

Pushing Back Protection

HOW OFFSHORING AND EXTERNALIZATION IMPERIL THE RIGHT TO ASYLUM

CHAPTER 2:
THE EUROPEAN UNION AND ITS MEMBER STATES' EFFORTS TO
PREVENT ASYLUM SEEKERS FROM REACHING THEIR BORDERS



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CHAPTER 2

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“Before the departure, some of the migrants told me that they had dreams. They were simple dreams. They just wanted to have a normal life. But instead of being able to pursue their dreams in their own country, they had to choose the path of exile. For them, it was the only solution. [...] When a European is the victim of a tragedy, the whole world mobilizes, but when hundreds of Africans drown, nobody seems concerned. Is humanity’s conscience dead?”

— Asylum seeker from Sudan who survived a shipwreck in the Mediterranean on April 22, 2021.⁵²

This is an excerpt of the full report, [Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum](#), co-authored by the National Immigrant Justice Center (NIJC) and FWD.us.

For access to Acknowledgements, Abbreviations, Terminology, other Chapters, and Closing Recommendations please click [here](#). Executive summary is [here](#).

After colonizing most of Africa, the Middle East, and Asia, and leaving many countries in crisis, European Union Member States often work diligently to prevent migrants from reaching their shores.⁵³ Europe’s policies have had ripple effects, displacing countless people and driving them from their homes in search of protection. In 2015, more than one million people seeking refuge arrived in Europe,⁵⁴ forcing the EU to confront its broken migration and asylum system.⁵⁵

In Jean Raspail’s racist dystopian 1973 novel, “The Camp of the Saints,” Raspail depicts the arrival of Black and Brown refugees in France as an apocalyptic invasion of the Western world. Although far-right figures in Europe and the U.S. have previously used the book as a propaganda tool, it was catapulted to the world stage in 2015 by anti-immigrant and white nationalist figures such as Steve Bannon and France’s Marine Le Pen. Le Pen used the depictions in Raspail’s work to conjure up anti-immigrant racial animus toward asylum seekers arriving in Europe, warning of a “real migratory

submersion.”⁵⁶ Although the National Rally leader would later lose the French Presidential race to Emmanuel Macron,⁵⁷ other campaign outcomes across Europe culminated in the United Kingdom leaving⁵⁸ the EU, Hungary’s far-right Prime Minister Viktor Orban winning his third term in office,⁵⁹ and the rise of far-right parties all over Europe.⁶⁰

The rise of far-right, nationalist, and anti-immigration parties in Europe as center-right parties find themselves in disarray has been disastrous.⁶¹ Even though public attitudes toward immigration in many European countries did not worsen during this time, mainstream political parties capitulated to the demands of the far-right and frequently adopted their anti-migration policy proposals.⁶² The EU and its Member States increasingly focused on migration prevention and externalization, despite vowing to implement non-refoulement policies throughout the bloc.

In recent years, Europe strove to close every route to its territory. Encouraged by EU Member States,⁶³ Western Balkans countries began to restrict travel through their borders in 2016, shutting out asylum seekers attempting to travel on land to interior countries in northern Europe.⁶⁴ This pushed many asylum seekers into more dangerous routes on land along the Western Balkans route, or by sea through the Mediterranean and Aegean seas. As discussed below, European nations then moved to block these routes altogether: EU Member States reached a deal with Turkey to deport “irregular” migrants to the neighboring nation, while Italy enlisted Libya to push back asylum seekers arriving via the Mediterranean. But these externalization and outsourcing practices were not exclusive to Europe’s eastern and southern entry points, as illustrated by the brutal demolition of a refugee camp in northern France in 2016.

2.1. Failure to Uphold Rights of Asylum Seekers Enshrined in EU Law

EU law incorporated the Refugee Convention’s core principle of non-refoulement in the European Convention on Human Rights⁶⁵ via the EU Charter of Fundamental Rights.⁶⁶ However, the EU has increasingly permitted Member States to impose limitations on the principle through externalization regimes—both within EU territory and beyond. These measures have put the rights of asylum seekers at risk and drawn scrutiny in courts.

In 1999, EU Member States agreed to streamline the processing of asylum claims by building a Common European Asylum System (CEAS) based on the Refugee Convention and the 1967 Protocol.⁶⁷ Though Member States retain discretion as to implementing asylum policies, the CEAS framework provides a minimum standard of treatment for asylum seekers including their registration, reception (where they are initially housed), and the processing of their applications.⁶⁸ Directives and regulations addressing minimum standards for asylum seekers, including their treatment, and the sharing of financial and processing responsibility were subsequently adopted by the EU. These include the 2003 Dublin Regulation and the 2005 Asylum Procedures Directive (APD) as well as their subsequent amendments.⁶⁹ These policies have provided the framework for some European Union Member States to further insulate themselves from perimeter countries and the African, Asian, and Middle Eastern asylum seekers arriving at their borders.

In theory, the APD and the Dublin Regulation were designed to share asylum processing responsibility among EU Member States. In practice, however, these procedures codified safe third country concepts within the EU, placing the collective burden on external border countries to process arriving asylum seekers and provide asylum. While the APD provides certain due process guarantees, including the right to a lawyer and an appellate process,⁷⁰ it also allows Member States to apply “safe third country” concepts in processing of asylum claims, provided protections are in accordance with Refugee Convention standards.⁷¹ The Dublin Regulation also relies on these concepts when determining which European Union country is responsible for processing an asylum claim. An increase in the numbers of arriving asylum seekers in 2014 and 2015 exposed basic vulnerabilities in this refugee-transfer model, including disputes among Member States regarding sharing asylum processing responsibility, overly lengthy procedures, and poor reception conditions for vulnerable people.

The Dublin Regulation requires one fair examination of an asylum application within the European Union, operating on the assumption that asylum practices in each country adhere to the same common standards.⁷² Under the agreement, certain criteria are applied in the examination process of an asylum claim in order to determine if an asylum seeker will remain in the EU country they are currently in, or if a Member State is to initiate a “transfer” request of that asylum seeker to another Member State. Family reunification is supposed to be the first criterion for determining which EU country is responsible for processing an asylum claim,⁷³ but many Member States do not follow this standard and, instead, Dublin “transfers” are usually initiated when secondary movement is detected or where an individual is found to have traveled through another country before reaching the country where they are requesting asylum.⁷⁴

In practice, the Dublin Regulation exposes asylum seekers to human rights abuses, including indefinite detention, family separation, and delays in access to protection.⁷⁵ The regulation forces already vulnerable people to wait for long periods of time in limbo without substantive appeals processes while EU Member States determine and agree on responsibility.

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There are a number of reasons why asylum seekers often attempt to travel from European external border states such as Greece and Italy to interior countries like Germany, France, and the United Kingdom: in order to reunify with family members, or to have access to the labor market, housing, legal aid, and other direct services. Further, because external border countries within Europe are often the first countries through which asylum seekers transit, they may be responsible for processing and providing protection to more individuals than other destination Member States.⁷⁶ As a result, asylum seekers may attempt to bypass these countries in order to avoid prolonged detention and ensure that they have access to fair asylum proceedings. This imbalance was only exacerbated with the increase in migration in 2014 and 2015, as this broken system for processing asylum seekers fell apart and harsh deterrent policies were expanded upon.

External border states within the EU who are recipients of the largest share of arrivals

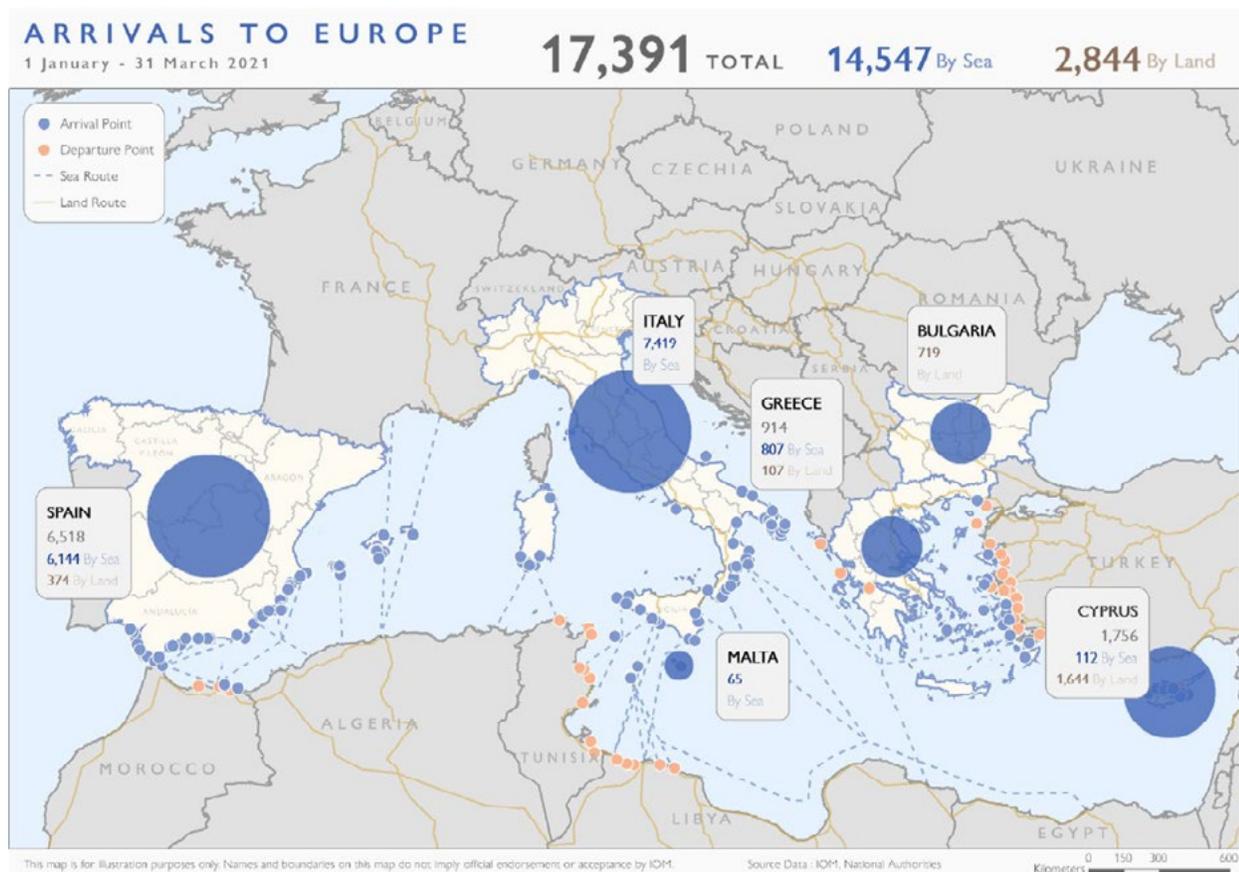


Image Credit: IOM's DTM Europe, Europe – Mixed Migration Flows to Europe, Quarterly Overview (January – March 2021)

2.2. Refoulement at Sea: The EU and Italy's Reliance on Libya to Prevent Asylum Seekers Arriving In Europe

For many asylum seekers, simply arriving in Europe and requesting asylum is becoming increasingly impossible, particularly for those who are pulled or pushed back to harm in the Mediterranean. Due to its location, Italy frequently becomes the default European gateway for asylum seekers from Sub-Saharan African countries, who arrive by sea on dangerous and overloaded boats. Rather than rise to the humanitarian challenge, Italy and the EU have accelerated their efforts to halt arrivals and push asylum seekers away from Italian ports.⁷⁷ After the European Court of Human Rights' *Hirsi Jamaa and Others v. Italy* decision created a legal barrier which prevented Italy from pushing back asylum seekers physically, Italy enlisted Libya to act as a border enforcement proxy. Under a Memorandum of Understanding first signed in 2017,⁷⁸ Italy and the EU have provided training, equipment, and additional support including a total of more than 500 million Euros to Libya, with the goal of preventing migration to the shores of Europe.⁷⁹ Most notably, Italy and the EU's efforts have gone toward the recruitment, training, and financing of the Libyan Coast Guard (LCG). The building up of the LCG, which in some instances involved recruiting coast guard officials from smuggling networks, has resulted in human rights violations and deaths at sea, revealing just how far EU Member States will go to prevent migration from the continent of Africa to Europe.⁸⁰

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In the first three years of the agreement, at least 40,000 people, including children, were intercepted at sea and pulled back to Libya, where they faced indefinite detention and human rights abuses, including torture and slavery.⁸² The same year the MOU was reached, CNN published a report exposing the auctioning of migrants in Libya into enslavement.⁸³ Nevertheless, Italy renewed its Memorandum of Understanding on Migration with Libya in 2020,⁸⁴ without any amendments.⁸⁵

Historically, the European Union and Italy's use of Libya as a proxy border control agency predates this formal agreement. Libya is a primary transit country for asylum seekers from the continent of Africa.⁸⁶ Asylum seekers frequently flee war, conscription, and violent conflict, including state sanctioned violence and slavery, layered upon economic destitution. In the aftermath of colonialism and the carving up of the continent of Africa, Europe—and Italy in particular enlisted Libya to prevent asylum seekers from arriving at their shores.⁸⁷ In 2008, Italy reached a deal with Colonel Muammar al-Gaddafi pursuant to which Italy paid Libya \$5 billion over the course of 20 years in recognition of damage done to Libya by Italy during the colonial era.⁸⁸ In exchange, Libya would work to stop as many asylum seekers as possible from arriving in Italy. The agreement broke down with the Libyan dictator's fall from power and subsequent death, but not before he demonstrated the racist ideological underpinning of these mechanisms on the world stage.⁸⁹ Standing next to Italian Prime Minister Silvio Berlusconi in Rome in 2010, Gaddafi warned that "Europe runs the risk of turning black from illegal immigration... It could turn into Africa."⁹⁰

The International Organization for Migration (IOM) has described the Mediterranean Sea as "by far the world's deadliest border."⁹¹ Even if individuals have been able to withstand grueling overland journeys, including facing violence such as kidnapping, they are then packed onto rubber dinghies or shabby wooden boats without life vests and sent out to sea. Since 2014, at least 22,000 people have perished in the Mediterranean and the Atlantic en route to Europe.⁹² In 2020 alone, more than 2,200 lives were lost at sea,⁹³ including over 1,400 deaths in the Mediterranean.⁹⁴ These preventable tragedies have not slowed down, and as of June 2021, human rights observers have recorded 677 deaths of asylum seekers traveling from Libya to Europe.⁹⁵ In many instances, these deaths are the result of the EU and its Member States' generalized failure to agree on who has responsibility to rescue people in danger at sea. Instead of working to save lives, the EU and its Member States have halted government run search and rescue operations and interfered with and criminalized SAR NGOs.⁹⁶

Libyan Coast Guard officials drag a deflated rubber boat which had carried some of the 150 asylum seekers whose lives were lost in a shipwreck in the Mediterranean on July 25, 2019.



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In May 2021, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a report on the state of search and rescue operations in the Mediterranean Sea. The report, titled “Lethal Disregard,”⁹⁷ condemns the failure of EU Member States to assist distressed migrants at sea, as well as push-backs, the LCG’s “pattern of reckless and violent behavior,” and the criminalization of SAR NGOs. As of December 2020, the OHCHR found that only 2 of the 15 SAR assets which normally save lives in the central Mediterranean were performing rescue operations, while the others were “either impounded or otherwise being prevented from undertaking their activities.”⁹⁸ In addition to halting EU SAR operations and interfering with the work of NGOs, Italy and the EU conspired with the Libyan Coast Guard, enlisting them to intercept asylum seekers at sea and return them to Libya.

Under the United Nations Convention on the Law of the Sea, EU and Italian authorities are obligated to alert whichever ship is in the best location to rescue a distressed vessel at sea.⁹⁹ In recent years, however, Italian authorities and the EU’s border agency, Frontex, have given preference to the LCG over non-governmental organizations to prevent disembarkation of asylum seekers in Europe.¹⁰⁰ Leaked transcripts detailing communications between Libyan and Italian Coast Guard officials revealed that Italian authorities were aware of Libya being “either unwilling or incapable of looking after migrant boats at sea.”¹⁰¹ In one instance, a LCG official told his Italian counterpart who had phoned to report 10 distressed dinghies that it was a holiday and “perhaps we can be there tomorrow.” In March 2017, Italian officials responded to calls for help from hundreds of distressed asylum seekers at sea by reaching out to the LCG, who in turn failed to act. According to evidence obtained by The Guardian, the Italian Coast Guard would subsequently lose contact with the distressed dinghies, resulting in at least 146 deaths.¹⁰²

Italy's and the EU's externalization policies with Libya compound layers of human suffering for asylum seekers who are intercepted by the LCG and returned to detention centers in the country. Conditions in Libyan detention centers are abhorrent, and the country, engulfed in a civil war, is not party to the 1951 Convention and has no asylum law.¹⁰³ Furthermore, Libya criminalizes irregular entry, stay, and exit, and individuals intercepted at sea or apprehended in the interior or at the borders of Libya are criminalized and detained.¹⁰⁴ Because of Libya's failed judicial system, asylum seekers are detained indefinitely without being charged or convicted. Twenty percent of detained asylum seekers in Libya are children, some of whom have been separated from their families or are unaccompanied.¹⁰⁵ Detained asylum seekers including children, are subjected to beatings, torture, forced labor, and sexual violence.¹⁰⁶ International human rights organizations have condemned the cooperation of the Italian government and the European Union with Libyan authorities, and have called for an end to the MOU and the release and evacuation of all asylum seekers detained in Libya.¹⁰⁷ In a report submitted to the UN Security Council on September 3, 2020, UN Chief Antonio Guterres urged the closure of immigration detention centers in Libya due to their "horrendous conditions."¹⁰⁸

The inhumane externalization policies of the European Union and Italy have increased pressure on asylum seekers to explore more dangerous migration routes including the Atlantic route to the Canary Islands in Spain.¹¹⁰ According to the IOM, one-third of migrant deaths at sea in 2020 were along the Atlantic route.¹¹¹ Loss of life in the Atlantic has persisted, with at least 126 deaths from January to April of 2021.¹¹² Like Italy and Greece, Spain is an external border state and a recipient of a larger number of arrivals. In 2020, more than 20,000 people mostly from the continent of Africa reached the Canary Islands after surviving dangerous journeys at sea, while at least 849 people died trying.¹¹³ This is more than four times the amount of deaths in 2019.

The Spanish government has struggled to process these vulnerable people, many of whom it has restricted in hotels and kept on the islands.¹¹⁴ At the end of 2020, when more than 8,000 people had been accommodated in hotels, the government asked for resettlement support from the European Union.¹¹⁵ Spain's Migration Secretary Hana Jalloul called on other EU Member States to share the responsibility of processing asylum seekers, stating: "We are the southern border of Europe, not of Spain."

“Detained migrants and refugees in Libya, both women and girls as well as men and boys, remain at high risk of sexual and gender-based violence, including rape, which is used as a form of torture, with some cases resulting in death.”

— Situation of migrants and refugees in Libya, United Nations Security Council Report of the Secretary-General¹⁰⁹

In December 2020, the European Union announced 43.2 million euros in aid for Spain to, according to the EU, go toward providing temporary shelter and additional assistance for migrants on the Canary Islands.¹¹⁶ Although many women and minors have reportedly been transferred to mainland facilities or put into the care of Spanish government officials,¹¹⁷ thousands of men are being held on the islands in unsanitary conditions with poor access to food, medical treatment and legal services, where they fear they are at risk of deportation.¹¹⁸ A 2020 Spanish Ombudsman report decried conditions for asylum seekers on the Canary Islands and called for an end of the practice of trapping of people on islands: “coastal areas in southern Europe cannot be turned into places where rights such as freedom of movement are denied, on the grounds of migration control and to avoid a so-called pull effect.”¹¹⁹ In addition to the devastating human consequences of Spain’s migration policies, trapping asylum seekers on islands in degrading conditions has not deterred new arrivals.¹²⁰

2.3. EU-Turkey Statement: Banishing Asylum Seekers to Turkey and Trapping them on Greek Islands

In March 2016, European Union Members States and the Turkish government reached an agreement to deport asylum seekers arriving on Greek islands “irregularly” to Turkey.¹²¹ According to the European Commission, the EU-Turkey Statement “sought to put an end to irregular migration from Turkey to the EU, improve living conditions for Syrian refugees in Turkey and open up organised, safe and legal channels to Europe for them.”¹²² The agreement postures as a hybrid between a safe third country agreement and border externalization and is predicated upon the false premise that Turkey is a safe country for asylum seekers.¹²³ Intentionally called a “statement” rather than a bilateral agreement, the EU-Turkey agreement also skirts judicial oversight because it implicates EU Member States, rather than the EU.¹²⁴

Under the Statement, in exchange for accelerated talks on accession to the EU, visa liberalization, and 6 billion Euros in refugee aid for Turkey,¹²⁵ Greece may deport asylum seekers to Turkey who are deemed inadmissible for transiting through the country en route to Europe. Additionally, the Statement provides that for every Syrian refugee deported to Turkey, one may be resettled in Europe. This outsourcing practice was suspended in early 2020 due to the coronavirus pandemic and a breakdown of relations between Turkey and Greece.¹²⁶

As the UNHCR has pointed out, the Statement relies on Article 33 in the Asylum Procedures Directive (APD) to deport individuals who traveled through both a first country of asylum and/or a safe third country.¹²⁷ Rooting the legality of deportations to Turkey in the APD is dubious, particularly because the Statement is not in compliance with Article 38 of the APD, which states that nations can only be considered safe third countries when they are compliant with certain measures, including the obligation to process and provide refugee protections in accordance with the Refugee Convention.¹²⁸

Although Turkey (which hosts the most refugees and asylum seekers worldwide¹²⁹) is party to the Refugee Convention and the 1967 Protocol, the country maintains the Convention’s original geographical limitations and therefore does not provide non-European individuals with all rights under the treaties.¹³⁰ In Turkey, asylum seekers from non-European countries are granted limited

relief, must secure their own housing, and their access to the labor market and education is restricted.¹³¹ Further, they are subjected to deportation at any time because Turkey's protection regime for Syrians and other non-Europeans is non-binding.¹³² Overall, asylum seekers in Turkey experience high rates of homelessness¹³³ and are frequently forced to work in the underground economy,¹³⁴ conditions which worsened during the COVID-19 pandemic. Further, because the resettlement scheme in the EU-Turkey Statement applies to Syrians only, it reinforces disparities in Europe's protection regime among nationalities,¹³⁵ including those from Afghanistan, Iran, Iraq, and Sudan.¹³⁶ Turkey thus fails to meet the threshold requirements for safe third country processing.

With the EU-Turkey Statement, European Union Member States employed Greek islands to hold asylum seekers it intends to remove to Turkey off of the mainland. This approach is designed to make it as difficult as possible for people to gain protection in Europe, and as easy as possible for them to be returned to Turkey. As a peripheral member state, Greece has therefore been tasked with guarding Europe's borders, and since the EU-Turkey Statement went into effect, it has effectively served as a mass detention center for the EU. The Statement has trapped asylum seekers in camps on the Greek islands with mandatory detention,¹³⁷ fast-track asylum procedures,¹³⁸ due process deficiencies, and a disregard for family reunification.¹³⁹

According to the UNHCR, as of September 2020 more than 21,000 people resided in overcrowded camps on the Greek Aegean islands.¹⁴¹ That month, the Greek Moria refugee camp on Lesbos island caught fire and was destroyed. At the time of the fire, the camp (built to house 3,000 people) had a population of 13,000.¹⁴² The Moria camp had been plagued by unsanitary and unsafe conditions. Its destruction displaced thousands of asylum seekers, with many forced into even worse conditions.¹⁴³ A temporary shelter erected on Lesbos to house more than 7,000 asylum seekers displaced by the Moria fire has been described as susceptible to strong winds and flooding, with poor sanitation and lack of power and adequate protection for residents. Additionally, the Greek government confirmed in January 2021 that the camp (built on a repurposed firing range) has dangerous levels of lead in the soil, endangering both asylum seekers and aid workers.¹⁴⁴

**“I thank Greece
for being our
European ασπίδα
[English: shield]
in these times.”**

**— European
Commission President
Ursula von der Leyen,
March 3, 2020¹⁴⁰**



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**Photos taken of
Moria Refugee
camp in July 2017
and January 2020.**

In addition to trapping people in unsafe conditions off of mainland Greece, Greek authorities have engaged in systematic illegal push-backs at sea. In 2020, 9,741 asylum seekers, including children, were involved in push-back incidents.¹⁴⁵ The Greek government also began to criminalize asylum seekers, for example, in late 2020 Greek authorities charged an Afghani father with endangerment because his 6-year-old son died at sea en route from Turkey.¹⁴⁶ With the goal of minimizing migration to Europe, the EU and its Member States, including Greece, have subjected asylum seekers to a system of punishment for daring to protect themselves and their families. Whether it be push-backs at sea, offshore detention, or deporting people to Turkey where they are not provided full refugee rights and are at risk of refoulement, the EU-Turkey Statement demonstrates the deadly human suffering caused by externalization regimes.

Whether it be push-backs at sea, offshore detention, or deporting people to Turkey where they are not provided full refugee rights and are at risk of refoulement, the EU-Turkey Statement demonstrates the deadly human suffering caused by externalization regimes.

Demolition of the Jungle refugee camp in Calais, France.



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2.4. U.K. and France Border Enforcement: Raids, Surveillance and More Deaths at Sea

In addition to the European Union's disturbing push-backs and other externalization policies, the continent also has yet to provide safe conditions for asylum seekers internally—and this failure is often intentional. Member States participate in a variety of programs and policies designed to make conditions so difficult as to incentivize “self-deportations.”

The northern French city of Calais has for years been an embarkation point for asylum seekers trying to reach the U.K. In 2016, the French government sent bulldozers to demolish the ‘Jungle,’ a refugee camp located in Calais, evicting thousands.¹⁴⁷ Conjuring images of colonial violence, France wielded its police and military might intentionally to deter other would-be asylum seekers and “secure” its border with the U.K. The demolition of this refugee camp was followed by a crackdown on informal refugee camps and settlements, as well as on the ability of charitable organizations to provide food and housing, particularly in northern France.

There are approximately 2,000 vulnerable people, including hundreds of unaccompanied children, living on the streets in the French border towns of Calais and Dunkirk.¹⁴⁸ Inhumane living conditions, lack of reception space, barriers to work authorization, hostility toward asylum seekers, and challenges surrounding family reunification, drive asylum seekers to attempt to reach the U.K. from France.¹⁴⁹ Police raids and the constant displacement and brutalization of asylum seekers living in informal settlements have made surviving already unsafe and unsanitary conditions even more difficult. In 2020, the non-profit Human Rights Observers found that nearly 1,000 police evictions took place at refugee camps.¹⁵⁰ A field director at the organization described the French government's strategy as being designed to wear down and tire asylum seekers, and to “take away their hope. It's like torture.”¹⁵¹ An asylum seeker from Chad who escaped Libya and survived a perilous journey at sea thought his life might get better when he reached Europe. Instead, his misery

persisted. He recalled: “I feel like my mind is slipping. I can’t remember the last time I’ve slept... I ask the police for help, but they just beat us and take us to jail.” Another asylum seeker from Nigeria said of the raids, “You think they are coming for war.”¹⁵²

France is not alone in this repressive conduct. For years, the U.K. has pumped hundreds of millions of pounds into French border enforcement in order to prevent asylum seekers and migrants from arriving on Britain’s shores.¹⁵⁴ Following the Brexit transition, the British government is reportedly planning to “radically beef-up the hostile environment” approach for immigrants and asylum seekers.¹⁵⁵ Because the U.K.’s Brexit deal with the EU did not contain provisions similar to the Dublin regulation, the U.K. cannot make requests to “transfer” individuals to an EU state that asylum seekers may have traveled through before arriving in Britain.¹⁵⁶ This has driven the British government to explore new methods for reducing the processing of asylum seekers on its territory.

Although the United Kingdom’s Home Office previously distanced itself from reports in September 2020 that it was exploring offshoring asylum processing to Moldova, Morocco and Papua New Guinea,¹⁵⁷ the government agency proposed new legislation in July 2021 to establish an offshoring system.¹⁵⁸ On July 6, 2021, Home Office Secretary Priti Patel introduced The Nationality and Borders Bill to permit the processing of asylum seekers outside of the U.K., and make it a “criminal offence to knowingly arrive in the U.K. without permission.” If enacted the new legislation would limit the types of protection and benefits available to asylum seekers who arrive between ports of entry and who may have traveled through a third country en route to the U.K.

Due to increased police presence in Northern France, it is all but impossible for asylum seekers to arrive in the U.K. by the Channel Tunnel, the railway tunnel connecting the two countries.¹⁵⁹ Instead, asylum seekers are driven to pay exorbitant fees to smugglers who put them in boats and dinghies and into the world’s busiest shipping lane - the English Channel. In 2020, at least 8,000 asylum seekers crossed the Channel, though many more perished at sea.¹⁶⁰ In October 2020, a boat with asylum seekers sank, killing two children ages 5 and 8 and leaving a baby missing.¹⁶¹ Just over a month later, the U.K. and France reached an agreement doubling police presence along the French coast and increasing surveillance measures.¹⁶² The agreement failed to contain safe and legal procedures for individuals to arrive in the U.K. and apply for asylum, ensuring that crossings and deaths at sea will likely continue.¹⁶³ Further, the continued militarization of northern France has only emboldened and enriched traffickers there, who have found new more dangerous routes and charged asylum seekers more to journey along them.¹⁶⁴

**“They come
at 5am, circle
around your tent
and cut it with
knives... It has
happened to me
so many times.
They treat us
like animals, not
humans.”**

— Abdul, a 20-year-old from Sudan on the French police evictions.¹⁵³

2.5. Looking Forward: Europe's Continued Focus on Externalization and Returns

EU Member States have intensified their already harsh deterrent practices under the guise of responding to the COVID-19 pandemic. Unable to halt the departures of asylum seekers through other measures, EU Member States pushed back at least 40,000 vulnerable people during the pandemic.¹⁶⁵ This resulted in an estimated 2,000¹⁶⁶ deaths on land and at sea, and demonstrated the willingness of EU Member States to violate the non-refoulement principle in order to prevent asylum seekers from entering their territories.

In September 2020, the European Commission unveiled a new proposed Pact on Migration and Asylum,¹⁶⁷ representing a capitulation to anti-immigrant heads of state in Hungary and Poland. The pact contains some positive measures for asylum seekers, including an expanded definition of family for reunification purposes, but overall, fails to ground the new policy in humanitarian principles, and diminishes existing EU protections for vulnerable people. The proposal would replace the Dublin regulation with a new system for determining state responsibility, though effectively the first countries in which asylum seekers arrive will bear most obligations. The pact solidifies Europe's practice of establishing inter-country deals to halt migration, and expands detention and deportation measures.¹⁶⁸ Under this pact, the practice of incentivizing third countries to accept deportations and readmissions through visas and development assistance continues.¹⁶⁹ The new proposal would also allow countries to opt out of relocating asylum seekers processed by the European-wide system, and instead show "solidarity" with peripheral countries by taking charge of deportations.

This proposal will continue to drive asylum seekers to take even more dangerous routes in search of safety, with long-term deleterious effects on refugees' health.¹⁷⁰ Humanitarian organizations led by the European Council on Refugees and Exiles (ECRE) have noted two flawed presumptions on which the new pact is based: first, "that the majority of people arriving in Europe do not have protection needs;" and second, "that assessing asylum claims can be done easily and quickly."¹⁷¹ As ECRE observes, both are unfounded. The majority of people claiming asylum in Europe over the past three years, have, in fact, received a form of protection. Europe's efforts to externalize asylum processing and border enforcement are depriving vulnerable people of their right to protection, and unnecessarily subjecting them to human rights abuses and death.

"...we want to share with you what we have, we hope to live in dignity. But this dream comes at a high cost for all the migrants who drown."

— Asylum seeker from Sudan who survived a shipwreck in the Mediterranean on April 22, 2021.¹⁷²

On April 22, 2021, at least 130 asylum seekers from African countries died in a shipwreck in the Mediterranean off the coast of Libya.¹⁷³ As Marie Naas, Head of Advocacy in Germany and the EU at the SAR NGO Sea-Watch points out, “Imagine a boat in distress with 90 people on board, 15 children, 3 pregnant women, all European or U.S. passport holders. Can you imagine what an impressive flotilla would search day and night for the boat in distress, supported by military and helicopters and live tickers of all big news agencies? This reality is the greatest demasking of the so-called European values.” Were Europe to live up to its self-described human rights ideals, it would have to reckon with its treatment of asylum seekers and migrants on land and at sea, at its borders and beyond, and end its punishment and banishment of human beings fleeing war, persecution, and other dangers.

As Marie Naas, Head of Advocacy in Germany and the EU at the SAR NGO Sea-Watch points out, “Imagine a boat in distress with 90 people on board, 15 children, 3 pregnant women, all European or U.S. passport holders. Can you imagine what an impressive flotilla would search day and night for the boat in distress, supported by military and helicopters and live tickers of all big news agencies? This reality is the greatest demasking of the so-called European values.”

Endnotes

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