



## Statewatch Analysis

### The effects of security policies on rights and liberties in the European Union, and their export beyond the EU's borders<sup>1</sup>

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Before starting, I would like to thank the University of A Coruña and professors Ferreiro and Brandáriz for the invitation to take part in this meeting, on my behalf and that of Statewatch, the organisation for which I work.<sup>2</sup> In my contribution, I will try to highlight some of the main current concerns about matters stemming from security and immigration policies at an EU-wide level, their concrete implementation in member states through a selection of examples, and their effects on rights and freedoms, both in Europe and beyond its borders, due to the increasingly important impact that they have beyond the Union's geographical borders.

To begin, I will cite a quotation from a preparatory document by the Portuguese Council presidency within the framework of the work of the "Futures Group" headed by Franco Frattini, the former Commissioner for the area of justice and home affairs (JHA) who is currently the foreign affairs minister in the Berlusconi government, in which the representatives of the interior ministries of the government who held or were set to assume the EU presidency participated (they were three "trios": Germany-Portugal-Slovenia; France-Czech Republic-Sweden; Spain-Belgium-Hungary). The quotation talks about the need to take advantage of the so-called "digital tsunami" in a security-oriented key, because:

*"Every object the individual uses, every transaction they make and almost everywhere they go will create a detailed digital record. This will generate a wealth of information for public security organisations, and create huge opportunities for more effective and productive public security efforts."*<sup>3</sup>

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<sup>1</sup> The talk on which the article is based was given in the Law Faculty of A Coruña University on 4 December 2009, in its International Meetings on "Human Rights and poor countries: contradictions in development cooperation policies".

<sup>2</sup> The Statewatch website can be found at: <http://www.statewatch.org>

<sup>3</sup> For a study on the work of the Futures Group, see T. Bunyan, "The Shape of Things to Come", Spokesman, London 2009: <http://www.statewatch.org/analyses/the-shape-of-things-to-come.pdf>

The implications of such an approach are at least worrying. The Group was working with a view to the preparation of the Stockholm Programme, which has been approved and lays out the measures that will have to be adopted over the next five years (2010-2014) in the JHA field.<sup>4</sup> The policies in this field and particularly insofar as security (which has been dominant over the last few years) is concerned, have detrimental consequences on civil rights and liberties, firstly within the EU and its countries, and secondly in countries that are not EU members through their externalisation, especially in the fields of migration controls and the fight against terrorism.

Analysing the present situation in matters of rights and liberties in the EU requires an assessment of the relationship between the citizens and communities that live in its member states, and the bodies, forces and services that represent legality and authority at a national level. Without seeking to be exhaustive, some trends can be perceived which are worth stressing, particularly with regards to the activities to punish, control and repress conduct that is not necessarily criminal, but also anti-social or merely suspicious. These trends include the introduction on a permanent basis of measures and procedures that would have been "exceptional" only a short while ago in the police and judicial fields -partly due to the antiterrorist emergency, but also due to the fight against immigration and to reduce the effects of social protests-, or the regulation of rights in a way that is so restrictive that it is not an exaggeration to claim that their nature is fundamentally altered (an example with an EU-wide reach in this sense would be the right to seek asylum),<sup>5</sup> turning them into luxury items, in spite of the fact that they are conceived as minimum standards that should be guaranteed to everyone.

### **A wide range of practices and measures that curtail liberties and rights**

I will analyse these matters through a series of events in different European countries and their significance:

1) The introduction of the so-called "security package" in Italy, which institutionalises discrimination as a general rule,<sup>6</sup> accompanied by agreements with Libya and returns to this country which have proved deadly and entail violations of migrants' human rights,<sup>7</sup> as well as the deployment of soldiers in the streets and the harassment of gipsies, supposedly based on "emergencies".<sup>8</sup>

2) Exceptional practices to counter terrorism in the UK and exception turned into routine in the functioning of Italian courts, whose corollary is what has been discovered about the complicity by the governments and security services of EU states in the so-called "extraordinary renditions" enacted by the CIA and in

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<sup>4</sup> To check the key texts and analyses on the Stockholm Programme, see the Statewatch observatory about this programme: <http://www.statewatch.org/stockholm-programme.htm>

<sup>5</sup> See J. Valluy, "The Metamorphosis of Asylum in Europe", in S. Palidda "Racial Criminalization of Migrants in the 21st century", Ashgate, London, 2011.

<sup>6</sup> Y. Maccanico "Institutionalising discrimination", in Statewatch, vol. 18 no. 2, April-June 2008.

<sup>7</sup> Y. Maccanico, "Relaciones peligrosas: el acercamiento italo-líbico y sus efectos para los migrantes", in "Derechos Humanos en la Frontera Sur 2008". *Asociación pro Derechos Humanos de Andalucía*, 2009.

<sup>8</sup> Y. Maccanico "Open-ended emergencies: deployment of soldiers in cities and summary treatment for Roma people", Statewatch news online, November 2009.

allowing flights transporting prisoners to Guantánamo to use their airspace and airport facilities.<sup>9</sup>

3) The criminalisation of behaviour that is not criminal *per se* in England and Wales through so-called antisocial behaviour orders (ASBOs).<sup>10</sup>

These are clear signs of the current regression in matters of human rights and civil liberties in the EU, and they are not isolated, considering that four years ago the themes worth highlighting would have been:

1) The killing of a Brazilian citizen by police officers in the London Underground in July 2005, a few days after the terrorist attack on the London transport system, in an anti-terrorist operation which was following by official lies when it became apparent that the victim was innocent.<sup>11</sup>

2) The state of emergency declared in France when there were disturbances in the *banlieues* [suburbs] in autumn 2005, in spite of the fact that few prefects adopted it, enabled the suspension of rights such as those of assembly, association and press, as well as envisaging the imposition of curfews.<sup>12</sup>

3) Events in the Spanish north African enclave of Ceuta in northern Morocco in September 2005, when Moroccan soldiers fired their weapons, killing at least five migrants who tried to breach the border fences.<sup>13</sup>

This development can be perceived in practices on the ground and decision-making at a political level alike, up to the point in which certain rights are considered mere obstacles in relation to the need for state authority to assign itself new powers to protect its citizens and, hence, to expand its repressive dimension. A proliferation of legislation that tends to criminalise or punish a growing array of behaviours, which results in a sequence of records in the prison population in many European countries (Italy, France, United Kingdom), where overcrowding in prisons has received criticism from international bodies entrusted with monitoring respect for human rights, without significant improvements taking place. Almost without exceptions, governments tend to feel that the solution entails the building of new prisons.

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<sup>9</sup> On exceptional practices in the anti-terrorist field, see Y. Maccanico, "Urgence et exception: l'extension des politiques antiterroristes au Royaume-Uni", in "Au nom du 11 Septembre... Les démocraties à l'épreuve de l'antiterrorisme", D. Bigo, L. Bonelli and T. Deltombe (dir.), La Découverte, Paris, 2008. On exception turned into routine in anti-terrorist trials in Italian courts, see G. Petti, "La guerra al terrorismo globale nelle pratiche giudiziarie", in S. Palidda, "Razzismo Democratico. La persecuzione degli stranieri in Europa". On extraordinary renditions and the complicity of European governments and law enforcement agencies, see the Statewatch observatory on renditions, <http://www.statewatch.org/rendition/rendition.html>

<sup>10</sup> The Statewatch observatory on ASBOs: <http://www.statewatch.org/asbo/ASBOwatch.html>

<sup>11</sup> Press statement by Birnberg, Peirce & Partners, representing Jean Charles de Menezes' family, 17.8.2005, explaining that "the entire body of information either placed, or allowed to remain, in the public domain since Jean Charles de Menezes was killed on July 22nd 2005, has been false": <http://www.statewatch.org/news/2005/aug/gp-press-release-17.8.05.pdf>

<sup>12</sup> "Décret no. 2005-1386 du 8 novembre 2005 portant application de la loi n°55-385 du 3 avril 1955", and "Décret n°2005-1387 du 8 novembre 2005 relatif à l'application de la loi n°55-385 du 3 avril 1955".

<sup>13</sup> See, "Guerre aux migrants. Le livre noir de Ceuta et Melilla", *Migreurop*, E. Blanchard and Anne-Sophie Wender (coord.), Syllepse, 2007.

The key issue is the reversal in the relationship between citizens and state, even though it is more on a theoretical than plane than that of reality, as the theory of the state as an entity that works for citizens and that must be accountable for its actions to them has been discredited as a result of conflicts between state authority and certain social or professional groups which, it was decided, had to be defeated (a classic example is that of English miners in the 1980s, singled out as the “enemy within” at the time of Margareth Thatcher). Practices like punishment in the absence of crimes, wholesale surveillance on a massive scale, enabled by technological advances in this field (see the initial quote), trials concerning terrorist activities in which ordinary procedures are not followed, shape one side of this equation. The other side is the substantial impunity enjoyed by agents of the state whose disproportionate, or even criminal, actions may have affected the lives of ordinary citizens, from the political level to that of an unidentified police officer during a demonstration or of a prison officer, unless there is incontrovertible evidence and sometimes even when there is. At least since 2001, with the demonstrations in Copenhagen and particularly the G8 in Genoa, passing through the G8 in Heiligendamm (Germany) in June 2007,<sup>14</sup> a public order policy is asserting itself in which interventions by police forces in the context of demonstrations are characterised by a degree of violence and restriction of freedom (for example, the practice of “kettling”,<sup>15</sup> which received strong criticism after the G20 demonstration in London in April 2009 in which Ian Tomlinson died after he was attacked by a police officer), after a pre-emptive demonisation of demonstrators by the authorities and, at times, the media.

However, a list of examples is insufficient to analyse what is occurring at an ideological level and the way in which this translates into practice. The keys for understanding this are:

- an interpretation of security in a very wide sense that encompasses other matters, as the first duty of state authority and as the most important rights, to which all the others must be subordinated.
- an increase in the powers exercised by local authorities (local council, regional governments) to watch over their citizens’ security and even to improve the “perception of security”, a concept that can be observed often in the explanatory memoranda of laws adopted in EU countries.
- the power to identify and isolate groups that are more or less ample and establish that they do not enjoy the same rights that are recognised intrinsically to every person, which entails the imposition of new requirements and special certificates (integration contracts, etc.) and possible punishment for situations that do not involve criminal offences but are deemed to undermine security.
- the calling of “states of emergency” for a large variety of problems that are not particularly exceptional and allow an expansion of the powers of public authorities

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<sup>14</sup> See, “Heiligendamm G8 Summit: A chronology of protest and repression”, Statewatch, vol. 17 no. 2, 2007.

<sup>15</sup> Which consists in keeping demonstrators blocked between two police lines without the possibility to move for hours, see “Shock and anger at policing tactics used at the G8 summit”, parts I and II, Statewatch, vol. 19 no. 2 and vol. 19 no. 3, 2009.

that are entrusted with a task, reducing their limits and ruling out the possibility of exercising control over their actions.

- beyond the policies that are exposed in public, the anti-terrorist emergency has also given authorities in western countries *carte blanche* to enact policies that are directly illegal such as the so-called "extraordinary renditions" (of foreigners to have them tortured in their countries of origin) or internment in inhumane conditions in Guantanamo by the U.S., with the connivance by some governments of EU member states, which have begun to impose punishment without a conviction in a criminal court against individuals who are "dangerous" for society or public order/security.

- once a precedent has been set, these measures may be expanded to a wider range of subjects on the basis of the successive alarms that are sounded as a result of current events that are reported in the media.

### Effects which are amplified in other continents

To link these themes to the title of these meetings, I will propose a hypothesis which may be somewhat bold with regards to conditions within the EU and the effects of its activity beyond its borders, which cannot overlook an analysis of European policies in the field of immigration and asylum, the one that has a greatest impact on the worsening of conditions in the EU and on the effects of EU policies on the countries in its vicinity. This hypothesis may be summed up in the following proposition: the violation of human rights and the worst situations that people living in the EU experience is moving closer to those that exist in poor third countries, while, in certain fields, supposed cooperation with neighbouring third countries is contributing to deteriorate the situation in the latter and, therefore, it is adding to the reasons that push people to wish to emigrate. The matter of "irregularity" of residence in a country's territory means that a new class of people comparable to that of "untouchables" has been created, who suffer various kinds of abuses. Firstly, in the field of employment, because, as they cannot work lawfully, they are exploited and lower the standards attained after decades of worker and trade union struggles, enabling a return towards slavery or work in inhumane conditions in terms of wages, accommodation and treatment by their bosses, accompanied by brutal violence if they rebel or if their presence in public ends up annoying some locals (from the racist attacks in El Ejido a decade ago to the recent case of Rosarno in Calabria, in the south of Italy).<sup>16</sup> In the case of so-called "legal" immigrants, the link between residence permits and work contracts means that foreign workers cannot afford to complain if an employer does not comply with the conditions that have been agreed, as this may entail the loss of a document that is of fundamental importance for their lives. The conditions in detention or "identification and expulsion" centres, the treatment reserved to "illegals" by police forces, and the impossibility of reporting what happens to them due to fear that they may be expelled, as well as the situation of those living rough in the streets, are other aspects of this problem.

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<sup>16</sup> African workers exploited in the orange harvest were evacuated from the town after disturbances that followed a protest that they staged when two of them were injured by bullets, in January 2010.

At the same time, European policies towards the countries around the EU strengthen some regimes that do not stand out for their respect for their citizens' human rights, further worsening the situation of migrants in their countries. If, as examples, we take relations between Spain and Morocco, on one hand, and Italy and Libya on the other, we will see how Europe grants aid to strengthen the repressive apparatus of these states through means, money, training, and gives them *carte blanche* for the repression of foreigners who may wish to travel to Europe. Hence, it causes an intensification of racism in neighbouring countries, something which evidently contrasts with the EU's stated goal of strengthening respect for human rights worldwide. Moreover, in this theme, the complicity by several European governments that has been ascertained by the European Parliament's investigation into the "extraordinary rendition" of terrorist suspects by the CIA to their home countries as a manner of subcontracting torture in order to obtain information, is equivalent to legitimising these practices. The same applies to the approval of anti-terrorist laws that include some aspects of laws that are in force in third countries which Europe used to criticise in the past as violations of freedom of expression and of political activity.

If we add the effects of migration and anti-terrorist policies on the right of refugees to seek asylum, we could highlight that the clear separation established between "economic migrants" and "refugees" gave rise to a need for people wishing to enter the EU to declare themselves refugees, clearing the way for a series of procedures to prevent the entry of "bogus refugees" and for concepts such as those of "safe countries of origin",<sup>17</sup> over which EU states failed to reach an agreement and that contradict the notion of the examination of the individual situation of a person which is the key foundation of asylum. Insofar as anti-terrorist policy is concerned, on the one hand it reinforced the identification of migrants as a threat (especially those who come from Muslim countries), and on the other it led to any measures adopted in the JHA field to be checked to ensure their compatibility with the anti-terrorist effort. This is what the anti-terrorist roadmap of 2 October 2001 instructed, stressing the importance of this condition in relation to legislation on immigration and asylum (point 11) and it advised to assess the relationship between "the safeguarding of internal security and compliance with duties of protection and international instruments" (point 36). The risks include the possibility that the services of a country that is examining an application may contact the authorities of a country of origin of an applicant to ascertain their identity and activities, a practice that may entail: a refusal resulting from information that may indicate that they are terrorists due to their political activity; the persecution of members of their family in their home country; an expansion in the reach and effects of repression by the regimes of countries that cooperate in the so-called "war against terrorism" due to the risk of granting refugee status to nationals of the country in question. *Migreurop's* annual report for 2010 documents the example of Poland, where Georgians hardly have any chance of being granted asylum, Vietnamese fear that, due to the cooperation between Polish authorities and those in their country, applying for asylum may lead to terrible consequences for their families in Vietnam, while Uzbeks and Chechens run the risk of suffering attacks or kidnappings by agents of their countries'

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<sup>17</sup> "EU divided over list of 'safe countries of origin' - Statewatch calls for the list to be scrapped", Statewatch, September 2004: <http://www.statewatch.org/analyses/no-38-safe-countries.pdf>

governments.<sup>18</sup> Both restrictive policies in the field of immigration and the denaturing of asylum strengthen authoritarian regimes, because their citizens are aware that it is more difficult to leave the country or to be recognised as refugees if they end up having problems due to their activity against their governments.

### Security and emergencies

The widening of the concept of security can be appreciated in a large number of legislative initiatives and practices adopted in European countries. In Italy, things have reached a point where illegal status and poverty are deemed to be intrinsically dangerous for public security, and the so-called "security package" expanded the powers of town councils to act in this field. The result was the introduction of measures to control and regulate various aspects of migrants' life on its territory through controls on their status, the size of their houses, their means, their businesses or jobs, as well as some rules on integration to verify that they are complying with their duty to integrate in the host society, for example, their knowledge of the country's language and constitutional principles. In effect, they are turned into people who must permanently demonstrate their efforts and lawfulness, or their residence permits may not be renewed. These checks are introduced when it comes to registering in the *anagrafe* (register of municipal residents), to using public services (health, education, social security) and in any situation in which they appear before a public official. The latter have a duty to inform the police if they learn about a migrant whose administrative situation is irregular, something that has become a criminal offence in order to elude the norm contained in the so-called "Returns Directive" which establishes that, in the absence of penal punishment, prior to an expulsion with accompaniment to the border, an order for them to leave the country that a foreigner must comply with on their own initiative must be issued. At the last moment and due to resistance by doctors and teachers, the norms were softened in the case of hospital treatment and the registration of children whose age is that of compulsory education in schools.

As for "emergencies", two were approved by government decree in May and August 2008, lasting a year. The first one, dated 21 May 2008, concerned the Roma and Sinti, because their mere "presence" and "illegal camps" caused a perception of insecurity among citizens, apart from considerations pertaining to public order and security, whereas the second one on security, which allowed the deployment of 3,000 soldiers in sensitive locations in ten cities since 4 August 2008, was accepted without much complaint. Defence minister Ignazio La Russa did not deem it necessary to justify the reasons for the decision in great depth, as he did not feel that the deployment of soldiers in the streets of cities in a democratic state in peacetime was a particularly serious matter: "*No decent person has even been frightened of a police officer, a carabinieri or a soldier*". A year later, both measures were renewed and expanded, and they remain in force in the middle of 2010.

The 3,000 members of the armed forces were to be equally distributed between three tasks (1,000 for each). External surveillance of identification and expulsion

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<sup>18</sup> "European borders. Controls, detention and deportations", *Migreurop*, 2009-2010 report, November 2010: [http://www.migreurop.org/IMG/pdf/rapport-migreurop-2010-en\\_-\\_2-121110.pdf](http://www.migreurop.org/IMG/pdf/rapport-migreurop-2010-en_-_2-121110.pdf)

centres, CIEs, as detention centres for migrants were re-named, in the sixteen provinces where they have been set up (Agrigento, Bari, Bologna, Brindisi, Cagliari, Caltanissetta, Catanzaro, Crotona, Foggia, Gorizia, Milan, Modena, Rome, Syracuse, Turin and Trapani). Protection of sensitive sites including embassies and consulates, predominantly in Rome (where 50 sites were identified), Milan (20) and Naples (1). A further 1,000 were to be made available to the prefects [government representatives responsible for security in a given city] for patrol and surveillance purposes, to be used in joint police-military patrols or posts comprising two members of the military and one or two police or *carabinieri* [police force with military status] officers. The lion's share of the soldiers were deployed in Rome, to which 1,092 military personnel were allocated, and where they have been a regular presence in sites including important train and metro stations. On 3 August 2009, a joint decree by the interior and defence ministers renewed the measure, as interior minister Roberto Maroni cited a considerable decrease in criminal offences as proof of their "effectiveness". The measure would last for a further year, increasing the number of soldiers used to 4,250, confirming their deployment in the cities where the pilot scheme had started (Bari, Caserta, Catania, Milan, Naples, Padua, Palermo, Rome, Turin and Verona) and spreading it to thirteen others (Bergamo, Bologna, Florence, Foggia, Genoa, Messina, Piacenza, Pordenone, Prato, Rimini, Treviso, Venice and Vercelli) throughout the country. The 1,250 soldiers that were added were to be made available to prefects to be used for joint patrol and surveillance operations. Hence, at a time when police trade unions had been demonstrating in opposition to a lack of resources and cuts in their budget, the government chose to favour the deployment of military personnel, new powers for local police forces and the controversial *ronde* (citizen patrols, authorised to operate since August 2009), whose uptake has been very small in spite of their great visibility in the debate over the adoption of the security package that introduced them.

Hence, the introduction as an emergency of a measure that sets a precedent in a specific context (in this case, the murder of a woman, allegedly by a Romanian Roma in a train station in Rome that had great prominence in the media) led to measures that had a nationwide scope and in themes that are unrelated (such as external surveillance around CIEs),<sup>19</sup> and ended up becoming the norm and being progressively extended, both in terms of their numbers and of the cities in which it is applied. However, the issue of emergencies is not limited to an increase in control and surveillance and a change in their nature due to the deployment of soldiers, it is also a matter of being able to elude the rules that are in force due to situations which, it is claimed, cannot be solved by using the ordinary instruments that are available. The state of emergency declared in relation to Roma and Sinti camps in the regions of Lazio, Lombardy and Campania on 21 May 2008 is an evident example of this, as well as showing how people can be stripped of rights without taking their personal conduct into account, on the basis of their membership of a given group.

The Berlusconi government's first Council of Ministers declared a state of emergency lasting over a year (until 31 May 2009) in these three regions concerning

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<sup>19</sup> In January 2010, within the framework of this "external" surveillance in the CIE in Bari, there were soldiers inside the centre.



the settlements of "*communities of nomads*" due to the "*presence of numerous irregular third-country nationals and nomads who have settled permanently*" in these areas [emphasis added].<sup>20</sup> Their "*extreme precariousness*" was deemed to have caused "*great social alarm, with the possibility of serious repercussions in terms of public order and security for the local populations*". Exceptional measures that are usually reserved for cases involving severe natural disasters were envisaged to enable the newly appointed special commissioners (the *prefetti* of Rome, Naples and Milan) to resolve the situation. On 28 May 2009, the measure was renewed for a further year and a half (until 31 December 2010), it was extended to the regions of Piedmont and Veneto, and the *prefetti* of Turin and Venice were appointed as special commissioners, because the same "*critical situation*" existed there as that which had justified declaring a "*state of emergency*" in the first three regions. The decree explained that phase one, involving the "*monitoring of authorised camps, the detection of unauthorised settlements and the identification and census of people*" living there, had been completed in Lazio, Lombardy and Campania. However, the state of emergency was renewed to enable the second phase, namely, interventions of a "*structural, social and healthcare*" kind, as well as those for the "*integration of minors*". These are planned to include new villages with improved facilities, improved sanitary conditions and measures for social insertion and schooling for children.

Both phases include aspects that caused heated criticism by Italian and European organisations working in defence of human rights, migrants and the gypsy community. Firstly the derogations include "*the powers of the state authority to compel a person to identify themselves before the public authority, as well as to allow the data-basing of photometric and other personal information; the powers of mayors in matters that are within the state's competence; the rights of citizens to respond to a measure taken by the public administration; [norms on] expropriation for public utility; specific procedures that must be followed in public building work interventions (including demolitions); the entire Consolidated Act concerning health laws; norms on the exercising of traffic police services; and, as a final norm with general value, all the other laws and other regional provisions that are closely related to the interventions envisaged by this ordinance*".<sup>21</sup> Hence, the duty to notify a person affected by a measure taken by the public administration in advance is removed, as are those of issuing a communication explaining the measure's purpose, of making the acts concerning the measure available, and to argue one's case against or submit relevant documentation about the measure to the responsible authority. This legitimises practices that have been enacted over the last few years, such as forced evictions that do not comply with requirements contained in international instruments of which Italy is a signatory, such as advanced notification, contingency plans for alternative accommodation and for such operations not to be conducted at night or in adverse weather conditions.

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<sup>20</sup> Gazzetta Ufficiale 31.5.2008, no. 127, Ordinanza del presidente del consiglio, (nos. 3676, 3677, 3678) - "Disposizioni urgenti di protezione civile per fronteggiare lo stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio della regione Lazio (Lombardia e Campania)".

<sup>21</sup> Memorandum submitted by organisations including the *Associazione di Studi Giuridici sull'Immigrazione* (ASGI) and the *European Roma Rights Centre* (ERRC) to the Committee for the Elimination of Racial Discrimination (CERD) on cases of non-compliance with the International Convention for the Elimination of Racial Discrimination, 11 July 2008.

The European Parliament approved a Resolution on 10 July 2008 that urged the Italian authorities to refrain "*from proceeding to the collection of fingerprints of Roma, including minors... as this would clearly constitute an act of discrimination based on race and ethnic origin*", adding that it deems it "*inadmissible, with the aim [expressed by the Italian government to justify the measures] of protecting children, to violate their fundamental rights and to criminalize them...*". The Resolution also noted that "*policies enhancing exclusion will never be effective in combating crime*".<sup>22</sup> On 1 July 2009, there was a ruling by the *Tribunale Amministrativo Regionale* (regional administrative court, TAR) in Lazio on a lawsuit filed by two Bosnian citizens and the *European Roma Rights Centre* (ERRC) that complained about a number of discriminatory aspects in the decrees and in the measures adopted by the special commissioners. The TAR ruled in their favour insofar as the collection of fingerprints is concerned, as it is a practice that can only be used if there are no other possible means of identification. Moreover, the court found that there were unconstitutional aspects in the regulations issued by the Lazio regional government for "villages" to be made available to "nomad" [term used in Italy to refer to Roma and Sinti people] communities in substitution of the unauthorised settlements and by Milan city council for managing sites to be used to accommodate "nomads".

The norms that were deemed unlawful give an idea of the sort of camps or villages that were envisaged. The court drew attention to a series of problems in the regulation issued in Lazio:<sup>23</sup>

- art. 2.4 (points 1 and 5) provided that a surveillance post for the "control of entry" would compile a register of the village's inhabitants, verifying their identity upon entry, as well as a register of "occasional visitors" after ascertaining consent by the family they are attached to - deemed to contravene freedom of movement (article 16 of the Constitution).

- art. 3 (points 1 and 5), whereby admission depends on signing a commitment to respect internal norms of behaviour by adults in a family that has requested admission, norms that were yet to be established - deemed to contravene freedom of movement and residence.

- art. 3.7, whereby each member of a family admitted in a village would have a card with their personal details, exclusively for entry into the village - again, deemed to contravene freedom of movement.

- art. 4.1, whereby people admitted in the villages must participate in employment insertion programmes, and art. 4.2 (point 2), whereby they must accept employment insertion and training offers - deemed to violate a person's right to choose their profession.

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<sup>22</sup> European Parliament Resolution, 10 July 2008, "Census of the Roma on the basis of ethnicity in Italy": <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0361+0+DOC+XML+V0//EN>

<sup>23</sup> See note 7. For the TAR ruling: Tribunale Amministrativo Regionale per il Lazio, sentence no. 6352/2009, 1 July 2009: [http://www.cittadinolex.kataweb.it/article\\_view.jsp?idArt=88696&idCat=26](http://www.cittadinolex.kataweb.it/article_view.jsp?idArt=88696&idCat=26)

- art. 4.2 (point 3), their being held to observe their commitment envisaged in art. 3 on internal norms of behaviour - that was deemed unlawful, see above.

In the regulation of Milan city council, apart from the articles on the register of authorised people and the issuing of an identification card featuring a photograph and personal data, exclusively to enter a "village", article 11 was deemed illegal. It established that relatives, friends and acquaintances of the "guests" could enter the camp to visit them, but they would previously be identified by the management, they could be subjected to checks by the police, and their visits would end at 22:00, unless it was "proven to be necessary" beyond that time limit, although management could temporarily suspend access for "proven security reasons", informing the guests in advance. The TAR appreciated that these measures contravened freedom of movement and residence, as well as entailing undue interference in personal and family life.

Nonetheless, the TAR dismissed several complaints that were included in the lawsuit, charges of discrimination concerning various measures, and it validated the declaration of a state of emergency. In particular, the measures were not deemed discriminatory because they were adopted in relation to the illegal settlements and not a specific group, and resident who are not "nomads" would be treated in the same way.

The failure to consider the impact of prejudice on access to the housing and employment markets for Roma people, or that of their lack of means, and the fact that the solutions that are arranged by public authorities are based on an understanding of them as "nomads" in spite of this not always being true, means that their separation from society in camps or special "villages" that are subject to restrictive norms may be portrayed as a benevolent measure. In sum, these people would be concentrated in homes found within sites in which special control and surveillance rules would be in force.

### **Threats for public order and security, an ever-expanding concept**

The concept of what represents a threat for "security" or "public order" is acquiring importance and visibility due to their being two conditions that enable the urgent adoption and implementation of special measures. For instance, in the Returns Directive,<sup>24</sup> the approach that was adopted to improve the conditions in which returns were carried out and to ensure greater respect for human rights, was to promote voluntary returns and to make forced expulsions an exception, or the effect of non-compliance with an order to leave the country by a migrant living irregularly in an EU country. In spite of the criticism [which I consider justified] that the final text received from both organisations working to support migrants or to promote human rights and the authorities of third countries,<sup>25</sup> one must recall

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<sup>24</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

<sup>25</sup> "42 days? Try 18 months", Evo Morales, *Guardian*, 16.6.2008; statement by the Central American Parliament (the governments of Central American countries and the Dominican Republic):

<http://www.statewatch.org/news/2008/jul/PRONUNCIAMIENTO.pdf> and the 'Declaration of the

that its initial goal was to set some common conditions to counter the worst abuses that had been practised prior to its approval. In a classic example of the workings of EU institutions, the intervention by governments through the Council resulted in ambitions in this direction being reduced, worsening existing conditions in some states. One example of this would be the increase in the admissible length of detention in several countries stemming from the fact that, in establishing common conditions, there were countries where the maximum was one or two months, whereas others had not even set a limit.

The Directive set a limit of six months for detention in detention centres, renewable up to 18 months in exceptional cases. There was a statement [not binding] that assured that states whose conditions were more favourable than those established in the Directive would not worsen them in applying it. Shortly afterwards, Italy increased the allowed detention period for migrants awaiting expulsion three-fold, from 60 to 180 days. In this sense, Italy was not an exceptional case, as several countries extended their limits - in Spain, it went from 40 to 60 days-, but its haste in implementing this measure was not accompanied by a comparable attitude insofar as measures that would improve the situation of foreigners in an irregular situation were concerned. In practice, the effect of the measure that turned irregular stay into a criminal offence that was approved in the "security package" and gave rise to much discussion as it criminalised a "condition" rather than concrete actions by a person, was that of neutralising the Directive's effects as, with commission of an offence, it was no longer necessary to give priority to an order to leave voluntarily. In fact, article 2 of the Directive, dealing with its scope of application, establishes that "*Member States may decide not to apply the present Directive to third country nationals: ... b) who are subject to return measures that constitute punishment for criminal offences or are a consequence of punishment for criminal offences, in accordance with national legislation*". Hence, expulsion would remain the norm, as the interior ministry did not consider that voluntary departure was a measure that would be enacted effectively. That is to say, when something is deemed useful, it is applied, whereas if something is considered detrimental, steps are taken to neutralise it.

After the attacks on 11 September 2001, the countries in the EU reformed their anti-terrorist laws or introduced them for the first time in accordance with the "harmonisation" of policies and laws in this field promoted in the EU institutions, in which a [very wide] common definition was approved as to what a "terrorist" act entails, and minimum punishments for such actions were imposed, in order for member states to adopt them. The reach of executive powers granted to home affairs [interior] ministers was extended, and exceptional measures were introduced due to the danger that this threat posed. In the UK, the indefinite detention of third country terrorist suspects without trial was approved<sup>26</sup> (based on an assessment by the home affairs minister) until it was abrogated by a Law Lords ruling in 2005, whose effect was the approval of a new regime of very strict restrictions (*control orders*) applicable to these people.<sup>27</sup> As was the case for detention, the decision could be based on secret information, which made defence

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Union of South American Nations on the European Union's "Returns Directive", 4 July 2008:

<http://www.comunidadandina.org/unasur/4-7-08directivaUE.htm>

<sup>26</sup> Antiterrorism, Crime and Security Act 2001.

<sup>27</sup> Prevention of Terrorism Act 2005.

lawyers' work extremely difficult to carry out. One measure which became commonplace was the authority to expel foreigners accused or suspected of terrorist activity because they represented a threat to national security. As Petti notes with regard to the Italian case,<sup>28</sup> since 2006 "the category of 'terrorism' is so elastic that it also allows a conviction for people who contravene rules on immigration or on counterfeit documents, if this activity is part of a programme 'with terrorist purposes'". And, in spite of a judicial context which is not "exceptional", a practice has developed that allows a series of conditions or pieces of evidence, ranging from ideology (religious radicality), the use of anti-western language, possession of certain magazines, the people one meets or commission of an offence such as forging documents, to turn into a thread that suffices to prove this charge. Even following acquittal, some people who were charged were later expelled for "public order reasons".

The expulsion towards third countries decreed by the interior minister affecting people charged with terrorist offences, regardless of the findings of a court, is an example of the prevalence of executive power over obligations in the field of human rights, particularly if it is acknowledged that there is a risk of persecution, ill-treatment or torture following their return to their home country. In fact, the "non refoulement" principle was violated in a series of cases in which Italy expelled Tunisians to the north African country although the European Court on Human Rights (ECtHR) in Strasbourg had asked for the measure to be suspended following appeals submitted by the people concerned. This suspension was ordered to enable the court to reach a decision on the matter, in application of Rule 39 of its regulation: it is a temporary measure that is binding and, in recent times, it has become the only way to prevent repatriations for public security reasons when the interested person runs the risk of being tortured in their home country. Two high level officials of the Council of Europe's (CoE) parliamentary assembly criticised the expulsion of Ali Toumi on 2 August 2009, in a statement which explained that "It is totally unacceptable to ignore binding interim measures ordered by the European Court of Human Rights... This is the fourth case in which, since 2005, the Italian authorities have taken measures in flagrant disregard of the Court's orders". Italy was contravening the "absolute" prohibition of torture, which is a cornerstone of the European fundamental human rights structure. Minister Maroni denied contravening any of the court's decisions: "We respect the European Court's decisions, and I stress decisions. However, when I receive a fax from an official that says that it is necessary to suspend the expulsion while awaiting the Court's decision, I prefer to continue and expel an alleged terrorist". Thus, in spite of the binding nature of interim measures, they became a mere "fax from an official", without further importance.<sup>29</sup> In April 2010, *Amnesty International* (AI) criticised Slovakia for a similar case, as it had expelled an Algerian citizen for national security reason in spite of a suspension order issued by the ECtHR which was still in force. The interior minister justified his actions on grounds of national security, adding that the fine for the breach was "a couple of thousand euros".<sup>30</sup> It

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<sup>28</sup> Petti, op. cit. pp. 220-223.

<sup>29</sup> Herta Däubler-Gmelin and Christos Pourgourides, "Blatant disregard yet again, by Italy, of binding interim measures ordered by the ECHR", Council of Europe, press release 615(2009): <https://wcd.coe.int/ViewDoc.jsp?id=1481061&Site=COE> ; La Padania, 4.8.2009

<sup>30</sup> "Slovakia: Expulsion of Mustapha Labsi Violated International Law", *Amnesty International*, 28.4.2010, press statement 72/001/2010.

should be noted that these cases are neither isolated nor limited to these countries, but expulsion through an executive order in a security context is important if one considers that once a precedent has been set, it has been extended to situations that are less dangerous.

Following the increase in powers assigned to local authorities (see below) in the field of security and public order, and with the identification of migrants as subjects who represent a threat in this field, there was a shift from the dichotomy between “legal” (and hence good) migrants and “illegals” (bad and dangerous) to another one whereby migrants, even if they had a residence permit, would be deemed a threat if their social and economic situation was inadequate. This led to a proliferation of checks imposed in several towns when it comes to registering a foreigner in the municipal register of residents, like controls on their home (to ensure that it is large enough for the person in question and any relatives who may be with them) and their earnings (to ensure that they suffice to support them). Otherwise, registration could be denied. It should be stressed that there are many Italians who do not fulfil the requirements imposed because, even if they work, they may be unable to afford a rent due to high prices and low wages at a time of economic crisis. Moreover, the increase in the *prefetto's* powers to adopt urgent measures to “*prevent and eliminate serious dangers that threaten public well-being and urban security*” could lead to expulsions on the basis of such concerns.

#### **Identification of problem groups and introduction of norms against them**

Beyond what has been detailed above, there is a matter that concerns the isolation of groups and categories that the government, media or so-called public opinion consider disturbances for security or public order, for the purpose of criminalising them. This trend is heightened by the apogee of security, and especially due to the growing powers enjoyed by local administrations to control phenomena that threaten it. That is, there has been a proliferation of laws, at a national or local level, that supposedly oppose specific phenomena but, in reality, they target concrete groups. And there has been a compression of what annoys or disturbs with what effectively represents a “threat” for security or public order.

Already in France in 2003, in order to rein in the expansion of “certain forms of criminality” or “the development of situations that trouble the peace of citizens” and their right to security, the LSI (law on internal security) introduced norms such as article 322.4,1 in the penal code, which turned illegal settlement in association with others on lands belonging to a city council or privates with a view to residing there without authorisation, into a crime that may be punished with a six-month prison sentence and a 3,750 euro fine. The law increased sentencing and expanded the applicable criminal offences for other acts like resistance or violence against public officers (from police officers, *gendarmes*, prison officers, judges and employees of public authorities or ministries to school teachers, social workers, firefighters, etc.) or activities such as occupying shared areas (entrance halls or stairways) in residential buildings, prostitution and begging. Begging would be treated as a form of organised crime through concepts like “exploitation of begging”, which would incur maximum sentences of three years in prison and fines of up to 45,000 euro, and could reach five years’ imprisonment and 75,000 euro fines in cases that include the use of children, or vulnerable people, or depending on the number of people who participate, or the use of violence. The law even

allowed the administrative closure of food stands if they are deemed to represent a threat for public order, security or peace. In many circumstances, like prostitution or “aggressive” begging, in order to combat international criminal associations, if those responsible for criminal behaviour are foreign, their residence permits would be revoked. The LSI developed measures contained in LOPSI, law on guidelines and planning for internal security, which was approved by the *Assemblée Nationale* [National Assembly, the lower house of parliament] on 22 October 2002. The then interior minister, Nicolas Sarkozy, painted a picture of France in which the increase in crime meant that the French people were no longer free, “*Living with fear for oneself or one’s loved ones on a daily basis is not to live in freedom*”. He laid the blame squarely on foreigners for ordinary French citizens’ real or imagined fears, arguing that in France the issue has been a taboo for too long. Prostitution (and problems linked to it such as drugs, Aids and organised rackets), drug dealing and aggressive begging or begging by minors, were explicitly described as “foreign” crimes that would no longer be tolerated. In spite of such crimes being the result of human misery, it “*must be fought and not suffered*”.<sup>31</sup>

It seems obvious that, having identified the cause for the fears of “ordinary citizens”, namely, migrants, *gens de voyage* [travellers] or gypsies, prostitutes, youths who gather in the “*halls*” of their buildings or around food stalls and beggars, whose visibility and mere presence in the streets disturbs the “tranquility” of citizens, offences were created to discourage this presence by subjecting it to increasingly stringent conditions, including crimes by association when members of a group carry out an offence, which will sometimes entail crippling fines or even prison sentences. Moving forward to the summer of 2010 and measures against illegal settlements of *gens de voyage* and gypsies, a circular dated 24 June 2010 addressed to *préfets* detailed the arsenal of legal and operative measures available to them, and encouraged them to make use of the measures introduced by the LSI (law 239/2003). The instructions point out that article 322.4,1 of the penal code is “underused” and offers a two-fold advantage: dissuasive, because it ensures the punishment of unauthorised occupation of lands, and administrative, as once a matter is brought to a judge’s attention, this enables the identification of the occupants and may result in the expulsion of those among them who are living unlawfully in the country. Moreover, prefects are invited to implicate the police and *gendarmerie* [police force with military status] to verify if there have been any criminal offences connected with the illegal settlement, particularly begging with its aggravating circumstances, and to inform prosecutors about them.<sup>32</sup>

In Italy, since the approval of the so-called “security package” that extended the powers of local councils in public security matters in 2008, there has been a proliferation of measures to counter activities which, intrinsically, were neither criminal nor threatening, because of who was practising them. Thus, having identified foreigners as a threat, local by-laws were introduced to forbid massages on the beach by people who were not duly certified (an activity primarily carried out by Chinese women) for public health reasons, the mayor of Rome announced

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<sup>31</sup> See, “France: New internal security law”, Statewatch, vol. 12 no. 6, 2002.

<sup>32</sup> See, “France: Expulsion of Roma undermines EU’s founding principles”, Statewatch, vol. 20 no. 2, 2010.

that stricter regulations concerning wholesale commerce would be enacted (again, Chinese shops were the target), and there were cities that forbade “ethnic” food outlets, such as kebabs (due to noise in the street outside them and to defend local culture and identity). Furthermore, with regards to street selling and especially that involving products that were imitations of famous brands or pirate copies of CDs and films on DVD (which is illegal, and mainly practised by Africans), police operations were carried out in the summer of 2008 that included spectacular chases on the beaches and, in Ostia (the closest beach to Rome), there were helicopters flying at low altitude to detect “sellers of counterfeit brands”.

A decree that came into force on 5 August allowed mayors to intervene in “any matter that concerns public order and security”, but it also led to the approval of ordinances on “public decorum”. In Florence (governed by the centre-left), people were banned from washing their armpits in public fountains, tying their bicycles to a bench, or eating in public in an “undignified” manner. Certain mayors’ imagination or morality went so far as to introduce a 500 euro fine for “effusive behaviour” in a car in Eboli (Campania); in Voghera (Liguria), it was forbidden for groups of more than three people to use benches in the street or in parks; in Ravenna (Romagna) a 1,000 euro fine was introduced for bathing in the sea later than eight o’clock in the evening.<sup>33</sup>

As can be appreciated, the categories that produce “social alarm” in accordance with these interpretations may be migrants, gipsies or “nomads”, poor people and beggars, or people who sell imitation products or services without possessing the qualifications that are required. However, they also include young people, who may be noisy, rude or aggressive and violent, in short, anti-social. This category acquired importance from a government and media perspective in England, which, under Labour governments, pioneered measures to re-establish a “culture of respect” through so-called ASBOs (anti-social behaviour orders).<sup>34</sup> ASBOs introduced “parallel” legal procedures to the ordinary functioning of the criminal justice system through “civil” orders to counter “*behaviour which causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator*”. The police or a local authority may request that an ASBO be issued by a judge or magistrate’s or county court, it entails a lower burden of proof than in criminal law, as hearsay evidence is admissible, and they may ban an individual from committing any action or from going to specified locations for a minimum of two years through a fast-track procedure. Failure to comply with the restrictions may lead to imprisonment for a maximum of five years for adults or a two-year detention and training programme for minors. Minors run the risk of beginning their adult life with criminal records that are liable to stigmatise them and/or limit their ambitions.

Like in the French and Italian cases that we have just observed, by imposing prohibitions and strict rules applicable in places such as park benches, the “halls” of residential buildings or food stalls, once minors are identified as a threat and as being potentially dangerous, measures were implemented make the public spaces

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<sup>33</sup> On the issue of prohibitions throughout Italy in the summer of 2008, see “L’estate dei divieti. Spiagge, parchi e strade come caserme”, *Umanità Nova*, no. 27, 7 September 2008.

<sup>34</sup> Material on ASBOs is drawn from the ASBOWatch observatory:  
<http://www.statewatch.org/asbo/ASBOWatch.html>



where they gathered inhospitable for these users. An emblematic example of this was the use of the so-called "mosquito" - an audio device created for the purpose of dispersing groups of youths by emitting an ultrasonic tone to disturb them in a 15-metre radius at a frequency that is only fully audible by under-25s. In February 2008, the head of the Children's Commission for England, Professor Al Aynsley-Green, criticised the use of the estimated 3,500 devices that were in use because they "*are indiscriminate and target all children and young people... regardless of whether they are behaving or misbehaving*".<sup>35</sup>

### A strange parallelism: Calais and Oujda

As immigration policies in EU countries have given rise to a category of people who have plenty to fear from any sort of interaction with public authorities (detention, return to their countries, transit countries, or to those where they first crossed EU borders for the first time if their fingerprints are recorded in the Eurodac database for asylum seekers in application of the Dublin II Regulation), some areas have appeared where they hide from society and are blocked while they await their opportunity to take the next step in their journey. One of these areas is the so-called "jungle" in the Calais region in north-western France, a dead end near to the route to seek entry into England in which many migrants are trapped.<sup>36</sup> The annual report for 2009 published by Migreurop, a Euro-African network of associations that work on immigration-related subjects, notes some similarities between the situations that migrants experience in the "jungles", in shantytowns near the port of Patras in Greece, and the "tranquillos" in the countryside outside Oujda near to the border between Morocco and Algeria.

*"The main common denominator of these 'adventurers' exile is their 'reception' in transit or destination countries", the report states, describing them as "identical victims of the EU's policy", which is shaped by their "dehumanisation", the "inhospitality of reception mechanisms", "police repression" and "indifference" for their fate by people whose concern is for them to remain "invisible". And these are the lucky ones who have not joined the ranks of people who have died during their migration journey. In Calais, like in Patras and like in Oujda, "you can observe the same concealment, the same makeshift shelters made of plastic and rubbish bags, the same recovered old clothing, the same relegation into a sub-human existence".*<sup>37</sup>

These policies also mean that borders, while they become increasingly difficult to breach for migrants, become more relaxed insofar as the policing activities of some neighbouring countries are concerned. This is true of the border between France and the UK (which did not join the Schengen area), where the Le Touquet treaty of 4 February 2003 allowed the setting up of bilateral controls in all the "sea harbours of the Channel and the North Sea found in the other party's territory". A later administrative arrangement on 6 July 2009 envisaged installing the "latest detection technologies" in French territory, financed by the British, who would also ensure their maintenance, while the French authorities made a commitment to

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<sup>35</sup> Statewatch, vol. 18 no.1, January-March 2008, p. 3, "Mosquito told to buzz off"

<sup>36</sup> "La Loi des Jungles", report by the *Coordination Française pour le Droit d'Asile*, September 2008: [http://cfda.rezo.net/download/Rapport\\_CFDA\\_092008.pdf](http://cfda.rezo.net/download/Rapport_CFDA_092008.pdf)

<sup>37</sup> "Les frontières assassines de l'Europe", *Migreurop*, Paris, October 2009, p. 5.

reduce the number of foreigners in an irregular situation in the border region. The second phase that the agreement envisaged was to involve the extension of these surveillance measures to the ports of Boulogne, Dunkirk and Coquelles, and the two countries agreed to cooperate in "joint activities in the field of returns, in particular joint returns by air". The *Migreurop* report highlights that these agreements have given rise to a "multiplication of British police posts in France" and the "installation of detection facilities whose operation is reserved solely to British experts".<sup>38</sup>

Likewise, this time on the border between Europe and Africa, agreements signed in 2007 that later developed into the friendship, association and cooperation treaty of August 2008, allowed the operation of joint patrols in Libyan waters to prevent the arrival of African immigrants on the southern coast of Italy and, especially, on the island of Lampedusa. Returns carried out outside of any lawful framework enacted by the *Guardia di Finanza* [GdF, the customs and excise police, which has a military status] and the Italian navy followed, during which migrants were intercepted in international waters and returned to Libya without any formal procedures, in spite of them having boarded Italian ships. This meant that they were on Italian territory, that they had to be identified, that if any of the migrants wished to claim asylum they should have been allowed to do so, and that an expulsion order or refusal of entry was required in order to return them to Libya. To this, the concerns expressed by Laura Boldrini of UNHCR should be added, as she stressed that a majority of asylum seekers arrived in Italy by sea. Following the scandal that these returns caused, the area in which Italian navy boats were deployed moved back, leaving Libyan patrol boats to surveil its coasts (Italy gave the north African country six boats for this task) and an area that was wider than the limits of its territorial waters. These patrols often have GdF officers on board for "observation and training" purposes (23 of them have been sent to Tripoli for this task), although they do not have operative powers as they are in Libyan territory. Among the victims of this situation are Sicilian fishermen, who have suffered confiscations of their vessels and pursuits at sea by the Libyans and, in a recent case on 12 September 2010, the *Ariete* fishing boat from the Mazara del Vallo fleet was machine-gunned by a Libyan boat that was on patrol in international waters and has six GdF officers on board who were not in a position to intervene.<sup>39</sup> It is an incident that raises a question: if patrols in the high sea behave in this way towards Italian fishermen who are suspected of fishing illegally, as the Libyan authorities claimed, running the risk of unleashing a diplomatic crisis and without any possibility that Italy may not find out about this, what happens when they intercept boats laden with migrants if they do not comply with an order to stop?

### **Subcontracting border controls, detention and returns**

The growing role of the EU and its member states in countries of origin and transit of migration flows through the so-called "externalisation" of migration control and a supposed "cooperation" that primarily reflects the interests of European

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<sup>38</sup> Ibid., p. 67.

<sup>39</sup> Libya/Italy: Machine gun attack on Italian fishing boat by Libyan coast guards: what happens during patrols against "illegal" immigration?, Statewatch news online, October 2010: <http://www.statewatch.org/news/2010/oct/04italy-libya-fishing-boats.htm>

countries has some important effects. Firstly, it is very unrealistic to expect the creation, funding and construction of detention centres for migrants in countries that are poor or governed by authoritarian regimes not to entail serious human rights violations. Even in Europe, they have turned into places where a degree of contempt for human rights and for the humanity of people who are treated like criminals for having emigrated in search for ways to improve their lives can be observed. There has been a sequence of protests and hunger strikes by detainees, and criticism by associations and official bodies entrusted with monitoring respect for human rights and detention conditions alike. There have been deaths, fires, allegations of ill-treatment by guards, that have even included the sexual harassment of female detainees, and they are very "opaque" facilities, that is, it is very difficult to obtain any reliable information about what happens inside of them, although there has been limited progress in this direction in some countries.

Italy has funded centres in Libya from which astonishing information has surfaced (with difficulty, due to the hermeticism that prevails regarding these centres) concerning the treatment of detainees.<sup>40</sup> Spain has done likewise in relation to Mauritania. In these countries, like in Morocco, a country in which contact between local and European associations, particularly French ones, enables access to more detailed information, there are repeated operations to round up foreigners when Europe requires it or when they can prove useful for the government in the framework of negotiations in which what is important is to catch a considerable number of migrants (in general, "sub-Saharan", who are easy to recognise due to their dark skin), regardless of whether they work regularly or have been granted refugee status.

Like happens in Europe, where migrants have plenty to fear from their interaction with the authorities and where, periodically, political institutions task police forces to focus on round-ups, arrests and controls whose target are migrants in order to promote "legality", "security" and "respect for the rules", foreigners in north Africa experience a sorry situation in which they become easy targets for different groups. The "Escape from Tripoli" report published in 2007 by *Fortress Europe*,<sup>41</sup> an observatory on deaths at the EU's borders, about the situation of migrants in transit in Libya, describes the dehumanisation and vulnerability that these people experience at each step of their migration journey. The sub-human conditions in which they travel, well into the 21<sup>st</sup> century - crammed into vans, in dinghies or wooden fishing boats (*cayucos*) that are quite likely to sink, or walking, sometimes for spells lasting several days in inhospitable terrains like the desert - due to prohibitions that do not allow them to board a regular airplane, boat or bus, even though they spend a lot more than the cost of a ticket to be harassed, abandoned and left at the mercy of several actors during each stage of the journey, are well known. What is striking, is the lack of moments or situations in which they may remain at ease... even if they are in the street near to a group of children, the latter know that they are "illegals" and that there is a fair chance that they are

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<sup>40</sup> Particularly, but not only, from Fortress Europe, <http://fortresseurope.blogspot.com> . See, "Guantanamo Libya. The new Italian border police", 2.2.2009; "Border Sahara. The detention centres in the Libyan desert", 1.1.2009; and "Libya. Inside the immigrants detention centre of Misratah", 2.12.2008.

<sup>41</sup> "Escape from Tripoli", *Fortress Europe*, 25 October 2007: <http://www.statewatch.org/news/2007/nov/fortress-europe-libya-report.pdf>

carrying some money on them to continue their journey. Hence, they may ask them for money under the threat of informing the police about their presence and, if they do not accept, they can harass them, for example on religious grounds, and there have been cases in which a refusal or complaint has resulted in beatings, even up to the point of killing them. Obviously, their status does not allow them to report any abuse, violence or crime that they are subjected to. And this is without talking about their relations with people smugglers (who may abandon them at any point, even in the middle of the desert), soldiers, police officers or kidnappers (cases in which migrants caught by law enforcement agencies or held in detention centres have been sold to groups that keep them hostage until their families pay to have them released have been documented).

Therefore, I would highlight that one of the main effects of the EU's migration policies, both within it and in neighbouring countries, is the creation of a category of people whose illegalisation lowers the minimum standard of rights applicable to people in the territory of a state for reasons that stem from their origin or nationality. Another important matter, is the way in which some countries are forced to introduce measures that run contrary to their interests or to the policies that they had in place until recently. To an extent, there is a practice of *do ut des* at work, that is, that such incentives are offered in terms of funding, materials and infrastructure, apart from influence in international affairs, in exchange for the repression of "illegal" immigration that it is very difficult for the authorities not to grant what is asked of them, even if it runs contrary to principles that have been declared up to that point. Libya was able to put an end to its international isolation imposed following the attack over Lockerbie<sup>42</sup> in which 270 people died due to the explosion on flight *Pan Am 103* over Scottish territory on 21 December 1988. In March 2003, the goals were set of ensuring "the good functioning and safe management of the future eastern and Mediterranean borders, to promote lasting economic and social development in the border regions and to pursue regional and transnational cooperation" for the EU's neighbourhood policy (ENP). In June of the same year, Morocco adopted law 02/03 "concerning the entry and residence of foreigners in the Kingdom, irregular emigration and immigration", which turned emigration by Moroccans without prior authorisation into a criminal offence and repressed immigration by foreigners in accordance with a model that was copied from French legislation. To fulfil the goals of the ENP action plan, Morocco received 190 million euros in 2007, 654 million euros were assigned to it between 2007 and 2010, and it was promised progress in its status from that of ordinary partnership with the EU to one of "advanced partner".<sup>43</sup> The connection between the adoption of measures required by their European counterparts and the benefits that they entail have been expressed very clearly by colonel Gaddafi (who was a champion of "pan-Africanism" and "pan-Arabism" in the past) in his visit to Rome in the summer of 2010, when he also played with the fears that European governments arouse among their populations: "Libya, with support from Italy, asks Europe for at least five billions per year: it is in Europe's interest, because

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<sup>42</sup> Although several experts agree that the trial's outcome did not fit the reality of what had happened, see Paul Foot "The Great Lockerbie Whitewash, 1989-2001" in John Pilger (ed.) "Tell Me No Lies. Investigative Journalism and its Triumphs", Vintage, 2005, pp. 214-254.

<sup>43</sup> *Migreurop*, *ibid.* 2009, pp. 42-43.

otherwise, tomorrow, in the presence of millions of immigrants who advance, it could turn into Africa".<sup>44</sup>

The relations between Italy and Libya led to the treaty of friendship, partnership and cooperation signed in Benghazi on 30 August 2008<sup>45</sup> for the purpose of developing a "special and privileged" bilateral relationship, which was ratified by the Italian senate on 3 February 2009. The conflict between the countries concerning the colonial period was deemed to have been ended through reparations and a commitment by Italy to undertake great works on infrastructure, among others, in exchange for an important role reserved for Italian businesses like ENI in the exploitation of energy resources. The treaty called for continuing the cooperation that began with an agreement on the fight against terrorism, organised crime and "illegal" immigration signed in 2000, which was followed by coordination between the two countries to fight organised crime and "illegal" immigration. In 2007, Romano Prodi's government struck agreements with Libya for the joint patrolling of the Channel of Sicily, and the European Commission began to express an interest by way of two technical missions to Libya in 2004 and 2007. This process of underwriting agreements is becoming established between countries at the EU's borders (other examples would include Spain with Morocco and Mauritania, Poland with Ukraine, or Greece with Turkey) with those found on the other side of the border through which those who seek to breach them pass. Their effects include a transfer of materials and means to fight so-called "clandestine" immigration, from vehicles or means to carry out controls like boats, vans, jeeps, night-vision equipment or binoculars, up to equipment to save lives such as diving suits or life jackets, or logistical material for anything that may occur (in the Italian-Libyan case, this included a thousands body bags to carry corpses in). Italy financed three detention centres for foreigners in Libya (in Gharyan, Kufrah and Sebha), and Spain built one in Nouadhibou in Mauritania following the arrival of immigrants in the Canary Islands who had taken the perilous sea route from the west coast of Africa due to the "success" of SIVE (integrated electronic surveillance system) in the Andalusian coasts. It is estimated that thousands died during this crossing, so much so that the year in which there was a peak in the number of deaths (around 7,000 in 2006) was when this important shift in migration routes occurred.

The effects of this cooperation between EU member states and their neighbours is the detention of migrants in inhuman conditions, returns that result in the former violating the commitments that they have acquired regarding human rights and a blackmail that forces the latter to adopt measures that are not convenient for them in exchange for money and means that contribute to strengthen the repressive state apparatus in countries that have limited democracy, instead of helping to improve the situation for their populations. As regards the situation in detention centres in Libya, we may limit ourselves to noting what Mario Mori, the former director of SISDE (formerly the civilian information service), told the parliamentary committee for oversight of the intelligence services in 2005 about "illegals" who are "*ensnared like dogs, placed in pick-up trucks and released into*

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<sup>44</sup> *Repubblica*, 31.8.2010.

<sup>45</sup> Italy/Libya: "Special and privileged" bilateral relationship treaty, Statewatch news online, November 2008: <http://www.statewatch.org/news/2008/nov/01italy-libya-treaty.htm>

*reception centres in which those guarding them have to place their handkerchiefs over their mouths to enter, as a result of the nauseating odours"*, and about how, in Sebha, " *the centre is meant to host 100 people, but there are 650, heaped onto each other"* . Associations like *Fortress Europe*, which try to discover what happens there, report ill-treatment, repression of revolts that result in deaths among detainees, or scarceness of food, leaving aside the issue of repatriations towards countries where they are at risk of being tortured, for example to Eritrea, as Libya is not a signatory of the Geneva Convention on refugees. Or expulsions enacted by abandoning immigrants in the desert, as has been documented in Morocco.

As for returns, some practices are becoming established whereby the priority are immediate returns, like intercepting boats in the high sea by the Italian authorities or immediate expulsion without access to asylum proceedings for those requiring it or, in the case of Spain, through the return of migrants to Mauritania followed by an examination of their personal situation while they are held in the African country under Spanish custody, as happened in the case of the *Marine I* in January 2006. These practices have almost become commonplace since European countries and the EU began negotiating readmission agreements with migrants' home or transit countries in order for them to readmit their nationals as well as those who are presumed to have travelled through their territory, at the same time as cooperation in this field becomes a condition to receive development aid funding. That is, they either accept, or they will suffer important economic consequences.

As for the adoption of measures that do not benefit them by third countries, it should be stressed that for many poor countries remittances from their nationals who live abroad are one of the most important sources of revenue. European countries seek to present their co-development or development aid projects as counterweights to repression in this field, which would enable an improvement in conditions in countries of origin, causing a decrease in the number of people who feel that they have to emigrate. The reality, however, is that remittances reach the families of those who have emigrated directly in their cities or villages, whereas aid is channelled through a considerable number of intermediaries, which makes it possible for part of it to be lost in bureaucratic procedures, corruption, or in projects that governments deem priorities but do not always end up improving the situation on the ground. Moreover, I would go so far as to argue that freedom of movement in the EU is being enacted at the expense of freedom of movement between all those countries from which the EU fears the arrival of migrants. In fact, in the same way as one of the reasons behind the EU's creation was that free trade and free movement could entail benefits, regional unions and free trade and free movement areas had been established in Africa as well, such as ECOWAS in western Africa. Malian citizens did not require visas to enter Mauritania, but now, Spanish pressure has given rise to mass expulsions during which important human rights violations are being committed.<sup>46</sup> In this sense, the request/blackmail that forces these countries to criminalise and punish "illegal" emigration and immigration does not help them. Although official propaganda in Maghreb countries on the emigration of "illegals" towards Europe largely blames sub-Saharanans, a

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<sup>46</sup> See "Otra frontera sin derechos: Malí-Mauritania. Corresponsabilidad de España en las repatriaciones en cascada de Europa a África", *Asociación pro Derechos Humanos de Andalucía/Association Malienne des Expulsés*, October 2008.

considerable portion of those who emigrate or would wish to emigrate are Moroccan or Algerian citizens. It should also be noted that, insofar as humanitarian bodies are concerned, funds that were traditionally used to ensure humanitarian aid are being used for purposes such as setting up biometric identification systems that comply with the standards that are promoted by the EU. In January 2010, an *Inter Press Services* article warned of the decision by EU authorities to allow that "*Aid traditionally reserved for keeping victims of war and disasters alive may now be used for security-related projects such as the fingerprinting of refugees*".<sup>47</sup>

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<sup>47</sup> D. Cronin, "EU Aid to be Used for Fingerprinting", *IPS*, 13.1.2010:  
<http://ipsnews.net/news.asp?idnews=49961>