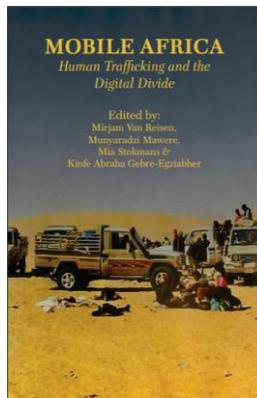


Complicity in Torture: The Accountability of the EU for Human Rights Abuses against Refugees and Migrants in Libya

Wegi Sereke & Daniel Mekonnen

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Complicity in Torture: The Accountability of the EU for Human Rights Abuses against Refugees and Migrants in Libya

Wegi Sereke & Daniel Mekonnen

Introduction

This chapter addresses serious allegations about the complicity of European governments and state actors, in particular Italy and the European Union (EU), in the abuse of African refugees and migrants in Libya. The analysis is based on the *prima facie* findings – accepted as correct until proven otherwise – of a groundbreaking report by Amnesty International, published in December 2017 (Amnesty International, 2017). Building on the main findings of Amnesty International, this chapter raises additional critical questions about accountability that are not adequately addressed in the report. This will be done in a way that charts out possible mechanisms of not only legal accountability, but also moral and political accountability, for the alleged complicity of European governments in the serious violation

Amnesty International estimates that there are 20,000 refugees and migrants detained in horrific conditions in different Libyan detention centres administered by the country's General Directorate for Combating Illegal Migration, a government entity that receives support from Italy and the EU. In addition, horrendous violations are committed against African refugees and migrants by the Libyan Coast Guard, another government entity receiving enormous amounts of support from Italy and the EU. The EU and EU governments carry responsibility for the situation of refugees in Libya and they need to be held accountable for their complicity in the human rights abuses taking place.

of international human rights law being committed in Libya. The chapter will also look at the obstacles that lie ahead of any accountability measures related to the alleged complicity of European governments.

We start by making some key assertions about contemporary global challenges, one of which is the so-called ‘migration crisis’ in Europe. With the advent of the Internet and other recent technological advancements, the world has become increasingly smaller and interdependent – benefiting immensely from the fruits of globalisation. At the same time, the world is also “becoming a more troubled place today than it was many years back” (BBC, 2018). Most recently, the former UN Secretary-General, Kofi Anna, had the following to say: “The world is particularly messy today when we look at what is happening in the Middle East, what is happening in some parts of Africa, some parts of Asia, and the fact that I don’t see strong leaders around” (BBC, 2018).

Our world is currently experiencing multiple crises, ranging from the catastrophic consequences of climate change, to rising levels of inequality, a retreat from universal commitments about the protection and promotion of human rights, the rise of populist political parties and leaders, and the unprecedented number of victims of forced displacement, to mention a few examples. This chapter focuses on the latter challenge, the growing number of refugees at the global level, particularly in Europe, and how this problem is shaping policy and practice in European decision-making processes, including its far-reaching influence on Europe’s long-standing commitment to the protection and promotion of human rights, as well as adherence to the obligations emanating from international refugee law and international human rights law. The chapter will pay particular attention to the emerging discourse on the complicity of European governments in the suffering of African refugees and migrants stranded in third countries, most notably Libya.

The main question looked at in the chapter is: *Are the EU and EU governments complicit in the human rights abuses of refugees and migrants in*

Libya and, if so, can they be held accountable and by what mechanism? The chapter is organised as follows. Following this general introduction, a brief account is given of the horrendous abuse suffered by African refugees and migrants in Libya. This is followed by an analysis of the legal grounds for the alleged complicity of Italy and the EU, as well as the gravity of this alleged complicity. The section that follows sets out the accountability options, including prosecutorial measures and non-prosecutorial measures, as well as the reparation of the rights of victims and relatives of victims. This discussion takes into account the EU and international legal framework applicable to accountability measures for complicity in atrocity crimes. Looking beyond legal accountability, the next section proposes what are considered to be long-term and sustainable solutions to the so-called ‘migration crisis’ in Europe. This will be done by emphasising the need to contextualise European migration debates in light of the unfolding global migration crisis, the effects of which are not limited to Europe. This is followed by re-visiting the alleged complicity of Italy and the EU in human rights abuses and the need to look at this problem as an early sign of the emergence of recalcitrant government behaviour in Europe – a problem that requires the proactive engagement of sensible and responsible European citizens. The final section summarises the main findings of the chapter and draws some conclusions.

The abuse of refugees and migrants in Libya

Due to its geographical proximity to Europe, Libya is the most important and highly-populated transit country for refugees and migrants coming to Europe. Since the downfall of the previous regime of Muammar Gaddafi, the country has been in chaos, in which context numerous serious human rights violations are being committed with impunity. Violations against African refugees and migrants are the norm, not the exception.

In the interest of clarity, it is important to briefly explain here the difference between the two seemingly similar, but different, terms: ‘refugee’ and ‘migrant’. The latter is a person who moves from one place/country to another in order to find work or better living

conditions. The reason for his/her movement is usually economic. Any violation that such a person may suffer is addressed by the corpus of what is generally known as international human rights law. In the case of migrant workers, a thematic treaty was adopted in 1990 known as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN General Assembly, 1990).

A refugee, on the other hand, is a person who has been forced to flee their country of origin due to one of several grounds of forced displacement, such as war, natural calamity or gross human rights violation. Persecution or grave danger to one's own personal security is the most important element in defining a person as a refugee. The conditions under which a person may be defined as a refugee are stipulated in Article 1 of the 1951 UN Convention on Refugees. Unlike a migrant, a refugee is literally forced to flee his or her country of origin by one of the grounds listed in this convention.

Therefore, in terms of meaning, there is a huge difference between a migrant and a refugee, although these terms are often used interchangeably, in particular by mainstream media. Relatively speaking, refugees are more vulnerable to abuse. The focus in this chapter is on refugees, but cursory reference will also be made to migrants due to the fact that the main focus country of this research (Libya) is host to a large number of African refugees and migrants. According to the statistical data of the International Organization for Migration (IOM), up to September 2017, there were around 416,000 migrants and more than 44,000 people recognised by the United Nations High Commissioner for Refugees (UNHCR) as refugees in Libya (IOM, 2017). Amnesty International (2017, p. 22) cautions that “the actual number of such individuals is again likely to be much higher, given UNHCR's limited mandate in the country”.

In terms of the various categories of population movements involved, the experience in Libya fits well with a situation of mixed migration. Organisations working on the broader topic of migration, such as IOM and UNHCR, understand the phenomenon of mixed migration

as the complex movement of people, including refugees, asylum seekers, economic migrants, environmental migrants and other migrants, as well as unaccompanied minors, smuggled persons, victims of trafficking and stranded migrants (Mixed Migration Hub, 2018).

Amnesty International estimates that there are 20,000 refugees and migrants detained in horrific conditions in different Libyan detention centres administered by the country's General Directorate for Combating Illegal Migration, a government entity which receives all sorts of support from Italy and the EU – this being one of the most important links in establishing European complicity in the ongoing suffering of African refugees and migrants in Libya. This is in addition to other horrendous violations committed against African refugees and migrants by the Libyan Coast Guard, another government entity receiving enormous amounts of support from Italy and the EU (Amnesty International, 2017, pp. 26–40). The alleged complicity of Europe in the ongoing abuse of African refugees and migrants needs to be seen in this context, as will be elaborated in some detail in the next section.

Alleged European complicity

The December 2017 report by Amnesty International makes serious accusations against European state actors, alleging complicity in the continued abuse of African refugees and migrants in Libya. Based on a thorough analysis of the jurisprudence of international courts and tribunals, regional and international human rights bodies, as well the opinion of eminent publicists, scholars and practitioners of international law, Amnesty International concludes that Italy and the EU have knowingly aided and abetted in the perpetration of grave violations of international human rights law and international refugee law in Libya. One of the most common abuses committed against African refugees and migrants is the crime of torture (Amnesty International, 2017).

Among the many intriguing arguments Amnesty International puts forward to substantiate its conclusions is the one based on the interpretation of the scope of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN General Assembly, 1984). Citing General Comment No. 2 of the UN Committee Against Torture (2008), Amnesty International argues that obligations emanating from the Convention against Torture are binding even when the torture in question is committed in a geographic location far from the national boundaries of a given European country.

Based on the definition of the scope of the UN Convention against Torture, provided by the UN Committee against Torture, a country may be held accountable for the crime of torture when the crime is committed in a situation in which the country in question “exercises, directly or indirectly, *de facto* or *de jure* control over persons in detention” (Committee Against Torture, 2008, p. 56). Similar guidance is found in the jurisprudence of the UN Human Rights Committee. In one of its landmark decisions (UN Human Rights Committee, 2006), involving the interpretation of the scope of the International Covenant on Civil and Political Rights (UN General Assembly, 1966), the Committee concluded:

A State party may be responsible for extraterritorial violations of the Covenant, if [there] is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extraterritorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time. (UN Human Rights Committee, 2006)¹

The above arguments need to be understood in the context of the overall political situation in Libya, not only as a major transit country for African refugees and migrants to Europe, but also as a country in complete chaos. Since the downfall of the regime of Muammar Gadhafi, Libya is suffering from a breakdown of the rule law and has

¹ In support of its conclusion, the Committee cites *A.R.J. v. Australia* (UN Human Rights Committee, 1996), *Judge v. Canada* (UN Human Rights Committee, 1998), and *Alzery v. Sweden* (UN Human Rights Committee, 2005).

seen the continued enfeeblement of the central government and the proliferation of several armed groups, criminal gangs, and militias, all of which are wantonly committing human rights abuses against African refugees and migrants. There is a plethora of academic and non-academic literature chronicling in great detail the overall political situation in Libya, particularly the abuses suffered by African refugees. This includes a well-established pattern of documentation and reporting by Europe External Policy Advisors (EEPA) and its partners, including Tilburg University (Van Reisen, Estefanos & Rijken, 2014; Van Reisen & Rijken, 2015; Van Reisen & Mawere, 2017; Mekonnen, 2015; Mekonnen, 2016; Sereke, 2018; Sereke, 2016).

One of the most shocking accounts of abuses against African refugees and migrants is that by CNN, published in November 2017, which showed how African refugees are being auctioned in Libya in open markets, in a practice reminiscent of the dark age of slavery (CNN, 2017). Similarly, on 25 January 2018, CNN released additional disturbing video clips in which five Sudanese men are shown being whipped by their kidnappers. As done previously in relation to the well-documented Sinai trafficking (also researched by EEPA, see Van Reisen, Estefanos & Rijken, 2014; Van Reisen & Rijken, 2015; Van Reisen & Mawere, 2017), the videos were sent to the relatives of victims in order to extract ransom (CNN, 2018).

There is a huge amount of evidence showing the prior knowledge of European governments about the abuses suffered by African refugees and migrants in Libya, making their continued cooperation with Libyan actors even more problematic. The best example, among many others, is a letter sent from the Office of the Prime Minister of Italy to Amnesty International, dated 3 November 2017, in which the Italian government is quoted to have said: “We are on the front line for the improvement of living conditions in the reception centres for migrants in Libya – whose problems have been well known to us for a long time – in co-operation with the main actors and international agencies” (Amnesty International, 2017, p. 58). Additional statements cited by Amnesty International (2017, pp. 58–59) include a comment dated 6 August 2017 and attributed to the Italian Deputy Minister for

Foreign Affairs; a statement given in March 2017, attributed to UK Independent Commission for Aid Impact; a leaked report of the EU Border Assistance Mission to Libya (EUBAM), dated 25 January 2017; extracts from an internal report by the German Embassy in Niger to the German Ministry of Foreign Affairs, titled *Return from Hell*, leaked by the German newspaper *Die Welt* in January 2017; and several resolutions of the EU Parliament.

These statements show that that Italy and other European countries are pursuing the agenda of outsourcing border control functions to the Libyan authorities regardless of the tremendous level of abuse (torture and other ill-treatment) African refugees and migrants are suffering at the hands of Libyan authorities. With regard to specific co-operation measures aimed at interceptions at sea, the actions of European governments are described by Amnesty International as that of:

... proactively contributing to violations and abuses, in particular by providing funds, training, equipment and other forms of assistance to enhance the capacity of Libyan security agencies to intercept and detain refugees and migrants, which has led to the arbitrary detention and ill-treatment of women, men, and children. Italy and other European governments have also failed to take any reasonable measure to prevent and end violations and abuses and to require Libyan counterparts to take adequate steps towards ending such violations and abuses as a condition underpinning the implementation of any co-operation measure. (Amnesty International, 2017, p. 59)

Another study, which resonates deeply with the findings of Amnesty International (2017), is that of Davitti and Fries (2017). The authors contend that Italy's actions in financing and ensuring the effectiveness of the Libyan Coast Guard (an entity accused of alleged cooperation with human smugglers, see Amnesty International, 2017) are part of a concerted effort by the EU to externalise migration management, in which Italy plays a key role. Thus, according to the same authors, these actions constitute a violation of Article 16 of the International Law Commission's *Articles on the Responsibility of States for International Wrongful Acts* (International Law Commission, 2001).

Following this line of argument, it can be concluded that it is difficult for both Italy and the EU to distance themselves from wrongful acts committed in Libya in the context of their ongoing migration-related dealings with the Libyan authorities. In conclusion, we believe that the argument made by Davitti and Fries (2017),² in the context of a hypothetical violation that took place in Niger and involving Italian complicity, applies in the same fashion in the context of the ongoing violations taking place in Libya. Based on this understanding, it can be concluded that Italy and the EU are in violation of Article 3 (prohibition of torture), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the European Convention on Human Rights (Council of Europe, 1950) for their active involvement in the financing, setting up and monitoring of the effectiveness of the offshoring mechanism in Libya for dealing with migrants attempting to cross the Mediterranean Sea to Europe.

Possible accountability options

Many of the violations that are currently taking place in Libya, with the alleged complicity of Italy and the EU, involve flagrant breaches of fundamental rights and freedoms protected by international human rights law, international refugee law, and European human rights law, not to mention African human rights law. There is no doubt that many of these violations are of serious concern to the international community as a whole. Thus, according to Article 5 of the Rome Statute (International Criminal Court, 1998), they have the characteristic features of atrocity crimes that can possibly be prosecuted by the International Criminal Court (ICC), if other accountability measures are not taken by the countries concerned, in particular Libya, Italy and other EU member states.

² Davitti and Fries (2017) cite the following case law of the European Court of Human Rights in support of their argument: *ND and NT v. Spain* (European Court of Human Rights, 2017); *Hirsi Jamaa and Others v Italy* (European Court of Human Rights, 2012a); *MSS v. Belgium and Greece* (European Court of Human Rights, 2011); *EL-Masri v. The Former Yugoslav Republic of Macedonia* (European Court of Human Rights, 2012b); *Case of Al-Nashiri v. Poland* (European Court of Human Rights, 2014); *Khlaifia and Others v. Italy* (European Court of Human Rights, 2016).

One of the four categories of atrocity crimes punishable by the ICC, as per Articles 5 and 7 of the ICC, is the crime of torture, when committed as a crime against humanity. In order to reach the threshold of a crime against humanity, torture must be committed in a *systematic* or *widespread* manner, and must be directed against any civilian population, with knowledge of the attack. There is hardly any doubt that the situation of torture in Libya fits well with the definition of crimes against humanity, at least based on the detailed findings made by Amnesty International (2017).

However, as is generally known, prosecution by the ICC takes place only when the authorities in a given situation are unwilling or unable to take necessary legal action with regard to the violations in question. While this may be the case in Libya, the same cannot be said with regard to Italy and other EU member states. Be it as it may, the authors are cognisant of the fact that at this level the possibility of initiating prosecutorial measures targeting European actors at the ICC level is undoubtedly not a priority in the near future for a number of practical and procedural reasons, which are not the direct focus of this chapter. This calls for consideration of other accountability options under national or regional mechanisms.

The possibility of pursuing accountability for these violations is by far better in Europe than in Africa, for the simple reason that most European countries, including Italy, happen to have advanced prosecutorial infrastructure. This is in addition to complementary accountability options that can be pursued at the level of the European Court of Human Rights or the ICC at a later stage, should the situation demand. The relevance of the latter option needs to be seen in the context of the complete breakdown of the rule of law in Libya.

However, as a matter related to one of the most controversial issues of public policy in Europe, prosecutorial accountability measures are not going to be that easy, even in European courts. This issue involves a potential process of criminal accountability, targeting high-ranking

government officials sitting at the helm of the uppermost structures of political power in several European capital cities, including at the level of the EU – in other words sitting heads of state. Apparently, before reaching the doorsteps of major judicial forums in Europe, such a daring exercise of prosecutorial accountability can be frustrated by a tremendous amount of pressure emanating from European capital cities.

Therefore, without discounting the possibility of pursuing prosecutorial accountability in the future, it may also be helpful to look at other accountability options that can be pursued in a less confrontational way and by way of encouraging significant departure on the part of EU policymakers from their ill-suited migration policies, which are causing immense human suffering on the part of African refugees and migrants in transit countries such as Libya. This also takes into consideration another concern, which is related to the possibility of any prosecutorial accountability being stifled by delay tactics by the EU.

Moreover, as an enormous institution of regional governance, with untapped resources at its disposal, securing a successful prosecutorial strategy against high-ranking EU politicians cannot be achieved without tremendous challenges and a prolonged legal battle. For victims and their relatives, who are in dire need of swift reparatory measures, other options that can provide timely remedial answers are more important than prosecutorial options, the success of which is subject to a great deal of uncertainty. This makes it imperative to look for other accountability options, in particular moral, political and compensatory ones.

Such options can consist of a mix of remedial measures, which include an official apology on the part of the EU and other countries, such as Italy, which are accused of complicity in the abuses perpetrated against African refugees and migrants through their provision of direct and indirect help to state and non-state armed groups in Libya (Amnesty International, 2017, p. 49), whose record on the ill-treatment of refugees is worse than any other in

contemporary world history. Public acknowledgment of harm to the victims of abuse and their relatives should be seen as a crucial component of such a public apology. Common sense also dictates that any official act of remorse with regard to the abuses under discussion would be incomplete if not supplemented by moral and financial reparation to the victims and their relatives. In the interest of long-term and sustainable solutions, there are additional steps that need to be taken by European countries. These steps require a much broader understanding of the migration crisis in Europe, as discussed in the next section.

Long-term and sustainable solutions

One important aspects of the European ‘migration crisis’ that is often inadequately debated in major policy circles across Europe is the following question: is Europe really experiencing a big problem of refugees compared to other regions of the world, which are hosting a much higher number of refugees or victims of forced displacement? The answer is no, especially compared to the enormous amount of resources Europe has at its disposal, which makes it possible for European leaders (with the requisite political will) to come up with solutions that are mutually beneficial both to Europeans and the rest of the world, in particular the refugee-producing countries of the developing world.

On the other hand, it is important to note that this question does not in any way dispute the fact that Europe is indeed flooded by a growing number of refugees, at a level not experienced since the end of World War II, as also corroborated by UNHCR (2017). The truth of the matter is that this problem is not unique to Europe, but rather global. As such, it is not helpful to frame the issue as a Eurocentric problem that can only be solved by employing Eurocentric solutions. Before proposing some ideas for a long-term and sustainable solution, we need to have a closer look at some basic facts and statistics by way of debunking some myths related to the so-called ‘migration crisis’ in Europe.

We do this by citing comparable observations from different sources, starting from the following remarks made in October 2016 by one of the most popular TV channels, Al-Jazeera's *Reality Check*:

As hundreds of thousands of refugees continue to make their way into the European Union – already the home of 1.3 million – many governments have begun passing anti-immigration laws in response. However, while the ‘wealthier’ Europe panics over the influx of asylum seekers, the numbers are much higher in Africa. (Hasan, 2016).

From a staggering global figure of 21.3 million refugees in 2016, in Sub-Saharan Africa alone, there were 4 million refugees. In addition to this, again in Sub-Saharan Africa, there are 19.5 million people, who are of concern to the UN refugee agency, UNHCR. The largest refugee camp in the world for many years, Dadaab Refugee Camp, is located in the African country of Kenya. Apparently, compared to Europe, Africa shoulders much of the burden caused by the growing number of refugees (Hasan, 2016).

In spite of such realities, the focus of the debate in major policy circles across Europe is mostly on the “huge economic burden” refugees bring to European host countries (Hasan, 2016). Forgotten in this shallow debate, and pushed aside mostly by the narrow self-interest of European governments, are other issues of major concern to the world at large. Perhaps, it is based on this understanding that the presenter of Al-Jazeera's *Reality Check*, Mehdi Hasan, after reminding European governments “to stop navel-gazing”, asks at the end of his short account: “is a crisis a crisis only when it washes upon the shores of Europe?” (Hasan, 2016).

The view of African actors is also important in promoting a broader understanding of the issue of at hand. There are two recent observations made by two different African leaders on separate occasions that we believe are helpful in advancing our argument. These are the observations made by the presidents of Ghana and Kenya. The observation made by the Ghanaian President Nana Akufo-Addo during the first official visit to Africa by the current

President of France Emmanuel Macron offers a two-dimensional approach to addressing the global challenge of migration. On the one hand, Akufo-Addo reminds African citizens and politicians that it is their responsibility to make the continent attractive to its own young people, who are migrating in huge droves, risking death and other forms of abuses, to Europe. In his view, this can be done, among other things, by: liberating Africa from the mentality of aid dependency, building institutions that work according to the dictates of good governance, making leaders accountable, and making “sure that the monies that are placed at the disposal of leaders are used for the interest of the state and not for those of the leaders” (YouTube, 2017). Arguing that Africans are migrating to Europe not because they want to, but primarily because they do not believe they have opportunities in their own countries, Akufo-Addo makes it clear that it is incumbent on African leaders to get their countries to work, so that they can create conditions that would allow young Africans to forgo the hazardous journey to Europe. He wants to see the level of resilience and ingenuity African refugees and migrants are showing in “crossing the Sahara, finding ways to go across with rickety boats, across the Mediterranean”, invested back in Africa, in realising the continent’s prosperity (YouTube, 2017).

On the other hand, by invoking the lessons of 19th Century European history, in particular the mass exodus of Irish and Italian migrants to the American paradise in the latter part of that century, Akufo-Addo reminds Europe that migration and the movement of people does not need to be presented in a manner that suggests this is a new phenomenon. He focuses on the core message, that these problems can only be resolved sustainably by providing people with adequate opportunities in their own home countries. As a continent, with at least 30% of the most important minerals of the world, he points out that with proper political leadership Africa should be giving money to other places (YouTube, 2017).

The second observation is that of the Kenyan President Uhuru Kenyatta. Although his observation was made in specific reference to the growing anti-refugee sentiment in the United States, a problem

exacerbated after the election of the President Trump, we believe that Kenyata's observation also addresses some of the key issues raised in the migration debate in Europe. Kenyata argues that it is troubling to see that countries, which were built and developed on the basis of migration – and possibly also on the basis of the twin sisters of slavery and colonialism – are harbouring anti-refugee tendencies, gravitating towards isolationism and moving away from the dictates of globalisation. Global processes, such as migration, he argues, which were once used as the main drivers of economic progress by some developed countries, are now seen as a misfortune when it comes to the migration of Africans to Europe (CNN, 2018).

The kind of approach currently propagated by European leaders perpetuates a long-standing accusation against the Western world: that it deals with any matter related to Africa on the basis of self-serving Western double standards. This mode of thinking misses a very essential component of the equation: challenges of a global nature, such as migration, can only be solved sustainably on the basis of meaningful partnerships and a mutual understanding, not by putting up a wall of isolationism or shutting people out (CNN, 2018). This problem also requires the ability to look deeply into emerging trends of recalcitrant government behaviour throughout Europe, as will be articulated in the next section.

The end justifies the means

Before concluding our chapter, we need to return to the core theme of our analysis, which is Italy and the European Union's alleged complicity in the violation of human rights of African refugees and migrants in Libya. In our view, this situation is a dark blot on modern European history, and negates some of the most important lessons of 20th Century European history, in particular that of World War II.

Modern human history is replete with unforgettable lessons regarding the initial warning signs of recalcitrant government behaviour – be it in matters of domestic policy or those of external affairs – which can easily morph into a more complex crisis of governance unless

addressed at an early stage. In most cases, such tendencies start by attacking the rights of minority groups or underprivileged societal segments, while the remaining, more privileged members of society watch in silence. Often it does not take long for such traits to degenerate into the worst form of governance problems, at which time it is too late to ‘put the genie back into the bottle’.

Some of the disturbing traits of bad governance under discussion are now observable, more glaringly in Hungary and Poland, whose governments do not shy away from using highly charged anti-refugee rhetoric – not to mention the fact that these two countries are now at loggerheads with the EU for refusing to accept refugee quotas. With regard to these peculiar challenges, a scholar from Oxford University, writing for *The Guardian*, warns as the follows:

It is the recipe for domestic repression, crony capitalism, massive corruption, implosion of the rule of law, the rise of racism and international conflict. The values that underpinned the postwar liberal order that conferred peace, tolerance and prosperity are being torched before our eyes. It is time to take a stand. (Hutton, 2018)

This problem is unfolding itself at a time when Europe seems to be falling into the grip of, what Hutton (2018) calls “an anti-Enlightenment populist right”. Europe is indeed gradually “reacquainting itself with its darkest demons” (Hutton, 2018). When it comes to the burning issue of refugees originating from Africa and the Middle East, there is another message that needs to be underscored. Current anti-refugee discourse in Europe flies in the face of historical accounts that show that during World War II there was actually a huge influx of European refugees to Africa and the Middle East, the two major sources of refugees in contemporary Europe. For example, Poland, one of the leading European countries adamantly refusing to accept the refugee quotas stipulated by the EU, is said to have had an estimated 35,000 of its refugees hosted in Eastern and South Africa (notably in Uganda) for more than a decade during World War II (Abraham, 2012; Taparata, 2016).

If history has any hints to offer, Europe only needs to go back to World War II³ (a recent history of only 75 years ago) to find its own lessons. The most important lesson to be drawn from this is related to untamed and recalcitrant government behaviour, which can morph into a wider social problem. It is summed up in the often-cited observation of a German protestant priest, Martin Niemöller, who is cited as saying:

*First they came for the Socialists, and I did not speak out –
Because I was not a Socialist.*

*Then they came for the Trade Unionists, and I did not speak out –
Because I was not a Trade Unionist.*

*Then they came for the Jews, and I did not speak out –
Because I was not a Jew.*

Then they came for me – and there was no one left to speak for me.
(United States Holocaust Memorial Museum, 2018)

Equally troubling is the tendency of some European countries to forget, to gloss over the favours done for them by the developing world during their most difficult times. That is why contemporary European discourse on migration is sometimes seen by outsiders as self-deception, at best, and chicanery, at worst, propelled by the narrow self-interest of European politicians. Sensible and responsible Europeans, presumably making up the greater majority of the European citizenry, need to do something about this before it is too late. There are already clear signs of recalcitrant government behaviour throughout Europe, threatening the continent's long-standing commitment to human rights, including refugee rights. These disturbing trends need to be tamed by the proactive engagement of responsible citizens.

³ It is interesting to note that the two major world wars (World War I and World War II), although fought primarily between European governments, are dubbed 'world wars', as if the rest of the world had anything to do with them.

Conclusion

Looking into the most recent statistics published by the UNHCR (2017), it appears that more than in any other period of modern human history, since 2016 the world is experiencing the largest number of victims of forced displacement. Some of the most common drivers of forced displacement are wars and natural calamities. Side-by-side, there are also people who move from place-to-place in search of better opportunities. These two groups of 'people on the move' are differentiated as refugees and migrants. In relative terms, the plight of the former group is the subject of a heated debate in European migration circles.

The so-called European 'migration crisis' is an incomplete picture when seen in isolation from the context of rising global figures on refugees. While the pressure European countries are feeling as a result of the increasing number of refugees is understandable in some ways, it does not justify their complicity in the gross human rights violations that are currently taking place in Libya.

In terms of scale and gravity, the level of abuse suffered by African refugees and migrants in Libya has no parallels in recent human history. This is why the alleged complicity of some European countries and the EU becomes problematic. No doubt the violations discussed in this chapter could give rise to prosecutorial accountability measures at national, regional or international levels, including those targeting high-ranking European government officials. While the prospect of pursuing prosecutorial accountability seems to be, at least for the moment, an extremely challenging exercise for a number of practical and procedural reasons, there is a need for an immediate reconsideration of European cooperation with Libya. This is in addition to repairing the damage caused by the alleged complicity of Italy and the EU – over and above other accountability measures that can be implemented within existing parameters of European and international human rights law.

Time and again, migration experts have advised the EU to shift its focus from a preoccupation with stemming the arrival of refugees to addressing the root causes of forced displacement. The former is not difficult to achieve, but its dividend is short lived because it is propelled by the need to see quick results. By their nature, hurried and short-sighted policy considerations do not lead to a lasting solution. The other option, addressing the root causes of forced displacement, requires a holistic approach, which is not beyond the reach of the EU. It may require extra hard work and improvisation at several levels of political negotiations, but surely its dividend is more permanent and sustainable. The EU is not investing sufficiently in this option and needs to re-focus its attention accordingly.

There is also a need to focus on long-term migration-related solutions. Of the many recommendations that have been proposed at different times and in different contexts, we emphasise the following two: 1) improving access to the free movement of people, and 2) in situations, like that of Libya, where horrendous violations of human rights are rampant, introducing expedited resettlement procedures with higher levels of geographic distribution and increased quotas (McAdam, 2015).

With regard to a long-term and sustainable solution, the following observations are relevant by way of concluding this chapter. Dark roots that relish the nightmares of outlandish governance behaviour are hovering over Europe, in what seems to be a gradual, but assured, process. Exacerbated by the rise of populist political parties, who do not shy away from using overtly offensive (and irresponsible) language in reference to refugees and other societal groups, the problem is taking a disturbing shape. There is an urgent need to nurture the proactive involvement of responsible and sensible European citizens and actors, in particular grassroots and civil society actors, in the migration debate. With proper planning, diligence and perseverance, progressive forces can still win the struggle for a fair and just Europe.

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