

**AMNESTY INTERNATIONAL: PUNISHING COMPASSION
SOLIDARITY ON TRIAL IN FORTRESS EUROPE**

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1. EXECUTIVE SUMMARY

- The report documents how the “criminalization of solidarity” has hampered individuals’ and NGOs’ activities to save lives, protect the dignity and defend the rights of refugees and migrants in Europe
- The report shows that national authorities, within the framework of agreed EU migration and asylum policies, have on multiple occasions deliberately misused migration laws and policies and other measures to crack down on human rights defenders of people on the move. But the variety of the measures and practices used by national authorities at various levels makes it virtually impossible to determine how many people, NGOs and civil society groups have been affected
- Amnesty International has documented cases of restriction and criminalization of assistance and solidarity towards people on the move in eight countries: *Croatia, France, Greece, Italy, Malta, Spain, Switzerland, and the United Kingdom*
- The cases that feature in the report were selected to illustrate the range of acts of solidarity that have been criminalized across Europe and the range of methods used by the authorities to criminalize solidarity

2. TERMINOLOGY

Criminalization of solidarity: “[...] *the misuse of criminal, civil or administrative laws to target and harass human rights defenders (HRDs) working for the rights of migrants, asylum-seekers and refugees, (including) HRDs who are themselves migrants, asylum-seekers and refugees.*” (AI 2020, 12)

Solidarity: “[...] *(takes) many forms; for example, rescuing people at sea, offering humanitarian assistance to refugees, asylum-seekers and migrants in need, preventing an unlawful deportation which would send people to face a real risk of serious human rights violations, monitoring and reporting on refugees, migrants and asylum-seekers’ rights, or protesting against anti-immigration groups that threaten them. Regardless of the nature of the act, **acting peacefully and intent/motivation are the key elements of Amnesty International’s understanding of when a person is engaging in an act of solidarity.***” (AI 2020, 12)

Human right defender (HRD): “[...] *people who engage in acts of solidarity to protect the rights of refugees, migrants and asylum-seekers as HRDs, regardless of whether they are private citizens acting in their individual capacity, volunteers or members and staff of NGOs.*” (AI 2020, 12)

People on the move = refugees, migrants and asylum-seekers

AI uses the term “irregular entry/stay” rather than “illegal entry/stay” in order to emphasize their “*call for the **irregular crossing of borders not to be addressed as a criminal matter.***” (AI 2020, 12)

3. BACKGROUND

“Under the Declaration on Human Rights Defenders, states are committed to enable and protect individuals who, alone or in association with others, act to promote and defend human rights. In reality, however, authorities and political leaders have treated acts of humanity and charity towards refugees and migrants as a threat to national security and public order, serious enough to warrant the time and resources of police, prosecutors and the courts.” (AI 2020, 13)

Why?

- human rights defenders (HRDs) have laid bare the failures of European policies on migration and asylum and their inconsistency with human rights principles and obligations which are binding upon European states
- political leaders and government representatives across Europe have chosen to exploit the migration debate for electoral gain over the responsibility to govern migration consistently with human rights obligations, often unashamedly fueling fears about migration and fostering racism and xenophobia → HRDs have found themselves on a collision course with European governments' migration policies

What has happened since 2015 when the number of people trying to reach Europe in search for safety or a better life started to peak?

- European leaders primarily focused on reducing arrivals at the EU
 - by securing the external border of the Union from irregular crossings with a focus on smugglers
 - by agreeing on an EU Action Plan against Migrant Smuggling including the European military mission in the central Mediterranean, EUNAVFOR MED
 - by increasing resources for border control executed by FRONTEX
 - by creating hotspots in Italy and Greece in order to speed up the registration process
 - by shifting external borders towards the Global South through cooperation and financial aid with foreign governments outside Europe
- According to the UN Special Rapporteur in extrajudicial, summary or arbitrary executions, *"governments' strategy to shield their countries from migration has relied on deterrence measures"* (cited as in AI 2020, 14)
- However, these measures have failed to deter people from searching safety in Europe and have instead **exacerbated the risks** of their journey
- European leaders still fail to agree on a reform of the *Dublin System*, contributing to the overall suffering as asylum seekers are required to await their legal proceedings in the country of entrance in the EU, mostly Italy or Greece, though these bureaucracies are overstrained in many respects
 - This led to bolder measures of border protection by countries at the external borders of the EU, such as Greece, Italy, Malta and Croatia, occasionally including cracking down on HRDs
- There is no option to more regularly until recent days and HRDs who offered food, shelter, clothes and/or safe lifts across borders have faced hostility and obstruction by authorities as well as cases of criminal prosecutions and convictions
- HRDs have regularly been prosecuted or have faced excessive charges for deliberately infringing the law to protest or for taking civil disobedience actions in order to, f.i. oppose deportation or protest the inhumane militarization of borders

4. HUMAN RIGHTS DEFENDERS OF PEOPLE ON THE MOVE IN EUROPE

"Human rights defenders are individuals who, alone or in association with others, act to promote or defend human rights at the local, national, or international levels. Their rights are recognized in the UN Declaration on Human Rights Defenders adopted in 1998 by consensus by the UN General Assembly." (AI 2020, 16)

- The declaration recognizes the work of HRD as a fundamental pillar of the international human rights system and shifted *"the understanding of the human rights project: from a task*

accomplished mainly through the international community and States, to one that belongs to every person and group within society.” (cited as in AI 2020, 16)

- HRDs of people on the move are facing increasing challenges inextricably linked to the treatment and policies applied to the people whose rights they defend; these restrictions often stem from (national) migration laws and policies indicating that authorities misuse those laws/policies to undermine the very rights to defend human rights
- Any national restriction on migration policies and on the right to defend human rights needs to be provided by law, be necessary and proportionate to pursuit of a legitimate aim and to correspond with the Universal Declaration of Human Rights

Restrictions to the Right of Association

- often by implementing **burdensome requirements** for HRDs and the NGOs to which they belong at the **point of registration or for seeking, utilizing and receiving funding**
- often break the allowed reasons listed in the International Covenant on Civil and Political Rights (ICCPR), namely: national security, public safety/public order, public health/morals, protection of the rights and freedoms of others

Implementing the Declaration on HRDs within the EU

- crucially needed to be implanted within the EU as *“[...] in a twist of bitter irony, across Europe, human rights defenders standing up for the rights of people in the move are being criminalized and their activities unduly restricted as a result of migration laws and policies that are designed to maintain the Fortress Europe.” (AI 2020, 19)*
- FRONTEX often views *“NGOs as adversaries potentially implicated in irregular border crossings” (AI 2020, 19)* rather than as legitimate actors that need to be protected

5. THE EU FACILITATORS’ PACKAGE: CRIMINALIZING SOLIDARITY IN EUROPE

*“In 2002, the EU adopted rules to clamp down on the smuggling of people. Aiming to harmonize member states’ legislation in this area, it adopted the Facilitation Directive, which defines **what constitutes facilitation of unauthorized entry, transit and stay**, and the accompanying Council Framework Decision, strengthening the penal framework to prevent said facilitation, [...] known together as the Facilitators’ Package [...] (requesting) member states to **criminalize (such behaviors) at national level [...].**” (AI 2020, 20)*

- Many of the criminal investigations and prosecutions brought against HRDs and NGOs rely on the crime of facilitation of irregular entry, transit and stay in the territory of an EU member state with two types of conduct that are criminalized in Art. 1(1):
 - (a) *“intentionally assisting a third country national to enter or transit across the territory of a member state, in breach of that state’s laws on entry and transit of aliens”*
 - (b) *“intentionally assisting for financial gain, a third country national to reside within the territory of a member state, in breach of that state’s laws on residence of aliens”*
- **Humanitarian Clause**, Art. 1(2): member states shall not criminalize *“conduct that facilitates unauthorized entry or transit (not stay) when motivated by the aim to provide “humanitarian assistance”*

Violating International Law and Standards protecting the Rights of Refugees and Migrants

- The criminalization of humanitarian assistance to refugees and migrants breaches the human rights of both human rights defenders and refugees and migrants
 - many cases indict the **misuse of anti-smuggling legislation**

- criminalizing irregular entry, transit and stay increases the risks faced by migrants, asylum-seekers and refugees to a range of other human rights violations, including discrimination and labor exploitation, as well as denial of access to justice and other services and basic necessities
- The Facilitators' Package departs from the internationally agreed definition of "smuggling" as contained in the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (UN Smuggling Protocol), adopted in 2000 and ratified by the EU and by all EU member states, except Ireland
 - in Art. 3, smuggling of migrants is defined 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"*
 - this article highlights the **intention of financial/material benefits** for an individual to be held criminally liable for smuggling in order to shield family members or support groups such as NGOs from punishment
 - in order to protect the rights of smuggled migrants, Art. 5 **prohibits the criminalization of smuggled persons themselves**
 - **smuggling involves consent**, even when undertaken in dangerous or degrading conditions, and is **not for the purpose of exploitation**
 - smuggling is not in and of itself a human rights abuse, although it may involve abuses → in contrast, human trafficking¹ is abusive per se
 - however, AI documented how the journeys of refugees and migrants often involve using smugglers' services, with some people becoming trafficked at some point along the route as **trafficking and smuggling can overlap and distinctions between the two are often subtle**
- The Facilitators' Package is inconsistent with states' obligations in the UN Smuggling Protocol in several ways, as
 - it criminalizes all facilitations of irregular entry and transit regardless of any profit and it does not distinguish between fair and exploitative gains when criminalizing the facilitation of irregular stay out of financial gains
 - it grants discretion when the aim of a behavior is to provide humanitarian assistance rather than shielding family members or any other support group such as religious or non-governmental organizations from criminalization
 - it does not expressly prohibit the criminalization of smuggled migrants, although its provisions must be applied in accordance with the principle of non-refoulement
- The Facilitators' Package ignores the fact that smuggling is a potentially life-saving option and that, *"when no visa is available for anywhere, and one's life or one's family future is at stake, smuggling is often the only option"*
 - this is particularly important if there are no legal and safe ways to enter Europe regularly
 - in order to **shield their external borders**, EU leaders passed policies further blurring the distinction between smuggling and trafficking, broadening the criminalization net and making criminalization look justifiable, regardless of the specific circumstances and the adverse effects to the individuals in desperate need of protection
- Legal requirements that are partly or completely ignored by the Facilitators' Package and/or the EU member states themselves
 - the 1951 Refugee Convention **prohibits the penalization of asylum-seekers and refugees for irregular entry or presence on a territory** (Art. 31), hence any administrative sanctions applied to irregular entry should be proportionate, necessary and reasonable and should never include the detention of children (cited as in AI 2020, 24)

¹ Defined as *"(involving) a form of coercion and (with the) aim (to exploit) the trafficked person"* by the UN Protocol on trafficking in persons (cited as in AI 2020, 22).

- **the right to seek and enjoy asylum** (Art. 14 of the Universal Declaration of Human Rights) requires that a person can leave and enter a state → current measures aimed at restricting this ability also restrict people’s ability to access international protection and force people to use irregular transit routes
- all states are bound by the **principle of non-refoulement** → undermined by criminalizing HRDs assisting refugees and migrants in situations in which they could be returned to or pushed back towards countries where they would be at risk
- Criminalization of human rights defenders who provide life-saving assistance may place a **state in breach of its obligations to protect the right to life** codified in multiple international instruments such as Art. 6 of the International Covenant on Civil and Political rights and Art. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; any death linked to such prohibition constitute an arbitrary deprivation of life
 - according to the Special Rapporteur on extrajudicial, summary or arbitrary executions, these violations of law are **especially pertinent to the criminalization of rescue NGOs and of those HRDs who have been helping people in distress at sea to be rescued**
 - equally important in situations in which the state prohibits or hampers the provision of basic necessities and humanitarian actors are indispensable in delivering those services
- Criminalization of HRDs carrying out search and rescue activities at sea is also inconsistent with key principles of the law of the sea, including the obligation to assist people in distress at sea regardless of their nationality, status or the circumstances in which they are found
 - this obligation is accepted as customary international law and has been codified in the international law of the sea and the integrity of the maritime search and rescue (SAR) system depends on it
 - law of sea further requires state to coordinate and ensure the provision of SAR procedures as well as the disembarkation of rescued people to a place of safety
- EU member states furthermore violate the prohibition against discrimination enshrined in many human rights treaties

Need for Reform

- Rather than consistency it has brought about **legislative ambiguity and legal uncertainty** resulting in criminal sanctions being applied in member states to “a broad range of behaviors that cover a continuum from people smuggling at one extreme to assistance at the other” (cited as in AI 2020, 20) as well as **discrepancies in transposition into domestic law which have contributed to the violation of human rights** of both, human rights defenders directly affected by the criminalization, and people they try to assist
- No accurate definition of smuggling or compulsory application of a humanitarian exemption so far
- The European Parliament commissioned a study on the effectiveness of the Facilitators’ Package recommending a legislative reform at the earliest opportunity, including
 - a “Humanitarian Exemption” as a “*bar to prosecutions, to ensure that no investigation is opened and no prosecution is pursued against private individuals and civil society organizations assisting migrants for humanitarian reasons*” (cited as in AI 2020, 25)
 - the introduction of the financial gain element to all forms of facilitation, qualified to encompass only “unjust enrichment” or “unjust profit”, thus exempting bona fide shopkeepers, landlords and businesses
- In 2018, the European Parliament updated its earlier study and confirmed its own conclusions as the evidence of unjust criminalization of individuals, groups and NGOs in several EU states dramatically increased:

- recommendation to bring the Facilitators' Package in line with the UN Smuggling Protocol as to the activities that should and should not be criminalized
- recommendation to prohibit the criminalization of humanitarian assistance which should be defined more broadly to include various forms of solidarity towards refugees and migrants, including civil disobedience
- Furthermore, the EP urged the Commission to issue guidelines specifying which forms of facilitation should not be criminalized by member states and to make sure that the law is applied with greater clarity and uniformity

6. COUNTRY REPORTS

SOLIDARITY TOWARDS REFUGEES AND MIGRANTS IN THE DOCKS IN EUROPE

“The failure of EU leaders to uphold and promote key principles of the UN Declaration on Human Rights Defenders, coupled with the lack of a clearly defined offence of human smuggling in EU and domestic legislation in many countries, has contributed significantly to the prosecution of HRDs acting to protect the rights of migrants and refugees [...]” (AI 2020, 28)

- EU leaders prioritize to control borders and immigration in order to prevent new arrivals if possible,
- they set the stage for the use of the criminal justice system alongside other state resources to pursue these aims
- furthermore, impose charges for terrorism-related offences, espionage, being part of a criminal organization, irregularities in waste disposal and trafficking in illegal waste as well as non-criminal restrictive measures
- slanderous media campaigns accompanied those developments and lowered the bar for states to proceed criminal investigation of HRDs

Types of criminalization of HRDs AI has documented (in decreasing number of frequency)

- **Acts related to the assistance to people trying to cross sea or land borders irregularly**
 - rescuing lives at sea in Greece, Italy, and Malta
 - alerting coastguards and other emergency services to the presence of people in danger at sea in Greece
 - providing people with adequate information, equipment and provisions to pursue their journey across the mountains from Italy towards France
 - giving lifts to people who seemed lost or weak or who were walking along dangerous roads in France and Switzerland
 - bearing witness to, exposing and opposing human rights violations by the authorities at borders, such as pushbacks, collective expulsions, ill-treatment or other misconduct by border guards and other officials in Croatia, France, and Italy
- **Acts of solidarity towards people who are already in Europe**
 - destitute people who are unable to access essential necessities and services, including food, water, sanitation, health care and shelter because of their irregular status
 - offering shelter, including to asylum-seekers awaiting a decision on their claim on appeal
 - carrying out acts of civil disobedience to oppose deportation exposing foreign nationals to grave dangers

6.1 CROATIA

PROTECTING PEOPLE FROM HUMAN RIGHTS VIOLATIONS AT BORDERS

“Croatian authorities have discouraged public scrutiny of its migration practices and pursued a targeted campaign against organizations supporting refugees and migrants and documenting human rights violations by the Croatian police.” (AI 2020, 33)

“(NG-)Organizations are left in a precarious situation where its activists and volunteers continue providing assistance to migrants and refugees in Croatia and monitoring police activities at the border, while at the same time fighting off attempts by the authorities to delegitimize, and potentially criminalize, their work.” (AI 2020, 33)

Croatia’s borders with Bosnia and Herzegovina/Serbia are external borders of the EU

- over the last two and a half years, Croatian authorities have engaged in a **systematic and a deliberate effort to prevent and discourage irregular entries** into the national territory and thus into the EU
- numerous allegations of **violent pushbacks and collective expulsion** from Croatian borders accompanied by **police violence and intimidation**
- as a consequence, approx. 8,000 refugees and migrants are currently stranded in Bosnia and Herzegovina, half of them in *Bihac* and *Velika Kladusa*, where they live under precarious conditions
- since 2016, Croatian authorities underwent systemic changes in their approach to migration policy and the security of their borders → from a “wave-through” policy to **increased border security and a strict, often brutal policy of pushbacks and deportations** after Croatia saw itself forced to take action against a **chain reaction** of pushbacks and expulsion from Hungary and Slovenia
- Croatian authorities consistently deny any wrongdoing and justifying the robust measures at their border by insisting on EU law (esp. *Schengen Borders Code*, allowed member states to “refuse entry” to irregular migrants) → **inconsistent reactions of EU institutions** to the growing allegation of police violence and increasing collective expulsions (AI 2020, 28ff.)
- **attempts to penalize solidarity and silence critical voices** → Ministry of Interior directly attacks HRDs and the two key organizations providing integration programs, legal aid and advocacy on migrant rights in Croatia, Are You Syrious (AyS) and the Center for Peace Studies (CMS) with a **targeted campaign**: the government publicly **discredits, defames and delegitimizes** the organizations in order to undermine the credibility of their work/reports, accuses them of facilitating illegal migration and frequently draw links between their activities and illegal actions of smuggling groups; furthermore it promotes the **narrative of fear about people on the move** gradually turning public opinion against migrants and creating conditions that broadly discourage acts of solidarity
 - **pressing misdemeanor charges**, including: the highest prescribed penalty, imprisonment, massive fines and loss of access to official centers for accommodation of asylum-seekers and detention centers for foreigners after the organizations have been found guilty according to the Art. 3 of the Schengen’s Border Code and the EU Facilitation Directive (“intentionally assisting migrants in the illegal crossing of the border”) → with the help of detailed accounts, written evidence, and recorded geo-locations related to the specific event with police, the original charges could be partly disproved by the organization during the court hearings!
 - serious reputational and psychological toll and **chilling effect** on HDRs and people who want to call out the government for its human right violations
 - **intimidation and harassment** of volunteers and activists by holding them for hours by police without formal charges and threatened with criminal prosecution for speaking out

- about police violence or visit their private homes at night and after official working hours to deliver the summons the
- public defamation has encouraged **anonymous attacks** on the organization and its staff including death threats on social media and in person, but the police does not manage/is not willing to identify the perpetrators
- **deliberate intention of the authorities to silence the critics and restrict the freedom of association**
- consequently, many activists do no longer to work in the border area and instead focus on integration activities and operations of documenting pushbacks to Bosnia and Herzegovina

6.2 FRANCE

A HOSTILE ENVIRONMENT

“The reasons [...] to undertake irregular and unsafe land journeys with a view to settle in France [...] are multiple: cultural and language ties, presence of family members, friends and community networks ready to assist (refugees and migrants and the) belief in better prospects of succeeding in starting a new life” (AI 2020, 34)

“In France, authorities have targeted human right defenders through smear attacks, police intimidation, harassment, and court proceedings, imposing undue restrictions to the right to defend human rights and violating the freedom of expression and assembly.” (AI 2020, 46)

- in Northern France, authorities have hampered aid delivery through routine identity checks, fines and other forms of police harassment
- at the French-Italian border, authorities have abused a combination of security measures to crack down on solidarity
- a flawed legislation on facilitation enables authorities to misuse the law in order to target HRDs through the courts
- criminalization of HRDs, potentially based on ideological preconceptions, as
 - the facilitation without any material gain is considered as a criminal offence being at variance with the international definition of smuggling and the humanitarian exemption from prosecution does not apply to cases of facilitation of irregular entry
 - the law does not define the behaviors that constitute facilitation; however, it criminalizes direct and indirect facilitation → causes expansive interpretation on the acts of human decency and solidarity for authorities

Crossings of the Alpine border between Italy and France (AI 2020, 34ff.)

- “secondary movements” from Italy to France are often based on the **disillusion of integrating into the Italian society** as the measures introduced by the Italian governments in 2018 (esp. abolition of humanitarian protection status and exclusion of asylum-seekers from the local authorities’ network of reception facilities) have **deprived thousands of their rights** to access health, housing and social services, education and work and hence negatively affecting their wellbeing, safety and dignity
- no accurate figures, but several thousand people are estimated to cross irregularly every year, using various points of the border
- dangerous route, esp. for people who are not trained or equipped to walk in the mountains → NGOs on both sides of the Alpine border prioritize the prevention of deaths in the mountains (through awareness work on risks and orientation, the provision with shoes and

clothes, nutrition as well as assistance for those who get lost and must be brought back to safety)

- on the Italian side of the border, an informal but well-organized network was created comprising volunteers, NGOs, the Italian Red Cross, members of the Alpine Rescue (Soccorso Alpino) and representatives of the churches
- on the French side of the border, people in Briançon opened a shelter called “Le Refuge” and started to offer food and shelter to newcomers arriving from Italy; furthermore people started so-called “*maraudes*” – collective outings in the mountains during which volunteers go on ski or on foot in the areas near the border to reach out to refugees and migrants who may be in need of help
- volunteers on the Italian side have also helped those who are pushed back by the French police, including many unaccompanied children.

Targeting solidarity in Northern France (AI 2020, 44ff.)

- While waiting to make their way to the UK, they continue to live in **dire conditions** in tents and informal camps in the area
 - the French authorities pursue a policy of preventing the establishment of so called “attachment points”, have employed a range of measures to dissuade migrants and refugees from setting up informal camps and staying in the area, have deployed large numbers of police officers
- human rights violations against migrants and refugees in Northern France include **beatings, misuse of teargas sprays, and routine forced evictions**
- the aggressive and abusive policing has contributed to creating a **climate of fear and mistrust between HRDs and the authorities** → hostile environment where those defending the rights of migrants, asylum-seekers and refugees find themselves pitted against the authorities, just for doing their legitimate work
- HRDs have been facing a **mix of intimidation, obstacles to aid delivery, and hostility aimed at discouraging their work**, much of it taking place when individuals witness evictions and ill-treatment of migrants and refugees, when they monitor police behavior during evictions, or when they denounce abuses
 - between 11/2017 and 06/2018, local humanitarian organizations started to record incidents of abuse: they counted **646 separate instances of police abuse** against volunteers and humanitarian workers, including: unjustified parking fines; photos and video recording by police officers with personal phones; frequent ID checks; body and vehicle searches; insults and threats; and several cases of assault

6.3. GREECE

FRIENDS TO FOES, THE CHANGING CLIMATE TOWARDS HRDS HELPING REFUGEES AND MIGRANTS

- the public perception and attitude towards NGOs working with refugees and migrants in Greece has shifted over time, reflecting the authorities’ changing approach to migration policies, from welcoming HRDs and the assistance they provided to people seeking safety in Greece, to an increasing suspicion and hostility
- 2015: **new registration requirements** for NGOs operating in Lesvos and created a Coordination Committee for their monitoring and a National Registry for NGOs working on international protection, migration and social integration
- 2016: first use of **anti-smuggling legislation against NGOs** → major criminal investigation of HRDs’ activities on “the facilitation of irregular entry of third-country nationals as well as that of transit and residence” with comparatively high sanctions

- 2019: further deepening of the hostility towards NGOs → the new law on international protection introduces limits to NGOs' access to reception and detention places, requiring that they obtain a prior certification by the Ministry of Citizen Protection; creation of task forces of police and immigration officers and officials from the Ministry of Labor and that of Finance to inspect NGOs activities
- 2020: the Greek Parliament passed a new law which formally established the requirements for the registration of members and staff of NGOs working on migration in a Registry under the Ministry for Immigration and Asylum
- The Greek Law on 'Immigration and Social Integration (the Migration Code) which implements the Facilitators' Package, **criminalizes both the facilitation of irregular entry into the Greek territory and that of transit and residence**
 - the element of "material benefit" is only considered as an aggravating circumstance of facilitation, despite Greece's ratification of the UN Smuggling Protocol which considers it as a constitutive part of the crime
- Greece authorities incrementally criminalize assisting on the shoreline as the case of Sarah Mardini and Séan Binder prove, both volunteering with the Emergency Response Centre International (ERCI) (AI 2020, 49ff.)
 - their prosecution has built a **complex accusation** which ties the core charge of the case, that of facilitation of irregular entry of third country nationals, aggravated by allegedly being committed as part of a criminal organization, to other allegations of money laundering, espionage, disclosure of state secrets, unlawful use of radio frequencies, forgery and fraud, accompanied by entry bans and the breach of fair trial rights
 - the charge of money laundering is linked to fundraising activities that the two volunteers carried out for **ERCI the accusation risks undermining trust in NGOs and their ability to fundraise**, a critical activity for many civil society organizations "is an inherent element of the right to freedom of association"
- In addition to targeting specific defenders, Greek authorities' recent and general remarks against NGOs reveal, at a minimum, a **lack of understanding of NGOs and HRD's role and right to operate** → Greek law lends itself to being misused to target an open-ended array of behaviors commonly conducted by HRDs working with refugees
 - also, their views on NGOs and HRDs are not consistent with EU and international standards
 - the newly introduced restrictions on NGOs risk creating an undue interference in their operations, undermining their independence and could, in turn, undermine asylum seekers' rights to access protection procedures effectively
 - **Greece authorities fail to protect humanitarian activities**, including "relief support on land" and places an unfair burden on humanitarian workers who "cannot identify whether the individual is in need of international protection"
 - the failure to protect HRDs from long judicial proceedings has significant material, reputational and psychological impact on the lives of HRDs

6.4 ITALY

CRIMINALIZATION OF SEA RESCUE NGOS: A SMEAR CAMPAIGN

- The behavior of Italian officials towards sea rescue NGOs started changing towards the end of 2016 after FRONTEX claimed that NGOs' methods of operating facilitate the smugglers' activities, that they constitute a pull-factor for people in Libya and were not cooperating sufficiently with law enforcement agencies in combatting smuggling and trafficking, and that NGOs they had contributed to smugglers

- In February 2017, the public prosecutor of Catania announced an investigation aimed at looking into the methods of operating of NGOs and into their financial sources while Italian politicians began questioning the role and real agenda of NGOs operating at sea and accusations of smuggling were pushed publicly
- Although there was no evidence of any wrongdoing by NGOs, the Senate's parliamentary inquiry recommended adopting restrictive measures for the operations of NGOs' vessels: According to the Senate, NGOs vessels were neither commercial nor state ships, but constituted a third category, performing a systematic rescue at sea activity which required a framework of clear rules → **Code of Conduct with 13 requirements for rescue** which had to be signed by July 31, 2017
 - the code constituted an attempt by the Italian authorities to limit the number of rescues undertaken by NGOs in order to reduce disembarkations in Italy, and also to press other EU states to share the responsibilities related to refugees and migrants' reception (Principle of European Solidarity)
 - while many of the requirements in the code of conduct constitute unnecessary impositions on NGOs with no demonstrable rationale that they would ensure more effective rescues, other requirements could potentially place people at risk or constitute infringements of the right to freedom of association
 - Jugend Rettet, MSF and Sea-Watch refused to sign and by September 2017, four NGOs (Moas, MSF, Save the Children and Sea-Eye) suspended their operations in the central Mediterranean due to **concerns for the safety of their crews and that they would not have been able to perform their activities consistently with their mission**
 - As a 2018 European Parliament study noted, the imposition of the code of conduct "institutionalized suspicion and introduced exceptional rules solely for civil society", it also "facilitated and encouraged the criminalization of the remaining organizations operating in the Mediterranean"
 - it subsequently became an **additional means for 'judicial harassment' of various organizations** regarding their flag state, intimidation and arrests of the staff and seizures of boats

Criminal investigation against rescue NGOs (AI 2020, 59ff.)

- Prosecutors based in Sicily have been on the frontline of the fight against people smuggling and trafficking from the coasts of north Africa for nearly a decade: the ending of Mare Nostrum, new smuggling tactics and the fear of losing state control of migration flows through the action of NGOs **paralyzed authorities** → since 2017, at least 13 criminal investigations have been opened in Sicily against rescue NGOs
- However, the way in which Italian legislation defines and punishes smuggling is one significant contributing factor to the **failure of the state to protect and enable human rights defenders and their life-saving activities at sea**
 - Article 12 of Italy's Immigration Act punishes conducts aimed at facilitating the irregular entry of a foreign national into the territory of the state, regardless of financial or material profit from the facilitation of irregular entry
 - the interpretation of the state of necessity exemption in rescues carried out by NGOs decides if NGOs are to stand trial (though, most refugee and migrants' boats from Libya correspond to an inherent state of distress)
 - even though the state of necessity defense and the duty to provide life-saving assistance exonerate sea rescuers from punishment, they do not bar prosecutors from opening investigations → **NGOs' crews in Italy continue to face criminal proceedings**, which take a heavy toll on the lives of those accused and can be irretrievably damaging to the organizations

New laws tailored-made to target rescue NGOs (AI 2020, 64ff.)

- In March 2019, Italy's Minister of Interior issued a directive instructing all authorities responsible for maritime border controls to **prevent entry and disembarkation in Italy of vessels that had conducted rescue operations**, other directives followed between April and May **banning the entry of specific NGO vessels** which had just undertaken or were about to undertake rescue operations
- the Minister of Interior accused NGO vessels of conducting rescue operations autonomously or of ignoring the instructions of the competent maritime authorities, including the Libyan coastguard; of exploiting search and rescue obligations for their own ends; of lending themselves to being used by smugglers for their criminal ends, thus incentivizing irregular crossings; of carrying out "planned and intentional" transportation of migrants towards Europe and a "mediated" cooperation with smugglers thus of facilitating the irregular entry of unauthorized foreign nationals → **the directives contain no reference to people in need of protection, such as refugees**
 - these policies resulted in a politically motivated criminalization of civil society and contributed to rising xenophobia and potentially to discouraging rescue at sea by other commercial vessels
 - In May 2019, six UN experts wrote to the Minister of Foreign Affairs expressing grave concerns about the failure of the directives to reflect Italy's obligations under international law and about the expected impact of the directives on the safety and human rights of refugees and migrants, as well as on NGOs → however, the Italian government implemented a "**closed ports**" **policy** in order to prevent the disembarkation in Italy of refugees and migrants rescued at sea
- According to the new law, authorities are granted the power to forbid or restrict vessels from entering, transiting or staying in Italian territorial waters, in case of concern for public order and security and when the vessel may be engaging in the loading and unloading of people in violation of the country's immigration laws → in case of breach of the entry, transit and stay ban, the shipmaster and the ship owner are subjected to an administrative fine ranging between 150.000 and 1.000.000 EUR, the vessel is impounded and the shipmaster can be arrested in the act if they resist or commit "violence" against a warship

Impact of the criminalization of rescue NGOs (AI 2020, 69)

- The long criminal investigations and the impoundments have taken a heavy toll on NGOs
 - they have had to use their limited resources to defend their staff and members in court and to try to get back their vessels
 - their reputation has been tarnished just through smear campaigns and the airing of baseless suspicions by people in authority
- Meanwhile, **people on the move have been left even more vulnerable** due to forced returns to Libya or unnecessary suffering on rescue boats for weeks because of "closed ports" provisions in Italian law
- The measures taken by Italy and the EU to prevent the arrival of people from Libya by outsourcing border control activities to Libyan authorities have **undermined the SAR system** relying on the duty to save people in distress at sea without discrimination

6.5 MALTA

REFUGEES, MIGRANTS AND RESCUERS IN THE DOCK

"Determined to retain a huge search and rescue region which it has no means to patrol directly, (Malta) has traditionally interpreted its obligations regarding search and rescue at sea in a restrictive

manner to limit the need to provide assistance and offer disembarkation on the island only to cases for which it regards itself as responsible.” (AI 2020, 70)

- Malta allowed NGOs to use the island as a base for operations, accepted the occasional medical evacuations and generally provided support within the limits of its restrictive interpretation of the law of the sea
 - When Italy began to withdraw from SAR activities near Libyan coasts, Maltese authorities also refused to allow NGOs to disembark on the island on several occasions and took steps to obstruct their activities and dissuade them from operating in Malta
 - the country has been at the forefront of efforts to agree on predictable disembarkation arrangements among EU member states and has accepted the disembarkation of over 2,000 people, however it **contributed to prolonging the suffering of rescued refugees and migrants and of NGOs crews left stranded at sea for days on end** on multiple occasions
- the Maltese Prime Minister made **baseless references to the NGO’s possible collusion with smugglers** and opened several criminal investigations against NGOs
 - including the case of Claus Peter Reisch, the captain of the Lifeline, who was accused of entering Maltese waters with a ship that had not been appropriately registered in its flag state, the Netherlands → the criminal prosecution was defeated, but not before having caused the lifesaving activities of a small NGO to stop for some 18 months and having put considerable financial strain on the accused and the NGO
 - 2018, Maltese authorities launched investigations to ascertain that the operations of other similar “entities” to the Lifeline, using Maltese ports and operating within its waters, were being conducted in accordance with international and national rules, including as to the registration of vessels → by doing so, Malta prevented the vessels of NGOs Sea-Watch and Seafuchs from leaving its ports as well as the aircraft Moonbird from flying on several occasions since May 2018
 - The case of El Hiblu 1 (cf. AI 2020, 71ff.): pending a formal indictment, three teenagers have been charged with nine very serious offences, including under anti-terrorism legislation → the severity of the nine charges currently laid against the three youths appears disproportionate to the acts imputed to the defendants and do not reflect the risks they and their fellow travelers would have faced if returned to Libya, **the use of counter-terrorism legislation is especially problematic**

6.6 SPAIN

PREVENTING SHIPS FROM SAVING LIVES IN THE CENTRAL MEDITERRANEAN

“The Spanish authorities had no issue with Spanish NGOs rescuing people in the central Mediterranean and with the lawfulness of their actions, until the Italian government started refusing the disembarkation in Italy of people rescued at sea [...] Spain decided to take a convenient shortcut and began hampering the activities of rescue NGOs, even if this meant restricting their activities in ways that are not consistent with international law and standards.” (AI 2020, 76)

- Spanish authorities misused national maritime administrative law regulating the granting of ship clearance to curb rescue operations conducted by NGOs in the Central Mediterranean, which in the end prevented human rights defenders from saving lives at sea
 - two arbitrary requirements, not foreseen in legislation: agreement on disembarkation in the Central Mediterranean and conformity with requirements of the competent SAR authorities → these requirements (including technical requirements necessary for

SAR operations) were arbitrarily imposed by Spanish authorities and appear to be at variance with established principles under the Law of the Seas, in particular the principles of freedom of navigation in the high seas and the duty to render assistance to people in distress at sea

- the case of the Open Arms → the Open Arms was granted permission to head towards the Aegean Sea, but only to bring humanitarian aid to the Greek islands as it allegedly lacked authorization to conduct SAR operations, or even to navigate in the area → these requirements appear problematic since assisting people in distress at sea is an obligation under international law for any shipmaster → However, tensions between the NGO and the Spanish government intensified again in August 2019, when the Open Arms rescued 124 people in the Central Mediterranean, hence the Spanish political party Vox filed a criminal complaint against the NGO for aiding illegal migration and collaboration with smuggling criminal organizations which was eventually dropped in October 2019
- Port Authorities denied clearance motivated by the lack of agreement among EU states on where to disembark people rescued in the Central Mediterranean
 - the case of Aita Mari → SMH risks fines and sanctions, despite having committed to perform SAR operations only under the coordination of competent SAR authorities as they were confronted with huge obstacles and a repeated delay
- the authorities contributed to further reducing available assets with SAR as their primary purpose in the Central Mediterranean
- also, they tarnish NGOs' reputations and try to undermine the legitimacy of their activities

6.7 SWITZERLAND

NO PLACE FOR COMPASSION

“Authorities in Switzerland are misusing charges of facilitation of irregular entry and stay to prosecute and penalize legitimate human rights activities, such as providing shelter, food and assisting refugees and migrants to access international protection.” (AI 2020, 83)

- Switzerland, as a party to the Schengen and Dublin agreements, falls under the EU Returns Directive and applies the so-called Facilitators' Package → however, a combination of a strict application of EU migration rules and the national legislation criminalizing such assistance led to **widespread prosecutions of acts of solidarity** and has a **significant deterring effect**
 - number of asylum applications in Switzerland has reached its lowest level since 2007
 - with more than 15%, the percentage of returned asylum applicants is comparatively high → Switzerland has made the **most so-called “Dublin referrals”** than any other European state
- The differentiation between penalties for aggravated and non-aggravated facilitation remains problematic, as
 - the Law on Foreigners is not in line with the UN Smuggling Protocol (it does not require facilitation to include a material or financial benefit or profit to constitute a criminal offence)
 - also, it does not provide for a humanitarian exemption excluding acts of solidarity from prosecution

- many criminal records result from helping family members and friends in an irregular situation → in cases of those who were non-Swiss nationals, these acts of solidarity jeopardize their immigration status
- Swiss authorities opened **several cases of facilitation of irregular entry** against activists who have supported asylum seekers and protected the rights of people on the move
 - also, they **forcibly deported asylum seekers** back to Italy, as it was the case for Mr Ashuqullah (AI 2020, 81)
 - Swiss and Italian **authorities failed to defend the rights of unaccompanied children and other vulnerable people** at their border, executed pushbacks and denied the right to asylum → activists stepped in and supported people in seeking international protection at high costs → in the case of Lisa Bosia Mirra (AI 2020, 80ff.), her acts of solidarity were persecuted in court and had damaging consequences on her private and professional life, including the termination of her job

6.8 UNITED KINGDOM

THE CASE OF THE “STANSTED 15”

“In the United Kingdom, 15 human rights defenders, known as the “Stansted 15”, took non-violent direct action to stop a charter flight due to deport 60 individuals to Nigeria and Ghana in March 2017. [...] As a result of the “Stansted 15”’s action, 11 people due to be deported were allowed to stay in the UK to pursue their claims in the immigration and asylum system. As of March 2020, at least four of them had been granted the right to remain in the UK.” (AI 2020, 84)

- On arrest, they were **charged with aggravated trespass as well as with “endangering safety at aerodromes”** → a serious terrorism-related charge which carries a maximum penalty of a life sentence
 - they were found guilty but were **not granted a justification defense**
 - Amnesty International considers the “Stansted 15” to be HRDs, thus the charges (suspended jail sentences and community orders) were excessive and may have been brought to **discourage other activists from taking non-violent direct action in defense of human rights**
 - after their conviction, several UN human rights experts, wrote to the UK authorities expressing concerns at the use of such disproportionate charges and calling on them to “refrain from applying security and terrorism-related legislation to prosecute peaceful political protesters and critics of State policy who are engaged in non-violent expression, protest and political advocacy

7. CONCLUSION AND RECOMMENDATIONS

- Attempts by the authorities to restrict and punish their activities and of virulent smear campaigns and denigration by politicians, representatives of institutions, commentators and anti-immigration groups
- European leaders shifted their attention towards ways of preventing departures from Libya and reducing the number of people reaching Europe
- Europe had decided that refugees and migrants had to be contained in Libya, despite the real risks of human rights abuses they would suffer there. By this time, the presence of NGO vessels trying to rescue refugees and migrants fleeing from Libya to disembark them in Europe had become an obstacle to the implementation of EU leaders’ strategy to keep them there

- European leaders have implemented strict border and migration control measures focused on reducing departures of people from northern Africa and Turkey, on making Europe's external borders hard to access for them and on containing them in the countries of first arrival in Europe (AI 2020, 85)
 - they used the fight against human trafficking, smuggling and occasionally that against 'terrorism', as justifications for exposing refugees and migrants to grave risks to their lives and safety
 - national and EU authorities challenged the primacy of the right to life in dignity and without discrimination as well as to seek asylum
- During the past three years, many HRDs have found themselves on trial, their rights violated and their lives on hold → the public questioning of their motives has undermined the very notion of solidarity
- Radically new migration policies that do not compromise on the protection of the human rights of refugees and migrants, are very much needed throughout the EU
 - it is urgent to end the criminalization of HRDs by changing relevant legislation through a reform of the Facilitators' Package
 - at national level, states must remedy the impact of the misuse of criminal law and of other legislation, policies and practices against HRDs
 - European states must work towards the full implementation of the UN Declaration on HRDs in Europe

This abstract refrains from any specific recommendation concerning the EU or its member states as those are already summarized by Amnesty International itself (see: AI 2020, 85-90).