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## **Global Compact on Migration December 2018 – can a people-centred approach solve the ‘migrant crisis’? Sheona York, Kent Law Clinic, University of Kent**

### **Abstract**

On 11 December 2018 a UN conference celebrated the adoption of the “First-Ever Global Compact for safe, orderly and regular migration”. This Compact’s strategic intention is to confine global migration to regulated and controlled flows.

In this Compact, the majority of the world’s nation states have put their names to what amounts to a detailed description of what social, political, cultural and legal life should be like, in every part of the world, albeit seen through the prism of “migration as a global problem”. Sustainability policies are directed to assist ‘sending’ countries develop ‘resilience strategies’ to protect against slow and fast-acting disasters, and provide economic, social, health and educational programmes sufficient to ensure that their nationals are not impelled to emigrate in order to seek a better life. Countries both of ‘transit’ and ‘destination’ are encouraged to provide accommodation, subsistence, health care, educational and work opportunities for migrants, as well as reducing bureaucratic barriers to applying for visas. ‘Destination’ countries are encouraged to facilitate family reunion for temporary migrants, reduce precariousness, and encourage integration.

What is being proposed here is effectively the most highly-regulated and public-spirited management of the global capitalist system to provide a healthy, safe and fulfilling life for everyone, though here with the spotlight on migrants. Yet there is no mention at all of politics, economics, religion, or culture, (and only a bare whisper of a reference to climate change) and therefore no recognition or assessment of the different, ideas, beliefs, forces and processes at work in the world which drive migration.

Drawing on my own casework for asylum-seeker clients from one ‘sending’ country (Eritrea) and one ‘transit country’ (Italy) and for asylum and family migrants in one ‘destination country’ (the UK), I examine whether the Compact’s application of a people-centred approach to all migrants can transcend the forces of global capitalism.

### **1. Introduction**

On 11 December 2018 a UN conference celebrated the adoption of the “First-Ever Global Compact for safe, orderly and regular migration”. This Compact’s strategic intention is to confine global migration to regulated and controlled flows.

Most of the world’s nation states have put their names to what amounts to a detailed description of what social, political, cultural and legal life should be like, in every part of the world, albeit seen through the prism of “migration as a global problem”. Countries of emigration are encouraged to provide programmes to lessen the need to emigrate in order to seek a better life. These include such diverse policies as the education of women and the regulation of remittances to reduce their cost and ensure their spending is directed to improvements in the recipients’ societies. These ‘sending’ countries are encouraged to defend against both fast-acting and slow-acting disasters, to reduce numbers obliged to flee from climate-based or natural catastrophes. Countries of both transit and destination are encouraged to provide accommodation, subsistence, health care, education and work opportunities for migrants, as well as generally contributing to unification and digitalisation of documentation and reducing bureaucratic barriers to applying for visas. Destination countries are encouraged in addition to facilitate family reunion for temporary migrants and reduce the incidence of precariousness, and to encourage integration.

Three points stand out.

First, unlike, for example, the UN Refugee Convention, the European Convention on Human Rights and the UN Convention on the Rights of the Child (the 3 main conventions concerning migrants which have legal force once ratified by signatory states), “... *the Compact is not legally binding. Its guiding principles reaffirm States’ sovereign rights to determine their national migration policies and to govern migration within their jurisdictions.*” [press release 11/12/18].

Secondly, the large number of generally laudable objectives, each supported by richly-elaborated programmes, are to be worked on flexibly: “*As migration experiences and challenges vary across the world, the Global Compact is a flexible instrument that can meet the needs of every country and stimulate joint cooperation at all levels.*” Press release 11/12/18]

But thirdly and most important is the colossal ambition presupposed by the Compact. It must be the first time in which the majority if not all the world’s nation states have put their names to a highly-regulated and public-spirited management of the global capitalist system to provide a healthy, safe and fulfilling life for everyone, in every part of the world, albeit seen through the prism of “migration as a global problem”. But few even first-world countries aspire to, never mind succeed in, providing such high standards, whether of accommodation, subsistence, health care and education or of legal rights, even to their existing populations. Neither is there any mention of politics, economics, religion, or culture, (and only a bare whisper of a reference to climate change) and therefore no recognition or assessment of the different forces and processes at work in the world which drive migration. Whereas in reality migration, viewed globally, is an *outcome* of the effects of capitalist forces seeking to overcome barriers to profitable activity. It is a *response* of millions of separate individuals and families to the impact of those effects whether directly economic (as in loss of jobs or land) or indirectly as a result of geopolitical conflicts or political repression driven by economic forces. Countries, whether ‘sending’, ‘transit’ or ‘receiving’, have governments, which represent economic, political and religious forces in those societies, whose relative strengths change over time. At the time of writing, events in Venezuela and Brazil<sup>1</sup> show how, in a short time, countries can tip over from enjoying growing economies, popular governments and hopeful citizens into tangles of political tension, economic chaos and geopolitical interventions, driving the sudden emigration of millions as just one among many individual coping mechanisms.

I have acted for asylum-seekers from all over the world, who arrived using widely differing migration routes. I have been acting for Eritreans since before that country’s independence, hearing 30 years of political critiques and disappointment at the newly independent regime, and fear of being persecuted by it. Eritrea ‘sends’ refugees at a rate of 5,000 young people per month evading compulsory military service. The majority languish in refugee camps in Ethiopia and Sudan, some struggle to survive in detention camps in Libya and, of the few who reach European countries, most are formally recognised as refugees. I argue that Eritrea’s role on the world stage as a friendless, sanctioned and impoverished ‘sending country’ can only be understood by laying bare its colonial

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<sup>1</sup> Venezuela is currently in the news as the US and some EU countries have formally recognised the opposition leader as president. Perry Anderson succinctly describes Brazil’s situation in *Bolsonaro’s Brazil*, London Review of Books 7 February 2019.

history and uncovering the reasons for its current lonely position in African and Middle Eastern geopolitics.

In 2009 the case of *M.S.S v Belgium and Greece*<sup>2</sup> determined that Belgium 'knew or ought to have known' that conditions in Greece for asylum-seekers could potentially breach art 3 ECHR, so prohibiting the applicant's return there under the Dublin Regulation, the EU's burden-sharing system. In 2011 the CJEU decided in *NS v UK*, also concerning sending an asylum-seeker back to Greece,<sup>3</sup> that a Member State's decision not to enforce a 'Dublin' return was an act covered by EU law and thus also by the EU Charter of Fundamental Rights. In 2009 I had taken the first of many cases in which asylum-seekers wished to resist a Dublin return to Italy,<sup>4</sup> because conditions for asylum-seekers there, although not as bad as in Greece, would probably breach art 3 ECHR. In the EU Common Asylum Policy Italy is treated as a 'destination country' (and is so defined in UK law).<sup>5</sup> But because, on the evidence, it fails to provide adequate reception conditions for asylum-seekers, and also fails to provide sufficient employment or accommodation whether for those granted refugee status or its own citizens, Italy is reduced to being a 'transit country'. I argue that, without analysing its current weak economy and fragmented politics in the light of its economic and political history since the establishment of the Italian unified state in 1861, any attempt from 'outside' to apply the aspirations of the Global Compact to Italy would fail.

The UK is a true 'destination country'. Not virtually built by immigrants like the USA or Australia, but, like the Netherlands and France, a previous country of empire with a long history of strong economic, political and social links with its ex-colonies. But the UK has been until recently a significant 'sending country' itself, to those colonies and the rest of the world. Not just as 'rulers of Empire' but also in desperation, as with Irish people fleeing the 1840's Great Famine,<sup>6</sup> Scottish people fleeing the Highland Clearances,<sup>7</sup> and also forcibly, as convicts transported to Australia.<sup>8</sup> And also, since the second world war, as economic migrants mainly to the Dominions (Canada, Australia, New Zealand,<sup>9</sup> Hong Kong and South Africa) and more recently to elsewhere in the European Union. The 2010 Conservative manifesto promise to reduce 'net migration' implicitly recognises this historical two-way flow (though without devoting any policy analysis to what drives the emigration side of the equation). Over decades, as part of this flow, some millions of people have entered the UK, in search of work, to join family, to study or to seek asylum. As at 2017 some 14% of the UK population were born abroad.

However the UK has never adopted aspirations like those proposed by the Global Compact. Both Conservative and Labour governments have legislated over decades to restrict entry save to specific

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<sup>2</sup> *M.S.S. v Belgium and Greece* 30696/09 ECtHR

<sup>3</sup> *Joined cases of NS v UK and ME & others v Ireland*, C411-10 and C-493/10

<sup>4</sup> *EW [2009] EWHC 2957 (Admin)*

<sup>5</sup> Asylum and Immigration (Treatment of Claimants) Act 2004 s8, part 2 of Schedule 3

<sup>6</sup> In which, while Ireland was under British rule, 1 million people died and another million emigrated

<sup>7</sup> See for example not just John Prebble's classic *The Highland Clearances* Penguin 1963, Eric Richards *The Highland Clearances* Birlinn 2000, and also Donald MacKay *Scotland Farewell: the people of the Hector* Birlinn 1980, telling of the people of Ullapool, Assynt, becoming the first Scots to arrive in what became Nova Scotia 1773

<sup>8</sup> See for example Robert Hughes *The Fatal Shore*, Vintage Books 2003

<sup>9</sup> Where most of my father's family went, in the early 1950's

categories of migrant, and legislated to restrict migrants' access to social housing and social assistance. In relation to asylum-seekers, referred to by both parties as 'scroungers' and 'bogus', both parties have restricted access to accommodation and support, and all but prohibited access to work and higher education, citing the 'pull factor'.<sup>10</sup> In 2013 Theresa May as Home Secretary announced the 'hostile environment', aimed at driving out 'unlawful migrants' but, as shown by the 'Windrush' scandal, heavily affecting lawful migrants as well.<sup>11</sup> Moreover, the Coalition and Conservative governments' austerity policies since the 2008 financial crisis have led to a situation where the Compact's aims are not even met for a significant proportion of the UK's own citizen and settled population. This is dramatically described in the recent UN report on UK poverty by Prof Alston.<sup>12</sup>

I conclude that a 'people-centred approach' i.e. one not based on the democratic decisions of national populations (or of even the undemocratic decisions of authoritarian national governments), but on a supra-national elite-proposed 'programme' centred on and prioritising the needs of *migrants*, is not just merely aspirational (and therefore looks good but unlikely to have any effective operational impact). Such an approach both obscures the true reasons for the ills suffered by migrants, and, in my view, by singling out people *qua migrants*, gets in the way of building solidarity between citizens and those more recent arrivals (now, instead of being welcomed and integrated, are deemed by law in the UK to be 'precarious').<sup>13</sup> Such proposals fuel populist anti-migrant feeling,<sup>14</sup> itself stigmatised by elites as racist, xenophobic etc while *its* causes remain unexamined. I argue that adopting a people-centred approach in fact inhibits us from analysing migration as one among many *outcomes* of global capitalist and geopolitical processes, along with neoliberal economics, austerity politics, enforced regime change and so on. In my view such an approach leaves us blaming the wrong people (repressive regimes in Africa, xenophobes in Europe) rather than identifying as causes the crises of capitalism and its geopolitical and national political movements and effects as underlying and driving global migration trends.

## 2. Eritrea - a 'sending country'

Eritrea is a small country on the Red Sea with a harsh desert and mountainous climate and a population of around 5 million. The Economist among others refers to Eritrea as the 'North Korea of Africa',<sup>15</sup> summing up its history thus:

Its war of liberation from neighbouring Ethiopia, which began in the 1960s and only ended in 1991, was one of Africa's longest-running conflicts. Then, as a newly independent country, it

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<sup>10</sup> I have written on the history of the UK's 'welcome' to asylum-seekers, and the legal challenges to these measures, in *The Law of Common Humanity - Revisiting Limbuela in the 'hostile environment'* JIANL 31/4 2017

<sup>11</sup> I have written on this in *The Hostile Environment – how Home Office immigration policies and practices create and perpetuate illegality* JIANL 32/4 2018

<sup>12</sup> *UN Statement of Visit to UK Professor Philip Alston, UN Special Rapporteur on extreme poverty and human rights*, London 16 November 2018

<sup>13</sup> *Rhuppiah* [2018] UKSC 58, Richard Warren *Private life in the balance: Constructing the precarious migrant* JIANL vol 30/2 2016

<sup>14</sup> *Brussels protest over UN migration pact turns violent* Guardian 16/12/2018 <https://www.bbc.co.uk/news/world-europe-46585237> accessed 17/3/19

<sup>15</sup> The Economist <https://www.economist.com/the-economist-explains/2018/08/14/why-eritrea-is-called-africas-north-korea> also Forbes World Affairs <https://www.forbes.com/sites/ewelinaochab/2018/06/13/is-eritrea-becoming-the-north-korea-of-africa/> also Haaretz, the New Statesman etc , accessed 20/1/19

fought a war with Ethiopia between 1998 and 2000, one of the bloodiest in the continent's history, which only formally ended on July 8th of this year [2018]. Eritrea was Africa's largest single source of refugees to Europe from 2014 to 2016. Over the past decade so many people have left that Eritrea has been called the world's fastest-emptying nation.

Lawyers representing Eritrean asylum-seekers from both before and since independence have heard first-hand accounts of how the victorious People's Front for Democracy and Justice (PFDJ), then as the Eritrean People's Liberation Front (EPLF), fought ruthlessly through the 70's and 80's to eliminate political opponents from the liberation struggle, and then, on independence in 1993, established the one-party state still in power today. Members of the Eritrean Liberation Front – Revolutionary Council<sup>16</sup> among other groups, as well as individuals who had previously supported the EPLF, who had all hoped for a democratic multi-party government after independence, fled the country during the 90's as it became clear that no constitutional conference would be held in 1994 as had been promised, and restrictions on free speech and political activity intensified rather than lessened. Compulsory military and national service, maintained amongst the freedom fighters after independence to aid national reconstruction, and then maintained again after the war with Ethiopia, has been ruthlessly enforced ever since. There has been a 'shoot to kill' policy against people illegally crossing the border, and families of 'draft evaders' have been fined large sums of money and themselves imprisoned and tortured for not effecting the return of their teenage children or disclosing their whereabouts.<sup>17</sup>

The most recent UK immigration tribunal 'country guidance' case on Eritrean asylum claims<sup>18</sup> declared Eritrea's compulsory military service policy to amount to forced labour in breach of art 4 ECHR, thus virtually guaranteeing refugee status to anyone accepted as being from Eritrea and likely to have left illegally. It is that compulsory military service policy which has led to the constant flow of refugees as people of younger and younger ages flee over the borders as the round-up age for compulsory military service has been lowered. The UK 'country guidance' accepts that asylum-seeking children as young as 5 years old are likely to have left Eritrea illegally and would be at risk of persecution on return as 'draft evaders' and therefore traitors to the regime.

On 'sending countries' the Compact says this:

OBJECTIVE 2: Minimize the adverse drivers and structural factors that compel people to leave their country of origin

18. We commit to create conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration.

To do this the Compact will 'draw from the following actions':

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<sup>16</sup> See e.g. Home Office Country of origin reports from the 90's (archived now), and also Michael Weldghiorghis Tedla's thesis cited at fn 22 below

<sup>17</sup> See Human Rights Watch *Service for life: State repression and indefinite conscription in Eritrea* 16 April 2009, and the 2015 report *Eritrea: National Service* by Landinfo, the Norwegian country of origin information service, among the extensive academic and NGO reports attached to the various UK Country Guidance tribunal cases cited in *MST*, cited below.

<sup>18</sup> *MST and Others (national service – risk categories) Eritrea CG* [2016] UKUT 443 (IAC)

(b) Invest in programmes that accelerate States' fulfilment of the Sustainable Development Goals with the aim of eliminating the adverse drivers and structural factors that compel people to leave their country of origin, including through poverty eradication, food security, health and sanitation, education, inclusive economic growth, infrastructure, urban and rural development, employment creation, decent work, gender equality and empowerment of women and girls, resilience and disaster risk reduction, climate change mitigation and adaptation, addressing the socioeconomic effects of all forms of violence, non-discrimination, rule of law and good governance, access to justice and protection of human rights, as well as creating and maintaining peaceful and inclusive societies with effective, accountable and transparent institutions ...<sup>19</sup>

It is unrealistic to expect the current Eritrean government to do any of this. Even the writer Thomas Keneally, known (and criticised) for his sympathetic 1989 account of the EPLF,<sup>20</sup> has since stated that president Afewerki should yield up government to someone who can 'institutionalise ... democratic values'.<sup>21</sup> But he maintains that Eritrea was and continues to be punished by the West for its determination to achieve independence. Effectively he is directing us to look elsewhere for the reasons why Eritrea is a 'sending country': and it can be inferred from what he says that the Compact's recommendation of 'investment in programmes' will not suffice to achieve a 'peaceful and inclusive society.'

### **The Eritrean background<sup>22</sup>**

In *I didn't do it for you*<sup>23</sup> Michela Wrong provides a searing history of Eritrea's emergence from colonial oppression. She says: 'it's hard to think of another African country that was interfered with by foreign powers quite so thoroughly, and so disastrously, as Eritrea'.<sup>24</sup>

Eritrea, part of the ancient empire of Abyssinia (Ethiopia), was semi-privately controlled by Italy after they obtained the ports of Assab and Massawa in the 1870's. Italy attempted to conquer the whole of Abyssinia, but after defeat at the 1896 Battle of Adua, Italy retained only Eritrea. Martini, an Italian elder statesman, enforced the setting up aspects of a modern society – an independent judiciary, a telegraph system and departments of finance, health and education, and terminated land expropriation for Italian settlers. To exploit Eritrea's inland resources Italy built the 'steel snake' – a most impressive railway from Massawa to Asmara, climbing 2,300m in 70 kilometres. Wrong argues that this among other economic developments allowed Eritreans to develop some sense of

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<sup>19</sup> Global Compact

[https://refugeemigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeemigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

<sup>20</sup> Thomas Keneally *Towards Asmara* Hodder & Stoughton 1989;

<sup>21</sup> <https://www.eritreadaily.net/documents/thedailynews04/N525041.htm> ; *Eritrea: the world's biggest prison* editorial, The Guardian 17/4/09 <https://www.theguardian.com/commentisfree/2009/apr/17/eritrea-human-rights> ; <https://www.tesfanews.net/eritrea%E2%80%99s-success-will-be-an-embarrassment-to-africa-thomas-keneally/>

<sup>22</sup> In addition to specific references below, see Michael Weldeghiorghis Tedla *The Eritrean Liberation Front: social and political factors shaping its emergence, development and demise 1960-1981* Leiden 2014 pdf available here <https://openaccess.leidenuniv.nl/bitstream/handle/1887/32998/ASC-075287668-3671-01.pdf?sequence=1> At [10] He references Gunter Shroeder and Gaim Kebreab, both experts well-known from the UK tribunal's Country Guidance cases. See also the detailed history in the Human Rights Watch report cited at n17 above

<sup>23</sup> Michela Wrong, *I didn't do it for you – how the world used and abused a small African nation* Harper Perennial 2005

<sup>24</sup> *Ibid* xii

nationality distinct from Ethiopia – a completely unexpected political by-product of colonial activity.<sup>25</sup>

Tekeste Negash, writing in 1997,<sup>26</sup> argues:

the most important function of the colony remained as a supplier of colonial soldiers for Italian expansion elsewhere. ... Under the Italians, Eritrea approached a modern-style economy ... Drought virtually ceased to be a catastrophic experience, since the colonial government could avert hunger crises through food imports. There were no armed conflicts among the various ethnic groups... By the end of the 1930s an entire generation of Eritreans had grown up under the peace established by the Italian colonial system.<sup>7</sup>

Mussolini decided to avenge the battle of Adua. Eritrea, used as a staging-post for the invasion, saw further economic modernisation. In 1936 the Italians declared victory over Ethiopia, sending the emperor Haile Selassie into exile. However Ethiopia never achieved the level of economic development as Eritrea. Meanwhile Mussolini introduced racist laws which Negash argues further contributed to an Eritrean sense of beleaguered national identity.

Allied troops expelled the Italians on 5 May 1941. The British were in charge of the Horn of Africa for a short few years. Paradoxically, while expropriating the equipment and modern infrastructure necessary for the modern economy that Eritrea had become, the British almost casually repealed the racist laws, extended secondary education and, eventually,<sup>27</sup> opened up political liberties, permitting political organisations and trade unions. Negash and Wrong both refer to a common Eritrean saying: *During the Italian period the rule was: eat but do not talk. The British changed the rule to: talk but do not eat. In the 1960s a third experience was added, namely the Ethiopian experience where the rule was: do not eat and do not talk.*<sup>28</sup>

On 15 September 1952, the UN, afraid of opening the Pandora's box of self-determination in Africa, handed back an impoverished but politically and economically literate and nationally-conscious Eritrea to Ethiopia, a country racked by rural starvation and still ruled by one man backed by medieval laws: *"a hyena had been put with a goat and the result was obvious"*.<sup>29</sup> Eritreans found their appeals for UN support for self-determination ignored. Similarly, the Organisation of African Unity (OAU), set up in 1963 and located in Addis Ababa, giving Haile Selassie much prestige, had adopted a policy of not disturbing imperial borders. Tedla<sup>30</sup> states: *In the end the resort to military solutions to "rectify" a perceived national case came after the failure of the international diplomacy.*

It took over 30 years of guerrilla war to achieve independence. Several different and often contradictory geopolitical factors favoured Ethiopia. First, the US poured military aid into Ethiopia, enabling Ethiopia to maintain 'the largest military establishment in Africa'.<sup>31</sup> The US maintained a sophisticated listening station on the Hamassien plateau (in Eritrea) and used Ethiopia as a staging-

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<sup>25</sup> Ibid p67

<sup>26</sup> Tekeste Negash *Eritrea and Ethiopia, the federal experience* Nordiska Afrikainstitutet, accessed via Jstor January 2019

<sup>27</sup> Tedla fn 22[19]

<sup>28</sup> Negash fn 26 [24]

<sup>29</sup> ibid [83]

<sup>30</sup> Tedla fn 22 [31]

<sup>31</sup> Ibid [61]

post for Israeli flights to South Africa, and as a counterweight to USSR support for Somalia. In 1974 Haile Selassie, failing to deal with a terrible famine, was overthrown by the Derg, a group of army officers from which Mengistu Haile Mariam soon emerged. They too refused to countenance Eritrean independence. The Eritrean independence movement grew significantly in this period, able to steal or win Ethiopian military equipment from a demoralised army. In response, the USA poured in more military aid, but as the Eritreans began attacking Americans, decided to withdraw. In 1975 Ethiopia very rapidly acquired the support of the USSR, at the very moment when the USA was arguably at its weakest with withdrawal from Vietnam, and with Soviet-supported liberation movements at the height of their prestige, as Angola and Mozambique threw off Portuguese control.

Soviet support for Ethiopia was disastrous for the Eritrean independence movement. For the USSR, Ethiopia could not be considered a colonial power (which had been how the Eritrean independence movement had theorised their struggle)<sup>32</sup> and therefore ‘there was no insurgency’. Somalia had thrown USSR advisers out and invited US support, and so, as these neighbouring hostile countries each changed sides in the Cold War, Ethiopia received huge USSR arms shipments, and the Eritrean liberation movement had to retreat comprehensively into the Sahel mountains.

Keneally recounts<sup>33</sup> the resourceful and determined organisation of civilised Western standards of education and high-quality health-care along with the highly-controlled social and political life that took place in hiding. This experience influenced a whole generation of Eritrean Fighters and their children, erasing cultural, ethnic and religious origins, leaving them with a complete sense of certainty and habituated to a war-based austere collective lifestyle. Both Wrong and Negash predicted that transition to ruling their country during peacetime would take maybe a generation to achieve,<sup>34</sup> and, for Wrong, this was the origin of the Eritrean regime’s policy of self-reliance,<sup>35</sup> and thus the path taken by the regime since then. Already, even in that period in the mountains, dissent was ruthlessly eliminated.<sup>36</sup>

Meanwhile the lack of agricultural reform in Ethiopia led in 1984 to the huge drought and subsequent famine which left 1 million dead, and which required significant Western aid.<sup>37</sup> By 1988 the Ethiopian army stood at 250,000 regulars and 200,000 militiamen, costing half the government’s revenues, but its morale was crumbling. In the wider world, the dismantling of the Soviet Union and liberation of the Baltic states reignited wider support for the right to self-determination. The Eritrean Fighters comprehensively defeated Ethiopian forces at the Battle of Afabet 1988, after which the world began to listen to the Eritreans. Meanwhile another Ethiopian independence movement, the Tigray People’s Liberation Front (TPLF) had succeeded in 1989 in expelling the Ethiopian army from the province of Tigray. It then united with the Ethiopian People’s Democratic Movement (EPDM) and thus transformed itself into the Ethiopian People’s Revolutionary Democratic Front (EPRDF) and it was just a matter of time before this, allied to the EPLF, would defeat the Mengistu regime.

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<sup>32</sup> See detailed discussion by Negash fn 26 [163]

<sup>33</sup> Keneally fn 20

<sup>34</sup> Negash fn 26 [173], where he argues that inviting foreign office-holders to assist in ‘democratic socialisation’ would by no means amount to a loss of sovereignty.

<sup>35</sup> The Human Rights Watch report refers to Dan Connell *Conversations with Eritrean political prisoners* Red Sea Press 2005

<sup>36</sup> Tedla fn 22 [308]

<sup>37</sup> Negash fn 26 suggests that the West did not respond straight away to Ethiopia’s calls for help, allowing the famine to develop and demonstrate the weakness of the Ethiopian state

Mengistu escaped to Zimbabwe. A new Ethiopian government under Meles Zenawi gave up Ethiopia's claim to the Red Sea coastline and agreed to hold a referendum on Eritrean independence.

In 1993, after independence, the new Eritrean president Isaias Afewerki was sternly critical of the UN, and also accused the OAU of having 'failed to deliver on its brave pronouncements on human rights and economic development'.<sup>38</sup> A multiparty constitution was drafted, reconstruction started, independent media were permitted, and elections were promised. But neither the constitutional conference or any elections were held, and accounts suggest that the intolerance of dissent was not much lessened after independence.<sup>39</sup>

In May 1998 Eritrea and Ethiopia contested Badme, a border village. War rapidly broke out, and Eritrea was labelled the aggressor. Wrong compares Eritrea to Israel and Rwanda – the small country 'bungling the subtle challenges of peace'.<sup>40</sup> That war engaged over 500,000 troops and displaced 600,000 people, the worst war ever seen in Africa. Ethiopia deported over 70,000 Eritreans and alleged Eritreans, even those with Ethiopian passports.<sup>41</sup> The fighting ceased in 2000, but UN troops remain deployed on the frontier.<sup>42</sup> Eritrea lost Ethiopian markets, which accounted for over 70% of Eritrean trade.

The outside world began to see public signs of dissent. Three major EPLF figures, Mesfin Hagos, Petros Solomon and Haile Woldensae, issued the Berlin Manifesto in 2001. This was supported by the so-called Group of 15, who were all promptly detained.<sup>43</sup> When the EU protested, the Italian ambassador was expelled. From then, Eritrea has been a virtually closed country, with no independent media, strict limitations on foreign NGOs<sup>44</sup> and strict control on exit visas. In 2002, the government set up the Warsai Yekalo Development Campaign ('bearer of the legacy of the war of independence': WDYC) under which most people must work under the direction of the state. Effectively the whole economy consists of forced labour on low pay insufficient to support a family. Every child leaving school must go straight to the Sawa military training camp, and then join the military. Regular street roundups and shoot-to-kill at the border attempts to mop up those trying to escape. Those who are caught, along with those facing religious persecution, are sent to Sawa and imprisoned, suffering months in metal lorry containers in the blistering desert, facing sexual abuse and violent treatment. This recent history of Eritrea as 'one big land prison' must be among the most examined and most reported on, in the Western world. Not in the world's serious media, or at Davos or at the G20, but in the thousands of asylum appeals heard in tribunals in 'destination countries' from Europe to Canada.

Meanwhile, geopolitically, Eritrea continued to be ostracised. In July-August 2006 Ethiopian troops were sent into Somalia to fight the 'Islamic Courts' which had briefly taken control of Mogadishu.

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<sup>38</sup> Tedla fn 22 359 (2)

<sup>39</sup> Human Rights Watch fn 17 [11]. Negash fn26 suggests that this may partly be because Eritrea's democratic tradition was not native, but in fact imposed by Italy and Britain [172]

<sup>40</sup> Tedla fn 22 [368]

<sup>41</sup> That process has led, in the UK at least, to significant caselaw turning on 'whether the person really had been deported'; 'whether they had truly lost their Ethiopian citizenship'; were they stateless? 'were they lying?' despite detailed UN Claims Commission reports that the deportations had been carried out 'without due process'.

<sup>42</sup> Until a final treaty was signed in July 2018, see below.

<sup>43</sup> "As at March 2009, the whereabouts and conditions of those detainees remained unknown" HRW nXX [4]

<sup>44</sup> Human Rights Watch n xx [15]

Somalia's transitional government accused Eritrea of sending troops and weapons to the Islamic Courts, and at the time Eritrea's involvement was suspected as both pro-Islamic and as an excuse to fight Ethiopia. Then in 2009 the UN Security Council passed resolution 1907, including an embargo and targeted sanctions, over concerns that the Eritrean government was providing finance and weapons to Al Shabaab, as well as backing rebels in Ethiopia and elsewhere in the region. In 2012 the UN Monitoring Group reported: 'Eritrea has reduced its support for the al Qaeda-allied al Shabaab militant group in Somalia under international pressure, but still violates U.N. Security Council resolutions and remains a destabilizing influence'.<sup>45</sup>

Eritrea is just now slowly being brought out of international isolation.<sup>46</sup> In June 2018 a change of government in Ethiopia has brought what looks like a true change of direction in that country, including a release of political prisoners and openings towards political opponents in Oromo. Ethiopia reestablished diplomatic relations with Eritrea. The presidents exchanged visits and agreed a formal end to the border war. Subsequently Eritrea and Somalia reestablished diplomatic ties after decades of hostility. Eritrea now provides bases for Saudi Arabia and UAE in their war in Yemen. European countries have also been making overtures to Eritrea, primarily to reduce the numbers of Eritrean refugees fleeing into Europe.<sup>47</sup> However, it has not yet introduced any democratic reforms nor proposed an end to compulsory military service – and the opening of the border into Ethiopia has led to 'up to 500' crossing daily. The US continues to list Eritrea as one of the worst countries for religious persecution, owing to its prohibition of Pentecostalism and Jehovah's Witnesses.<sup>48</sup>

A recent World Bank report<sup>49</sup> describes Eritrea as '*one of the least developed countries in the world.... In 2012, Eritrea's Human Development Index was below the average for countries in the Low Human Development group and below average for countries in the Sub-Saharan Africa region.*' Eritrea is said to suffer from 'chronic fiscal deficits' which must have been due to the heavy military spending during the war with Ethiopia, described by the World Bank as 'regional insecurity'. Agriculture occupies two-thirds of the population, in decline because of increasing drought in the region. '*... Eritrea's economic conditions remain challenging as a result of the global economic slowdown, a difficult macroeconomic situation, and limited physical and human capital. High budget deficits, resulting mainly from large military expenditure, and a large social safety net, restrict the government's ability to maintain prudent fiscal targets. ... The majority of the population are young, and youth unemployment and underemployment is high. Half of the youth cohort, though well educated, have no access to jobs.*

This skates expertly around the country's decades of lack of self-determination and ostracism by the world, its lack of democratic rights and its significant human rights abuses. It is not clear, for example, if the World Bank's 'large social safety net' refers to Eritrea's compulsory national service. The report does not mention the thousands of young people who flee. What the Global Compact and other people-centred approaches face therefore is not just the complex reality on the ground. They must reckon with the way that instances of global capitalism like the World Bank, and instances

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<sup>45</sup> Aaron Maasho, UN, reported by Reuters (Addis Ababa) 16/7/2012 accessed 27/1/19

<sup>46</sup> see also *Eritrea and Somalia: A decade of animosity* Martin Plaut, Senior Research Fellow, Horn of Africa and Southern Africa, Institute of Commonwealth Studies, *School of Advanced Study* This article is republished from *The Conversation* under a Creative Commons license. Accessed 27/1/19

<sup>47</sup> See below in part 3 on the UK

<sup>48</sup> The US State Department 2017 report on religious freedom says of Eritrea: '*On December 22, 2017, the Secretary of State redesignated Eritrea as a Country of Particular Concern (CPC)*' and decided that it should remain under sanction.

<sup>49</sup> <https://www.worldbank.org/en/country/eritrea/overview> 18/4/2018, Accessed 20/1/19

of global governance like the UN and the OAU, as well as Middle Eastern powers, the EU and individual European ‘destination countries’, dance around the reality and their own past and present involvement in it, blaming and sanctioning, while extracting and using what they need. Critiquing the ‘Khartoum project’, in which the EU promises funds for development in return for African countries’ undertaking to manage migration, Hala Al-Karib<sup>50</sup> said: *Europe’s efforts on migration are too focused on trying to stop people from moving. They treat illegal cross-border movement as an issue of law enforcement rather than as a symptom of deep-seated governance and extreme poverty problems...*

### 3. Italy - a ‘transit country’

For Eritreans to reach a ‘safe’ country they must survive a 2000-mile journey across the desert, risking enslavement, rape and death from criminal gangs who control traffic through Sudan and Libya<sup>51</sup> to the Mediterranean beaches, then risking death by drowning to arrive on European soil. This means Italy, Greece, Malta, Cyprus or Spain. Many set off to other countries in Europe, but, since 1997, when the Dublin Convention was signed by 12 EU states, those states can require that the state of first asylum ‘take back’ any asylum-seeker claiming elsewhere.<sup>52</sup> Conditions for refugees in Greece and then Italy became intolerable. Asylum-seekers facing ‘Dublin’ procedures began to resist removal back to Greece, and then Italy.

The case of *M.S.S. v Belgium and Greece*<sup>53</sup> held that the presumption that an EU Member State’s reception conditions would meet EU requirements was rebuttable: and that a ‘returning’ State would be in breach if ‘it knew or it ought to have known’ about potentially noncompliant conditions in the ‘receiving State’. Evidence of ‘non-compliant conditions’ began to emerge in Italy. Our clients<sup>54</sup> detained in the Oakington detention centre<sup>55</sup> recounted being met on a beach on Lampedusa or in southern Italy, being given a train ticket and told go to Milan, or Rome. Some were taken into reception centres (where some faced ill-treatment and abuse) but then asked to leave. Some arrived in Rome or more northern cities and faced sleeping out on river banks, or in derelict office buildings and factories, along with people already granted asylum, and Italian and EU citizens and their families who were unable to find work or housing in their ‘own country’.<sup>56</sup>

In my own case, *EW*,<sup>57</sup> heard in 2009, I attempted to argue that Italy’s formal asylum reception provision of 3000 bed spaces clearly could not cope with over 30,000 asylum-seekers arriving each year by sea alone. We lost the case, but recently the UK courts have accepted that conditions in Italy

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<sup>50</sup> Regional Director of Strategic Initiative for Women in the Horn of Africa (SIHA), in a report jointly produced with SOAS and International Refugee Rights Initiative (IRRI) *Tackling the root causes of human trafficking and smuggling from Eritrea – the need for an empirically grounded policy on mixed migration in the Horn of Africa* November 2017

<sup>51</sup> See, for example, *Diary*, Jerome Tubiana and Clotilde Warin, London Review of Books 21/3/19

<sup>52</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities. (No longer in force, Date of end of validity: 16/03/2003; Replaced by [32003R0343](#) (the Dublin Regulation).

<sup>53</sup> *M.S.S* fn2

<sup>54</sup> At that time I was Principal Legal Officer at the Immigration Advisory Service, which until it went bust in 2011 handled around 10,000 immigration and asylum cases under legal aid every year.

<sup>55</sup> Since closed down

<sup>56</sup> Information from scores of witness statements in old client files, no longer individually accessible after the collapse of IAS in 2011; and from my evidence filed and served in 2009 in *EW*, set out in the judgment (see next footnote)

<sup>57</sup> *EW, R (on the application of) v Secretary of State for the Home Department [2009] EWHC 2957 (Admin)*

for asylum-seekers would lead to an art 3 breach for a 'vulnerable' applicant and thus it would be unlawful to return them.<sup>58</sup>

### **The Italian background<sup>59</sup>**

How can it be that Italy, the eighth largest economy in the world and a founder member of the EU, is in this position? First, Italy came late to statehood (1861) and before that only the northern parts of the future state enjoyed any real industrial development, limited by the lack of coal and iron among other factors. Most of the country was dependent on small-scale agriculture which had not seen 'land reform or scientific innovation as in 18<sup>th</sup>-century Britain. Illiteracy was widespread, while in Britain and Germany school education was compulsory. Huge numbers emigrated, mostly to the United States. Around 26 million Italians left during 1870-1970, mostly between 1880-1914; considered by some as the biggest mass migration of contemporary times.<sup>60</sup>

Italy's North-South divide underlay big political divisions and is still of major significance. During the late 19<sup>th</sup> century trade union and socialist organisations grew in the North, while in the South, largely controlled by Catholic organisations, poverty and starvation were seen. Governments were weak coalitions, often corrupt. Nationalism and irredentism attracted votes. The 'two Red years' 1919-20 of mass strikes and factory occupations led to the creation of the Italian Communist Party. Meanwhile Mussolini, earlier an active socialist, led the Fascists, who after brutal actions against trade unionists and socialists took power in 1922, completely crushing any opposition. The Communist Party was significant in the Resistance against Fascism and against the German occupation once Italy changed sides during the second world war.

At the end of the war both Socialist and Communist leaders (under the heel of Stalin's 'socialism in one country' policy), agreed to a government of national reconstruction, in which Communist leader Togliatti was minister of justice and another Communist was minister of finance. The postwar years saw waves of land occupations, strikes and factory occupations even greater than in the 2 Red years. But the Communist party did not support these, blaming the 'real objective situation'. First, the postwar partition of the world agreed in 1945 at Potsdam 'gave' Italy to the capitalist bloc, along with Greece, while the USSR was permitted to 'take' Yugoslavia along with the Baltic states. This meant that Italian workers' and peasants' struggles had to take second place to the reconstruction of Italian capitalism. The Party also feared the loss of support from the rural South. The Communist party was soon excluded from the government, and there followed 40 years of Christian Democrat domination of Italian politics. Class violence continued, ruthlessly put down by armed police. The Communist party continued to grow, acquiring a national newspaper, a publishing house, other cultural activities and great popularity. They also achieved control of a number of large municipalities, effectively dragging it into the clientelism and corruption of the *sottogoverno* (the

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<sup>58</sup> *SM & Ors, R (on the application of) v Secretary of State for the Home Department (Dublin Regulation - Italy)* [2018] UKUT 429 (IAC)

<sup>59</sup> This section is taken from (i) my unpublished paper *The Italian working class and its political representatives since the Second World War*, written in 1985, (ii) with facts taken from the 5 volumes of Renzo del Carria *proletaria senza rivoluzione* Savelli, 1975 [Untranslated, and Amazon shows as currently unavailable, and my own paperback copies have no index!], (iii) Spotts and Wieser *Italy: a difficult democracy* CUP 1986, (iv) Perry Anderson's chapter on Italy in *The New Old World* Verso 2011, and (v) recent newspaper reports

<sup>60</sup> Rudolph Vecoli discusses in detail the different migration trends in Italy during that century in *Cohen, Robin (1995). The Cambridge Survey of World Migration. Cambridge: Cambridge University Press. p. 114. ISBN 0-521-44405-5*. Accessed 23/2/19

issuing of public works contracts and the like) and limiting its claim to be untainted by the corruption and degeneration of the Christian Democrat-controlled government.<sup>61</sup>

Through this period the Italian economy grew significantly, assisted by US postwar loans,<sup>62</sup> the general increase in world trade, free trade agreements and the huge increase in US consumer spending, but also helped by low wages and job insecurity. There was no shortage of workers. Besides unemployed industrial workers, emigration from the rural South reached almost biblical proportions. From 1951 to 1967 nearly 9 million workers plus their families left the land – the poorest third of Italy's population on the move. This was effectively the North's first experience of immigration – and the southern emigrants were treated in much the same way as the Caribbean 'Windrush' arrivals were in Britain.

In 1959 FIAT dismissed its entire Mirafiori assembly line workforce and replaced them with new young workers from the South, working on precarious contracts where 'an hour on the line' consisted of 100 minutes' worth of work.<sup>63</sup> In a period in which wages in Germany had gone up by 25% and in France by 17%, wages in the Italian North increased by only 11.7%. This growing worker unrest led the government, with the support of the Pope<sup>64</sup> and the US, to invite the Socialists back into government.<sup>65, 66</sup> The socialist historian and politician Tamburrano said 'we must keep the Socialist party in the realms of capitalism, or capitalism will leave the realms of democracy'.<sup>67</sup> The US regarded the policy as a success precisely to the extent that Communist party influence in Italian affairs was reduced.<sup>68</sup>

In the 'hot autumn' 1968-69 the 'new workers', mostly those recruited from rural southern Italy, who had organised outside the traditional trade union movement and who were not trammelled by the traditions of party discipline of the Communist left, evolved new methods of struggle – lightning strikes, strikes in different parts of the factory, sabotage of machinery and products. They demanded flat rates of pay and workers' control of the speed of the line. Some big concessions were achieved including index-linked wage rates<sup>69</sup> and the right to organise, but those struggles petered out as the economy went into recession in the early 70's, affected by the oil crisis. This in turn led to a huge re-entry of ex-rural workers back to the countryside and the South. Because wages had been kept low, Italian exports continued to rise, while public spending in Italy stagnated and consumer spending shuddered to a halt.

In response to these developments, the US intensified a programme of supporting Italian political parties from the Christian Democrats rightwards, while the Communist party under Berlinguer

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<sup>61</sup> Perry Anderson *The New Old World*, Verso 2011, comparing the position of the PCI to that of the Gaullists in 1950's France, who in contrast appeared as a genuinely new and untainted force in French politics. [281]

<sup>62</sup> On condition that the Left was kept out of government – see Alan A. Platt and Robert Leonardi *American Foreign Policy and the Postwar Italian Left Political Science Quarterly* Vol. 93, No. 2 (Summer, 1978), pp. 197-215. This describes the significant US involvement in the 1948 elections in Italy, including planning to exclude Italy from the United Nations and even 'limited military mobilization' in the event of a Left victory.

<sup>63</sup> Renzo del Carria *proletaria senza rivoluzione* Savelli, 1975 [Untranslated] vol V [50]

<sup>64</sup> In the encyclical *Mater et Magister* July 1961

<sup>65</sup> *proletaria senza rivoluzione* fn 63 [52]

<sup>66</sup> Platt & Leonardi fn 62

<sup>67</sup> *proletaria senza rivoluzione* fn 63 [54], referring to Giuseppe Tamburrano, socialist politician, historian and later member of the Italian Senate until 1973.

<sup>68</sup> Platt & Leonardi fn 62

<sup>69</sup> Referred to as 'la scala mobile' or escalator

proposed the clearest expression of class collaboration by a leftwing party anywhere – the Historic Compromise. This determined that the Communist party would not enter a government without the Christian Democrats. This left the working class with nowhere to go politically, and the Christian Democrat-dominated administration continued for another fifteen years.

The consequent exhaustion and frustration of the left showed itself during that period in two ways. Away from the trade unions and the large left parties, small groups pursued mostly unrelated campaigns ranging from mass occupation of empty apartments, ‘self-reduction’ of payments for rent and utilities, carrying out formal work for no pay (such as cleaning out a hospital ward or cooking and providing food to patients) and then formally demanding wages for the work; ‘proletarian expropriations’ (i.e. mass thefts from supermarkets), and the setting up of small cooperatives and workers’ markets. This period saw the rise of feminism and the slogan ‘the personal is political,’ – which led to the further fragmentation of the organised left.<sup>70</sup> This period also saw the rise of armed attacks and political murders, carried out by several different groups on both the left and the right – the ‘Years of Lead’. Subsequently, many former Red Brigades and others ‘repented’, and other former left political leaders joined the Green Party, the Radical Party, or left politics altogether.

Perry Anderson recounts the virtual collapse of most of the traditional parties of government in the early 1990s as corruption scandals erupted, in which at one point more than half of the Senate and Chamber of Deputies had been served notices of legal proceedings. A referendum was held which abolished the system of proportional representation. In the elections which followed the Christian Democrat and Socialist parties disintegrated, with major figures like Craxi, Socialist prime minister for Italy’s longest post-war government, facing corruption charges.<sup>71</sup>

The Communist party, having changed its name after the fall of the Berlin Wall in 1989, had lost half its support in the 1992 elections, but subsequently in 1994 looked like the only party left standing. However, Silvio Berlusconi, a media boss and tacky showman, launched *Forza Italia*, and managed to make common cause with the two powerful populist regional parties, Lega Nord under Umberto Bossi, and Alleanza Nazionale under Gianfranco Fini, and achieve a surprise victory in the 1994 elections. For Perry Anderson, this grouping gained support precisely because of an appearance of freshness, of being unknown quantities – albeit based on quite distinct and even opposing political support. The Lega Nord attracted small shopkeepers and small businesses from the North who were exasperated with the economic lead weight of Italy’s underdeveloped south, while Alleanza Nazionale precisely represented the old clientelism which propped up southern bureaucrats and kept their friends and families in work.

Berlusconi’s victory, with those allies, was a shock, partly also because of Berlusconi’s shameless reliance on clear conflicts of constitutional interest as controller of Italian media, especially television. He then used his victory to force the passing of specific *ad personam* laws preventing any investigation or prosecution of his own affairs. Unexpectedly, and despite the pursuit of corruption

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<sup>70</sup> I took part in the enormous demonstration on 6 December 1975 for free abortion on demand, in which the ‘corteo’ – the massed ranks of demonstrators, divided completely into 2 parallel processions, one for women only and one mixed, with real hostility and some violence between them. This led eventually to the collapse of Lotta Continua, one of the larger left organisations. <https://www.infoaut.org/storia-di-classe/6-dicembre-1975-lc-e-le-femministe-verso-lo-scioglimento> accessed 9/2/19

<sup>71</sup> Perry Anderson fn 61, [283]

taking an explicitly political form in the magistrates' party 'Clean Hands', the electorate did not seem to hold this against Berlusconi.<sup>72</sup>

However his government did not last long, and elections in 1996 led to an extremely narrow victory for a broad coalition (the Olive Tree) led by Romano Prodi. The Berlusconi grouping had polled more votes, but that coalition had temporarily broken down. The Prodi government intended to reform public life, but its room to manoeuvre was limited by the Treaty of Maastricht (1992) requirement for Italy to achieve economic 'convergence' so as to enter the Eurozone. This required brutal economic measures leading to Italy's experiencing the slowest growth of any major industrial society, with continuing high levels of unemployment, especially in the South. Continued governmental instability and the unpopularity of those government measures led to Berlusconi's landslide reelection in 2001, again supported by Bossi and Fini, and again followed by Berlusconi's relentless pursuit of *ad personam* laws, trying to stay one step ahead from prosecutions by the 'Clean Hands' magistrates which were wending their way through the Italian courts. Broadly, that government pursued the standard neoliberal policies of privatisation, deregulation, lower taxes and a tougher immigration law, as well as assisting in the war in Iraq and, in return for the support of Lega Nord, granting the North an element of devolution. Then, fearing unpopularity, that coalition changed the electoral system again – and promptly lost the next election.

The new centre-left government was hit almost immediately by a crisis in the South, which had continued to be poor and undeveloped, enduring political corruption and a growing burden of organised crime. On this, a UN report<sup>73</sup> published in 2011 stated:

organised crime in Italy - mostly illegal waste disposal, drugs and people trafficking - is worth €116 billion a year, equivalent to 7.7 percent of the country's GDP. The scale of the problem is far larger than in other industrialised nations - organised crime accounts for 1.3 percent of the economy in Germany, 1.2 percent in the UK and 2.3 percent in the US. The UN notes that crime has short-term positive effects: Money laundering sees dirty income invested in small businesses, creating jobs, or saved in banks, easing credit flows and liquidity. But the medium and long term effects are destructive.

A major rubbish collection crisis in Naples in 2007 had exposed the involvement of local Centre-Left politicians in organised crime and corruption. At the next elections in 2008 the Centre-Left catastrophically lost votes and Berlusconi, Bossi and Fini came back to power, with Lega Nord being the main beneficiary. Perry Anderson notes that Lega Nord was by then the oldest party in Italy still standing, but still benefiting from their role as the insurgents – the plain-speaking populists. Anderson draws up an economic balance sheet for Italy, showing how Italy as at 2011 had a higher spending on the machinery of government and lower spending on education and health than Germany or France; the legal system is sclerotic, with criminal cases taken an average of 4 years and some civil cases taking over 10 years. Infrastructure is poorer than elsewhere in Europe, labour productivity has barely increased, and the gap in living standards between North and South has widened. GDP per capita had fallen below the Eastern European countries. Thomas Fazi<sup>74</sup> says: *'since signing the Maastricht treaty Italy has either been stagnating or growing well below the European average...since the financial crisis of 2008 Italy has lost between 6 and 7 % of its GDP – the largest*

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<sup>72</sup> Ibid [291]. One is struck by the similarity of the rise of Donald Trump, a showman whose reputation for lying, etc, does not appear significantly to dent his support in the country.

<sup>73</sup> A study by the UN Office on Drugs and Crime released in Vienna 25 October 2011

<sup>74</sup> Thomas Fazi *The Italian crisis is devastating – the EU has been vicious* (Interview with *Spiked* 15/2/2019)

*loss in the Eurozone after Greece. About 25% of its industrial production has been wiped out...in the south things are catastrophic: we are talking about unemployment rates of 60 to 70% in some parts'.*

Italy's faltering economy and high public debt, compared to 'a giant, maxed-out credit card tab'<sup>75</sup> has made it a target of the EU's Eurozone austerity measures. The EU's interference in Italy's political and economic life has included allegedly ordering Italy at the height of the Eurozone crisis to replace Berlusconi with Matteo Renzi, a technocrat acceptable to them,<sup>76</sup> and ordering them to redraw their recent budget in terms acceptable to the EU,<sup>77</sup> i.e. to introduce more austerity. Recent elections have shown a clear divide between supporters of Lega Nord (supported by small businesses and traders who want lower taxes) and the Five Star Movement, a new and bizarre collection of personalities at first headed by a comedian (supported by primarily by the young unemployed from the South who are demanding some kind of economic support). But these two groupings, encompassing different collections of national-populist ideas, in 2018 became Italy's coalition government.

Returning to the Global Compact categories, it is important to note that Italy has been a 'sending' country until very recently. The first major legislation to control immigration was passed as recently as 1998,<sup>78</sup> amended by the Bossi-Fini law 2002 no 189, bringing in increased powers of detention and expulsion of migrants. Around 600,000 migrants are believed to have reached Italy over the last four years, mostly by sea, a big increase since I worked on the case of *EW* in 2009. Money has been spent on increasing the availability of reception accommodation, but still nothing like enough, as evidenced in the UK cases of *EM*<sup>79</sup> and *SM*.<sup>80</sup> Both under Berlusconi and more recently Italy has shown a frank hostility to 'foreigners' whether asylum-seekers, economic migrants, poorer EU citizens and marginalised Italian citizens such as Roma. Berlusconi introduced the first restrictions on rescuing migrants from the sea.<sup>81</sup> He concluded agreements with Ghaddafi to prevent migrants leaving Libya, a policy condemned all over Europe. After a brief interlude in which Italy assisted with rescue operations and allowed rescued migrants to land in Italian ports, the new minister of the interior Salvini, of Lega Nord, has again stepped in to deter the rescue of migrants from the sea, prohibiting boats with survivors from berthing in Italian ports. His government has also rounded up Roma from camps and expelled them.<sup>82</sup> His government has also threatened to expel 600,000 migrants from Italy.<sup>83</sup>

Recently the deputy prime minister and leader of the Five Star Movement Luigi Di Maio has criticised France<sup>84</sup> for '*never having stopped colonizing dozens of African countries*', and using the CFA franc, a

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<sup>75</sup> Jordan Weissman, theatlantic.com 2011 <https://www.theatlantic.com/business/archive/2011/11/4-reasons-why-italys-economy-is-such-a-disaster/248238/> accessed 9/2/19

<sup>76</sup> <https://www.reuters.com/article/us-italy-berlusconi/italys-berlusconi-says-he-was-forced-out-by-eu-plot-idUSBREA4D0N720140514>

<sup>77</sup> *EU rejects Italian budget in unprecedented rebuke* Fast FT, <https://www.ft.com/content/db7a59ac-d6c9-11e8-ab8e-6be0dcf18713> accessed 25/1/19

<sup>78</sup> *Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, ovvero il D. Lgs. [25 luglio 1998](#), n. 286.

<sup>79</sup> *EM* [2014] UKSC 12

<sup>80</sup> *SM* fn 58

<sup>81</sup> This is discussed in the ECtHR case of *Hirsi Jamaa v Italy* Application No. 27765/09, decided in 2012

<sup>82</sup> <https://www.theguardian.com/world/2018/jun/19/italy-coalition-rift-roma-register-matteo-salvini> accessed 2/2/19

<sup>83</sup> <https://www.cnbc.com/2018/06/04/pack-your-bags-italys-new-leaders-tell-500000-illegal-migrants-but-itll-cost-them.html> Holly Ellyatt, Correspondent, CNBC.com

<sup>84</sup> Reuters 22/1/19, BBC 22/1/19

colonial era currency backed by the French Treasury, to intervene in and control the economies of the Francophone countries<sup>85</sup> so that people are forced to emigrate to find a means of living. The CFA arrangement obliges those countries to deposit half their foreign exchange reserves in a French treasury account, which limits their freedom to develop national economic policies.<sup>86</sup> This contretemps, which has led to France's withdrawal of its ambassador to Italy, goes wider than concerns about migration, since in June last year French President Macron described populists as 'rising like leprosy' all over Europe.<sup>87</sup>

However these Italian complaints, however rudimentary their economic basis, and with whatever motives, do at least suggest that more complex international economic policies might lie behind 'the migrant problem'. What must also be considered is the impact of Italy's persisting North-South divide. Migration to look for work, whether to the North of Italy or beyond, mainly in Germany and Switzerland, has been the experience of a large proportion of Italians from the south for over 100 years: and in times of recession many of these are forced to return home as unable to survive away from home with no wages. Thus the small southern settlements coping with significant arrivals of foreign migrants will from time to time already be under strain from local high unemployment, swelled by the return of local emigrants hit by recessions elsewhere. One account I submitted in my case of *EW*<sup>88</sup> concerned the small Southern town of Rosarno, whose economy is largely based on fruit-picking. Employers were not concerned about the legal status of who they employed, and so many refugees, asylum-seekers and refused asylum-seekers worked alongside local people. In 2009 there was already tension between local people and migrants, and at that time a demonstration showed solidarity between all the workers regardless of status. However, less than a year later, with tensions exacerbated by a drop in the market, Rosarno is reported to have evicted and driven out every migrant from the area, achieving 'the only purely white town in the world'.<sup>89</sup>

Also fundamental is Italy's unique political past and present. Perry Anderson concludes his Italy chapter of *The New Old World* by reviewing the calamitous collapse in left-wing politics in Italy, the country which had had the largest and best-organised communist and socialist parties in Europe, the Communist party in addition having its own major intellectual heritage in the writings of Antonio Gramsci. With that having been abandoned largely by free-standing decisions of the party leaders, and with the left and the traditions of the left no longer enjoying any social weight in Italy, the chance of developing a political debate about 'who belongs', or achieving the political solidarity with migrants necessary for *political* support for migrants' rights is virtually nonexistent. Without grappling with Italy's uneven, unequal and unsuccessful economy and its resulting divided and angry political landscape, the Global Compact approach will fall on stony ground in Italy.

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<sup>85</sup> Benin, Burkina Faso, Guinea-Bissau, Senegal, Mali, Niger, Togo, Cote'd'Ivoire, Cameroon, Gabon, Chad Central African Republic and Equatorial Guinea.

<sup>86</sup> However Hannah Roberts, *Why Italy are lecturing France on Africa* Politico 25/1/19 notes that only one of the CFA countries enter the 'top ten' of African 'sending countries, the principal 'senders' being Eritrea and Tunisia.

<sup>87</sup> Michael Rose, Gavin Jones, Reuters 21/6/2018 <https://uk.reuters.com/article/uk-france-macron/frances-macron-warns-of-populism-leprosy-italy-hits-back-idUKKBN1JH1QR> accessed 24/2/19

<sup>88</sup> *EW* – fn 4. The 2009 accounts of Rosarno are contained in my separate witness statement commenting on the objective evidence.

<sup>89</sup> <https://www.theguardian.com/world/2010/jan/11/italy-rosarno-violence-immigrants> accessed 9/2/19

#### 4. The 'destination country' – the UK

In the Introduction I summarised the UK's role as a 'sending' country: exporting 'rulers of Empire', administrators and military personnel all over the world, 'sending' desperate emigrants escaping the consequences of 18<sup>th</sup> and 19<sup>th</sup> century 'land reform' on the mainland and brutal neglect in Ireland, forcibly deporting convicts to Australia in the 19<sup>th</sup> century, and after the second world war 'sending' hopeful economic migrants mainly to the Dominions and more recently to continental Europe. However, now the UK is pre-eminently seen as, and sees itself as, a 'destination' country. A 2018 report from the Migration Observatory<sup>90</sup> states that as at 2017 some 14% of the UK population were born abroad, the main foreign nationalities being Poland (at 16% by far the highest proportion), India (6.6%), Pakistan (5.6%), Ireland (5.6%). The report notes that the UK's foreign-born population has nearly doubled since 2004, from 5.3m to around 9.4m, largely arising from the influx of EU nationals from the 8 new countries joining the EU in 2004.<sup>91</sup> Before that the largest group of foreign-born immigrants to the UK were from the Republic of Ireland. Notably, the 'Windrush generation' of arrivals of 'citizens of the UK and colonies' and Commonwealth citizens from the Caribbean and from Africa do not figure in the top ten foreign nationalities present in the UK: beyond those listed above, the list consists mainly of people from other EU countries.

I stated in the Introduction that the UK has never truly offered a welcome, or any sustained practical assistance with integration, to other than a few specific categories of incomers.<sup>92</sup> In relation to refugees, sentimental references are often made to the welcoming of Huguenot refugees in the 16<sup>th</sup> and 17<sup>th</sup> centuries, but, firstly, these were Protestant co-religionists being persecuted on the European continent in a wider struggle against Catholic powers (and so potential allies of England), and, secondly, even they were not always welcome, and from time to time subject to quasi-'hostile environment' measures as adverse economic conditions affected the native English population.<sup>93</sup> Similar sentimental references are made in the modern period to the UK's 'welcome' of refugees, but (as in Home Office press releases) this is always prefaced by the word 'genuine'. Official resistance to accepting Jews escaping pogroms in Russia and Eastern Europe towards the end of the 19<sup>th</sup> century, and official resistance to offering refuge to Jews escaping from Nazi Germany in the 30's, is well-documented. UK asylum legal practitioners over recent decades can document the UK Home Office resistance to every modern wave of refugees, from those escaping Pinochet's Chile in the 70's, Tamils from Sri Lanka in the 80's, and people escaping from every subsequent war and 'failed state' including Somalia, Afghanistan, Iraq, the Congo and elsewhere. The government's first response is always to ensure that nationals of such countries require visas to enter the UK. Then, very quickly, the Home Office evolves a standard response to the typical asylum claims from each troubled country or war zone: the applicant 'is not from that country'; 'was only a low-level activist' in that political organisation; 'would be able to safely relocate internally' to avoid persecution; the rape and abuse suf-

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<sup>90</sup> Rienzo, Cinzia and Carlos Vargas-Silva. "Migrants in the UK: An Overview," Migration Observatory briefing, COMPAS, University of Oxford, August 2018 <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/>

<sup>91</sup> Poland, Czech Republic, Slovakia, Latvia, Lithuania, Estonia, Cyprus, Malta

<sup>92</sup> It is strictly incorrect the use the term 'migrant' to refer to the 'Windrush generation', who were either 'citizens of the UK and colonies' and could arrive and remain as of right, or to Commonwealth citizens arriving before the Commonwealth Immigrants Acts of 1962 and 1986 when restrictions were imposed.

<sup>93</sup> *Immigrants in Tudor and Early Stuart England* Edited by Nigel Goose and. Lien Luu (Brighton: Sussex Academic Publications 2005)

ferred 'was the work of rogue policemen and not typical'; the applicant's account 'is vague and inconsistent' and his 'credibility is weakened because he did not claim asylum in the first safe country' and so on. These issues, collectively referred to as the Home Office 'culture of disbelief', have been the subject of many reports over 3 decades,<sup>94</sup> but, fundamentally, *nothing has changed*.

The numbers of asylum-seekers arriving in the UK have never been large, increasing from a few hundred a year in the 1980s to a high point in 2001 of just under 100,000 and falling subsequently to a current level of around 30,000 a year. This is far lower than experienced by several other European countries, and of course tiny when compared to the millions of Syrians arriving in Lebanon, Jordan, Turkey, the hundreds of thousands of Afghans arriving in Iran and Pakistan, and of Rohingya arriving in Bangladesh. To understand the political drivers of the restrictive laws and negative policy framework of the UK's asylum system we need to place 'asylum' into the UK's wider political response to 'immigration', which in turn requires a broader look at the vicissitudes of UK economic and political life since the second world war, highlighting the circumstances of each cohort of arrivals. It is immediately clear that, unlike in the case of Italy, for the UK 'immigration' and 'race' have been problematised categories virtually since the end of the second world war.

## The UK background<sup>95</sup>

### A. *the 50's and 60's: "they've stopped talking about it in the clubs"*

It seems extraordinary now to note that precisely as the *Empire Windrush* was crossing the Atlantic, Parliament was debating what became the British Nationality Act 1948, where a major concern was that without providing for an Empire-wide citizenship (Citizen of the UK and Colonies) Canada's new citizenship laws would lead to a tangle of different nationalities within the British Empire. It scarcely occurred to anyone in that debate that 'the natives' from the 'colonies' would have the temerity to turn up in Britain and expect to work and live here. Peter Hennessy<sup>96</sup> shows how both Conservatives and Labour were disconcerted at the effects of the arrival of the first West Indian migrants in 1948. During the Attlee and Churchill governments discussions took place on controlling Commonwealth immigration, always foundering on the postwar economic need for migrant labour and the determination not to control immigration from the old white Dominions. David Widgery, in his book *The Left in Britain 1956-1968*,<sup>97</sup> sums up the period by noting that '*immigration from the West Indies reached a peak in 1958-60 and for Asians in 1963-4, almost precisely in time with the jobs available*'. He continued succinctly: '*the appetite for labour was keen enough to bring women workers and immigrants into the workforce from their sinks and villages*'.

The 1958 Notting Hill and Nottingham race riots led to the first official Trades Union Congress (TUC) response:<sup>98</sup>

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<sup>94</sup> See for example the series of reports by Asylum Aid (*No Reason at All, Still No Reason At All, Unsustainable*), reports from Women for Refugee Women here: <https://www.refugeewomen.co.uk/campaign/research/>, *UNHCR quality integration project – first report to minister 2010* <https://www.refworld.org/pdfid/56a9c4294.pdf> accessed 17/3/19

<sup>95</sup> This segment is summarised from my paper presented to the 2018 SLS conference: *Can only victims win?* (available on the Kent Academic Repository (KAR))

<sup>96</sup> Peter Hennessy *Having it so good – Britain in the 50's* 2006 Penguin Allen Lane

<sup>97</sup> David Widgery *The Left in Britain 1856-1968* Penguin Books 1976, page 14

<sup>98</sup> *Coloured Workers and British Trade Unions* Beryl Radin, *Race* vol 8, 1966, Institute of Race Relations [*Race* was later renamed Race and Class]

*'...the most serious social problems facing immigrants to Britain were those which had faced working people for many years and caused hardship to substantial sections of the British public as a whole ... immigrants could best serve their own interests by taking part on an equal footing with other members of the trade union movement which represented their day to day interests as workers, and, through branches and trades councils, provided a means of expression in local and national life'.*

It could be argued that this showed a solidarity of class between white and 'coloured' workers, but if so it was very partial, ignoring the controls on entry of wives and children, additional barriers to housing for immigrant families, and not formally confronting racist and prejudiced attitudes amongst the white workforce.

The Commonwealth Immigrants Act 1962 brought in the first restrictions, requiring future Commonwealth immigrants to show that they had work. Several national unions and many senior Labour figures had formally opposed that Act, but after the bruising election campaign of 1964<sup>99</sup> felt forced to make a sharp change in official party policy. Labour's 1965 White Paper<sup>100</sup> proposed further restrictions on entry of Commonwealth citizens, plus conditions limiting lengths of stay and easier deportation procedures, while proposing separate legislation to outlaw race discrimination. There was no wide public debate on these measures, and, despite the significant restrictions and loss of rights proposed, the parliamentary debates on this are notable for speeches on both sides congratulating themselves and each other for taking race and immigration 'out of politics'.

On behalf of the extraparliamentary Left, David Widgery apologises that his book *'reflects the pre-1968 Left's complete lack of interest in the particular situations of woman and immigrants'*. Comparing the 1964 and 1966 election campaigns, the academic journal *Race*<sup>101</sup> wrote:

*'The issue of coloured immigration cannot be shown to have had any significant impact at the 1966 general election...the Bradford Labour Party two generations ago could have been relied on for some spirited idealism typical of the ILP [Independent Labour Party]. Today the party is more likely to adopt more solid 'practical' policies'. After the publication of the (Labour) 1965 White Paper they decided not to make any public statement. [The most important thing for the Party was that] **they've stopped talking about it in the clubs'**... The [Labour] party's quite explicit retreat from its internationalist neo-principles on immigration policy went unmarked'.<sup>102</sup>*

The White Paper policies were effectively enacted by the later Conservative government in the Immigration Act 1971. In 1966 Cedric Thornberry, member of the Society of Labour Lawyers, had objected<sup>103</sup> that Labour's 1965 White Paper measures had removed Commonwealth citizens' essential legal rights and reduced them to the status of (undesirable) aliens. But his own pamphlet *The stranger at the gate*<sup>104</sup> had proposed a similar structure of immigration control, with no critique

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<sup>99</sup> In which Peter Griffiths, standing for the Conservatives in Smethwick, was supported by campaign slogans such as 'if you want a nigger for a neighbour, vote Labour'.

<sup>100</sup> *Immigration from the Commonwealth 1965* (draft available online at <http://filestore.nationalarchives.gov.uk/pdfs/small/cab-129-122-c-109.pdf>)

<sup>101</sup> *Colour and the 1966 general election*, Deakin et al, *Race* vol 8

<sup>102</sup> Widgery fn 97 p 199

<sup>103</sup> *Note on the legal position of commonwealth immigrants* Cedric Thornberry, *Race*, vol 7 1966

<sup>104</sup> *The stranger at the gate* Cedric Thornberry, Fabian research series 243, August 1964

of any reasons put forward for imposing control, nor any economic or political analysis of the underlying motivations for migration, or of the causes of racism and discrimination in the host country. It concludes: '*Noone suggests that the pattern of wholly unrestricted entry and unqualified asylum of before 1905 should be resurrected*'.<sup>105</sup>

The Immigration Act 1971 put an end to 'primary immigration' (then understood as entry of male heads of households intending to work and bring their families). Entry was permitted only in accordance with the new Immigration Rules, under determinate categories (visitors, students, workers and family members).<sup>106</sup> Following the passing of that Act 'immigration' faded from the political agenda. The failure to confront the lack of housing, school places, jobs and health provision in those areas where growing numbers of immigrants had concentrated had exacerbated already serious local issues, allowing prejudice to turn into actual opposition to immigration. Instead of introducing programmes to remedy those shortages, Labour-run local authorities became the spearheads of race equality campaigns, leading to a particular political conception of multiculturalism which has led to the 'identity politics' of today.<sup>107</sup>

### **B. 1979-2010 – 'bogus asylum-seekers', 'foreign criminals' – and unrestricted immigration?**

Immigration as a 'crisis' political issue reemerged in the 80's, in the face of an exponential increase in asylum claims from insignificant numbers in the 80's to over 97,000 claims<sup>108</sup> in 2001. Government discourse, both Tory and then Labour, paid lip-service to 'genuine asylum-seekers' but concentrated entirely on how to restrict arrivals and how to restrict their rights once here. These changes aimed at asylum-seekers in fact arose from more general economic and political developments. Following the recession of the 70's the Conservatives led by Margaret Thatcher won the 1979 general election, with a clear neoliberal programme of privatisation, deregulation, sales of social housing and reduction of spending on the welfare state. The new government moved quickly to curtail migrants' access to welfare benefits and social housing. This policy, in which 'asylum-seekers' were the ostensible target, was understood as a trial for reducing welfare entitlements across the board. Those policies were frankly heralded by anti-immigrant views supported by right-wing newspapers such as the Daily Express, Daily Mail and more soberly the Daily Telegraph.

The 90's saw major immigration legislation, in 1996<sup>109</sup> excluding most migrants and all asylum-seekers from receiving mainstream social assistance benefits and public housing, and in 1999<sup>110</sup> setting up an entirely separate welfare and housing system for asylum claimants, in a policy later described as 'destitution by design'.<sup>111</sup> Legislation in 2002<sup>112</sup> enforced a distinction in welfare terms between those who claimed asylum on arrival and those who claimed after passing immigration

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<sup>105</sup> *ibid*, p25

<sup>106</sup> The first Immigration Rules brought in under that Act in 1973 also had to provide for the free movement of workers, etc from the Common Market, as the UK had just joined.

<sup>107</sup> For a strong critique of this process, see Kenan Malik *What is wrong with multiculturalism – part 1* from a 2012 lecture published on Pandaemonium <https://kenanmalik.com/2012/06/04/what-is-wrong-with-multiculturalism-part-1/>

<sup>108</sup> Including dependants

<sup>109</sup> Asylum and Immigration Act 1966

<sup>110</sup> Immigration and Asylum Act 1999

<sup>111</sup> *Destitution by Design* was the title of a report published by Ken Livingstone's London Mayoral office in 2004, arguing that the government was using destitution as a tool by which to deter asylum-seekers from coming to the UK

<sup>112</sup> Nationality, Immigration and Asylum Act 2002

control.<sup>113</sup> In 2004,<sup>114</sup> as well as introducing new immigration offences and determining how asylum-seekers' credibility should be regarded, the appellate system was reorganised again, making 3 times in 10 years, each time in the hope of reducing the numbers of asylum appeals.

In 2006 another immigration target emerged, the 'foreign national prisoner' now termed 'foreign criminal'. It emerged that over 1000 foreign prisoners had been released at the end of their criminal sentences without being considered for deportation. The public outcry forced the resignation of a Home Secretary and the passing of a new immigration law providing for 'automatic deportation', except in cases where a person's asylum or human rights might be breached.<sup>115</sup> This 'foreign national prisoners' scandal was the beginning of a relentless campaign attempting to discredit 'human rights' altogether, and which drove the negative development of human rights- based litigation in immigration generally.<sup>116</sup>

Despite these frontal attacks on migrants' and asylum-seekers' rights from both Conservative and Labour governments, there was almost no coherent *political* opposition. Lawyers used state legal aid to take up legal problems in a strategic way in order to achieve or defend people's rights to housing, benefits, jobs, and, gradually, immigration rights. The introduction of the Human Rights Act in 1998 had intensified these trends. In the realm of immigration and race we saw a move away from the more political anti-deportation and anti-racist campaigns of the 80's<sup>117</sup> which had attempted to make links between lack of opposition to racial discrimination in society and the essentially racial basis of immigration control, and wider economic issues. Instead, campaigns supporting individuals against deportation became more focused on the individual's links with the community and any special needs, rather than on rights and entitlements or economic solidarity. And the major opposition to curtailment of asylum-seekers' rights was based on large-scale legal actions.<sup>118</sup> These moves towards legal rather than political actions have been paralleled by the advent of identity politics and celebration of difference, which has meant that *political* discussion now has to overcome barriers of acute distrust and real fear of 'causing offence', and it seems easier to mount support for a worthy individual's legal battle.

Extraordinarily, this process, so corrosive of progressive and universalist politics, has taken place while successive Conservative, Labour, Coalition and Conservative governments nationally were instituting anti-immigrant policies *aimed at those already in the UK, many with legitimate expectations of being able to remain permanently*. For example, Labour moved from its 1998 White Paper<sup>119</sup> which had broadly supported integration to the virtually opposite policies of lengthy probationary periods for settlement and a proposal for 'earned citizenship' as well as the 'automatic

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<sup>113</sup> Both the 1996 Act and the 2002 Act gave rise to streams of High Court injunctions, the 1996 ones leading to the setting up of NASS and the provision of support and accommodation to asylum-seekers in 'dispersal areas' and in 2002 eventually to the case of *Limbuela*, arguably the high point of human rights legal activism in Britain. [*Adam, Limbuela & Tesema v SSHD*, [2005] UKHL 66]

<sup>114</sup> Asylum and Immigration (Treatment of Claimants) Act 2004

<sup>115</sup> Borders Act 2007 s32

<sup>116</sup> See my article *Immigration control and the place of Article 8 in the UK Courts – an update* JIANL vol 29/3 2015

<sup>117</sup> For example Viraj Mendis, [https://en.wikipedia.org/wiki/Viraj\\_Mendis](https://en.wikipedia.org/wiki/Viraj_Mendis) and my client Josephine Yirenkyi, who obtained the formal support of both LB Ealing and LB Hammersmith & Fulham Councils for her campaign, as well as a number of local trade union branches.

<sup>118</sup> See my article *The Law of Common Humanity* fn10

<sup>119</sup> *Fairer, Firmer, Faster* Cm 4018 <https://www.gov.uk/government/publications/fairer-faster-and-firmer-a-modern-approach-to-immigration-and-asylum>

deportation' of foreign criminals noted above. The Coalition and later Conservative government's aim to 'reduce net migration to the tens of thousands' has led to the introduction of significant restrictive requirements in every immigration category, curtailments of rights of appeal and the introduction of 'hostile environment' policies, designed to root out 'illegal migrants' but in fact affecting large cohorts of legal migrants with expectations of settlement.<sup>120</sup> It is worth noting that in the official immigration statistics, the applications of those on 'routes to settlement' are now described as 'extensions of temporary stay'.<sup>121</sup> Until very recently, this has taken place virtually without political debate, on the assumption that public opinion is firmly anti-immigrant.<sup>122</sup> Only the recent 'Windrush' debacle has shown politicians that public opinion may have shifted.

A common populist complaint is that the Labour government 1997-2010, contrary to popular understanding, had encouraged unrestricted immigration.<sup>123</sup> Certainly, under Labour, work-based immigration was permitted to expand and foreign students were encouraged, especially after the introduction of the points-based system in 2007. And no limits were imposed on free movement of nationals of the 8 new EU accession countries in 2004, and many more arrived than had been anticipated. On the other hand, looking at Home Secretary David Blunkett's 2002 White Paper *Secure Borders, Safe Haven*,<sup>124</sup> the headline narrative, policies and laws introduced by the Labour government, as with the Conservative government before it, were directed at the protection of UK society and the UK welfare system from 'bogus' asylum-seekers, 'illegal' migrants and 'foreign criminals', and emphasised the need for existing migrants to show 'loyalty' and 'earn' their right to stay. However, the numbers of EU nationals who arrived after 2004, their high concentrations in some areas, and paradoxically their ability to find work and accommodation and settle down here, gave rise to resentment, leading to the rise in support for the UK Independence Party (UKIP) especially in the so-called 'left behind' coastal towns and areas whose old industries had closed down. The arrival of so many EU nationals under free movement provisions provided a clear basis for the ensuing campaign based on a demand to 'take back control' and the referendum victory on leaving the EU.

A recent report from the UN Special Rapporteur on extreme poverty and human rights in the UK<sup>125</sup> provides a wider context into which to place the situation of migrants and asylum-seekers. The author Professor Alston does not mince his words. In his introduction he describes what he saw:

*'... the immense growth in foodbanks and the queues waiting outside them, the people sleeping rough on the streets, the sense of despair... And local authorities, which provide vital*

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<sup>120</sup> See my article on the 'hostile environment' fn11

<sup>121</sup> Official immigration statistics <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2018> accessed 24/2/19

<sup>122</sup> It is often argued that the rise of UKIP and the Brexit vote show that public opinion is indeed firmly anti-immigrant. It is the author's view that such is the *result of the lack of debate* of the issues.

<sup>123</sup> Daily Telegraph 23/10/2009 <https://www.telegraph.co.uk/news/uknews/law-and-order/6418456/Labour-wanted-mass-immigration-to-make-UK-more-multicultural-says-former-adviser.html> Daily Express 27/2/2016 <https://www.express.co.uk/news/uk/648008/Tony-Blair-Labour-immigration-asylum-seekers-UK-Brexit-EU-referendum> Migration Watch (undated) <https://www.migrationwatchuk.org/press-article/83> ; all accessed 1/8/18; *Broken Vows: Tony Blair – the tragedy of power* Tom Bower, 2016; <https://www.theguardian.com/books/2016/mar/13/broken-vows-tony-blair-tragedy-power-review-tom-bower>

<sup>124</sup> *Secure Borders, Safe Haven* Cm 5387, February 2002

<sup>125</sup> Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights London, 16 November 2018 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E> accessed 15/12/18

*roles in providing a real social safety net have been gutted by a series of government policies... While the labour and housing markets provide the crucial backdrop, the focus of this report is on the contribution made by social security and related policies.*

*The results? 14 million people, a fifth of the population, lives in poverty. Four million of these are more than 50% below the poverty line, and 1.5 million are destitute, unable to afford basic necessities... For almost one in every two children to be poor in twenty-first century Britain is not just a disgrace, but a social calamity and an economic disaster, all rolled into one.*

He is clear in identifying the causes of this and apportioning blame, pointing to the 'austerity' polities of the Coalition and Conservative governments coupled with the introduction of Universal Credit at such payment levels and such methods of delivery as inevitably to increase poverty and hardship. He concludes:

*The experience of the United Kingdom, especially since 2010, underscores the conclusion that poverty is a political choice.*

For 'destination' countries, the Global Compact proposes, among other recommendations, facilitating family reunion for temporary migrants, the reduction of precariousness, and encouragement of integration. It can be seen from the above that under the present UK government there is no appetite for any of this. Since 2010 the rights of foreign workers and students to bring in family members have been significantly curtailed. The UK's family reunion rights for refugees are the narrowest in Europe. Far from reducing precariousness, several measures have been deliberately introduced to increase it.<sup>126</sup> First, several categories of worker and student are no longer eligible to apply for indefinite leave to remain. Secondly, those on the so-called 'routes to settlement' have found those 'routes' stretching out into the future, the way to settlement barred by extremely high application fees and the Immigration Health Surcharge. Finally, the Immigration Act 2014 introduced 'public interest' criteria to be taken into account when considering applicants' rights to family and private life under art 8 ECHR,<sup>127</sup> in which, in s117B, 'little weight' is to be given to an applicant's private life acquired during a period when his stay in the UK was 'precarious'. Explicitly for reasons of straightforward decision-making, the Supreme Court has recently determined<sup>128</sup> that a person's stay is precarious unless he has either indefinite leave or citizenship. This, at a stroke, renders precarious almost all *migrants*, including students, workers, family members on 'routes to settlement', anyone given discretionary leave outside the immigration rules, refugees and those with humanitarian protection, and EU migrants who have not yet acquired permanent residence. This is inimical to integration. What is problematic for the aims of the Global Compact is that the impact of this, along with the other 'hostile environment' measures, is not widely understood.

However the fundamental issue for the Global Compact is that 'immigration', along with race, has been explicitly and frankly problematised in British politics for decades, and while the left's concern, generally speaking, has been diverted into the realm of multiculturalism and identity politics, the field of debate about immigration has been left to the Conservatives and populists. This is explicitly

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<sup>126</sup> see *Rhuppiah* fn 11 and Richard Warren *Private life in the balance: Constructing the precarious migrant* JIANL vol 30/2 2016

<sup>127</sup> Now at s117 Nationality, Immigration and Asylum Act 2002

<sup>128</sup> *Rhuppiah*, fn 11

not to conclude that those populist concerns are without foundation, or that the demand to 'take back control' is ignoble. It is to encourage, and indeed demand, a wider participation in that debate which would explicitly draw on what we have in common as UK residents rather than celebrating our differences.

## 5. Conclusion

In this paper I have attempted to show that the laudable aims of the Global Compact, as presented, provide no room for consideration of the complex historical economic and political realities affecting 'sending', 'transit' and 'destination' countries. My concern is that without such consideration, the Compact's recommendations will not just appear as simple good intentions, but as unwarranted and resented interference from supra-national organisations, seeking to prioritise the needs of 'migrants' *qua migrants* rather than demanding a democratic debate about the basis of 'belonging', and what should be the rights and entitlements of residents, in a given polity.

In relation to Eritrea, my example of a 'sending' country, it is clear that its government retains and in fact derives political strength from its coherent history, supported by evidence, of nothing but harm from the outside, leaving it to turn back on itself and survive the best way it can. Blaming and sanctioning Eritrea for its manifest human rights abuses, etc, without more, is unlikely to achieve change. There is even a possibility that European overtures to Eritrea, if limited to the aim of reducing asylum-seekers entering Europe, will exacerbate its human rights abuses and delay any progress to democracy.<sup>129</sup> Currently it may be hoped that the opening from a changed Ethiopia may offer a route towards introducing democratic rights for its people, surely the only secure basis for the economic and social policies proposed by the Compact for reducing emigration and flight.

In relation to Italy and the UK, it is interesting to draw out the similarities as well as the contrasts, in relation to the expectations of the Global Compact. Both are countries in which global capitalist processes have resulted in 'left behind' communities which have been differentially affected by neoliberal economic and social policies at the national level and who are experiencing significant poverty and deprivation. Both countries have seen populist responses, in Italy directed much more strongly against new and recently-arrived immigrants, with government policies more frankly racist, while in the UK the recent opposition has been to the big influx of EU nationals, while racism remains below the surface and formally prohibited. In both countries, recent populist demands to 'take back control', whether specifically from the EU or more generally from traditional political parties or technocratic elites, must be seen as a more fundamental dissatisfaction and disillusionment with 'politics'. But while for many the work leading to the adoption of the Global Compact is seen as a fruitful, humane way to resolve major world problems, almost without having to resort to 'politics', the very arrival from 'outside' of such proposals is likely to provoke hostility from first-world populations such as those in Italy and the UK, who possess democratic rights but with few willing to listen to their grievances.

Sheona York

17/3/19

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<sup>129</sup> The examples of Turkey and Libya show the problems of European policies towards 'transit' countries. The critiques of the Khartoum Project cited at fn 50 show the problems of an EU law enforcement based programme in Eritrea, Sudan and Libya.