of 16–18 as the most vulnerable period for these children since they will have completed compulsory schooling at 16 and will face potential deportation on reaching 18 (Sueur *et al.* 2012: 87). This precarious status often leads these young people to, at best, stopgap jobs in the informal sector, or often to criminal activity. Even, those born on Mayotte and, therefore able to apply for French citizenship, often fail to break out of this trap.

It is in the shifting demography of Mayotte, notably in the context of land and labour, that the consequences of France's policies in the archipelago are most conspicuous. The island is reliant on migrant labour and irregular migrants, known as *sans papiers,* are willing to work for significantly less than the minimum wage (Godard and Kaufmant 2001). Jacques Witkowski, the Prefect of Mayotte, has commented that whilst it is common for sections of the Mahorais population to denounce irregular migration, it is these same people employing undocumented workers (*Journal de Mayotte* 2014). For 'employ', the Prefect might have more correctly used 'exploit'. Irregular migrants work in agriculture, construction, fishing and in the tourism sector. Working long hours, often at night, at the weekend and on public holidays for monthly wages between €100–500, Legeard goes as far as to suggest that this exploitation of undocumented workers could be described as 'modern slavery' (Legeard 2012/13: 639).

Yet, the flow of migrants continues, only partly reduced by the vigorous efforts of the maritime gendarmerie and the navy. Why do migrants from the Union, and beyond, take such high risks. Salima, a grandmother of 58, recounts how after living on Mayotte for 14 years she was detained and deported as illegal, but waited six months and returned to 'her home': 'what would I do in Anjouan, my children are here, and all my possessions. I am a stranger in Anjouan. I have made my home here' (*Libération,* 2008).

Beyond the incongruity of a migrant existence in an EU member state that, in many ways, mirrors the poverty from which the migrants are seeking to escape, the strictures imposed by the Balladur visa also influence the layered relations between those who live on Mayotte. A ghettoised ethnic French population largely live separate lives to the indigenous Mahorais. For their part, the local Mahorais distance themselves physically and socially from the communities of irregular migrants who live in the shanties on the edge of Mamoudzou or on the

smaller island of Petit Terre. Kinship and friendship bonds exist between the Mahorais and migrants from other islands, although there is also a history of antipathy towards irregular migrants which can lead to denunciations of undocumented workers and rallies calling for harsher measures against irregular migration.

Indeed, civil unrest is a regular occurrence on Mayotte. There are almost permanent demonstrations and strikes, and in October 2011 the island was paralysed by a general strike that led to the closure of all shops on Mayotte, barricades on the main roads and violent clashes between youths and gendarmes that led to deaths and serious injuries. The government was forced to deploy three battalions of gendarmes from Réunion, another Indian Ocean department, and even mainland France, to contain the violence. The unrest was triggered by the sudden steep rise in the price of the protein staple, *mabawa* or chicken legs, as a result of a commodities cartel by the three main wholesalers. Apart from protesting against *la vie chère*, the protests targeted the centre-right Sarkozy government in Paris; the patrician Prefect of Mayotte; and the heavy-handed tactics of the gendarmes. Despite an ineffectual intervention by the minister for overseas territories, Marie-Luce Penchard, the strike persisted for 44 days although it ultimately achieved little beyond an assertion of the Mahorais' frustration with their perceived second class citizenship within the Republic. This dissatisfaction is shared by the populations of France's other overseas departments of Guiana, Martinique and Guadeloupe.

Given their low income, the high cost of living impacts irregular migrants particularly severely. Access to the European-standard social security benefits available on the island is variable and precarious. Irregular migrants do not receive any welfare payments such as unemployment benefits, child allowance or retirement pensions. Although, since 2005, access to free health care for 'foreigners' has officially been restricted, a study completed in 2007 by a team of French doctors concluded that there was little difference in terms of the frequency of healthcare attendance between both the local and migrant communities (Florence *et al.* 2010). The possibility of claiming French citizenship for babies born on Mayotte through the *jus soli* has led to a maternity wing of the main hospital on Mayotte, the second largest in any French hospital, where 77 percent of the patients are 'foreign', nearly all from the Union. Yet, the results of the study by the French doctors indicate that as a pull-factor, access to healthcare is a relatively low priority with

only 8.8 percent of migrants citing it as the main reason for emigrating as against 49.4 percent who cited economic opportunities (Florence *et al.* 2010).

A further demographic development with bearing on migratory flows and the relationships between France, Mayotte and the Union is the increased emigration from Mayotte, mainly to Réunion and metropolitan France. Based on extrapolating from data gathered between 2002 and 2007, Antoine Math estimates that over a ten year period up to 2012, a fifth of the islands inhabitants have emigrated, with the majority of these being young, educated Mahorais studying abroad and opting not to return, and families seeking a better life. For Math, the clichéd portrayal in the French press of Mayotte as the locus of 'massive immigration' ignores the reality of the island as suffering a potential 'massive emigration' (2013: 34). Further, he argues that 'to characterise the Comoros as a scapegoat for all ills diverts attention from the economic and social problems of the island, the shortcomings of the welfare state, systemic discrimination etc' (Math 2013: 34).

A fork in the road

As with other policy areas, the election of Hollande to the presidency and the victory of the *Parti socialiste* (PS) and its allies in the 2012 elections, encouraged an expectation of a change in the status quo. In the wake of the elections, two reports on the Mayotte 'question' have appeared. One is a report to the Senate compiled by two PS senators, Jean-Pierre Sueur and Félix Desplan, working with an opposition senator from the *Union pour un Mouvement Populaire* (UMP), Christian Cointat. The second was commissioned by the ministers of foreign affairs; interior and overseas territories and compiled by a senior civil servant, *conseilleur d'état*, Alain Christnacht. On the key issue of the Balladur visa these reports come to opposite conclusions.

The Senate report is highly critical of the existing state of affairs regarding irregular migration to Mayotte and the treatment of irregular migrants on the island. In particular, the senators call for an end to the Balladur visa and its replacement with a new visa that would only be valid in Mayotte, rather than in metropolitan France. They emphasise the significant financial, physical and human resources that are currently being employed to intercept and deport irregular migrants. Their

recommendation is that all Union citizens wanting to visit Mayotte should be granted a visa for a period of between one and three months, granting the right to visit, but not to work. Resources currently expended on interception and, in particular, deportation could then be diverted to regulate these migrant visitors through biometric authentication. For the senators, this change in the conditions of entry would, at the same time, reset, but also be dependent on, a renewal of relations between France/Mayotte and the Union:

> The objective is not to abandon immigration control policy, but to couple it with a new policy of regional cooperation…all the people heard [by the senators] say that the issue of illegal immigration into Mayotte cannot be sustainably resolved without prior normalisation of relations between France and the Comoros. (Sueur *et al.* 2012)

Christnacht rejects this approach. On the basis that the numbers attempting to enter Mayotte remain substantial, he concludes that there is no alternative other than to retain the Balladur visa and further securitise the border through more air and sea surveillance and patrols. He also recommends an intensified policy of targeting undocumented workers on Mayotte which he considers the key driver of irregular migration. Christnacht agrees with the senators that a new relationship with the Union is needed, but would restrict any changes to the visa to a relaxation of the conditions for entry in very specific cases, notably to access medical facilities or for business travel. As an incentive for the Union to support this policy, Christnacht recommends increased development assistance from France to the Union, especially in the areas of health and education, and a drive to promote trade between Anjouan and Mayotte. In return, France would expect the Union, both in terms of policy and in practical ways, to work with France to combat people smuggling. Further recommendations that correspond with the senators' report concern remedial spending to address the overcrowding at Pamandzi CRA and the treatment of children left by their parents on Mayotte.

As anticipated, given that its ministers had commissioned the report, the government has sought to implement Christnacht's recommendations. In June 2013, a declaration of friendship and cooperation between France and Comoros was signed coinciding with the finalisation of a defence pact between the two countries. This was followed a year later by a draft agreement concerning the 'trafficking' (*sic*) of persons. This agreement elaborates the Christnacht proposal to maintain the Balladur

visa, but incorporate flexibility in the cases of businesspeople; persons participating in scientific, cultural and artistic activities; top athletes; persons needing regular medical attention on Mayotte subject to financial guarantees; spouses and other relatives providing that already hold a valid *titre de séjour* for Mayotte needing to visit Mayotte to attend a funeral.

The draft agreement has been vigorously opposed by national and international pressure groups and political parties. The non-governmental refugee support organisation, *groupe d'information et de soutien des immigré-e-s* (gisti), has described the agreement as facilitating travel to Mayotte for a Comorian elite who, in return, would tacitly agree to help France intercept their compatriots.

Conclusion

It is almost inconceivable that any French government would contemplate forcing Mayotte into joining the Union against the will of the Mahorais. Indeed, the new French Ambassador to Comoros announced in February 2015 that 'Mayotte will never be Comorian' (*Indian Ocean Times* 2015). Likewise, the Union government remains equally determined to assert its sovereignty over Mayotte, a position supported by International Law and reiterated by President Dhoinine before the UN General Assembly in 2012.

Given the gulf in the, at least perceived, economic opportunities in the Union and on Mayotte, and given the geographical reality that a journey of just 70km, albeit a potentially deadly journey, separates the developing and developed worlds, policy options for any French government will be necessarily limited. Following the 2012 elections in France, two competing proposals were advanced. The recommendations of the senators, at least superficially, address the fundamental issue of the Balladur visa, the most concrete example of the unbalanced relationship between France and its former colony. However, the scope of the proposed replacement visa is far from a fundamental reimagining of the sovereign status of the archipelago. Whilst certainly more compassionate than the Balladur visa, or indeed the Balladur visa after Christnacht's very circumscribed amendments, giving Comorians from the Union the right to occasionally visit Mayotte, but not the right to work, can only be a step towards a more sustainable solution. Both proposals obliquely recognise that only

a convincing rise in the quality of life on the Union islands would stem the flow of irregular migrants. However, there is little indication to date that France is willing, or able, to go beyond palliative measures.

In a letter to migration advocacy groups prior to his election, Hollande promised, 'if I am elected President of the Republic, to end in May 2012, the holding of [migrant] children and, therefore, families with children' (*Libération* 2014). However, faced by the reality of the number of children and families with children being intercepted on Mayotte, Hollande has failed to keep this promise. Indeed, the numbers of those held by the authorities in 2013, invariably in unsuitable facilities, increased to 3,512 children being held in detention (*Libération* 2014).

In July 2014, faced with a continuation of the status quo, the Governor of Anjouan, Anissi Chamsidine, made a populist declaration offering his support for those who choose to travel by *kwassa kwassa* to Mayotte, noting that it was practically impossible for the Anjouan authorities to prevent these embarkations and, in any case, since Mayotte was under domestic and International Law part of the Union, it would be unlawful to try to stop them (*Comores News* 2014). A provocation to the French authorities, and intended for internal political consumption, his remarks, nonetheless, highlight the persistence of a colonial legacy that, despite being played out thousands of miles from Europe's shores, mirrors the desperate dynamics of irregular migration across the Mediterranean.

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