

The Criminalization of Irregular Migration in Italy

Hyla Jacobson
Mediterranean Migration Mosaic
May 13th, 2016

Introduction

“Is immigration illegal?” was one of the first phrases that came out of Obum Okoye’s mouth at the Casa Dei Diritti Don Gallo, a home for migrants in Padua, Italy. Obum is from Nigeria and made his journey to Libya and then to Lampedusa after traveling by boat for two long days. Before he would talk to my colleagues and me about anything, he asked us for our thoughts on immigration to test how we would respond to him. As we convinced him that we did not see immigration as a crime, that it should be a right people have, he felt comfortable opening up to us and sharing his story.¹ It makes sense that Obum would want to gauge our feelings on migration before he shared his personal story with all of us, because there are many people who would consider his migration to be a crime.

The criminalization of irregular immigration is nothing new. Irregular migration, defined by the European Migration Network as “movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries” is often used synonymously with other words such as “clandestine” or “illegal” migration.² A strong association exists between undocumented migration and crime. Political groups, media, and European Union policies often conflate the idea of migration and crime and argue for stricter immigration control. But, in most places migration is not considered a criminal act against the law. “Being in a country without the required papers is, in most countries, not a criminal offence but an administrative infringement.”³ If immigration is typically not classified as a criminal offense, why has it become criminalized? How has it become criminalized? How

¹ Obum Okoye, Interview. Padua, Italy. March 2nd, 2016.

² “Asylum And Migration Glossary 3.0.” European Commission. 2014. Retrieved April 10, 2016 (http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf):173.

³ Ibid.

do these definitions of migration and crime change over time? Who decides who is considered a criminal?

Current debates rage over the influx of irregular immigrants into Europe, but some raise concern, and criticize the European Union over its violations of these immigrants' human rights. According to Article 2 of the Treaty of the European Union, the EU's founding values are "human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."⁴ The European Union prides itself on its recognition and treatment of human rights; however, with the recent increased trend of migrants it seems that these principles are being compromised. As more migrants try to make their way into Europe, the EU is burdened with the task of securing its borders, and as a result, is exercising internal pressures to criminalize migrants in particular member states that are located at the initial ports of entry into Europe. These member states located along the Mediterranean, such as Italy, Greece, and Spain, face pressure from the EU to reduce the number of migrants entering into Europe via their countries. The EU may espouse its respect for human rights, but the pressure it puts on these border countries to limit migrants' entry into the EU, has forced these countries to adopt laws that criminalize the act of irregular migration and, ultimately, deprive migrants of their human rights.

This paper will look specifically at Italy and its criminalization of irregular migrants. The major focus of this paper will be Italy's immigration laws and their Centers for Identification and Expulsion (CIEs) and how they criminalize the act of migration in Italy. These CIEs violate

⁴ "Consolidated Version of the Treaty on European Union." EUR-Lex: Access to European Union law. Retrieved April 26, 2016 (<http://eur-lex.europa.eu/legal-content/en/txt/?uri=celex:12012m/txt>).

human rights, which breaches international human rights agreements, as well as the Italian constitution. Migrants are treated inhumanely as they lack basic human rights in these CIEs and are treated like criminals, although they have never actually committed any crime. It is important to acknowledge the individual migrants who are subject to these inhumane laws and treatment in the CIEs. The humanity of these subjects often gets forgotten when studying the topic as more attention is paid to policies, laws, and the statistics surrounding migration. However, the people on the ground who are the ones actually interacting with the irregular migrants show there are people who do not want to criminalize them and instead see them as human beings just hoping to achieve a better life.

Literature Review

Large amounts of preexisting literature exists on the history of Italian immigration laws regarding irregular migration and the CIEs as well as the criminalizing effects of them on irregular migration. I developed my initial research on this topic from the report “The Criminalization of irregular immigration: law and practice in Italy” (2012) by Alberto di Martino, Francesca Biondi Dal Monte, Ilaria Boiano, and Rosa Raffaelli. This work gives a thorough overview on the Italian immigration laws and on the CIEs. These authors found that Italian policies on irregular migration and the CIEs did not comply with the EU’s Returns Directive as well as with other international agreements. They also found that Italy’s day-to-day practice of immigration enforcement does not even comply with Italian law and is unconstitutional. Italian laws and practices, such as the CIEs, which exercise major human rights violations, criminalize irregular migrants as they are treated like criminals by these laws and

institutions.⁵ Mark Provera in his article “The Criminalization of Irregular Migration in the European Union” (2015) explores the clear criminalization of irregular migration in many of the EU member states, including Italy. Provera concludes that, as set by EU law, irregular migration practice should be grounded in administrative law, but many member states like Italy, have characteristics that identify irregular migration as a criminal sanction and use criminalizing features, such as the detention centers. Many member states use criminal law to pursue immigration outcomes when administrative law measures will not provide the state with the outcome they want, leading to the creation of a criminalizing stigma around irregular migrants. The use of criminal law in regards to irregular migration challenges the rule of law established by EU international, supranational and regional human rights obligations.⁶ The article “The European Returns Policy and the Re-shaping of the National: Reflections on the Role of Domestic Courts,” (2012) by Elisa Fornalé, explores the Italian government’s ambivalence towards implementing the EU’s laws in regards to irregular migration. It is ultimately up to the member state to decide what, and how, to implement EU policies although they are technically bound by EU law. She notes the Italian government’s choice to adopt legislation that criminalizes irregular migration, instead of having it be considered an administrative offense. She also notes objections to criminalizing irregular migration, as it is a victimless offense, only violating law, but not directly harming anyone. Thus, it is important that there be harmonization within the EU member state for the removal, and treatment, of irregular migrants to ensure

⁵ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy."

⁶ Provera, Mark. 2015. "The Criminalisation of Irregular Migration in the European Union." CEPS Liberty and Security in Europe no. 80/2015.

human rights are respected.⁷ The 2013 United Nation Report by the Special Rapporteur on the human rights of migrants, François Crépeau, reports on the status of migrants' human rights in Italy. This is one of the most current sources that notes the recent decriminalization of irregular migration in Italy. The Special Rapporteur sees this as a positive step, but remains concerned about the actual implementation of this law. The Special Rapporteur also notes the still prevalent human rights violations in regards to the detention system as it is hard for those detained to get a lawyer, or interpreter, to help with their appeals and other processes. He, therefore, recommends many things to be done in order to ensure irregular migrants' human rights are being protected in Italy, such as the creation of a national human rights institution to promote the protection of human rights as well as improving the conditions of the CIEs.⁸ Finally, in the article, "Foreigners and immigrants in Italy's penal and administrative detention systems," (2013) Asher Colombo focuses on the CIEs in Italy, describing their development, management, and operation. He notes that there has been consistency in both the left wing and the right wing political parties in Italy as they both have supported these CIEs and increased sanction levels for irregular migrants.⁹

These works form the basis for my understanding, and examination, of Italian laws on irregular migration and the use of the CIEs. However, when analyzing these various articles and reports, these scholars lack first hand perspectives from irregular migrants and from those people in close contact with them, such as the local governments that first receive them, or the doctors that may care for them. These works predominately look at the criminalization of irregular

⁷ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):134.

⁸ Crépeau, François. 2012. "Report of the Special Rapporteur on the Human Rights of Migrants." *UN Doc.A/HRC/20/24. Report Presented at the Human Rights Council, 20th Session. Geneva.*

⁹ Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):746-759.

migration in terms of laws, policies, and statistics resulting in a lack of a humanizing perspective on the situation. My analysis, based on field research, seeks to show these perspectives from people on the ground, who are interacting with migrants, which are often hidden from academic work. This will give further insight into this situation in Italy concerning the criminalization of irregular migrants, since academic sources often give the mainstream perspective that the EU and the Italian government are criminalizing migration through their laws, policies, and institutions. My insight through interviews, predominately in Lampedusa, gives the perspective of those people receiving and interacting with these migrants, not just from the legislative body that is removed from the direct situation and only makes the policies and laws, but does not have interactions with the actual migrants themselves. This outlook adds in a humane perspective to these academic works, which are predominately based in statistics and policies.

Research Methods

This paper draws its findings from a literature review of research on irregular migration into Italy. It draws on research on the history of irregular migration to the EU, specifically Italy, as well as laws and policies at the EU and Italian levels that address irregular migration in order to contextualize this situation in the past and in the present. This paper also draws on raw data from three weeks of ethnographic fieldwork in Bologna, Padua, Palermo, and Lampedusa, Italy. The Mediterranean Migration Mosaic team conducted interviews with various government officials, a United Nations representative, associations that work with migrants, as well as oral histories from migrants living in Italy currently. Interviews ranged from informal conversations to hours' long formal interviews. This paper will particularly draw upon interviews and fieldwork done in Lampedusa, including an important interview with doctor Pietro Bartolo, who receives migrants and cares for them once they are in Lampedusa. He recognizes the humanity,

instead of criminality, of these migrants and suggests solutions for the situation. This paper will also focus on an interview with the mayor of Lampedusa, Guisi Nicolini, and her opinions on how immigrants should be classified and treated as well as her solutions to the problematic situation. These various types of research and raw data all work to shed light on the criminalizing laws and actions of Italy in regards to their treatment of irregular migrants.

The Act of Migration

According to renowned historians of migration, Jose Moya and Adam McKeown in their essay “World Migration in the Long Twentieth Century,” the act of migrating, moving from one place to another, is a “basic feature of the human species.”¹⁰ The act of migrating has been a fundamental part of society for all of time and continues to be a major feature of human nature. Migration has made the world we live in today as this movement made the appearance of our own species possible around 150,000 years ago.¹¹ Migration is responsible for connecting all of the continents since 15 C.E., and creating the political, social, and ethnic scenes of the world we live in today.¹² Especially in the decades since 1840, the world has seen mass movements of people.¹³ However, with this mass movement of people also comes the increase in border controls and limits on migration. In today’s world there seems to be the promotion of the “free movement of goods, capital, technologies, information, and culture, but not of people.”¹⁴ The limits on the migration of people seem to get more and more severe as time goes on. According to article 13 of the Universal Declaration of Human rights “(1) Everyone has the right to freedom

¹⁰ Moya, Jose C. and Adam M. McKeown. 2011. *World Migration in the Long Twentieth Century*. Washington, DC: American Historical Association.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

of movement and residence within the borders of each state. (2) Everyone has the right to leave a country, including his own, and return to his country.”¹⁵ However, it appears that migration is not seen as a recognized right in many places as “borders have shaped our knowledge of migration as deeply as the process of migration itself.”¹⁶ Today seems that border control appears as frequently in the media and political spheres as migration itself.

The European Union Dilemma

The EU is no stranger to being on the receiving end of mass migrations, especially today as many migrants are trying to enter into the EU through countries along the Mediterranean such as Italy, Greece, and Spain. This influx of migrants creates a strain on the EU and causes the perceived need for increased border controls. Before the 1970s, migrations were predominately made by migrants in Southern Europe to Northern and Western Europe, such as from Italy to Germany. However, after the oil crisis in 1973, migration to Northern and Western European countries for jobs decreased dramatically. In the late 1980s, the majority of migrations to the EU began happening to the Southern European countries. These Southern European countries, starting with Italy, began receiving, instead of sending, migrants. Waves of migration to these Southern European countries came from Central and Eastern European countries as well as from Asia and Africa.¹⁷

The EU faces the dilemma between protecting human rights, a foundational principle they pride themselves on versus securing their borders. According to the European Union “respect for human rights and dignity, together with the principles of freedom, democracy,

¹⁵The United Nations. 1948. *Universal Declaration of Human Rights*.

¹⁶ Moya, Jose C. and Adam M. McKeown. 2011. *World Migration in the Long Twentieth Century*. Washington, DC: American Historical Association.

¹⁷ Triandafyllidou, Anna. 2010. *Irregular Migration in Europe: Myths and Realities*. Surey, England: Ashgate Publishing Limited: 9-11.

equality and the rule of law, are values common to all European Union (EU) countries. They also guide the EU's actions both inside and outside its borders.”¹⁸ However, when we look at the EU's methods of border control and their treatment of irregular migrants this “respect for human rights” is not seen. In his work “Mediterranean Crossings: The Politics of An Interrupted Modernity” esteemed professor of history, Iain Chambers, notes “today's walls, fences, surveillance, and detention announce discrimination, apartheid, exclusions, and new hierarchies.”¹⁹ It is increasingly hard, and expensive, for migrants to get an entry-visa to formally get access into the EU. This has resulted in a large portion of international migration occurring irregularly outside of the law and of legal safeguards. Migrants must find other means to make it into the EU. The risks they need to take increase greatly, often resulting in them taking treacherous illegal journeys organized by smugglers that put their lives at risk.²⁰ Iain Chambers, notes this relation between human rights and border controls:

So Europe and the Mediterranean—how they come to be defined and regulated—emerge from a legal configuration in which human rights go largely unrecognized in the elaboration of juridical confines and citizenship. It is these that establish the borders between the ‘inside’ and the ‘outside,’ between belonging and expulsion. The ‘illegal’ migrant lies beyond the law and is fundamentally without rights.²¹

As the EU continues to increase its border controls and define its territory, irregular migrants are often left without even the basic respect for their human rights due to the EU's strict border control policies.

¹⁸ “Human Rights.” EUR-Lex: Access to European Union law. Retrieved April 10, 2016 (http://eurlex.europa.eu/summary/chapter/human_rights.html?root_default=sum_1_coded=13).

¹⁹ Chambers, Iain. 2008. *Mediterranean Crossings: The Politics of An Interrupted Modernity*. Durham and London: Duke University Press: 3.

²⁰ Monzini, Paola. 2007. "Sea-Border Crossings: The Organization of Irregular Migration to Italy." *Mediterranean Politics* 12(2):163-4.

²¹ Chambers, Iain. 2008. *Mediterranean Crossings: The Politics of An Interrupted Modernity*. Durham and London: Duke University Press: 4.

The EU's policy of border management is an "integrated border security approach." It includes policies of border control as well as working with third countries, through readmission agreements to facilitate the return of irregular migrants to their countries of origin, or transit.²² The EU's borders are monitored by Frontex, which was established in 2004. According to its website, the mission of Frontex is to "[promote, coordinate and develop] European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management."²³ Frontex helps the various border authorities in each EU country by working with them to protect the EU's external borders.²⁴ The EU uses the exclusionary enforcement policy of deterrence to stop migrants before they reach EU territory. The common deterrence practices include: "interception at sea, bilateral agreements to return those intercepted, and detention of those making unauthorized entry somewhere during the transnational journey."²⁵ Human Rights Watch has charged Frontex for their inhumane treatment of migrants.²⁶ Clearly the EU's proclaimed dedication to the human rights of all is less of a priority than the protection of its borders.

Each member of the EU feels affected by migration because no member state, given the Schengen Agreement (1985), is immune once the migrant can travel to other places within the EU.²⁷ The EU has responded to this by putting internal pressure on the border countries, like

²² Triandafyllidou, Anna. 2010. *Irregular Migration in Europe: Myths and Realities*. Surey, England: Ashgate Publishing Limited:27-30.

²³ "Frontex: Mission And Tasks." 2016. Frontex. Retrieved April 27, 2016 (<http://frontex.europa.eu/about-frontex/mission-and-tasks/>).

²⁴ Ibid.

²⁵ Mountz, Alison and Jenna M. Loyd. 2014. "Constructing the Mediterranean Region: Obscuring Violence in the Bordering of Europe's Migration "Crises"." *ACME: An International E-Journal for Critical Geographies* 13(2):178.

²⁶ Ibid., 186.

²⁷ Triandafyllidou, Anna. 2010. *Irregular Migration in Europe: Myths and Realities*. Surey, England: Ashgate Publishing Limited:26-7.

Italy, in order to protect themselves from migrants entering into their countries. Other member states have blamed Italy, and the other external border countries, for the penetrability of their borders and their lack of power in stopping irregular migration.²⁸ Today, the EU and its individual member states have created an intricate set of border controls that stretch outwards over the waters of the Mediterranean Sea and into the Maghreb; the goal of which is to exclude and remove the outsider.²⁹ Ultimately, though, international human rights institutions and the European Convention of Human Rights bind the EU to uphold the human rights of migrants. These state that the “rights and freedoms are applicable to everyone in the jurisdiction of the contracting parties, including migrants in an irregular situation.” The EU cannot deprive irregular migrants of basic human rights that are shared by all human beings, but they continue to do so.

The European Union’s Policy on Irregular Migration: The Return’s Directive

The major EU policy regarding irregular migration is the Returns Directive, which was established in 2008. The goal of the Directive was to create common standards and procedures in member states for returning illegally staying third country nationals.³⁰ The European Migration Network defines a third country national as “any person who is not a citizen of the European Union.”³¹ Anneliese Baldacci, an EU committee specialist, gives a good overview of the Returns Directive in her article “The Return and Removal of Irregular Migrants under EU Law: An

²⁸ Triandafyllidou, Anna and Maurizio Ambrosini. 2011. "Irregular Immigration Control in Italy and Greece: Strong Fencing and Weak Gate-Keeping Serving the Labour Market." *European Journal of Migration & Law* 13(3):252.

²⁹ Chambers, Iain. 2008. *Mediterranean Crossings: The Politics of An Interrupted Modernity*. Durham and London: Duke University Press: 4.

³⁰ Baldaccini, Anneliese. 2009. "The Return and Removal of Irregular Migrants Under EU Law: An Analysis of the Returns Directive." *European Journal of Migration & Law* 11(1):1.

³¹ 2014. “Asylum And Migration Glossary 3.0.” European Commission. 2014. Retrieved April 27, 2016 (http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf):283.

Analysis of the Returns Directive.”³² Member states can exclude certain groups of the third country nationals from the scope of the Returns Directive, such as those “who are refused entry, or stopped in connection with an irregular crossing of the external land, sea, or air border of a Member State and were not later allowed to stay in that Member State.”³³ Third country nationals who are being removed for criminal reasons are also excluded from the scope of the Returns Directive. This can be an issue as those outside the scope of the Returns Directive can be returned, or removed, without the minimum legal guarantees provided by the directive leading to less protection of individual rights.³⁴ Under the Returns Directive, member states are required to issue a return decision to every third country national staying illegally on their territory. In order to recognize human rights, member state are supposed to “‘take due account’ of the best interests of the child, family life, the state of health and of the third country national concerned and to respect the principle of non-refoulement” when making returns decisions.³⁵ However, it is up to the discretion of the member state to decide whether to issue a return decision, and often times human rights do get violated.

The Directive embraces voluntary over forced return, and provides that in their return decisions, member states must allow for a voluntary departure period between 7 and 30 days. However, there are exceptions to this rule that member states can apply, like if they think there is a large risk the irregular migrant might abscond, leading to possible discrepancies between the applications of the Returns Directive among member states.³⁶ If the third country national has

³² Baldaccini, Anneliese. 2009. "The Return and Removal of Irregular Migrants Under EU Law: An Analysis of the Returns Directive." *European Journal of Migration & Law* 11(1):1-17.

³³ *Ibid.*, 3.

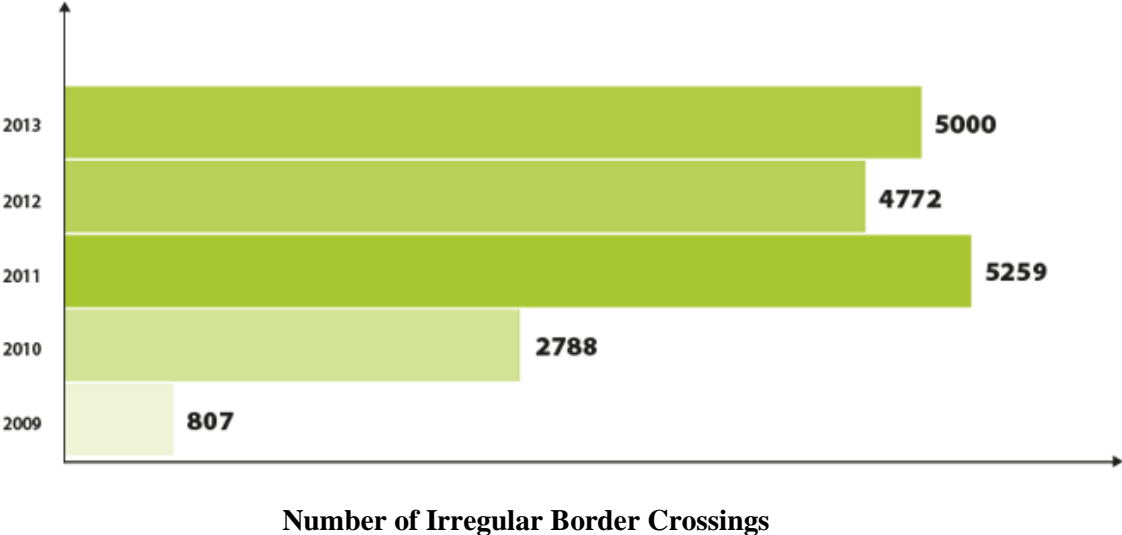
³⁴ *Ibid.*, 3-4.

³⁵ *Ibid.*, 7.

³⁶ *Ibid.*, 8.

not left during the voluntary removal period, member states must enforce the removal. “Removal may be enforced as a last resort by the use of coercive measures but these must be proportional, not exceed reasonable force and be in accordance with human rights and the dignity and integrity of the person concerned.”³⁷ The Returns Directive also sets up re-entry bans on the irregular migrant from re-entering the entire territory of the EU after the return decision has been issued and the migrant has been removed. The re-entry ban is also largely based upon the discretion of the individual member states as the EU only set that the ban should not exceed more than 5 years.³⁸ This is meant to be a deterrent to migrants wanting to enter the EU illegally, but does not succeed in this as migrants still frequently enter into the EU irregularly.

Illegal Border Crossings on the Apulia and Calabria Route

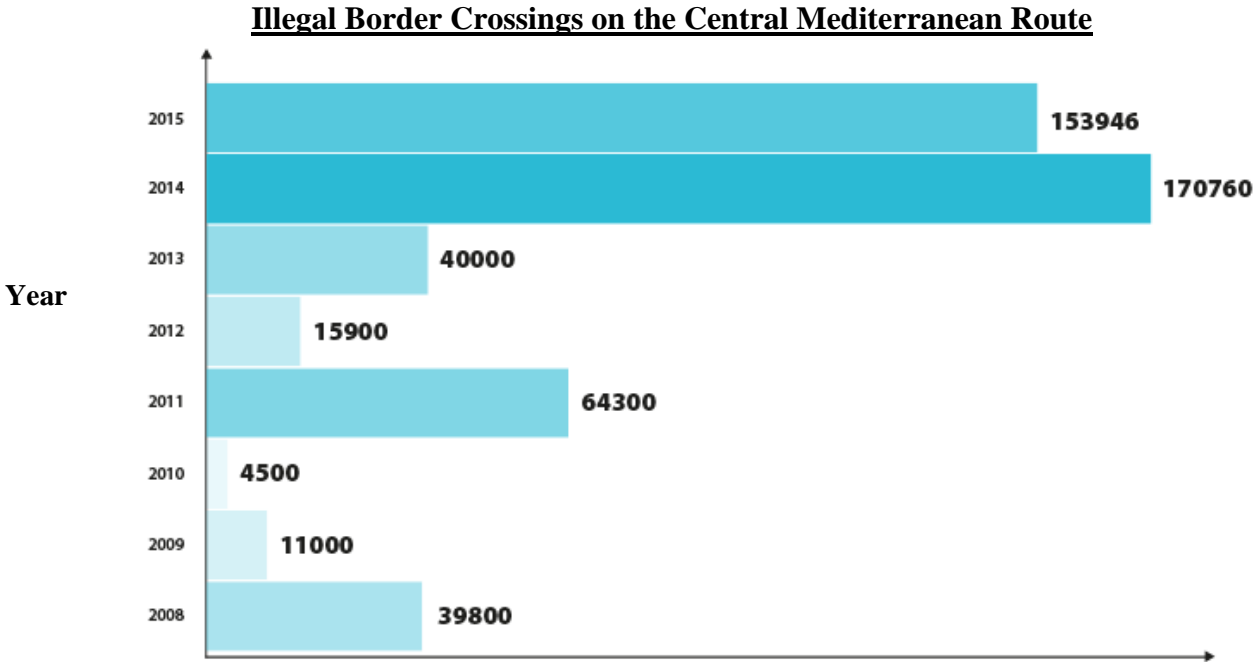


Source: <http://frontex.europa.eu/trends-and-routes/apulia-and-calabria-route/>

The graph above shows the illegal sea border crossings on the Apulia and Calabria route from 2009 to 2013. The Apulia and Calabria route is predominately used by migrants coming

³⁷ Ibid
³⁸ Ibid., 10

from Turkey or Egypt as well as for movements between Italy and Greece. This route is not a large source of irregular entries into the EU, but is still a source of great concern for border authorities in the EU. The graph below shows the illegal sea border crossings on the Central Mediterranean route from 2008 to 2015. The data from 2014 and 2015 includes data from the Apulia and Calabria route as many migrants disembark in Apulia and Calabria and get detected in the Central Mediterranean area. The Central Mediterranean route consists predominately of migrants coming from the Northern Africa countries of Libya and Tunisia into Italy through the Italian island of Lampedusa. This is a very popular route for illegal sea border crossings into the EU.³⁹ These graphs demonstrate the continuous presence of irregular migration to the EU despite the efforts of deterrence from the Returns Directive.



Source: <http://frontex.europa.eu/trends-and-routes/central-mediterranean-route/>

³⁹ “Frontex: Migratory Routes Map.” 2016. Frontex. Retrieved May 8, 2016 (<http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>).

The Returns Directive also established a common minimum set of legal safeguards on decisions related to returns to protect the individuals concerned as well as sets rules on the detention of irregular migrants. The Directive states that “Member States may *only* keep in detention a third country national who is subject to return procedures, in order to prepare return and/or carry out the removal process, *in particular* (i) when there is a risk of absconding or (ii) if the person concerned avoids or hampers the removal process.”⁴⁰ A six-month detention period is permitted and there can be a possible 12-month extension if the person is “uncooperative with the removal process or in the case of delays in obtaining documentation.”⁴¹ Member states can decide if they want to increase their detention periods to the maximum under the Directive. The Directive also sets the standards of the detention centers, such as the right to contact legal representatives and family members, the provision of emergency health care, the right to be provided with information, and other conditions that must be met.⁴² However, human rights groups have criticized many member states’ detention centers for their poor conditions, so clearly these guidelines established by the Returns Directive are not being upheld.

There are many problems that can, and have, arisen with the Returns Directive. This directive tries to set out a harmonious set of standards for removing third party nationals to protect human rights. Although it is EU law, it is ultimately up to the individual member states to enforce the provisions of this directive. There are discrepancies between each member state in the application of the directive, and some member states, like Italy, may have even harsher rules on the removal of irregular migrants that are not in accordance with the directive. A major

⁴⁰ Ibid., 13.

⁴¹ Ibid., 14.

⁴² Ibid.

problem that arises is the criminalization of irregular migration. By punishing irregular migration through criminal law, and not administrative, member states do not need to follow the Returns Directive when removing that migrant, and are not bound to any of the legal safeguards. This criminalizing of irregular migrants can lead to horrible human rights violations, which will be explored later on in the paper in regards to Italy.

History of Migration in Italy

Italy, which is currently a major center of immigration, was once a major country of emigration. There were four phases of Italian emigration. The first phase was in 1876-1900 when the workforce in North Italy mainly migrated to other places in Europe and South America. The second phase was from 1901- 1915, known as the great emigration, where there were nine million departures from mostly Southern Italy to the United States. The third phase was from 1916-1944, however, during this phase there was decrease in emigration due to the two World Wars. The last phase of emigration was from 1945- 1976, post World War II, when there were large migrations from Italy to South America, France, Switzerland, and Germany. The year 1976 represented the end of mass emigration out of Italy. This began the first time in Italian history where the number of immigrants coming into Italy was equal to the number of Italian emigrants abroad.⁴³ The closure of the British, German, and French labor markets in the 1970s due to the oil shock caused foreigners to travel to other countries for work. During this time Italy had very permeable borders as well as a weak immigration policy. Italy was also going through its own economic boom that created jobs for migrants in different sectors including domestic,

⁴³ Rusconi, Silvia. 2012. "Italy's Migration Experiences." Retrieved (www.migrationeducation.org).

agriculture, construction, and the informal economy. These were all factors that made Italy into a country of immigration. The number of foreign residents in 1970 was 143,800 compared to the massive 4,279,000 million in 2010, however, these numbers do not account for the large number of irregular migrants who entered into Italy.⁴⁴

The Exclusionary Goals of the Italian Border Policies

Many irregular migrants were drawn to Italy due to its porous borders and the once lax immigration policy throughout the 1970s and 80s. During this time Italy had an “open door” policy where they had little to no regulation and few external border and security controls. This resulted in many immigrants easily entering Italy without a visa and settling into the country by working in the informal economy or finding a loophole in Italian law.⁴⁵ The illegal sea border crossings to Italy began in the early 1990s after the collapse of the Soviet Union and Yugoslavia. Smuggling by sea became an integral part of irregular migration to Italy. Over recent years migrants have been arriving from the Balkans, the Middle East, the Indian sub-continent, Africa, and China.⁴⁶ Most migrants enter Italy through Lampedusa, a small Italian island on the Mediterranean, which is only about 70 miles away from Tunisia. With this trend of migration to Italy, came the need for border controls.

Most immigrants coming into Italy do not plan to stay in Italy for the long run; many want to travel to other EU countries. The Schengen Area, which Italy is apart of, allows for this movement to happen. The Schengen Agreement established the free movement of persons due to the abolition of internal border controls and the enabling of passport-free movement across most

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Monzini, Paola. 2007. "Sea-Border Crossings: The Organization of Irregular Migration to Italy." *Mediterranean Politics* 12(2):164.

of the area. The Schengen Agreement was signed in 1985, but did not take effect until 1995. Today, there are 26 Schengen countries—22 EU members and 4 non-EU members. The Schengen Area, therefore, makes it possible for a migrant to enter irregularly into a Schengen member state and to then more easily migrate into another member state because they are already in the Schengen Area.⁴⁷ This ease of migration created by the Schengen Area is a source of concern for the EU, resulting in them pressuring their external border states, like Italy, to stop irregular migrants from first entering into the EU.

The EU, therefore, puts pressures on Italy to stop irregular migration through stronger border controls, and at the same time Italy has been accused of violating the human rights of irregular migrants. Italy has continuously implemented stricter border controls and stronger penalties for irregular migration. The fight against irregular migration has been an important pillar of Italy's Ministry of Interior since the end of the 1990s.⁴⁸ The measures Italy has taken to fight and block irregular migration include "effective deportation policies for irregular migrants, penal sanctions for facilitators and smugglers, and actions implemented in cooperation with transit and origin countries to prevent undocumented migration."⁴⁹ The basic principles of the legal framework are "sanctions on irregular migrants, detention centres, border controls, control of migrants' identities, sanctions on facilitators, and bilateral agreements."⁵⁰ When these border controls do not end up deterring irregular migrants from making it into Italy, once in Italy, irregular migrants face the harsh Italian immigration laws.

⁴⁷ "Schengen: Controversial EU Free Movement Deal Explained." 2016. BBC News. Retrieved May 8, 2016 (<http://www.bbc.com/news/world-europe-13194723>).

⁴⁸ Monzini, Paola. 2007. "Sea-Border Crossings: The Organization of Irregular Migration to Italy." *Mediterranean Politics* 12(2):165.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

The Criminalization of the Irregular Migrant through Italian Immigration Laws

In line with the EU's Returns Directive, the Italian Immigration system for irregular migrants is based on expulsions. Irregular migrants are subjected to removal and may be detained in the CIEs for what used to be 18 months, although it was recently limited to 3 months.⁵¹ There is a long and complex history of Italian immigration laws regarding irregular migrants, however, this paper will give a brief overview of the history and provisions of the important immigration laws in order to show how they have evolved to criminalize the act of irregular migration.

During 1976 to 1986, the first decade of substantial immigration to Italy, there was an undefined and inconsistent legal framework of immigration in Italy. The first attempt at a systematic immigration policy in Italy was established in the 1990s following the first wave of migration from Albania. The 1990 Martelli Law was the first attempt to set up a regulatory framework on migration. Its goal was to manage the migratory flows to Italy by working with the migrants' countries of origin. The provisions of the law included: the introduction of visa requirements for a majority of sending countries, reforming the deportation procedures for irregular migrants, and introducing sanctions for migrant smugglers and traffickers.⁵² The next major immigration law was the 1998 Truco-Napolitano Law. The aim of this law was to define a "clear and unitary framework of provisions on the entrance, permanence and removal from

⁵¹ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": I.

⁵² Rusconi, Silvia. 2012. "Italy's Migration Experiences." Retrieved (www.migrationeducation.org).

Italy.”⁵³ The law established the grounds for issuing an administrative expulsion order.⁵⁴ It also created the Centers for Temporary Detention (now known as the Centers for Identification and Expulsion) for irregular migrants to be detained while they were awaiting their deportation.⁵⁵ It established that the detention of irregular migrants should only be for a period “strictly limited to the time necessary to determine the identity and qualification for remaining in Italy, and for determining whether or not they should be deported.”⁵⁶ It also established certain rights for legal, and irregular migrants, such as access to education and to the National Health System. The Truco-Napolitano Law gave legal immigrants all the social rights Italians had, however, irregular migrants were not given these same rights.⁵⁷ The next law, the Bossi-Fini Law, established in 2002, aimed to “[counter] the danger of a real invasion into Europe” by immigrants.⁵⁸ The Bossi-Fini Law further described the Italian expulsion and detention policy. Under this law, the length of detention period was extended to 30 days, and it could be extended to 60 days if that was necessary to carry out the expulsion.⁵⁹ This law also allowed for the “immediate enforcement of removal by forcible deportation at the border.”⁶⁰

⁵³ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.":9.

⁵⁴ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):146.

⁵⁵ Rusconi, Silvia. 2012. "Italy's Migration Experiences." Retrieved (www.migrationeducation.org).

⁵⁶ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):146-7.

⁵⁷ Rusconi, Silvia. 2012. "Italy's Migration Experiences." Retrieved (www.migrationeducation.org).

⁵⁸ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.":9.

⁵⁹ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):147.

⁶⁰ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.":9.

The Security Packages were important amendment acts, which truly led to the unquestionable criminalization of irregular migration. These are characterized by the close connection between “immigration policies and security.”⁶¹ The 2008 Security Package was established by Berlusconi and created harsher penalties for irregular migration. Some of the main amendments of the 2008 Security Package were that crimes would be punished with a harsher penalty if someone who is irregularly in the country committed the crime, however the Constitutional Court found this to be in violation of the Italian Constitution. It also stipulated that all immigrants are subjected to expulsion if they are sentenced for more than two years imprisonment. It also changed the name of the detention centers from Centers for Temporary Detention to Centers for identification and Expulsion.⁶² This Security Package began the turn to the increased criminalization of irregular migration, however it was the 2009 Security Package that truly facilitated this criminalization. Some of the main amendments of the 2009 Security Package were the introduction of the crime of irregular entry and stay subject to fines ranging from 5,000 to 10,000 euros and the maximum period of detention in a CIE was extended from 60 to 180 days.⁶³ This Security Package was major in the fact that it legally criminalized the act of irregular migration.” As discussed before, a complication that emerges with this criminalization is that member states do not need to apply the Returns Directive to irregular migrants who were removed as a part of a crime, and since irregular migration is criminalized they become exempt from the Directive. Italy, therefore, criminalized irregular migration to avoid the Returns Directive and its policies, such as the voluntary period for departure, in order to more quickly

⁶¹ Ibid., 9-10.

⁶² Ibid., 10.

⁶³ Ibid., 11.

facilitate the expulsion of irregular migrants.⁶⁴ The 2011 Security Package added on to these harsh penalties for irregular migrants even more. Some of the main amendments of the 2011 Security Package were that the expulsion of third country nationals would be enforced by immediate deportation in the cases of: risk to public order and state security, risk of escaping, judicial review, violation of precautionary measures applied by the Questore, and violation of the terms of voluntary departure. The maximum period of time in the detention centers increased from 6 to 18 months. The crimes of violation and of repeated violation of an expulsion order became modified by a fine and the possibility of the justice of the peace to order expulsion instead of detention.⁶⁵ There are many other provisions and amendments for each immigration law, however those presented are the ones most relevant in demonstrating the criminalization of irregular migration, most notably the 2009 Security Act which literally criminalized the act of irregular migration.

The criminalization of irregular migration under the 2009 Security Package has been contested greatly. The Special Rapporteur on the human rights of migrants spoke out that “irregular migrants should be regarded as an administrative offence and irregular migrants should not be treated as criminals.”⁶⁶ By criminalizing irregular migration Italy does not need to follow the legal safeguards in the Returns Directive and can quickly expel irregular migrants, or detain them for long amounts of time in the CIEs. However, this violates the principle of good faith and loyal cooperation in the application of EU law and does not create synchronization in

⁶⁴ Provera, Mark. 2015. "The Criminalisation of Irregular Migration in the European Union." CEPS Liberty and Security in Europe no. 80/2015.:20.

⁶⁵ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.":13.

⁶⁶ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):150-1.

how each member state deals with irregular migration.⁶⁷ In April of 2014 Italy decriminalized irregular migration under Law. No. 67/2014. This law removed the criminal offence of irregular entry and established administrative sanctions instead.⁶⁸ Under Law No. 161/2014 the maximum time for detention of irregular migrants in CIEs was reduced from 18 months to a limit of 3 months.⁶⁹ Although irregular migration is now decriminalized, and the maximum time in the CIEs were reduced, Italy still criminalizes irregular migrants through the act of detention.

The Criminalization of Irregular Migrants in Italy's Centers for Identification and Expulsion

Although irregular migration was decriminalized in 2014, irregular migrants continue to be criminalized through the Centers for Identification and Expulsion in Italy. These CIEs, which are almost identical to prisons, treat irregular migrants like criminals although they have not committed a crime. In 1998, Italy introduced the detention of irregular migrants through Truconapolitano Law, yet gave no detailing for how these CIEs should be run. Detention is formally defined as administrative rather than criminal because "it is not a punishment for having committed an offence, no term is defined by a trial and no ruling is issued by a judge, hence the ordinary criminal justice system is not involved in the process."⁷⁰ Detention in CIE is instead ordered by the Questore and is used to detain irregular migrants with an expulsion order if they cannot be deported immediately, if identity and nationality are to be established, and lastly if

⁶⁷ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": IV.

⁶⁸ Crépeau, François. 2012. "Report of the Special Rapporteur on the Human Rights of Migrants." *UN Doc.A/HRC/20/24. Report Presented at the Human Rights Council, 20th Session. Geneva: 7.*

⁶⁹ *Ibid.*, 12.

⁷⁰ Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):749.

travel documents and means of transport are to be obtained for repatriation. The goal of the CIEs is not to just hold irregular migrants, but to detain those who are awaiting identification and deportation.⁷¹

The entire system of detention is unconstitutional as it violates Article 13 of the Italian Constitution. Article 13 acknowledges that the most basic fundamental human right of individuals living in a democratic society is personal liberty. Personal liberty is so fundamental that the restriction of this personal liberty can only occur in such cases provided by law. This right of personal liberty, and the restrictions on taking it away, is true of everyone— citizens and immigrants equally. However, the CIEs are not regulated by parliamentary law since there is not law detailing the manner in which detention is to take place, or detailing the way in which the CIEs should be run.⁷² This violates the principle of legality, under which only a statutory law can provide for the restrictions of individual freedom. Since administrative acts, and not laws regulate the CIEs, they are unconstitutional.⁷³ This also leads to the violation of the principle of equality under Article 3 since there is no law on how the CIEs should be run, so immigrants detained in different CIEs get varied treatments and are, therefore, not being treated equally.⁷⁴

In Italy there are currently 13 CIEs, and as of March 2013 these 13 centers had a combined capacity of 1,814 available beds.⁷⁵ In 1999 there were 948 available beds in 7 centers, so the number of spots in the CIEs has almost doubled since they were first created.⁷⁶ The CIEs

⁷¹ Ibid.

⁷² Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": II-III.

⁷³ Ibid., 3.

⁷⁴ Ibid., II-III.

⁷⁵ Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):750.

⁷⁶ Ibid., 751.

are under the authority of the Ministry of Home Affairs, Department of Civil Liberties and Immigration. The CIEs are managed at the local levels by prefectures and the local police.⁷⁷ The local prefectures have service contracts with private groups, like NGOs, who provide the basic needs and services. It is the private contractor who is in charge of the conditions of the detainees and the efficiency of the center.⁷⁸

The physical structure of the CIEs closely resembles that of a prison. The centers are usually out of urban centers and are sometimes located near barracks or actual prisons. They are surrounded with barbed wire and are guarded by the local police and the military.⁷⁹ The layout of the centers also looks like prisons. The centers have high walls under camera surveillance that surrounds three main blocks. The three blocks consist of an administrative unit, a living unit, and service areas. There is open courtyard surrounded with walls and iron bars. In the living units, armored doors and anti-escape gates isolate each unit.⁸⁰ The CIEs are also run like prisons as police and military do the surveillance for the centers. Visits by relatives who are legally in Italy are only allowed on set days and times. The immigrants are housed in cells and cannot freely move from one unit to another. The immigrants cannot leave the centers without authorization. Men and women are separated within the centers. The internal staff treats the CIE like it is a prison.⁸¹ Often times the conditions migrants face in the CIEs are worse than in an actual

⁷⁷ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": 97.

⁷⁷ Ibid., 3.

⁷⁸ Ibid., 100.

⁷⁹ Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):750.

⁸⁰ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": 104.

⁸¹ Ibid., 108.

prison.⁸² The CIEs are practically identical to actual prisons where criminals are kept. By putting many irregular migrants into the CIEs, and subjecting them to the same treatment as criminals get in Italy, it is criminalizing irregular immigration although it may no longer be a criminal offense according to the law.

The CIEs in Italy have been criticized for their massive human rights violations. In a 2012 report by the Special Commission for the defense and promotion of human rights, it reported that the “living conditions in the CIEs are precarious and unsuitable for an extended stay.”⁸³ One of the few specifications on the conditions of the CIEs comes from Article 14(2) of the Immigration Law, specifying that the CIEs should ensure: assistance, respect for dignity, and freedom of communication with the outside world.⁸⁴ As stated before, since there are no clear detailed common standards for the managing of the CIEs, each center is run differently leading to a large variation in the treatment and rights of the detainees. For example, medical care is provided by an independent contractor for each center, therefore, leading to a differentiation between standards of care and assistance. There is also a large variation in the activities and opportunities detainees have. For example, in the center in Rome access is forbidden to the dining room where the television is located. Many detainees complain about the total inactivity of the CIEs, and not having access to any kinds of activities.⁸⁵ Differences also exist in the detainees’ access to newspapers and books in various languages.⁸⁶ There are also disparities in detainees’ ability to “communicate with the outside world,” with discrepancies in their allowance

⁸² Ibid., 123.

⁸³ Ibid., 103.

⁸⁴ Ibid., 102.

⁸⁵ Ibid., 105.

⁸⁶ Ibid., 106.

to use and have cell phones.⁸⁷ Another large issue is the public's lack of knowledge on what goes on in the CIEs since it is very hard for civil society representatives and journalists to get access to them to report on the conditions in the centers.⁸⁸ⁱ It is also very hard for irregular migrants to get the legal representation, which they have a legal right to in Italy. It can be very hard to communicate with legal representatives in CIEs where they have limited access to information and often times face language barriers.⁸⁹ These all violate Article 14(2) of the Immigration Law as the variations in the treatment of detainees violate these stipulations for the CIEs. Irregular migrants, who are not criminals, are treated like them as they lack basic human rights while in the CIEs.

In his book, "Crime of Peace: Mediterranean Migration at the World's Deadliest Border," esteemed professor Maurizio Albahari also notes these horrific, prison-like, conditions in the CIEs. He describes the detention centers as being "excluded from basic rights and democratic practice through spatial, administrative, and humanitarian inclusion behind bars."⁹⁰ He describes the nature of these centers as places of confinement and surveillance.

Removing all unnecessary furniture, putting bars on windows, creating a "Chinese box" succession of locks and gates, isolating known troublemakers, using nonflammable mattresses, bolting beds and cabinets to the floor, forbidding the use of phones with cameras, restricting access by relatives and denying any independent oversight, accepting abnormally low tenders (as organizations and multinational corporations bid on the administration of centers on behalf of the state), confiscating anything sharp as it could

⁸⁷ Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):752.

⁸⁸ Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy," 103.

⁸⁹ Crépeau, François. 2012. "Report of the Special Rapporteur on the Human Rights of Migrants." *UN Doc.A/HRC/20/24. Report Presented at the Human Rights Council, 20th Session. Geneva*, 19.

⁹⁰ Albahari, Maurizio. *Crimes of Peace: Mediterranean Migrations at the World's Deadliest Border*. 2015. Philadelphia: University of Pennsylvania Press,56.

be used for self-mutilation or for aggression.⁹¹

These strict restrictions on the detainees in the CIEs closely resemble the controls set on prisoners in a prison. Although those in the CIEs have not committed any crime, and are therefore not criminals, they are treated as so. Their basic rights are taken away and they become powerless in these detention centers, which have been criticized as “bordering on illegality” for their poor physical and sanitary conditions.⁹²

Ultimately, Italy’s Center for Identification and Expulsion add to the criminalization of the irregular migrant in Italian society. Through its prison like structure and management the CIEs make a criminal out of a migrant. Italy’s laws have led the creation of the CIEs and the grounds for detention; however, this detention is often in violation of the Italian Constitution and human rights agreements. These centers demonstrate the value Italy places on the detainment, and expulsion, of the irregular migrant over valuing the human rights of all. Although irregular law may no longer explicitly criminalize migration, these CIEs criminalize the irregular migrant by treating them like a criminal.

The Criminalized Irregular Migrant

This paper has established the progression of the history of laws criminalizing irregular migration in Italy as well as the criminalizing nature of the CIEs. Legal sociologist, Robert Kagan, proposes that “irregular migration could be identified as a ‘victimless offence’ that ‘by definition [. . .] is one that violates the law but does not directly harm anyone.’”⁹³ This raises the

⁹¹ Ibid., 57.

⁹² Ibid., 58.

⁹³ Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):151.

question of the legality of punishing a person for the way they crossed the border as a person who has broken criminal law.⁹⁴ Is it really reasonable to punish an individual for something that does no harm to others, or creates any victims? Clearly these individuals are not risking their lives to cross the Mediterranean Sea for no reason. Should not the fact that they faced, and survived, horrible conditions to make it to Italy be considered enough to legitimize their stay?

However, some may argue that these irregular migrations do harm other people. Many contend that it is the Italian citizens who must pay for the migrants once they are in Italy. They must pay for them as well as compete with them for jobs when they are already facing tough economic and labor conditions themselves. However, one must remember these migrants are not coming to Italy to take all the jobs, or get a free ride. Instead they are often fleeing bad circumstances in their home countries. Most people would not risk their lives to make the dangerous migration to Italy without having exceedingly important motives to need to leave. This represents the tremendous differences in power and privileges that the citizens of the sending versus the citizens of the receiving countries have. Although Italian citizens may be facing their own tough economic times, they do not have to flee horrible conditions that they are willing to risk their lives to escape. Italian citizens are privileged to live in a first world country that offers forms of welfare to its citizens. Their privilege extends to their status of being recognized as a citizen of a first world country, which provides them with tremendous innate respect for their personhood, including the freedom to travel.

There are major discrepancies in the freedom that citizens from certain countries have to travel especially in regards to first world countries versus developing countries. According to the Henley & Partners Visa Restriction Index for 2016, Italian citizens are able to freely travel to

⁹⁴ Ibid.

175 countries. For the citizens of the United States, they have the privilege to freely travel to 174 countries. However, when looking at developing countries there are very different privileges when it comes to travel, as can be seen when looking at Nigeria where Obum is from, the migrant currently living in Padua, Italy who asked us if immigration should be illegal. For Nigerian citizens, they can only freely travel to 45 countries. During our field research we talked to many migrants from various places such as Mali and Nepal, whose citizens can only travel freely to 52 countries and 37 countries, respectively.⁹⁵ This demonstrates how the difference in where your citizenship comes from can dictate your mobility and shows the power of the nationality that is listed on your passport. A citizen from a first world country, like Italy, is able to freely travel to about four times more countries than someone from Nigeria. It is completely out of anyone's control what citizenship they are born into, however, this greatly affects their opportunities to travel freely.

What are the effects of having your mobility restricted and it becoming criminalized? By having your movements criminalized, the public in turn perceives you as a criminal and treats you as such. This can be seen in the fact that the term "clandestine" is still in frequent use in Italy, especially by the media, which further adds to the public's negative view of immigrants. The word "extracommunitarian" is also often used, describing a person who is not a part of the EU community, and is thus, an "outsider." This creates an environment of xenophobic and discriminatory attitudes towards irregular migrants, which help to further create an atmosphere that criminalizes irregular migration.⁹⁶ Criminalizing irregular migrants marginalizes them from

⁹⁵ The Henley & Partners. 2016. "Visa Restrictions Index 2016."

⁹⁶ Crépeau, François. 2012. "Report of the Special Rapporteur on the Human Rights of Migrants." *UN Doc.A/HRC/20/24. Report Presented at the Human Rights Council, 20th Session. Geneva.*: 19.

society. As demonstrated earlier in the paper, Italy itself was once a country of emigration. Is it forgetting its own history of emigration to other countries, and across continents, for the opportunities at a better life? Italy should be welcoming of migrants considering its own history of emigration. Instead, its harsh immigration laws, prison like CIEs, and its predominantly poor perceptions of migrants characterize Italy.

Fieldwork Findings: Lampedusa the Receiving Island—A Source of Inspiration

The previous sections of this paper focused on the policies influencing irregular migration into the EU and Italy, however it is also important to focus on the people who are involved with the migrants. Our fieldwork brought us to the Italian island of Lampedusa, a popular place for tourism, which is often characterized as the border of Europe because it is where many migrants come to make it into the EU. Albahari describes Lampedusa as a tiny island that is the “gateway to the global north.”⁹⁷ Lampedusa has six thousand inhabitants and is closer to Africa than to mainland Italy; only 70 miles separate Libya from Lampedusa.⁹⁸ Lampedusa is responsible for receiving a large proportion of the migrants entering irregularly into the EU because of the heavy use of the Central Mediterranean Route from Tunisia and Libya to Lampedusa. The graph on page 15 shows the large number of migrants taking the Central Mediterranean Route into Lampedusa each year. So far in 2016, Nigerians, Gambians, and Senegalese have accounted for the biggest groups of migrants taking this dangerous route to Lampedusa. In just 3 months, from January 2016 to March 2016 there had been approximately 18,694 illegal border crossings on the combined Central Mediterranean and Apulia and Calabria

⁹⁷ Albahari, Maurizio. *Crimes of Peace: Mediterranean Migrations at the World's Deadliest Border*. 2015. Philadelphia: University of Pennsylvania Press.: 12-13.

⁹⁸ Ibid.

routes.⁹⁹ Due to these high numbers of illegal sea border crossings, and its position as the border to Europe, Lampedusa is faced with the task of controlling the boundaries of this European frontier.

Italy, which at one time embraced more humanitarian border controls, now has enforced very strict policies of border control. Lampedusa has been the source of much discussion and media attention for receiving large numbers of migrants as well as the conditions migrants must face on their journeys there. After the October 3rd tragedy in 2013, Lampedusa had a large increase in media attention. During this tragedy, a boat carrying migrants coming from Libya (most were originally from Eritrea and Somalia) sank off of the island of Lampedusa, resulting in approximately 360 reported deaths.¹⁰⁰ This event brought large amounts of often scrutinizing media attention to this small Italian island. The public shock over the number of migrants' lives that were lost spurred Operation Mare Nostrum. Mare Nostrum began in October 2013 as a search-and-rescue operation, operating in Italian and international waters with the goal of preventing the deaths of migrants making the journey from Africa to Europe. Mare Nostrum had a budget of around \$12 million a month and was seen as a considerable policy change to Italy's harsh attitude towards migrants it was known for.¹⁰¹ However, Mare Nostrum only lasted one year and was ended in October of 2014. Mare Nostrum was replaced with the Frontex operated project, Triton, whose main focus is on border management. Triton's budget is a mere \$3.6

⁹⁹ "Frontex: Migratory Routes Map." 2016. Frontex. Retrieved May 8, 2016 (<http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>).

¹⁰⁰ "Lampedusa Boat Tragedy: Migrants 'Raped and Tortured'." 2013. BBC News. Retrieved May 10, 2016 (<http://www.bbc.com/news/world-europe-24866338>).

¹⁰¹ Taylor, Adam. 2015. "Italy Ran an Operation That Saved Thousands of Migrants from Drowning in the Mediterranean. Why Did It Stop?" Washington Post. Retrieved May 11, 2016 (<https://www.washingtonpost.com/news/worldviews/wp/2015/04/20/italy-ran-an-operation-that-save-thousands-of-migrants-from-drowning-in-the-mediterranean-why-did-it-stop/>).

million and only operates within 30 miles of the Italian coast, resulting in an increase in the deaths of migrants on the Mediterranean.¹⁰² This recent shift from Mare Nostrum to Triton shows Italy's character of embracing more restrictive border control policies that forgo human rights in exchange for border security.

It was important that we came to the island of Lampedusa that has been greatly affected by the influx of migrants. Albahari notes the influence of these migrations on Lampedusa because everywhere you look you are reminded of the migrants and their journeys.

In Lampedusa, dozens of boats that have survived the Mediterranean crossing lie relatively undisturbed in “the boats’ cemetery,” a fenced and guarded ground close to the harbor, on the boats’ now-oblique decks one can see toys, clothes, gasoline containers, rusty extinguishers, shoes, and empty bottles. The exposed wood rots in the sun. Large holes in the white and blue hulls offer an opening into the sky—or toward the sea, depending on your vantage point... the destiny of these boats, or of what remains of them, is to end up in wood chipper.¹⁰³

It was interesting to see how the locals on the ground interacting with the migrants perceived the situation. The interviews in Lampedusa came to be some of the most inspiring and meaningful ones we had during our three weeks of field research in Italy. Our interviews with Doctor Pietro Bartolo and the Mayor of Lampedusa, Guisi Nicolini, demonstrated a compassion and understanding for these migrants that was refreshing to hear. Their interviews shed light on the people that are working on the ground receiving the migrants, recognizing them as people not as criminals.

¹⁰² “MareNostrum To End - New Frontex Operation Will Not Ensure Rescue of Migrants in International Waters.” 2014. The European Council on Refugees and Exiles. Retrieved May 11, 2016 (<http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html>).

¹⁰³ Albahari, Maurizio. *Crimes of Peace: Mediterranean Migrations at the World's Deadliest Border*. 2015. Philadelphia: University of Pennsylvania Press.: 204.

We interviewed Doctor Pietro Bartolo who has been working as a medical doctor in Lampedusa for 25 years. He is a strong figure in the community, serving as a doctor for the people of Lampedusa. He also provides treatment to all the migrants once they are received in Lampedusa. Since 1991, he has given treatment to over 250,000 migrants. During our interview Doctor Bartolo described to us how he had gotten little sleep the past few days because he had been helping to provide medical care to 78 people from a boat disembarkation that had occurred two days prior. During our interview we asked him various questions about his work as a doctor and his thoughts on the current situation. Throughout the interview it was clear that Doctor Bartolo did not see migrants coming to Lampedusa as criminals and instead recognized their personhood.

Well, we say that initially these people, I call them people because I have difficulty calling them migrants because it seems to me that it is a word that is not...that I do not like, let's think about the word clandestine...Who are the clandestines? Why are they clandestine? What have they done and what crime have they committed? Who does the land belong to? It's yours, mine, it is all of ours, so we are all clandestines. I am a clandestine. I am a migrant.¹⁰⁴

Doctor Bartolo's views challenge the criminalizing laws and policies that unfortunately dominate Italy and the research on this topic. Doctor Bartolo sees migrants as people who have done no crime by migrating. Everyone has a right to the land, so we therefore, are all "clandestines." Doctor Bartolo identifies as an immigrant himself because he has migrated from Lampedusa to Trapani to Catania to study. He does not agree with the labels of "migrant" and "clandestine."

So it seems to me that these labels are out of place. These are people who are forced to leave their own land to go and look for a land that can welcome them, if only temporarily, and after they outlive [the circumstances in their home country, n.d.r] then they return to their own homes.¹⁰⁵

¹⁰⁴ Pietro Bartolo, Interview. Mediterranean Migration Mosaic Team, *Lampedusa, Italy*. March 10th, 2016.

¹⁰⁵ Ibid.

Doctor Bartolo was very understanding of why migrants are coming to Italy. He understands they are not coming to Italy to steal jobs or take advantage of Italy. He recognizes that many migrants are often facing horrible conditions in their home countries that force them to migrate to Italy for a better life. He is also knowledgeable of the risks they take during their journey to make it to Lampedusa as the people he treats tell him about it.

They have gone thousands of kilometers in the desert and survived every agony, extortion, hunger, thirst...and then they arrive in Libya and they must stay for six months, a year, or even two years...and where they go, they suffer the worst things...so you understand it well...so these people arrive here and they are psychologically destroyed, but they arrive with the hope to find the world that they believed [they would find, n.d.r.]...but in reality it becomes an additional passage.¹⁰⁶

Migrants come to Lampedusa after making the long boat passage across the Mediterranean, risking their lives and facing treacherous conditions. They go through this journey for the opportunity at a better life they hope to achieve. Doctor Bartolo, instead of demonizing these migrants for coming to Italy, admires what incredible people they are for making it to Italy.

If you think about how many thousands of kilometers and how much suffering...these people are superhumans, because we, we would not be able to make it 10 kilometers in their conditions, so clearly they are people that have an extraordinary strength and they must be perfectly healthy to be able to arrive here.¹⁰⁷

By referring to these migrants who survive the journey to Lampedusa as “superhumans” he is valuing these individuals for their accomplishments instead of just categorizing them as criminals.¹⁰⁸

Instead of just detaining and expelling the migrants, Doctor Bartolo values them as people and, therefore, thinks they should not have to go through such harsh conditions to

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

migrate. He has ideas on how to fix the situation instead of just criminalizing immigration itself. He notes how today we see migrants continuing to die and suffer because interventions like Frontex are not a permanent solution to this situation; they only offer temporary relief without actually solving the real problems. He shared with us his solution to help the situation.

It's an easy solution. It's very simple. Because Lampedusa is the gateway of Europe for them and they want to go to Europe. Before they were 130 miles of distance between us and them, and then with Frontex and Mare Nostrum, it became 30 so we are almost there, The solution is going there, not to Libya because it is too dangerous but to Tunisia and organize a humanitarian corridor. And bring them here.¹⁰⁹

Doctor Bartolo believes in the creation of a humanitarian corridor to facilitate safe migrations of people going across the Mediterranean Sea to Italy. This would stop the countless people from dying as they make their journey. After having been personally interacting with these migrants for over 25 years and truly recognizing them as “superhumans,” he believes they deserve to be helped instead of criminalized. He points out that one of the solutions is to help fix the problems in the sending countries; however, Italy alone cannot do it.

Italy cannot resolve these problems in these countries, maybe Europe cannot even do it...but Europe, America, Russia, and China together we could do it.¹¹⁰

While it seems like Italy may be completely against migration and wants to paint irregular migrants as criminals, the interview with Doctor Bartolo demonstrates that is not true of all Italians. This doctor who has spent over two decades treating these migrants sees the humanity in them all. Instead of criminalizing them he urges the world to help them and work towards solutions so people do not need to migrate, or die trying.

Our interview with the current Mayor of Lampedusa, Guisi Nicolini, another person who frequently interacts with the migrants, revealed a similar position. She too sees migrants as

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

individuals and not as a group to marginalize and criminalize. Mayor Nicolini noted the flaws in Europe's categorization of migrants.

The distinction between economic migrants, asylum seekers, and refugees is an arbitrary distinction and if there must be a distinction it should be before these people are in the hands of the traffickers because when they arrive it is not possible to make a distinction anymore. At that point when they are in the boat she thinks of human trafficking so there can't be a distinction between economic migrants and asylum seekers.¹¹¹

Doctor Bartolo and Mayor Nicolini believe that there should be no distinction between the different types of migrants. Mayor Nicolini argues that an irregular migrant who traveled by boat and survived the horrific conditions should receive the same protections as an asylum seeker. She is understanding of the circumstances the migrants have survived in order to make it to Lampedusa and believes that an irregular migrant should receive the same rights as an asylum seeker because of this.¹¹²

As doctor Bartolo suggested, Mayor Nicolini thinks there should be a humanitarian corridor.

One easy solution is the possibility to develop a humanitarian corridor but at the same time it is not only the European Nations who need to commit to this but also the international community because they should commit to work on how to try to prevent the wars from happening. And how to do that is first of all not to send them weapons because the international community sends them weapons and then the international community makes a lot of noise when the migrants arrive from trying to escape the war.¹¹³

Mayor Nicolini believes in creating a humanitarian corridor to intervene along the way and to help the migrants safely make their way to Italy so lives are not lost. She also understands the need to help fix the situation in the sending countries because clearly they are having huge

¹¹¹ Nicolini, Guisi, Interview. Mediterranean Migration Mosaic Team, *Lampedusa, Italy*. March 10th, 2016.

¹¹² Ibid.

¹¹³ Ibid.

problems, many of which Italy, the United States, and other first world countries helped to create. She, like Doctor Bartolo, realizes Italy, and even the entire EU, cannot alone fix the current problems in the countries migrants are leaving. These countries responsible for creating the problems need to stop doing certain things, like sending weapons, in order to better the situations in those countries. She understands very well the circumstances that cause people to migrate and takes responsibility for the international communities' part in creating these circumstances.¹¹⁴ During the colonial period, in which the international powers went and colonized these now sending countries, they depleted them of their natural resources, like oil, for their own economic gain. In the post-colonial era, these sending countries are now left with few resources and economic opportunities for their citizens, which have caused the poor conditions that push many to migrate. However, the people of these countries have little means for legal migrations and must turn to smuggling, and risk their lives through illegal border crossings, to make it to Europe.

The effects of colonialism can also be seen in Italy's policies with their old colony of Libya. In August of 2008 the Italian Prime Minister, Silvio Berlusconi, and Colonel Gaddafi signed the Benghazi Treaty between Italy and Libya. The Treaty consists of three parts: the first part is the respect for human rights, fundamental freedoms, and international law. The second part consists of Italy implementing infrastructure projects in Libya for approximately \$250 million annually for 20 years as well as implementing other "special initiatives." In return Libya will stop restrictions on Italian companies in Libya. The third part of the Treaty is about cooperation in the fields of economy, industry, energy, defense, nonproliferation, and disarmament. An important article of the Treaty regards the prevention of illegal immigration by

¹¹⁴ Ibid.

having the two countries working together to prevent illegal migration in the countries of origin and to halt migration flows. Half of the funding to do this will be provided by Italy, and the EU will provide the other half.¹¹⁵ The Benghazi Treaty sounds like a beneficial agreement and a good form of colonial repatriation; however, in practice this Treaty has many flaws. A few days after the Treaty came into effect, hundreds of refugees were transferred from Lampedusa back to Libya without respecting these refugees' rights to asylum as stipulated in the 1949 Geneva Convention. These returned migrants were placed in detention centers located in the desert near the border of Libya. The migrants in these centers are exposed to massive human rights violations, violence, and torture, which seem to directly violate the first part of the Benghazi Treaty. The Italian Government knows these human rights violations are occurring, but overlooks them and continues to send migrants back to Libya in order to secure its borders.¹¹⁶ How Italy, and other nations, continue to interact with these post-colonial countries is creating the current environment, which is criminalizing the act of migration. Treaties, like the Benghazi Treaty, perpetuate the massive human rights violations migrants face and emphasize the value of border controls over the value of human rights.

Our fieldwork in Lampedusa including the interviews with Doctor Bartolo and Mayor Nicolini demonstrated the compassion of the people who are the ones actually interacting with the migrants who enter into Italy, and contrast the harsh Italian policies that lack respect for upholding human rights. Our interview with a United Nations High Commissioner for Refugees Eligibility Expert, while in Bologna, also showed the compassion of someone working directly with refugees. This UN official helps to decide migrants' asylum applications. He acknowledged

¹¹⁵ Castillo, Lorenzo D. 2011. "Italian–Libyan Relations." *Criminal Justice Matters* 85(1):4

¹¹⁶ *Ibid.*, 5.

what a difficult situation the migrants are in and noted how hard it is to label them and to decide who gets international protections. This compassion and empathy of those working directly with the migrants juxtaposes much of the literature in this field that focuses on the harsh policies that criminalize migration. Lampedusa, the small Italian island that has been directly influenced by the influx of migrants, chooses not to criminalize these individuals. The Mayor considers it still the “Gateway to Europe” rather than a border. Lampedusa is an island filled with empathy and recognition of these people who are risking their lives to make it into Italy of the southernmost point of Europe for the hopes of achieving a better life. These migrants are not criminals, but they are “superhumans” whose human rights deserve to be respected.

Conclusions

This paper has demonstrated the criminalization of the irregular migrant in the EU, and specifically in Italy in regards to the criminalization through its laws and CIEs. When examining Italy, it is clear that the government has negative perceptions of irregular migration and the individual migrants. They are subject to different treatments and laws. The CIEs take them out of the public's view as they await their deportation and deprives them of their basic human rights. This negative perception is often time demonstrated by the media and adopted by the public. This creates the marginalization of the irregular migrant.

The criminalization of irregular migration takes away a person's freedom of mobility and their prospects in life to migrate to a new place for better opportunities. It seems that much of Italy is going through a stint of historical amnesia as they are repressing their own emigrant past. The core reasons people migrate do not change over time, however in today's situation people do not seem to care to understand the reasons people are risking their lives to migrate, but only that they do so irregularly. Lampedusa, the Italian island that deals with the arrival of these migrants

sees the situation differently. The leaders in the community, who are on the ground, directly interacting with the migrants, do not want to criminalize them. Instead they want to help better the situation so these migrants do not lose their lives, and so the conditions in their home countries are improved. Lampedusa is a source of inspiration demonstrating that there are many people who do not want to criminalize these migrants, and instead value their personhood and want to help them.

In order for this current migration situation to get better there needs to be international intervention. Italy and the EU alone cannot fix these problems. The entire international community needs to take responsibility for their role in the current situation in these host countries. The international community must come together to help better the conditions in the sending countries as well as come up with more humane regulations for facilitating migration. Upholding peoples' fundamental human rights, regardless of their status in a country, needs to be respected worldwide. The criminalization of the irregular migrant, through laws and the act of detention, must be abolished if we expect the negative perceptions of migrants to cease.

References

- Albahari, Maurizio. *Crimes of Peace: Mediterranean Migrations at the World's Deadliest Border*. 2015. Philadelphia: University of Pennsylvania Press.
- "Asylum And Migration Glossary 3.0." European Commission. 2014. Retrieved April 10, 2016 (http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf):173.
- Baldaccini, Anneliese. 2009. "The Return and Removal of Irregular Migrants Under EU Law: An Analysis of the Returns Directive." *European Journal of Migration & Law* 11(1):1-17.
- Castillo, Lorenzo D. 2011. "Italian–Libyan Relations." *Criminal Justice Matters* 85(1):4-5.

- Chambers, Iain. 2008. *Mediterranean Crossings: The Politics of An Interrupted Modernity*. Durham and London: Duke University Press: 1-12.
- Colombo, Asher. 2013. "Foreigners and Immigrants in Italy's Penal and Administrative Detention Systems." *European Journal of Criminology* 10(6):746-759.
- "Consolidated Version of the Treaty on European Union." EUR-Lex: Access to European Union law. Retrieved April 26, 2016 (<http://eur-lex.europa.eu/legal-content/en/txt/?uri=celex:12012m/txt>).
- Crépeau, François. 2012. "Report of the Special Rapporteur on the Human Rights of Migrants." *UN Doc.A/HRC/20/24.Report Presented at the Human Rights Council, 20th Session.Geneva*.
- Dal, Alberto di Martino-Francesca Biondi and Monte-Ilaria B. Raffaelli. 2012. "The Criminalization of Irregular Immigration: Law and Practice in Italy.": 1-156.
- European Union Agency for Fundamental Rights (FRA). 2011. "Fundamental Rights of Migrants in an Irregular Situation in the European Union."
- Fornalé, Elisa. 2012. "The European Returns Policy and the Re-Shaping of the National: Reflections on the Role of Domestic Courts." *Refugee Survey Quarterly* 31(4):134.
- "Frontex: Mission And Tasks." 2016. Frontex. Retrieved April 27, 2016 (<http://frontex.europa.eu/about-frontex/mission-and-tasks/>).
- "Frontex: Migratory Routes Map." 2016. Frontex. Retrieved May 8, 2016 (<http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>).
- Human Rights." EUR-Lex: Access to European Union law. Retrieved April 10, 2016 (http://eurlex.europa.eu/summary/chapter/human_rights.html?root_default=sum_1_code=13).
- "Lampedusa Boat Tragedy: Migrants 'Raped and Tortured'." 2013. BBC News. Retrieved May 10, 2016 (<http://www.bbc.com/news/world-europe-24866338>).
- "MareNostrum To End - New Frontex Operation Will Not Ensure Rescue of Migrants in International Waters." 2014. The European Council on Refugees and Exiles. Retrieved May 11, 2016 (<http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html>).
- Monzini, Paola. 2007. "Sea-Border Crossings: The Organization of Irregular Migration to Italy." *Mediterranean Politics* 12(2):163-184.
- Mountz, Alison and Jenna M. Loyd. 2014. "Constructing the Mediterranean Region: Obscuring

- Violence in the Bordering of Europe's Migration "Crises"." *ACME: An International E Journal for Critical Geographies* 13(2):173-195.
- Moya, Jose C. and Adam M. McKeown. 2011. *World Migration in the Long Twentieth Century*. Washington, DC: American Historical Association.
- Nicolini, Guisi, Interview. Mediterranean Migration Mosaic Team, Lampedusa, Italy. March 10th, 2016.
- Obum Okoye, Interview. Padua, Italy. March 2nd, 2016.
- Pietro Bartolo, Interview. Mediterranean Migration Mosaic Team, Lampedusa, Italy. March 10th, 2016.
- Provera, Mark. 2015. "The Criminalisation of Irregular Migration in the European Union." CEPS Liberty and Security in Europe no. 80/2015.:1-43.
- Rusconi, Silvia. 2012. "Italy's Migration Experiences." Retrieved (www.migrationeducation.org).
- "Schengen: Controversial EU Free Movement Deal Explained." 2016. BBC News. Retrieved May 8, 2016 (<http://www.bbc.com/news/world-europe-13194723>).
- The Henley & Partners. 2016. "Visa Restrictions Index 2016."
- Taylor, Adam. 2015. "Italy Ran an Operation That Saved Thousands of Migrants from Drowning in the Mediterranean. Why Did It Stop?" Washington Post. Retrieved May 11, 2016 (<https://www.washingtonpost.com/news/worldviews/wp/2015/04/20/italy-ran-an-operation-that-save-thousands-of-migrants-from-drowning-in-the-mediterranean-why-did-it-stop/>).
- The United Nations. 1948. *Universal Declaration of Human Rights*.
- Triandafyllidou, Anna. 2010. *Irregular Migration in Europe: Myths and Realities*. Surey, England: Ashgate Publishing Limited: 9-11.
- Triandafyllidou, Anna and Maurizio Ambrosini. 2011. "Irregular Immigration Control in Italy and Greece: Strong Fencing and Weak Gate-Keeping Serving the Labour Market." *European Journal of Migration & Law* 13(3):251-273.

ⁱ Our Mediterranean Migration Mosaic team tried to gain access to visit a First Aid and Reception Center (CPSA) in Lampedusa, which is run by the Ministry of the Interior. The CPSA is the center that first receives the migrants and gives them the necessary medical care they need

before they are identified and the authorities decide if they can remain in Italy, or if they are to be sent to the CIEs for deportation. However, our request for access to this center was denied. We had to contact institutions, organizations, and offices in order to receive permissions to visit the CPSA. Often times we never even got a response from the places we contacted, or it took a very long time to get in contact with the right person. Ultimately, we got notice from the Prefect of Agrigento that the Ministry of the Interior in Rome had denied our group's request to visit the CPSA. We learned first hand how hard it is for the public to gain access inside of these centers that hold migrants.