

Part 2.

Humanitarian Admission Under Domestic Law. Between Formalised Procedures and Informal Practices

Chapter 4:

Humanitarian Admission to Italy through Humanitarian Visas and Corridors

Katia Bianchini¹

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¹ Research Fellow in the Department of Law & Anthropology of the Max Planck Institute for Social Anthropology.

1 *Introduction*

This chapter offers insights on how humanitarian visas provide a complementary legal pathway to Europe by focusing on the Italian case. The key research question is to identify the legislation and practices on humanitarian visas in Italy. The chapter devotes particular attention to the implementation of the 'humanitarian corridors' (HCs), a programme set up by various Faith Based Organisations (FBOs) in collaboration with the Italian government in order to ensure safe arrivals of asylum seekers and vulnerable persons from countries of first refuge outside Europe. The HCs have been the only instance where Italy has used humanitarian visas on a relevant scale.

In section 2, the chapter explains what the HCs are, their legal basis, the essential elements, the selection criteria and processes, and how they are organised and implemented. It argues that the use of humanitarian visas through the model of the HCs can be replicated, but a number of risks also need to be addressed, including the problem of excessive reliance on the goodwill of the government in power for their realisation, uncertainty in the selection process of the beneficiaries, lack of due process guarantees, and burden shifting of essentially State functions to civil society. Accordingly, although the HCs represent a good practice, they cannot be an alternative to the current systems of reception or resettlement. In section 3, the chapter briefly sketches out few other situations where humanitarian visas have been used to ensure safe entry to refugees and critically notes that such instances have been limited to situations of emergencies. Section 4 summarises the findings and concludes that, to have a significant impact and comply with the international obligations, humanitarian visas shall be developed through legislation and through a harmonised approach at the European level. Section 5 explores whether and how a common EU framework on humanitarian visas is desirable, explores arguments in favour and against it, and makes policy recommendations.

It should be noted that, because the use of humanitarian visas in Italy is very recent, there is little literature available on the subject and some pieces of information are also conflicting. Therefore, I have integrated the texts with data from thirteen semi-structured interviews of experts and stakeholders in order to gain insights into how humanitarian visas are issued and how the humanitarian corridors programme works in practice.

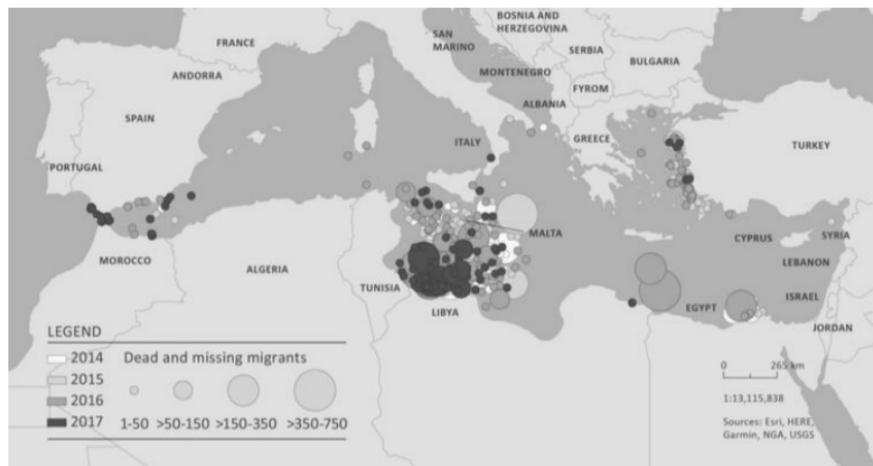
The names of a minority of interviewees who requested that they not be disclosed are anonymised. The interviews were carried out in Italian, my mother tongue, and by telephone or Skype. I identified the interviewees through previous published research, publicly available information on the organisations' websites, as well as their own contacts and networks. In preparing for the interviews, I prioritised flexibility. Although I had written down a list of questions I wanted to ask, I allowed the respondents to expand, digress, or even talk about a particular topic and their own concerns,² so that many questions I ended up asking arose in the course of the conversation. I took notes during the interviews, and then asked the respondents to check their accuracy. I double-checked the data of the interviews with the information gathered through primary text sources and connected them to the literature and wider academic debates.

2 Humanitarian corridors for beneficiaries of protection

The HCs were born as a two-year-pilot project at the end of 2015 in response to the dangerous journeys and arrivals of refugees and migrants by sea. Indeed, the Central Mediterranean route, which connects North Africa (especially Libya and Egypt) to Italy is considered the deadliest migration route in the world. It is estimated that more than 15,200 people died between 2014 and February 2019.³

2 C Robson, *Real World Research*, 3rd edn (Förlag, John Wiley Sons, 2011) 280.

3 IOM, 'The Central Mediterranean Route: Migrant Fatalities. January 2014 – July 2017' (31 July 2017) 1 missingmigrants.iom.int/central-mediterranean-route-migrant-fatalities-january-2014-july-2017; IOM, 'Deaths by Route – Central Mediterranean Route' (February 2019) https://missingmigrants.iom.int/region/mediterranean?migrant_route%5B%5D=1376.



Source: IOM, 'The Central Mediterranean route: Migrant Fatalities, January 2014 – July 2017' (31 July 2017) [1 missingmigrants.iom.int/central-mediterranean-route-migrant-fatalities-january-2014-july-2017](https://missingmigrants.iom.int/central-mediterranean-route-migrant-fatalities-january-2014-july-2017).



Source: IOM, 'Deaths by Route' (28 February 2019) <https://missingmigrants.iom.int/region/mediterranean>.

In particular, the impetus for the realisation of the HCs came following the death of at least 800 migrants of multiple nationalities (including Syri-

an, Eritrean and Somali), which occurred while they were attempting to cross the Mediterranean on a shipwreck on 19 April 2015.⁴ This tragedy brought the FBOs and other civil society actors together to study, propose and advocate for a safe and legal pathway for refugees to Italy. The outcome, after long negotiations with the Italian government, was the creation of the HCs. In brief, the HCs' aim is to allow the most vulnerable migrants and refugees to gain access to humanitarian visas, safe passage to Italy, lodge an asylum application upon arrival and encourage integration.⁵ The participating associations, which are all FBOs, act as sponsors and cover most of the cost of the programme, including the reception and integration services.⁶

The next sub-sections explain in detail how the HCs work, placing particular emphasis on their legal basis, procedures, criteria for selection of the beneficiaries, and reception in Italy, with a view to assess their replicability as well as their shortcomings.

4 A Bonomolo and S Kirchgaessner, 'UN Says 800 migrants Dead in Boat Disaster as Italy Launches Rescue of Two More Vessels' *The Guardian* (Rome, 20 April 2015) www.theguardian.com/world/2015/apr/20/italy-pm-matteo-renzi-migrant-ship-wreck-crisis-srebrenica-massacre; Interview with P Naso, Professor of History and Religion, Faculty of Literature, Sapienza University, and Coordinator, Mediterranean Hope Project (Rome, Italy, 26 April 2018).

5 Ministero degli Affari Esteri e della Cooperazione Internazionale, Minsitero dell' Interno e Comunita' di Sant'Egidio, Federazione delle Chiese Evangeliche e Tavola Valdese, 'Protocollo Tecnico per la Realizzazione del Progetto "Apertura di Corridori Umanitari"' (15 dicembre 2015) ('Protocollo 15 dicembre 2015') 3-4; Ministero degli Affari Esteri e della Cooperazione Internazionale, Ministero dell' Interno e Conferenza Episcopale Itlaiana e Comunita' di Sant'Egidio, 'Protocollo Tecnico per la Realizzazione del Progetto "Apertura di Corridori Umanitari"' (12 gennaio 2017) ('Protocollo 12 gennaio 2017') 4-5; Ministero degli Affari Esteri e della Cooperazione Internazionale, Minsitero dell' Interno e Comunita' di Sant'Egidio, Federazione delle Chiese Evangeliche e Tavola Valdese, 'Protocollo Tecnico per la Realizzazione del Progetto "Apertura di Corridori Umanitari"' (7 novembre 2017) ('Protocollo 7 novembre 2017') 2-3; Ministero degli Affari Esteri e della Cooperazione Internazionale, Minsitero dell' Interno e Conferenza Episcopale Itlaiana e Comunita' di Sant'Egidio, 'Protocollo Tecnico per la Realizzazione del Progetto "Apertura di Corridori Umanitari"' (3 maggio 2019) ('Protocollo 3 maggio 2019') 2-3; M Collyer, M Mancinelli, F Petito, 'Humanitarian Corridors: Safe and Legal Pathways to Europe' (Policy Briefing, University of Sussex, Autumn 2017) 1.

6 P Morozzo della Rocca, 'I Due Protocolli d'Intesa sui "Corridori Umanitari" tra Alcuni Enti di Ispirazione Religiosa ed il Governo ed il loro Possibile Impatto sulle Politiche di Asilo e Immigrazione' (2017) 1 *Diritto, Immigrazione e Cittadinanza* 1, 9.

2.1 Legal basis of the humanitarian corridors

There is no provision in Italian legislation regarding the issuance of humanitarian visas. However the HCs became possible because they could be set up without adopting new legislation and within the existing legal and operational framework by relying on *Article 25 of Regulation n. 810/2009 of 13 July 2009 (Visa Code)*.⁷ This Article provides Member States the possibility of issuing, in exceptional cases, visas with limited territorial validity for humanitarian reasons, national interest or on the grounds of international obligations. What is meant by ‘humanitarian reasons’ has not been clearly defined, but State practice shows that these kinds of visas have been issued for health reasons or protection needs.⁸

Article 25 must be read together with Article 1, which sets out the scope of the Code and states that the intended stay must not be longer than three months. There is no separate procedure in the Visa Code for lodging and considering an application for a humanitarian visa.

Despite the recent case of *X and X v Belgium*,⁹ it is believed that Article 25 of the Visa Code can still be used as the legal basis for setting up humanitarian corridors in the future.¹⁰ In that case, the issue at stake was whether Belgium had an obligation to issue a humanitarian visa to allow the applicants to travel to Belgium and apply for asylum there. However, the Court declined to reply and held that this was a matter of national law. In the case of the HCs, however, the parties involved do not intend to create any subjective right to a humanitarian visa.

7 Regulation (EC) 810/2009 establishing a community Code on Visas (Visa Code) [2009] OJ L 243/1, art 25; Protocollo 15 dicembre 2015 (n 5) 3 para 11(c); Protocollo 12 gennaio 2017 (n 5) art 4(c); Protocollo 7 novembre 2017 (n 5) 3 para 11(c); S Trotta, ‘Safe and Legal Passages to Europe: A Case-Study of Faith-Based Humanitarian Corridors to Italy’ (2017) UCL Migration Research Unit, Working Papers 2017/5, 27; Mediterranean Hope, ‘Migrant Humanitarian Corridors Greenlighted in Italy’ (1 January 2016) www.mediterraneanhope.com/2016/01/01/migrant-humanitarian-corridors-greenlighted-in-italy/; Sant’Egidio, ‘Dossier: What are the Humanitarian Corridors’ (29 February 2016) archive.santegidio.org/pageID/11676/langID/en/Humanitarian-Corridors-for-refugees.html.

8 U I Jensen, ‘Humanitarian Visas: Option or Obligation?’ (PE 509.986, European Parliament 2014) 41–48.

9 Opinion in C-638/16 PPU *X and X v Belgium* [2017] 4 WLR 89.

10 Interview with C Hein, Board Member and Founder, Italian Refugee Council, and Adjunct Professor, Department of Political Science, Luiss University (Rome, Italy, 26 April 2018).

In terms of the legal instrument chosen to carry out the programme, the parties agreed that it would be a '*protocollo*' (or, as labelled in the international context, 'Memorandum of Understanding' – MoU). An MoU is an administrative document which sets forth the aims, procedures, tools, responsibilities of the parties, as well as the validity and timeline of the project. MoUs are based on the collaboration between parties that intend to reach a common goal and normally do not have a legally binding force. They are more similar to a 'gentlemen's agreement' than a contract.¹¹ The MoUs of the HCs leave wide discretion to the administration and are written in carefully drafted general terms which allow the government to remain in as much control as possible. The MoUs create political and institutional responsibilities, but are not driven by the aim of creating enforceable subjective rights and making the visa process legally binding.

In regards to the use of *private sponsorship* on the part of the FBOs, the MoUs refer to the European Agenda on Migration, which hopes that the Member States use all legal channels to help people in need of protection, including assistance from private individuals and non-governmental organisations, humanitarian visas and family reunion.¹² Moreover, the MoU of 7 November 2017 mentions a European Commission's Communication of 27 April 2017, which recommends private sponsorships among other initiatives that States should support in order to increase the numbers of lawful entries into the country.¹³

2.2 *The MoUs for the humanitarian corridors: signatories, selection of countries and number of humanitarian visas*

The pilot project was set up by religious organisations and the Italian government with the first MoU in 2015 and was further expanded with two further MoUs in 2017 and one in 2019. In particular, the first MoU was signed on 15 December 2015 between the Federation of Protestant

11 S Calassi, 'L' Attività Amministrativa Negoziata nell' Analisi di Alcune Fattispecie nella Legislazione della Provincia Autonoma di Trento' (Master dissertation, Trentino School of Management 2011) 20.

12 Commission, 'A European Agenda on Migration' (Communication) COM (2015) 240 final. See: Protocollo 15 dicembre 2015 (n 5), 2 para 3; Protocollo 12 gennaio 2017 (n 5) 2 para 2; Protocollo 7 novembre 2017 (n 5) 2 para 3; Protocollo 3 maggio 2019 (n 5) para 7.2.

13 Commission, 'Delivery of the European Agenda on Migration' (Communication) COM (2017) 558 final; Protocollo 9 novembre 2017 (n 5) 2 para 4.

Churches (FCEI),¹⁴ the Waldensian Church,¹⁵ the Catholic Community of *Sant'Egidio*¹⁶ and the Ministries of Interior and of Foreign Affairs. The second MoU was signed on 12 January 2017 between the Community of *Sant'Egidio*, the *Conferenza Episcopale Italiana* (Italian Episcopal Conference – CEI)¹⁷ and the Ministries of Interior and of Foreign Affairs.¹⁸ The third MoU had the same signatories as the first one, and was signed on 7 November 2017. The most recent MoU extended the MoU signed on 12 January 2017 and was signed on 3 May 2019 by *Sant'Egidio*, CEI and the Ministries of Interior and of Foreign Affairs.¹⁹ The four MoUs, are very similar, apart from the descriptive part of the legal justifications in those dated 7 November 2017 and 3 May 2019, mainly due to references to latest declarations of the European Commission. Their aims, procedures, and implementation are the same.

On the basis of the first MoU, in the first six months, the Italian government agreed to issue a maximum of 150 humanitarian visas for persons in Morocco and 250 in Lebanon. At the end of the first six-month-period of its signing, it was agreed that, upon successful completion of the first phase, the project would be extended to Ethiopia, with the aim of involving, in particular, potential beneficiaries of protection from Eritrea, Soma-

14 FCEI was founded in 1967 and is comprised of various protestant Churches, including the Italian Evangelic Lutheran Church, Waldensian Church, Methodist Church, Salvation Army International, Christian Evangelical Baptist Union, Apostolic Church and St. Andrew's Church of Scotland in Rome. FCEI, 'Le Chiese Membri della FCEI' www.fcei.it/membri/.

15 The Waldensian Church is one of the Evangelic Churches. Chiesa Evangelica Valdese, 'Ci Presentiamo' www.chiesavaldese.org/aria_cms.php?page=16.

16 *Sant'Egidio* is a Catholic community founded in 1968. Over time, it has become a network of communities in more than 70 countries. Its activities focus on prayer, help for the poor, work for peace, and communicating the gospel. *Sant'Egidio*, 'The Community' www.santegidio.org/pageID/30008/langID/en/THE-COMMUNITY.html.

17 The CEI is the permanent assembly of Italian Bishops. It is a body which has particular importance regarding the relationship between the Italian State and the Catholic Church. Chiesa Cattolica Italiana www.chiesacattolica.it/la-conferenza-episcopale-italiana/.

18 Ministero degli Affari Esteri e della Cooperazione Internazionale, Minisqtero dell' Interno e Comunita' di *Sant'Egidio*, Federazione delle Chiese Evangeliche e Tavola Valdese, 'Protocollo di Intesa per la Realizzazzione del Progetto "Apertura di Corridori Umanitari"' ('Protocollo 2017').

19 A Sofia, 'Intesa sui Corridori Umanitari al Viminale ma Salvini non c'e'. *Il Fatto Quotidiano* (4 May 2019) www.ilfattoquotidiano.it/2019/05/04/intesa-sui-corridori-umanitari-al-viminale-ma-salvini-non-ce-cei-attacca-caritas-al-lavoro-per-migranti-e-italiani/5153585/.

lia and South Sudan. Morocco and Lebanon were chosen on the grounds of being key ‘transit countries’ for high numbers of refugees and because of the presence of several organisations and Churches already involved in the matter.²⁰ Specifically, in Lebanon, the beneficiaries are mostly people fleeing from regional conflicts, and especially families and vulnerable persons²¹ from Syria. In regards to Morocco, the beneficiaries of the project were meant to be both Syrians with preference for those recognized *prima facie* refugees by the UNHCR, and people in conditions of particular vulnerability coming from Sub-Saharan Africa. In total, the Italian government agreed to issue a maximum of 1,000 humanitarian visas between 2016 and 2017.²² However, in Morocco, the project was not implemented, as the Moroccan authorities feared a pull-factor.²³ In Ethiopia, due to operational matters, it was not possible to issue visas under the first MoU, but only with the MoU of 12 January 2017. Under this agreement, a maximum of 500 humanitarian visas could be granted between 2018 and 2019.²⁴

With the MoU dated 7 November 2017, the project has been further expanded in Morocco and Lebanon, with the aim of issuing a maximum of 1,000 humanitarian visas between 2018 and 2019.²⁵

Finally, the MoU of 2019 saw the establishment of the humanitarian corridors in Ethiopia, Jordan, and Niger, where 600 humanitarian visas are to be issued between July 2019 and 2021.²⁶ Although the text of the MoU does not specify it, the inclusion of Niger was due to the need of providing

20 The choice of Lebanon was also based on the consideration of the many hosted Syrian refugees. Lebanon has a population of about 4 million people and hosts about 1.2 million refugees. Besides the Syrian refugees, the country hosts half a million Palestinians in camps. As a consequence, the country is overwhelmed by refugees. ‘Beyond Good Intentions: Creating Safe Passage to Italy’ (2016) 1 *Security Community* 30-31.

21 Section 2.3 of this chapter will further discuss the criteria of selection and how ‘vulnerability’ is understood.

22 Protocollo 15 dicembre 2015 (n 5) art 5.

23 Interview with D Pompei, Coordinator, Humanitarian Corridors for the Community of Sant’Egidio (Rome, Italy, 3 May 2018); Interview with O Forti, National Coordinator, Humanitarian Corridors for Caritas (Rome, Italy, 7 February 2019).

24 Protocollo 12 gennaio 2017 (n 5) art 5.

25 Protocollo 7 novembre 2017 (n 5) art 5.

26 The Protocol states that, with the agreement of the government, the period can be extended for another year if necessary. It also states that, with the agreement of the government, the programme can include persons who transit through other countries. Protocollo 3 maggio 2019 (n 5) art 5. Farnesina, ‘Protocollo Tecnico per l’ Apertura dei Corridori Umanitari’ (6 May 2019) www.esteri.it/mae/it/

durable solutions to refugees the UNHCR evacuates from immigration detention centres in Libya.²⁷

The total number of visas issued as of the end of January 2019 stood at 1,403 for people in Lebanon, and 500 for Ethiopia under the MoU of 12 January 2017.²⁸ It is reported that, an addendum to the MoU of 12 January 2017 modified it to include Iraqi Christians who had fled to Turkey as well Syrians with serious medical needs in Jordan who needed to be evacuated.²⁹

2.3 The process of identification and selection of beneficiaries for the humanitarian corridors

The MoUs provide only general guidance on the essential steps in the process of examining beneficiaries' identification and issuing the humanitarian visas. The FBOs involved are in charge of preparing the list of potential beneficiaries and following the process from the beginning to the very end. The selection of the beneficiaries is made through actors on the field and takes a few months. For example, in Lebanon, the FBOs rely on two associations: Mediterranean Hope (a project of the Federation of Evangelical Churches – FCEI – and the Waldensian Church)³⁰ and *Operazione Colomba* (a project of the Community Papa Giovanni XIII). *Operazione Colomba* was chosen because their volunteers live in the refugee camp of Tel Abbas, they know the situation on the ground, and can help to build the beneficiaries'

sala_stampa/archivionotizie/comunicati/protocollo-tecnico-per-l-apertura-di-corridoi-umanitari.html.

- 27 Sir Agenzia d' Informazione, 'Corridori Umanitari: Forti (Caritas), "Al Via Secondo Protocollo anche dal Niger, Primi Arrivi tra Luglio e Ottobre, 47 Diocesi Coinvolte" (3 May 2019) www.agensir.it/quotidiano/2019/5/3/corridoi-umanitari-forti-caritas-al-via-secondo-protocollo-anche-dal-niger-primi-arrivi-tra-luglio-e-ottobre-47-diocesi-coinvolti/.
- 28 Interview with S Scotta, Operator, Mediterranean Hope in Lebanon (Beirut, Lebanon, 28 January 2019).
- 29 Interview with Forti (n 23). Twenty persons were evacuated in Turkey and Jordan. Interview with C Pani, Head of Humanitarian Corridors in Ethiopia, Comunita' di Saint' Egidio (Rome, Italy, 15 February 2019).
- 30 Mediterranean Hope, 'Chi Siamo. Corridori Umanitari' www.mediterranean-hope.com/corridoi-umanitari/.

trust with the sponsoring FBOs.³¹ Referrals from the UNHCR, *Medici Senza Frontiere* (Doctors Without Borders) and other organisations are also considered by the FBOs. In Ethiopia, the community of *Sant'Egidio* is directly on the field and makes the selection with the operational help of the CEI through Caritas and *Migrantes*.³² The UNHCR, local churches, NGOs, as well as relatives or friends of beneficiaries in Italy may also refer individuals.³³ However, the beneficiaries themselves cannot make an application to be included in the programme.

The potential beneficiaries are carefully selected and undergo interviews³⁴ that allow an assessment of their needs, vulnerabilities, the urgency of the situation, and whether they can integrate and intend to stay in Italy upon arrival, as further explained in the next sub-section.

The list of beneficiaries is presented to the Italian embassy and the national authorities of the host country to carry out security checks and exclude pending legal cases. The list of potential beneficiaries is then screened by the Italian Ministry of Interior to prevent threats to the national security and public order. Whereas no particular problems have been encountered for the project in Ethiopia, it is reported that several cases were denied in Lebanon.³⁵ As there is no obligation on the part of the Italian authorities to give any explanation in case of refusal, the exact reasons for such decisions are unknown. According to the interviewees, it is likely that some cases were rejected because they could create diplomatic problems with countries of first asylum (for example, in situations of persons with multiple nationalities) or concerned people coming from areas where terrorist groups are active.³⁶ Others were denied because beneficiaries were

31 Interview with Coordinator, Community of Sant'Egidio (Rome, Italy, 19 April 2018); Operazione Colombia, 'Dove Siamo. Libano-Sirya. Progetto' www.operazionecolombia.it/dove-siamo/libano-siria/libanosiria-progetto.html.

32 Interview with Naso (n 4); Interview with Pompei (n 23); A Gagliardi, 'Corridori Umanitari, a Fiumicino 30 Profughi Siriani dal Libano' *Il Sole 24 Ore* (30 January 2018) www.ilsole24ore.com/art/notizie/2018-01-29/corridoi-umanitari-fiumicino-30-profughi-siriani-libano-160005.shtml?uuid=AEyDzpQD.

33 Interview with Pani (n 29).

34 The interviews are conducted by the FBOs or by local actors on behalf of the FBOs in refugee camps or temporary private accommodations. The interviews are then vetted by the FBOs' offices in Rome. Interview with B Chioccioli, Project and Communication Officer, Mediterranean Hope (Rome, Italy, 12 May 2018).

35 Interview with Scotta (n 28); Interview with G de Monte, Journalist, Communication Office, Mediterranean Hope (Rome, Italy, 12 February 2019).

36 Interview with Chioccioli (n 34). Refugees in Ethiopia are usually poorer than those in Lebanon, are seldom involved in politics, and attract fewer security concerns than refugees from the Middle East. Interview with Pani (n 29).

suspected of potentially engaging in secondary movements due to family links in other EU countries.³⁷

For cases from Lebanon, the Italian Ministry of Interior may ask the UNHCR whether the information is consistent with the filed information and, if not, the case may not proceed.³⁸ For cases from Ethiopia, Turkey and Jordan, the UNHCR has been more involved since the beginning of the procedure and this situation does not occur.³⁹

In case of approval, the list is forwarded to the Ministry of Foreign Affairs who will communicate to the consular authorities about the issuance of a visa with limited territorial validity in order to arrive in Italy.⁴⁰ In case of refusal, there is no right of appeal.

Before departure, the beneficiaries are required to take part in awareness sessions on the cultural, linguistic and social aspects of European culture and society. Once the beneficiaries receive their humanitarian visas and travel documents, the sponsoring associations will deal with their transfer to the Italian territory and pay the costs.⁴¹

2.4 Criteria to identify the beneficiaries

Central to the aim of the HCs is the provision of a safe and alternative means to dangerous migration routes to Europe and seek protection. Such an alternative is, however, available only to those who are identified as 'priority groups'. As any other humanitarian or resettlement programme, the HCs face the reality of choosing the beneficiaries from a large pool of refugees in need and justifying such choices.⁴² Thus, according to the

37 Interview with Scotta (n 28).

38 *ibid.*

39 Interview with Forti (n 23). In Ethiopia, the government requires refugees to be registered with the UNHCR. Interview with Pani (n 29).

40 Collyer (n 5) 3. In Lebanon, the Italian consular authorities are in charge of issuing travel documents in case of lack of a passport, whereas in Ethiopia the Ethiopian government is responsible for that. To issue a travel document, the Ethiopian government requires the refugee to be registered with the UNHCR and reside in the place of registration. Interview with Pani (n 29).

41 Collyer (n 5) 3.

42 D Fassin, 'Inequalities of Lives, Hierarchies of Humanity: Moral Commitments and Ethical Dilemmas of Humanitarism' in I Feldman and M Ticktin (eds), *In the Name of Humanity: the Government of Threat and Care* (Durham, Duke University Press, 2010) 239-40; H C Markay, 'The Corridors Through the Keyhole: An Analysis of the Humanitarian Corridors Programme from Lebanon and Ethiopia to

MoUs, the beneficiaries are selected with reference to the following criteria:

- a) Persons whom the UNHCR considers *prima facie* deserving refugee status;⁴³
- b) Persons who, although not falling under the former point, show a proved vulnerability situation due to their personal characteristics, age and health (for instance, women with children, victims of trafficking, elderly, persons with disability or affected by serious illnesses);⁴⁴
- c) Either one of the two criteria, as long its grounds and seriousness is proved, can justify the admission of a person to the project.

In complementary form and not in place of the previous criteria, the following factors will be considered:

- d) Persons who can benefit from support in Italy from individuals, Churches or associations that have volunteered to provide hospitality and support for a substantial period in the initial phase;
- e) Persons who already have a family or stable social network in Italy and have declared their intention to live and integrate in the country for that reason.⁴⁵

2.4.1 'Vulnerability'

Even though the MoUs do not establish a clear definition of 'vulnerability', the concept seems to refer to situations where individuals with special

Italy' (Master dissertation, University of Oxford 2018) 21-22; Interview with researcher, Oxford University (Oxford, UK, 18 April 2018).

43 'A *prima facie* approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence. A *prima facie* approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition.' UNHCR, 'Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status' (2015) para 1. 'Although a *prima facie* approach may be applied within individual refugee status determination procedures it is more often used in group situations, for example where individual status determination is impractical, impossible or unnecessary in large-scale situations.' *ibid* para 2.

44 Protocollo 15 dicembre 2015 (n 5) 5 para 13(b), art 3.

45 Protocollo 15 dicembre 2015 (n 5) art 3; Protocollo 12 gennaio 2017 (n 5) art 3; Protocollo 7 novembre 2017 (n 5) art 3; Protocollo 3 maggio 2019 (n 5) art 3.

needs are particularly exposed to harm and lack the capacity to cope with the situation.⁴⁶ The term ‘vulnerability’ frequently appears in resettlement contexts and in the UNHCR Guidelines as a criterion for refugees to access protection, durable solutions or other protected entry procedures, and is subject to different understandings.⁴⁷ For instance, in the UNHCR resettlement programmes, the following categories of refugees are seen to have special needs: women and girls at risk; children and adolescents under physical threat, either unaccompanied or seeking to maintain family unit; persons with medical needs and victims of torture; and the elderly and the disabled.⁴⁸

One main difference between the MoUs on one hand and the resettlement and reception programmes on the other is that the former expands the personal scope to qualify, as a person does not need to be registered with the UNHCR as a refugee or meet the ‘refugee’ definition.⁴⁹ This was indeed a key point negotiated by the FBOs with the Italian government: in Lebanon, the UNHCR had to suspend the registration of refugees as per instruction of the Lebanese Government as a result of which many Syrians would have been excluded from the programme.⁵⁰ However, the FBOs could not include unaccompanied minors under the category of ‘vulnera-

46 Markay (n 42); for a discussion on vulnerability, see generally T Afifi and J Jäger, *Environment, Forced Migration and Social Vulnerability* (London, Springer, 2010).

47 UNHCR and International Detention Coalition, *Vulnerability Screening Tool. Identifying and Addressing Vulnerability: a Tool for Asylum and Migration Systems* (2016); UNHCR, ‘UNHCR Resettlement Handbook. Division of International Protection’ (revised edn, 2011) 182-84; Trotta (n 7) 10.

48 UNHCR (n 47) 243-99. In turn, the Reception Directive provides that ‘Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.’ Directive (EU) 2013/33 laying down standards for the reception of applicants for international protection [2013] OJ L180, art 21; see also UNHCR and International Detention Coalition (n 47); UNHCR (n 47) 182-84; Interview with Pompei (n 23).

49 della Rocca (n 6) 13-14.

50 Trotta (n 7) 21; UNHCR, ‘Syria Regional Refugee Response’ (as of 16 September 2019) <https://data2.unhcr.org/en/situations/syria>; UNHCR, ‘Lebanon. Overview 2015’ <http://reporting.unhcr.org/node/2520?y=2015#year>.

ble people' due to the legal issues connected with them, in particular the need to appoint legal guardians.⁵¹

Clearly, the MoUs give the FBOs a wide margin of appreciation in the selection of the beneficiaries. The interviewees themselves confirmed this, as they all stressed that the goal of the HCs is to protect those considered 'the weakest'. But they also pointed to other specific deserving categories that could be included.⁵² For instance, they focused on medical needs, on families (as opposed to individuals), on those who identified as gays and lesbians, but also on people who did not qualify for inclusion in family-reunion, resettlement or other programmes and would likely remain in refugee camps with no prospects of integration.⁵³ When asked about how they would select the beneficiaries, one of the operators explained that they were not concerned with applying legal standards but on finding practical solutions on the grounds of what they believe was fair and could make the programme work rather than following precise rules.⁵⁴ He added that the selection was difficult and sometimes overwhelming. Another operator explained that even among them, there may be different views on whom to include in the programme, and in case of disagreement, the decision was taken by their head office in Rome.⁵⁵ One study confirmed that different actors interpret 'vulnerability' in different ways according to their own understandings and aims: some actors may consider situations of 'extreme poverty'; others may include whole families who would otherwise remain stranded in refugee camps. It has also been reported that some beneficiaries were selected upon the request of the Italian government as they cooperated to an operation to rescue Italian hostages in Syria.⁵⁶

In light of the above, it emerges that FBOs have developed an operational definition of 'vulnerability', which includes intersecting factors and components, thus allowing an assessment based on a more nuanced understanding of the beneficiaries' experiences and eligibility for the programme according to the specificity of the situations they face. However, these criteria have the effect of dividing 'refugees into sub-categories of deservedness', and in practice it may involve 'political and humanitarian' considerations

51 Interview with Naso (n 4).

52 Markay (n 42) 27.

53 Interview with Scotta (n 28); Interview with Coordinator (n 31); Trotta (n 7) 21.

54 Interview with A. Capannini, Volunteer, Operazione Colomba (Rome, Italy, 24 May 2018).

55 Interview with Scotta (n 28).

56 Trotta (n 7) 29.

rather than objective standards.⁵⁷ Moreover, the preference for family, women and children may reinforce the stereotype of lone male migrants as a threat.⁵⁸ And, finally, while limited groups of particularly vulnerable persons might be included in the programme, the majority of refugees are excluded,⁵⁹ raising moral dilemmas and issues concerning the fundamental principles of fairness and legal certainty.⁶⁰ Problems relating to the practice of identifying 'priority groups' is not unique to the context of the HCs. Indeed, they are inherent to humanitarian and resettlement projects in general, including those run by the UNHCR in collaboration with governments.⁶¹ In a way, they are linked to the organisation and features of these programmes, especially their reliance on access to 'soft-law' instruments⁶² and considerations such as States' discretionary will, wide appreciation of the selection criteria of the actors in charge of implementation, and the powerlessness of the refugees.⁶³

Finally, one concern that has been pointed out is that, although the beneficiaries are selected independent of their religious affiliations, the process is carried out through the FBOs' networks and partners on site who may favour those they come into contact with more easily. However fieldwork research would be needed to support such a concern.⁶⁴ On this point, the experts that I interviewed for this study have all stressed that the selection of the beneficiaries is completely independent of their religious affiliation and the only aim of the project is to help people in need. This is confirmed by the fact that the majority of the beneficiaries are Muslims.⁶⁵

The next section will further explore how 'vulnerability' in the context of the HCs is being balanced against other considerations.

57 S Fine, 'Faiths and the Politics of Resettlement' (2014) 48 *FMR* 53-54.

58 Trotta (n 7) 32.

59 *ibid* 11-12; E Fiddian, 'Relocating: the Asylum Experience in Cairo' (2006) 8 *Interventions* 295, 305-11.

60 J-Y Carlier, 'Des Droits de l'Homme Vulnérable à la Vulnérabilité des Droits de l'Homme, la Fragilité des Équilibres' (2017) 79 *Revue interdisciplinaire d'études juridiques* 175-204.

61 G Verdirame and B Harrell-Bond, *Rights in Exile. Janus-Faced Humanitarism* (Oxford, Bergham Books, 2005) 283, 285.

62 K B Sandvik, 'Blurring Boundaries: Refugee Resettlement in Kampala - Between the Formal, the Informal, and the Illegal' (2011) 34 *PoLAR* 11.

63 Verdirame (n 61) 286.

64 Trotta (n 7) 23.

65 Collyer (n 5) 3.

2.4.2 Integration in Italy and avoidance of secondary movements

The concepts of vulnerability and *prima facie* recognition of refugee status in the MoUs are qualified in light of pragmatic considerations. Specifically, the MoUs state that, in complementary form and not in substitution of the aforementioned criteria, it shall be taken into account whether the beneficiaries intend to live and integrate in Italy.⁶⁶ In practice, vulnerability and *prima facie* refugee status are bundled together with the challenges that the beneficiaries will face once uprooted and whether they will be able to grow and become self-sufficient in the new context.⁶⁷ In this regard, one interviewee explained that between a family composed of a mother and five young children and a family with more children, but with two approaching adulthood and capable of working, they would choose the latter, as they are more likely to become independent in a shorter period of time.⁶⁸ Some stakeholders stated that they are concerned about whether the relocation may have negative effects on the beneficiaries' well-being. They illustrated this very well with the case of elderly people: if they had already fled from Syria and have been living in refugee camps for some years, they will likely never integrate or manage to become independent in Italy. Their health may even deteriorate with a new settlement, and therefore they would not be chosen unless part of a family.⁶⁹

In addition to the integration criterion, the MoUs require an assessment of whether the beneficiaries have any family or personal ties with Italy and whether they intend to settle down in the country, in order to limit or avoid secondary movements.⁷⁰ Stakeholders explained that they are becoming increasingly careful about this, as about 20 per cent of the beneficiaries from Lebanon left Italy after their arrival, and this may create problems with the government, as the programme relies on compliance with

66 Protocollo 15 dicembre 2015 (n 5) art 3; Protocollo 12 gennaio 2017 (n 5) art 3; Protocollo 7 novembre 2017 (n 5) art 3; Protocollo 3 maggio 2019 (n 5) art 3.

67 Interview with Pani (n 29).

68 *ibid.*

69 Interview with M Bonafede, Representative, Waldensian Church at the Italian Federation of Evangelic Churches, and Promoter, Humanitarian Corridors (Turin, Italy, 13 May 2018); Interview with Chioccioli (n 34); A Ager, 'Health and Forced Migration' in E Fiddian-Qasmiyah and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford, Oxford University Press, 2014) 439.

70 Protocollo 15 dicembre 2015 (n 5) para 11(d), art 3; Protocollo 12 gennaio 2017 (n 5) art 4(d); Protocollo 7 novembre 2017 (n 5) art 3; Protocollo 3 maggio 2019 (n 5) art 3.

the rules.⁷¹ Therefore, FBO's *operatori* (literally operators, but essentially volunteers and employees) try to understand whether the beneficiaries' migration project is actually to remain in Italy. The *operatori* now tend not to select individuals with family members in other European countries.⁷² In this regard, Caritas is strengthening the beneficiaries' preparation before departure by informing them of the difficulties which they may face in Italy.⁷³ These efforts address the Italian government's desire of being in control of its borders as well as of not permitting the beneficiaries to bypass EU immigration law upon arrival.⁷⁴ Thus, it is clear that the negotiated objectives of the programme with the government – helping the most vulnerable, maintaining the reputation of having a humane migration policy, and protecting the EU borders – create constraints and grey areas during the selection process.⁷⁵

2.5 Reception of beneficiaries: legal status and support provided after arrival

Once they arrive in Italy, the beneficiaries go on to lodge the asylum application at the airport. The FBOs support them with legal assistance and transfer them to different cities across the country.

Upon receipt of the asylum claim, the Ministry of the Interior shall forward the relevant files to the Territorial Commission in charge of the asylum decision.⁷⁶ For these applicants, the asylum procedure takes a much shorter time than usual – only six months compared to an average of two years.⁷⁷ In part, this is due to the fact that security checks are carried out beforehand but also owing to the FBOs' ability to speed up the processing of the applications thanks to connections with the Ministry of the Interior in Rome.⁷⁸ At the end of November 2018, the number of applicants from Lebanon who obtained the refugee status amounted to 751. Three received subsidiary protection (five years' leave to remain) and six a permit to stay

71 This figure applies only to the beneficiaries who arrived from Lebanon. Interview with Bonafede (n 69); Interview with de Monte (n 35). There is no available data of the beneficiaries who arrived from Ethiopia.

72 Interview with Bonafede (n 69).

73 Interview with Forti (n 23).

74 Markay (n 42) 32-33.

75 *ibid* 33.

76 Protocollo 15 dicembre 2015 (n 5) art 4; Protocollo 12 gennaio 2017 (n 5) art 4; Protocollo 17 novembre 2017 (n 5) art 4.

77 Collyer (n 5) 3.

78 Trotta (n 7) 23.

on humanitarian grounds (between six months and two years' leave to remain).⁷⁹ The other applicants are still awaiting a decision on their cases.⁸⁰ Over 95 per cent of the applicants from Ethiopia, Jordan and Turkey whose cases were finalised have received refugee status and the others subsidiary protection but the exact numbers have not yet been made public.⁸¹

The form of support provided by the FBOs has been formalised with the Italian government and creates a parallel structure of reception outside that of the State.⁸² Refugees, as well as beneficiaries of other forms of international protection, are immediately immersed into local communities instead of being placed in reception centres. Besides providing accommodation and support, the FBOs assist the refugees and beneficiaries of international protection with reaching their integration goals through language acquisition and work training, as well as with obtaining social benefits once the primary reception phase has been completed, in order to stabilise their position in Italy and prevent secondary movements.⁸³ The Italian government provides healthcare, schooling, integration services and, if the beneficiaries cannot integrate in the labour market, the support of welfare benefits.⁸⁴ The recent Decree Law 840/2018 (*Salvini Decree*) requiring a certificate of residence⁸⁵ in Italy to access health care has been detrimental to asylum seekers, who are normally unable to obtain such a certificate, and this has complicated the reception system for the beneficiaries of the HCs.

79 Both permits are renewable.

80 Interview with de Monte (n 35). It should be noted that the recent Legislative Decree 113/2018 has abolished the general humanitarian permission which allowed lawful residence in case a person did not qualify for refugee status but serious reasons based on humanitarian considerations or international obligations justified it. Humanitarian permission has now been limited to medical cases, or cases related to natural disasters or particular acts of civil engagement. DL 113/2018; C Padula, 'Quale Sorte per il Permesso di Soggiorno Umanitario Dopo il DL 113/2018?' (Associazione per gli Studi Giuridici sull'Immigrazione, 21 November 2018) www.asgi.it/asilo-e-protezione-internazionale/permesso-umanitario-dopo-decreto-11-2018/.

81 Interview with Forti (n 23); Interview with Pani (n 29).

82 Trotta (n 7) 26.

83 Protocollo 15 dicembre 2015 (n 5) art 3(11); Protocollo 12 gennaio 2017 (n 5) art 4(d); Protocollo 7 novembre 2017 (n 4) 4-5 para 10(d); Interview with Coordinator (n 31).

84 Interview with Pompei (n 23).

85 Only persons who have a regular residence permit can register in the lists of residents of the local town-hall. See eg Comune di Milano, 'Iscrizione Anagrafica per Cittadini Stranieri Extra UE' www.comune.milano.it/servizi/iscrizione-anagrafica-per-cittadini-extra-ue.

However, in some cases, the FBOs have been able to circumvent this new provision by negotiating with the local health services (*Associazione Sanitaria Locale - ASL*) to accept the *de facto* residence of the applicants.⁸⁶

The FBOs provide different kinds of services. For instance, the Waldensian Church and the FCEI tend to provide reception in small centres and hire external personnel, whereas the community of *Sant'Egidio* and Caritas are more based on mobilising resources within the religious community.⁸⁷ These differences make it difficult to evaluate the reception standards of the alternative systems although it is reported that there is a structure that coordinates the dispersal and allocation of the beneficiaries, taking into consideration their characteristics and needs.⁸⁸ Overall, this quality of reception seems to understand integration not only as a goal, but as a two-way process, in the sense that is dependent 'as much on the attitudes and actions of host country governments, institutions, service providers, communities and individuals as it is on the stance of migrants themselves, and needs to be sustainable.'⁸⁹ Moreover, according to some research, programmes based on private sponsorships like this are more successful in achieving long-term integration than government-sponsored programmes. This is due to the fact that the bond between the sponsor and the refugee is more personal and stronger, facilitating social cohesion.⁹⁰ It has also been noted that in Italy, public institutions have set up minimal interventions to facilitate integration into society and as a result refugee treatment has resembled that of economic migrants: social networks are crucial for finding employment and civil society organisations are the reference point for many needs.⁹¹

86 Interview with Pani (n 29).

87 Trotta (n 7) 26.

88 della Rocca (n 6) 13, 29.

89 G Craig, 'Migration and Integration. A Local and Experimental Perspective' (2015) University of Birmingham, IRIIS Working Paper Series 7/2015, 64. The Italian authorities' integration approach is explained in the next paragraphs of this section.

90 della Rocca (n 6) 26-30; E Y Krivenko, 'Hospitality and Sovereignty: What Can We Learn From the Canadian Private Sponsorship Program?' (2012) 24 *IJRL* (2012) 579, 595-96; M Lanphier, 'Sponsorship: Organizational, Sponsor, and Refugee Perspectives' (2003) 4 *Journal of International Migration and Integration* 237, 245-46.

91 M Abrosini, 'Better than Our Fears? Refugees in Italy: Between Rhetorics of Exclusion and Local Projects of Inclusion' in S Kneebone, D Stevens, L Baldassar (eds), *Refugee Protection and the Role of Law* (London, Routledge, 2014) 235, 241.

Initially, FBOs provided support for about one year, but recently they extended it to about two years, as practice had shown that it was difficult for the refugees to become self-reliant in a shorter timeframe.⁹² If the beneficiaries' independence has not been achieved within this period, support can be extended until necessary. Thus the beneficiaries might be provided with accommodation and support for a longer period than other asylum seekers, who instead can rely on it only until the final decision of their international protection application – or a maximum of six months 'grace period' after its adoption.⁹³ Furthermore, FBOs have an approach to reception services which is usually heavily reliant on volunteers and parishes and of better quality than those provided by the State.⁹⁴ In this regard, State-run emergency reception services (*Centri di Accoglienza Straordinaria - CAS*) that had to be provided for limited periods of time while asylum seekers waited to be moved to more long-term accommodation facilities (*Sistema di Protezione per Richiedenti Asilo e Rifugiati - SPRAR*) were often used to accommodate people for longer periods of time. Due to the high number of migrants arriving by sea and the decrease of secondary movements from Italy, CAS, once meant for situations of emergency, is now hosting about 80 per cent of asylum seekers, and this has become the norm.⁹⁵ With Decree Law 840/2018, SPRAR can accommodate only recognised refugees and unaccompanied-minor asylum seekers, whereas all other asylum seekers are hosted in centres of first reception (i.e., CAS, *Centri governativi di prima accoglienza (CARA)*). This measure has been heavily criticised as CAS and CARA lack effective integration programmes.⁹⁶ Moreover, CAS and CARA reception services are in general of lower quality than those provided by SPRAR. However, even within SPRAR there are many quality variations regarding the services provided, mostly because when SPRAR are privately managed, profit considerations may compete with their original aim.⁹⁷ Additionally, city councils' hostility and refusal

92 Interview with Coordinator (n 31).

93 P Gois and G Falchi, 'The Third Way. Humanitarian Corridors in Peacetime as a (Local) Civil Society Response to a EU's Common Failure' (2017) 25 *Revista Interdisciplinar da Mobilidade Humana* 59, 69; della Rocca (n 6) 13, 27.

94 Gois (n 93) 70.

95 Interview with social worker (Genoa, Italy, 24 April 2018).

96 E Lorusso, 'Decreto Sicurezza, Si dal Senato. Ecco Cosa Prevede' *Panorama* (7 November 2018) www.panorama.it/news/politica/decreto-sicurezza-legge-senato-contenuti-cosa-cambia-immigrazione/; A Camilli, 'Tutte le Obiezioni al Decreto Salvini' *Internazionale* (27 September 2018) www.internazionale.it/bloc-notes/analisi-camilli/2018/09/27/obiezioni-decreto-salvini-immigrazione-sicurezza.

97 della Rocca (n 6) 27-28.

to be involved with SPRAR's management due to fears of unpopularity among the electorate, has shifted the responsibility for dealing with reception services to the Ministry of the Interior, which, however, cannot provide the same social connections and integration options that local bodies otherwise would.⁹⁸ In light of this complex situation, arguments have been raised about the HCs creating a 'privileged channel of protection' and discriminating between asylum seekers. However, Susanna Trotta argues that the privileged aspects of the reception services have been used as an opportunity for lobbying for the improvement of the general support system.⁹⁹

2.6 Perspectives for enhancement and replication of the humanitarian corridors in other countries

Both the Italian government and the religious groups involved in the HCs underline the 'replicability' of the project, as exemplified by the adoption of similar initiatives in France, Belgium, Andorra and San Marino.¹⁰⁰ In this respect, 'replicability' means that the HCs could be based on different legal frameworks and forms and adopt a flexible approach. It could also mean that the initiative be started and supported by non-faith-based groups.¹⁰¹ The actors in each country could decide how to best manage collaborations and available resources. However, one of the main aims of the HCs is to actively address the ongoing refugee influx and manage protected entries from the bottom-up.¹⁰² Similarly, community-led assistance provides not only material reception, but also an effective system of integration into society through volunteers and networks. In Italy, the FBOs played a crucial role in establishing and implementing the HCs.¹⁰³ In the previous decades, these FBOs gained specific experience and competence on refugees and resettlement matters since they have been involved in reception and integration services for refugees in Italy as well as in humani-

98 ibid 28.

99 Trotta (n 7) 24. Paolo Morozzo della Rocca also underlines the FBOs' goal to realise a best practice model of reception based on cooperation and support of other institutions and local communities. della Rocca (n 6) 29-30.

100 Collyer (n 5) 4; Trotta (n 7) 27; Ministro degli Affari Esteri e della Cooperazione Internazionale, 'Humanitarian Corridors' www.esteri.it/mae/en/politica_estera/temi_globali/diritti_umani/i-corridoi-umanitari.html.

101 Trotta (n 7) 34.

102 Collyer (n 5) 4.

103 Historically, FBOs have been playing an important role as far as the shaping of Italian immigration policies and legislation. Trotta (n 7) 27-28.

tarian initiatives in transiting countries. Their reputation and professionalism persuaded the Italian government to support the HCs. Additionally, these FBOs committed to use their networks of contacts with other international and national actors, as well as to fund the project: the Waldensian Church and the Community of *Sant'Egidio* rely on donations of two schemes that allow taxpayers to give them a small percentage of their income tax; other FBOs receive donations from private citizens, local authorities, transnational networks and fundraising events.¹⁰⁴

Jessica Eby and others have stressed that in the United States, NGOs and FBOs are in charge of delivering a wide range of services concerning the resettlement programme and it would be impossible without their work and support.¹⁰⁵ Confirming this and other previous studies, the FBOs in Italy have been and continue to be key actors who are not just implementing partners, but advocates for the protection of refugees.¹⁰⁶ In the HCs context, they have engaged in lobbying activities to support the project at the national, European and international levels, in communicating the project to the public, and in trying to change the perspectives on refugees in Italy. For instance, they stress the refugees' personal experiences to show that they are not a threat. The result has been that even mainstream media has presented the HCs as an example of solidarity, which, at the same time, addresses citizens' concerns regarding safety and security. Moreover, such messages have been reinforced by the support of Pope Francis, the former Italian Prime Minister Paolo Gentiloni, and the UNHCR.¹⁰⁷ There have been very few isolated criticisms, voiced most recently in the 2018 electoral campaign.¹⁰⁸

The aim of civil society has been described as not being 'revolutionary' but as providing a model that could incentivise State actors to adopt similar initiatives.¹⁰⁹ Some stakeholders hope that the HCs will contribute not only to developing the use of humanitarian visas on a larger scale, but also to expanding private sponsorship as an ordinary legal channel beyond situations of vulnerability.¹¹⁰ Others, such as the Federation of Evangelic Churches, are lobbying to introduce humanitarian corridors at the Euro-

104 Interview with Coordinator (n 31); Trotta (n 7) 24.

105 *ibid* 6; J Eby and others, 'The Faith Community's Role in Refugee Resettlement in the United States' (2011) 24 *JRS* 586-87.

106 Trotta (n 7); Eby (n 105) 586-87.

107 Collyer (n 5) 2.

108 Interview with Pompei (n 23).

109 Markay (n 42) 53-54.

110 Interview with Pompei (n 23).

pean level through European Union legislation, European funds, agreements between different States, the European Union, NGOs and FBOs.¹¹¹ In this regard, in December 2018, the Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) of the European Parliament, agreed to request the Commission to adopt legislation establishing a European Humanitarian Visa by 31 March 2019.¹¹² However the Commission rejected the proposal acknowledging that it is not politically feasible, and stating that the new common resettlement framework already addresses the issues at stake.¹¹³ In the absence of a common EU framework and national legislation, one constraint to replicating and expanding the HCs is that Article 25 of the Visa Code states that humanitarian visas are to be used only in 'exceptional' cases and when the Member State 'considers it necessary' rather than to comply with enforceable obligations.

Furthermore, as they rely on the solidarity and goodwill of local communities, HCs cannot be an alternative to resettlement or other protected entry procedures – especially owing to the high costs and the limited num-

111 Interview with Naso (n 4); Mediterranean Hope, 'Humanitarian Corridors Presented at the European Parliament' (Rome, 7 December 2017) www.mediterraneanhope.com/2017/12/07/humanitarian-corridors-presented-at-the-european-parliament/.

112 European Parliament, 'Humanitarian Visas to Avoid Deaths and Improve Management of Refugee Flows' (11 December 2018) www.europarl.europa.eu/news/en/press-room/20181205IPR20933/humanitarian-visas-to-avoid-deaths-and-improve-management-of-refugee-flows; European Parliament, 'Humanitarian Visas Would Reduce Refugees' Death Toll' (3 December 2018) www.europarl.europa.eu/news/en/press-room/20181203IPR20713/humanitarian-visas-would-reduce-refugees-death-toll; Interview with Hein (n 9).

113 European Parliament, Legislative Train, 'Proposal for a Regulation on Establishing a European Humanitarian Visa' (June 2019) 2.

The New Resettlement Framework will replace the current ad-hoc schemes and set two-year plans for resettling refugees. The new legislation will provide a common set of procedures for the selection and treatment of resettlement candidates and also ensure financial support from the EU budget. K Bamberg, 'The EU Resettlement Framework: from a Humanitarian Pathway to a Migration Management Tool' (Discussion Paper, European Migration and Diversity Programme, European Policy Centre 2018); European Parliament (n 112) However, the Resettlement Framework only includes persons who have already been recognised as refugees, and who also fulfil other vulnerability or geographical criteria. In addition, Member States will continue to decide to whom, and how many people, they will grant protection. In any case, the Commission also stated that it would include in its assessment of the application of the Union Resettlement Framework whether additional measures for admission to the territory of the Member States are needed. European Parliament (n 113) 2-3.

ber of beneficiaries they can support.¹¹⁴ Consequently, at present, the HCs cannot be seen as an alternative to the current public system of reception or resettlement or as a substitute to other entry protected procedures because they lack the resources to deal with their dimension.¹¹⁵ They can nevertheless be considered a complementary pathway.¹¹⁶ One test showing whether the HCs have been really successful or not will depend on their expansion beyond civil society and becoming a structural model with the collaboration of the government and international institutions.¹¹⁷

2.7 Shortcomings

For the HCs to become a structural model, a number of matters need to be addressed. First of all, in section 2.4.1 of this chapter, it was discussed that the FBOs involved have come to develop a preference for deciding cases on the grounds of practical considerations,¹¹⁸ which emphasise the special circumstances and problems of each potential beneficiary, recognising the differences, and not attempting to fit them into a system of general rules.¹¹⁹ The flexible criteria to select the beneficiaries allow wide discretion over the choice of whom to include in the programme, and this helps to find creative solutions in the difficult and complex settings where they take place. On the other hand, the data confirm previous works in the field of administrative justice, arguing that, in this kind of decision-making, perceptions of justice, deservedness, and goals are based more on political and humanitarian considerations than on legal standards. In other words, the decisions are not taken in a vacuum; they are value-driven rather than founded on a legal framework. FBOs operate according to their own values which somehow are never completely neutral, as advocating for justice or peace work is never neutral.¹²⁰ So the risk is of emphasising suffering over rights and of substituting charity for the law.¹²¹ Similarly, due process

114 della Rocca (n 6) 29.

115 Jensen (n 8) 8; della Rocca (n 6) 29.

116 della Rocca (n 6) 29.

117 Markay (n 42) 50.

118 M Hertogh, 'Through the Eyes of Bureaucrats: How Front Line Officials Understand Administrative Justice' in M Adler, *Administrative Justice in Context* (Oxford, Hart Publishing, 2010) 203-04.

119 *ibid* 203, 212.

120 E Ferris, 'Faith and Humanitarianism: It's Complicated' (2005) 24 *JRS* 606, 618.

121 Markay (n 42) 52; D Fassin, 'The Precarious Truth of Asylum' (2013) 25 *Public Culture* 39, 49.

guarantees, including access to information, right to a motivated decision, and an effective remedy, are not provided for. Accordingly, the fundamental principles of legality (requiring that every administrative decision that affects rights and freedoms is based on a statutory basis) and equality (requiring equal treatment of all persons in equal circumstances) are set aside in favour of more practical and informal solutions.¹²² Therefore, there is the need to better define and address the selection criteria in a binding legal framework. Whereas the parties involved could set up the programme using the legal instrument of MoUs, it would be desirable that international protection initiatives be regulated by an act of Parliament and undergo the usual Constitutional guarantees for the passage of legislation. It is acknowledged that it is questionable as to whether the Italian government had the political force to obtain parliamentary support for such a project and, for some refugee advocates and FBOs, the present approach far outweighs the downfalls. In other words, if civil society had not engaged in this project, the beneficiaries might still be facing security problems in Lebanon or Ethiopia.¹²³ Overall this political choice is in line with the fragmented and ad hoc responses that Italy has given to the immigration phenomenon in the last twenty years, instead of adopting a clear and comprehensive plan to govern and manage it.

Second, this matter is strictly connected to that of accountability and professionalism of the actors involved. Most work of the FBOs is not recorded or quantified and, consequently, it is difficult to make an assessment of their assistance and decisions.¹²⁴ Nevertheless, it has also been discussed that several FBOs adopt a professional framework and approach, for instance, by hiring professionals, adopting high professional standards, and avoiding any activity that can be considered of missionary nature.¹²⁵ Moreover, under pressure from governments and other NGOs, they may have to comply with codes of conduct which prohibit discriminating on the basis of religion.¹²⁶ It has been pointed out that further research could look into different understandings of professionalisms as well as of humanitarian work that takes faith into account and how, at the same time, they satisfy the 'fundamental principles of impartiality, independence and neu-

122 Hertogh (n 118) 203, 211.

123 Markay (n 42) 51-52.

124 Ferris (n 120) 610; A Ager, 'Faith and the Secular: Tensions in Realising Humanitarian Principles' (2014) 48 *FMR* 16-18; Trotta (n 7) 9.

125 Ferris (n 120) 610; Trotta (n 7) 9.

126 Ferris (n 120) 615.

trality'.¹²⁷ This would require considering 'the role of faith in the personal experiences of both aid workers and beneficiaries alike'.¹²⁸ It may also involve investigating the motivations of FBOs and the type of work that they do and fund, as well as whether and to what extent religious activities, such as prayer and worship, are integrated into humanitarian work.¹²⁹

Finally, another debate concerns the FBOs' role in resettlement and migration programmes. Whereas their involvement has changed governments' protection policies as far as the diversification and numbers of beneficiaries,¹³⁰ as confirmed in the case of the HCs in Italy, where civil society has contributed to stimulate debate and State action, it has been argued that the diversification of actors in this area has shown the risks when the responsibility for disadvantaged groups is ceded to civil society and the burden is shifted from State to private actors.¹³¹ This is an important issue to address because far-reaching solutions require concerted action among humanitarian, political, security and development actors rather than responses of individual organisations.¹³² If civil society is left to do everything, it will 'fall short of its own objectives in something'.¹³³ Moreover, the adoption of safe and legal pathways should be seen as an obligation arising from international law rather than an exception to national immigration policies.¹³⁴

3 Other uses of humanitarian visas and instances of ad-hoc entry measures

Interviewees have confirmed that humanitarian visas issued on the basis of Article 25 of the Visa Code have been used in some isolated cases apart from humanitarian corridors. There are no statistics that inform on how

127 Trotta (n 7) 9; Ager (n 124) 16-18.

128 Trotta (n 7) 9.

129 Ferris (n 120) 614-15.

130 Trotta (n 7) 7; Krivenko (n 90) 579; B Treviranus and M Casasola, 'Canada's Private Sponsorship of Refugees Program: a Practitioners Perspective of its Past and Future' (2003) 4 *JIMI/RIMI* 177.

131 Trotta (n 7) 6; M Gottwald, 'Burden Sharing and Refugee Protection' in Fiddian-Qasmiyah and others (n 69) 525, 533, 535; G Loescher, 'UNHCR and Forced Migration' in Fiddian-Qasmiyah and others (n 69) 214, 217. The stakeholders that I interviewed all agreed on this point and stated that their responsibility shall be shared with the State's.

132 Gottwald (n 131) 534.

133 Markay (n 42) 49.

134 *ibid* 55.

many times humanitarian visas have been issued. The data suggest that humanitarian visas were issued in exceptional cases to ensure protection to persons who were in urgent need. For instance, in the past years, the *Consiglio Italiano dei Rifugiati* (CIR) [Italian Refugee Council] was able to negotiate about 20 visas with the government for asylum seekers who had family ties in Italy. It is believed that an individual approaching an Italian embassy alone, without support from NGOs in Italy would be unable to obtain such a visa.¹³⁵ On the other hand, even if the Law Clinic at the University of Brescia, supported by the Red Cross, applied for a humanitarian visa on behalf of a client under Article 25 of the Visa Code, it was unsuccessful. Students working in the Law Clinic had contacted the Italian Ministry of the Interior to ask clarification on the criteria to obtain a humanitarian visa and they were informed that applicants needed to prove there were grounds for persecution. Although the applicant was a widow with three children, whose husband and other two children were killed by terrorists, and she had a brother in Italy willing to sponsor her, the Ministry of the Interior refused the case on the grounds that the applicant could not demonstrate that she faced persecution in her country. One reported difficulty in this case was to provide evidence of persecution while still living in Pakistan, as both the Pakistani authorities and the local UNHCR were reluctant to assist.¹³⁶

135 Interview with Hein (n 10). See also the recent decision of the Tribunale Ordinario di Roma dated of 21 February 2019. In this case, the Civil Court in Rome dealt with the humanitarian visa application on behalf of a Nigerian unaccompanied child to join his mother and brother in Italy. The child had been detained in immigration centres in Libya and needed urgent medical treatment. The International Organization for Migration (IOM) assisted the child to contact his mother and set up a detailed medical plan with a hospital in Italy. However, IOM was unable to receive a visa for the child. The Civil Court recognised that the application could be submitted under Article 25 of the Visa Code Court and ordered the Ministry of Foreign Affairs to issue a humanitarian visa and a travel permit to the child. The Court considered factors such as the child's health, the availability of medical treatment in Nigeria or Libya, and the right to family life under Article 8 of the ECHR as well as the Italian Constitution. Tribunale Ordinario di Roma, Ordinanza 21.02.2019 www.asgi.it/wp-content/uploads/2019/05/Tribunale-di-Roma-visto-umanitario-per-msna-in-Libia.pdf.

136 Telephone conversation with C di Stasio, Lecturer, Faculty of Law, University of Brescia (Brescia, Italy, 26 April 2018); C di Stasio, "The "Immigration and Asylum Clinic" of the University of Brescia Facing the Problem of Immigration in Europe: New Challenges to the Effectiveness of Migrants' Rights" (2017) 4 *German Journal of Legal Education* 192, 214-17.

In this context, it should be mentioned that recently Italy carried out a few evacuations of migrants detained in immigration centres in Libya. These evacuations have been labelled HCs, although they were not based on a MoU or any other public document. Furthermore, the beneficiaries were selected by the UNHCR and the reception provided by the State. The Italian government organised and financially supported the transfer to Italy through the Italian Air Force. The Catholic Church, through Caritas, as well as the Italian government were involved with the evacuation logistics and the reception of the beneficiaries.¹³⁷ The beneficiaries were migrants from Eritrea, Ethiopia, Somalia, Cameroon and Yemen, and included single mothers, unaccompanied minors, and disabled people. Once in Italy, the beneficiaries received medical care, were dispersed through reception facilities in the country and allowed to apply for asylum.¹³⁸ These evacuations were carried out in response to the UNHCR's appeal made in December 2017 calling governments for resettlement places for vulnerable migrants stranded in Libya, as many asylum seekers, refugees and stateless persons there face serious violations of human rights, including indefinite and arbitrary detention.¹³⁹ Following the agreement, which the Italian government had entered into with Libya in July 2017 to prevent boats

137 'Corridori Umanitari: Caritas, altre 150 Persone Arrivate in Sicurezza dalla Libia' *Servizio di Informazione Religiosa* (15 February 2018) www.agensir.it/quotidiano/2018/2/15/corridoi-umanitari-caritas-altre-150-persone-arrivate-in-sicurezza-dalla-libia/; 'Come Funziona il "Corridorio Umanitario" dalla Libia' *Il Post* (3 January 2018) www.ilpost.it/2018/01/03/libia-migranti-corridoio-umanitario/.

138 'Come Funziona il "Corridorio Umanitario" dalla Libia' *Il Post* (3 January 2018) www.ilpost.it/2018/01/03/libia-migranti-corridoio-umanitario/.

139 Between November 2017 and 7 December 2018, UNHCR concluded 24 evacuations in Libya of over 2,600 refugees. The refugees were transferred to Italy (312), Niger (2,202), and Romania (94). UNHCR, 'Con Quasi 2.500 Persone Evacuate dalla Libia, l' UNHCR Chiede Più Posti per il Reinsediamento e la Fine della Detenzione' (23 November 2019) www.unhcr.it/news/comunicati-stampa/quasi-2-500-persone-evacuate-dalla-libia-lunhcr-chiede-piu-posti-reinsediamento-la-fine-della-detenzione.html; 'Evacuazione del Primo Gruppo di Rifugiati dalla Nuova Struttura in Libia' (7 December 2018) www.unhcr.it/news/comunicati-stampa/_evacuazione-del-primo-gruppo-rifugiati-dalla-nuova-struttura-libia.html; V Piccolillo, 'Salvini Accogli 51 Migranti dal Niger: "Porte Spalancate a Chi Scappa dalla Guerra, Chiuse a Chi la Porta da Noi"' *Corriere della Sera* (14 November 2018) roma.corriere.it/notizie/cronaca/18_novembre_14/roma-salvini-accoglie-51-migranti-niger-arrivati-corridoio-umanitari-448ad8e8-e801-11e8-b8c4-2c4605eeada.shtml; A Ziniti, 'Migranti, 51 in Italia con Corridoio Umanitario dal Niger' *La Repubblica* (14 November 2018) www.repubblica.it/cronaca/2018/11/14/news/_migranti_51_in_arribo_in_italia_con_corridoio_umanitario_da_niger-211626594/.

from leaving the Libyan coast and trafficking people into Italy, as well as deportation agreements between several EU governments and Sudan, the problem of migrants' human rights violations in transit even intensified.¹⁴⁰

In the past, besides these instances, Italy adopted ad hoc mechanisms based on political decisions to allow asylum seekers and refugees to enter the country. For instance, three 'informal' resettlement operations from Libya took place between 2007 and 2010. On this occasion, 150 Eritrean refugees selected by UNHCR were transferred to Italy, where they applied for asylum. The Italian Embassy issued a Visa with Limited Territorial Validity for tourism/courtesy reasons to allow the beneficiaries to travel and be admitted into the territory.¹⁴¹

Another evacuation operation involved 160 Palestinian refugees living in the Al Tanf camp at the Syrian-Iraqi border. At the end of 2009, upon UNHCR's referral, these refugees were transferred to Italy, where they sought asylum. Similar to the previous case, the Italian Embassy issued a Visa with Limited Territorial Validity for tourism/courtesy reasons.¹⁴²

In March 2011, two humanitarian evacuations from Libya took place in order to ensure safety to 108 persons originating from Eritrea and Ethiopia who were transferred from Tripoli to Italy. Following the plea by the Bishop of Tripoli, Habesha Association and Italian Refugee Council, the Ministry of the Interior and the Ministry of Foreign Affairs agreed to urgently evacuate these persons through the Italian Air Force. Unlike the previous 'informal' resettlement operations, these evacuations took place without UNHCR's involvement. Moreover, due to time constraints, no visa was issued to these individuals who applied for asylum upon arrival.¹⁴³

140 M Perrone, 'Migranti, il Patto con la Libia Frena gli Arrivi: da Luglio – 68 %' *Il Sole 24 Ore* (27 August 2017) www.ilsole24ore.com/art/notizie/2017-08-26/migranti-patto-con-la-libia-frena-arrivi-221553.shtml?uuid=AE QsV7HC&refresh_ce=1; The Editorial Board, 'Italy's Dodgy Deal on Migrants' *New York Times* (25 September 2017) www.nytimes.com/2017/09/25/opinion/migrants-italy-europe.html; D Walsh and J Horowitz, 'Italy, Going it Alone, Stalls the Flow of Migrants. But at What Cost?' *New York Times* (17 September 2017) www.nytimes.com/2017/09/17/world/europe/italy-libya-migrant-crisis.html; P Kingsley, 'Migration to Europe is Down Sharply. So is it Still a "Crisis"?' *New York Times* (27 June 2018) www.nytimes.com/interactive/2018/06/27/world/europe/european-migrant-crisis-change.html?module=inline.

141 Consiglio Italiano per i Rifugiati, 'Ponti non Muri. Garantire l'Accesso alla Protezione nell'Unione Europea' (2015) 69; Jensen (n 8) 44.

142 *ibid.*

143 C Hein and M de Donato, 'Exploring Avenues for Protected Entry in Europe' (ONLUS 2012) 45.

In May 1990, at the beginning of the Yugoslav war, hundreds of Albanians occupied some Embassies in Tirana. At that time, Italy, France and Germany granted refugee status automatically to those who occupied their Embassies. On July 13th 1990, 3,800 Albanians were transferred to Italy. 804 out of them remained in Italy and were given refugee status without going through the ordinary asylum procedure.¹⁴⁴

In light of this scenario, it can be concluded that, in exceptional situations of emergencies, when asylum seekers and vulnerable people had to travel to Italy, a number of practical and ad hoc mechanisms were adopted, including temporary protection, tourist visas, and humanitarian evacuations. However, such cases are based on political decisions and do not represent reliable and transparent pathways. Moreover, this discretion over procedures and criteria to obtain humanitarian visas create fluctuating policies and uncertainty over the implementation of Article 25 of the Visa Code at the broader European level.¹⁴⁵ Considering the above, the next section discusses the need for a harmonised European approach in this area.

4 Value of a common EU framework on protection entries

4.1. The debate on the need of EU legislation on protected entries

In the context of protected entries in Europe, there seems to be agreement on the need to expand admission programmes, but whether and how a common EU binding framework should be adopted is contested. Research demonstrates that, similar to Italy, other EU States have issued humanitarian visas for specific groups of refugees as acts of goodwill rather than legal obligations.¹⁴⁶ Alternative safe and legal pathways to protection in Europe,

144 *ibid* 44.

145 P Hanke, M Wieruszewski and M Panizzon, ‘The “Spirit of the Schengen Rules”, the Humanitarian Visa, and Contested Asylum Governance in Europe – The Swiss Case’ (2019) 48 *Journal of Ethnic and Migration Studies* 1361, 1368.

146 W van Ballegooij and C Navarra, ‘Humanitarian Visas. European Added Value Assessment Accompanying the European Parliament’s Legislative Own-Initiative report (Rapporteur: Juan Fernando López Aguilar)’ (European Parliamentary Research Service, July 2018) 42; A Sánchez Legido, ‘El Arriesgado Acceso a la Protección Internacional en la Europa Fortaleza: la Batalla por el Visado Humanitario Europeo’ (2017) 57 *Revista de Derecho Comunitario Europeo* 433, 451.

such as resettlement,¹⁴⁷ have also been forged on the basis of a voluntary approach due to a variety of factors, including lack of reception services, lack of embassies' staff to deal with applicants, and above all lack of political will.¹⁴⁸ Aims and objectives of safe and legal channels are often imprecisely specified, and there are no sufficient standards to hold governments accountable for their implementation. Given the wide discretion of national authorities in this area, States' practices strongly reflect their own national interests.¹⁴⁹

On the one hand, the proponents of a common European framework on protected entries argue that, first of all, they are necessary to improve protection. Due to the shortage of legal routes of entry to the EU territory, potential asylum seekers and other migrants resort to irregular and dangerous journeys with the help of smugglers and traffickers. This has consequences not only for migrants but for States as well. Harmonised protected entries could be an effective means to ensure safe arrivals, prevent unauthorised migrants, enhance security and identity checks and fight against organised crime.

Second, to build a credible asylum policy in Europe, the EU must identify concrete instruments to adequately balance the tension between the international obligations to admit protection-seekers and Member States' sovereign power to control access to their territory.¹⁵⁰ The EU adopted the 'asylum *acquis*' to avoid fragmentation in refugee policies and practices across the common area,¹⁵¹ but to ensure uniform understanding of the rights at stake, predictability and legal certainty, a coordinated action regarding protected entries is required.¹⁵²

Third, a unitary framework could balance the uneven distribution of the refugee burden, which is unfair to countries of first refuge and tran-

147 A Radjenovic, 'Resettlement of Refugees: EU Framework' (Briefing EU Legislation in Progress, European Parliamentary Research Service 2017) 5.

148 *ibid.*

149 Hanke (n 145) 1366; van Ballegooij (n 146) 42.

150 S Velluti, *Reforming the Common European Asylum System – Legislative Developments and Judicial Activism of the European Courts* (London, Springer, 2014) 106.

151 T P Spijkerboer, 'Full Circle? The Personal Scope of International Protection in the Geneva Convention and the Draft Directive on Qualification'; G Noll, 'International Protection Obligations and the Definition of Subsidiary Protection in the EU Qualification Directive'; and F Julien-Laferrière, 'Le Statut des Personnes Protégées' in D U de Sousa and P De Bruycker (eds), *The Emergence of a European Asylum Policy* (Brussels, Bruylant, 2004) 167, 183, 195.

152 van Ballegooij (n 146) 60.

sit.¹⁵³ This could also improve the meaning of the principle of solidarity and fair responsibility sharing set out in Article 80 of the Treaty on the Functioning of the European Union (TFEU)¹⁵⁴ for the future of the Common European Asylum System (CEAS). For instance, Italy has been demanding concrete solidarity from other EU Member States in dealing with sea arrivals.¹⁵⁵ Additionally, the Schengen system has been under pressure, especially since the 'refugee crises', as it depends on the ability to coordinate the management of external borders and prevent inflows of irregular migrants and secondary movements.¹⁵⁶

On the other hand, States raise various concerns regarding a common EU framework on protected entries, including whether they would be compatible with international human rights and EU law; where processing centres would be located and how to avoid that they could be overburdened; how protection seekers would have access to embassies or processing centres;¹⁵⁷ the risk for host States of becoming a magnet for even more asylum seekers; decrease of control over migration;¹⁵⁸ feasibility of return to the country of origin for those who receive a denial of their international protection application.¹⁵⁹

In response, I argue that the EU could adopt a potential wide range of measures to address these issues, such as humanitarian visas, sponsorship

153 Velluti (n 150) 106.

154 'The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.' Treaty on the Functioning of the European Union [2016] OJ C202/78, art 80.

155 Abrosini (n 90) 235, 240; Il Fatto Quotidiano, 'Migranti, Commissione EU Risponde alla Richiesta di Aiuto di Moavero: "Ridistribuzione? Chieda a Stati Membri"' (26 April 2019) www.ilfattoquotidiano.it/2019/04/26/migranti-commissione-ue-risponde-allarichiesta-di-aiuto-di-moavero-redistribuzione-chieda-a-stati-membri/5135777/; 'Migrant Crisis: Italy to Accept Arrivals Until Deal Reached' BBC (23 July 2018) www.bbc.com/news/world-europe-44933122.

156 M Savino, 'Refashioning Resettlement: from Border Externalization to Legal Pathways for Asylum' in S Carrera and others (eds), *EU External Migration Policies in an Era of Global Mobilities: Intersecting Policy Universes* (Leiden, Brill Nijhoff, 2019) 81-104.

157 J McAdam, 'Extraterritorial Processing in Europe' (Policy Brief 1, The Andrew and Renata Centre for International Refugee Law, University of New South Wales 2015) 6.

158 A Betts, 'Resettlement: Where's the Evidence, What's the Strategy?' (2017) 54 *FMR* 73-74.

159 M de Donato Cordeil and C Hein, 'Ponti Non Muri (CIR 2015) 92.

programmes, resettlement, family reunification, education or labour opportunities.¹⁶⁰ The legal framework should be carefully designed in order to guarantee fundamental rights, objective selection criteria and screening of applicants. Cooperation and equitable responsibility regarding administrative capacity and financial resources should be a central component,¹⁶¹ and strong incentives and commitment to take host countries' interests under consideration would be crucial.¹⁶² Also, the adoption of a clear set of rules will increase better predictability of arrivals, and 'preparation and coordination of post-arrival arrangements' such as reception services.¹⁶³ At present, it is not foreseeable when and how 'spontaneous arrivals' may occur, nor evaluate their circumstances, and asylum seekers are registered only after arrival and if they have contacts with the authorities.¹⁶⁴ While a discussion of all the available options regarding the introduction of protected entries is beyond the scope of this chapter,¹⁶⁵ as its focus is on humanitarian visas, it is acknowledged that humanitarian visas should be complementary to other protected entry procedures and the CEAS, and they are not a substitute for them.¹⁶⁶ Humanitarian visas could be used as a response to specific refugee situations, alongside strategies within countries of first asylum and within the countries of origin.¹⁶⁷

In light of this, the next section aims at identifying a number of recommendations to set up common legislation for humanitarian visas. These recommendations draw from the Italian experience and aim at addressing the main legal shortcomings that have been observed (i.e., the absence of a legal instrument setting out clear criteria to identify beneficiaries and due process guarantees; no subjective right to a humanitarian visa).

160 UNHCR, 'Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations' (2019) 5.

161 McAdam (n 157) 11; de Donato (n 159) 86.

162 McAdam (n 157) 10.

163 van Ballegooij (n 146) 62.

164 *ibid.*

165 K Pollet, 'A Common European Asylum System under Construction: Remaining Gaps, Challenges and Next Steps' in V Chetail, P De Bruycker and F Maiani, *Reforming the Common European Asylum System* (Boston, Brill Nijhoff, 2016) 74, 90.

166 J van Selm, 'Expanding Solutions for Refugees: Complementary Pathways of Admission to Europe' (European Resettlement Network 2018).

167 Betts (n 158) 73-75.

4.2. Recommendations for the adoption of common legislation on humanitarian visas

A new EU instrument that provides for humanitarian visas should be adopted to allow protection seekers to reach a Member State's territory in order to lodge an application for international protection. In line with the draft report of the European Parliament to the Commission, the humanitarian visa shall have limited validity and the Member State issuing it should be responsible to deal with the request for protection.¹⁶⁸ Member States shall be under an obligation to issue the humanitarian visa to persons seeking international protection when that is the only way to comply with international law, including the Refugee Convention, the European Convention on Human Rights, as well as the duties under Article 4 (prohibition of torture and inhuman or degrading treatment) and Article 19(2) (protection in the event of removal, expulsion and extradition) of the EU Charter of Fundamental Rights (CFR).¹⁶⁹ This argument is also supported by the ECtHR decision in the case of *Hirsi Jamaa and Others v Italy*, indicating that once a person is within a Member State's jurisdiction, which is unquestionably the situation when they present themselves to an embassy, 'that Member State must enable access to a procedure to verify whether the principle of *non-refoulement* would be violated upon return'.¹⁷⁰ The criteria should be assessed on a *prima facie* basis and a visa shall be issued when an 'arguable claim' of exposure to a real risk of serious harm or a well-founded fear of persecution has been established.¹⁷¹ This would best reflect the

168 European Parliament, European Parliament Resolution of 11 December 2018 with Recommendations to the Commission on Humanitarian Visas (2018/2271(INL)) (11 December 2018) (P8_TA(2018)0494).

169 The Charter of Fundamental Rights of the European Union which must be complied with by Member States when implementing EU law. Charter of Fundamental Rights of the European Union [2012] OJ C326/02 (Charter EU); European Commission, 'Incorporating Fundamental Rights into EU Legislative Process. Strategy and proposals for embedding fundamental rights in EU law' ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/incorporating-fundamental-rights-eu-legislative-process_en.

170 Pollet (n 165) 74, 91. See *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECtHR, 23 February 2012) para 133.

171 Note that the concept of 'arguable claim' is not the same as 'admissible application'; it denotes a much lower threshold. See eg, *TI v UK* which the ECtHR considered 'arguable', but subsequently dismissed as 'inadmissible' after a thorough examination of the case. *TI v UK* App no 43844/98 (ECtHR, 7 March 2000).

declarative nature of refugee status,¹⁷² and avoid the difficulties associated with selecting a pool of ‘vulnerable’ applicants, as well with offshore processing schemes, such as those pertaining to fair processing guarantees, remedies with suspensive effect, and effective judicial protection abroad. At the same time, it will allow the authorities to remain in control of the procedure.¹⁷³

4.2.1 Subjective right

Therefore, a subjective right to apply for a humanitarian visa should be recognised as long as the qualifying criteria are met and the entry procedures are followed.¹⁷⁴ This is in line with the Recast Qualification Directive, which imposes an obligation on Member States under Articles 13 and 18 to grant the relevant protection status to the individual meeting the qualification criteria set out in the Directive.¹⁷⁵ Also, the Recast Qualification Directive does not include any geographical scope to its application.

Regarding the instrument to adopt, it shall be legally binding, as the objective pursued must be in line with *non-refoulement* obligations and fundamental rights. A non-binding recommendation will not be enough to guarantee compliance. To minimise deviation from common obligations under EU law, the best choice between a Directive or a Regulation is the latter. This is also the instrument chosen for the visa *acquis*, the Schengen Borders Code (SBC), and the new phase of the CEAS. A regulation would preserve the integrity and ensure the effective functioning of the rules as they would be directly applicable in all Member States.¹⁷⁶ Whereas in the

172 The Qualification Directive acknowledges in recital 21 that ‘[t]he recognition of refugee status is a declaratory act’. European Parliament and Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9, recital 21.

173 van Ballegooij (n 146) 72.

174 de Donato (n 159) 118.

175 European Parliament and Council Directive 2011/95/EU (n 172) arts 13, 18.

176 It has been proven that when Member States are left with ‘the choice of form and methods’ of implementation, different criteria and procedures as well as standards of application arise. van Ballegooij (n 145) 82. The Common Asylum System has already revealed differences between Member States in the ways rules are interpreted and applied, creating divergences in recognition rates and types

past it was argued that a common legal framework on humanitarian visas could be included in the Visa Code, this would not be appropriate as its scope is to cover short-stay visas only.¹⁷⁷ In addition, the SBC, which sets rules on the monitoring of persons crossing the EU's external borders, does not address the situation of asylum seekers, notwithstanding the references to *non-refoulement* and obligations concerning access to international protection in its Articles 3 and 4.¹⁷⁸ This view was confirmed by the CJEU in *X and X v. Belgium* where it found that the Code does not create a subjective right to a humanitarian visa.¹⁷⁹

4.2.2 Procedural guarantees

Procedural guarantees could be derived from the CFR as well as the principles of European Union law, including the right to good administration

of protection granted, which is why the review of the 'asylum package' represents a more integrated approach, and supports the transformation of Directives into Regulations. European Asylum Support Office, *Annual Report on the Situation of Asylum in the European Union 2016* (2017) 26, 48; European Asylum Support Office, *Annual Report on the Situation of Asylum in the European Union 2017* (2018) 166; European Commission, 'Completing the Reform of the Common European Asylum System: Towards an Efficient, Fair and Humane Asylum Policy' (13 July 2016) europa.eu/rapid/press-release_IP-16-2433_en.htm.

177 van Ballegooij (n 146) 69.

178 Hanke (n 145) 1370; U I Jensen, 'Humanitarian Visas: Option or Obligation?' (PE 509.986, European Parliament 2014); V Moreno-Lax and C Costello, 'The Extraterritorial Application of the Charter: From Territoriality to Facticity, the Effectiveness Model' in S Peers and others, *The EU Charter of Fundamental Rights. A Commentary* (Oxford, Hart Publishing, 2014) 1657–83.

179 See text between footnotes 7 and 10 in this chapter. Hanke (n 145) 1371; V Moreno-Lax, 'Asylum Visas as an Obligation under EU Law: Case PPU C-638/16 X, X v État Belge (Part I)' (16 February 2017) *EU Immigration and Asylum Law and Policy* eumigrationlawblog.eu/asylum-visas-as-an-obligation-under-eu-law-case-ppu-c-63816-x-x-v-etat-belge/; V Moreno-Lax 'Asylum Visas as an Obligation under EU Law: Case PPU C-638/16 X, X v État belge (Part II)' (21 February 2019) *EU Immigration and Asylum Law and Policy* eumigrationlawblog.eu/asylum-visas-as-an-obligation-under-eu-law-case-ppu-c-63816-x-x-v-etat-belge-part-ii/.

and effective remedy in line with Articles 41¹⁸⁰ and 47¹⁸¹ of the CFR.¹⁸² A minimum set of procedural guarantees should therefore be provided, such as access to information, interpreters, right to a hearing, a motivated decision and an effective remedy.¹⁸³ Decisions should be made by competent personnel, with adequate knowledge and specialised training.

In case of negative decisions, the right to an effective remedy, which includes the right to a hearing before an independent and impartial tribunal, in accordance with Article 47 of the CFR, must be available.¹⁸⁴ In situations of emergencies involving the risk of irreversible harm, an automatic suspensive effect should be set up.¹⁸⁵ This option may translate in the issuance of a permit for immediate evacuation when imminent danger is faced.¹⁸⁶

180 '1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. 2. This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.' Charter EU (n 169) art 41.

181 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'. Charter EU (n 169) art 47.

182 However, the Recast Reception Conditions Directive and the Recast Asylum Procedures Directive would not apply due to their geographical limitation. K Pollet (n 165) 74, 91, 93.

183 *ibid* 74, 91.

184 V Moreno-Lax, *Accessing Asylum in Europe* (Oxford, Oxford University Press, 2017) 395-459.

185 See, among many others, *Sultani v France*: 'un recours dépourvu d'effet suspensif automatique ne satisfaisait pas aux conditions d'effectivité de l'article 13 de la Convention'. [an appeal deprived of automatic suspensive effect does not satisfy the effectiveness requirements of article 13 of the Convention.]. *Sultani v France* App no 45223/05 (ECtHR, 20 September 2007) para 50.

186 van Ballegooij (n 146) 73.

To address States' concerns on detrimental effects that the adoption of these arrangements may entail, especially fears of a pull factor, the issuance of humanitarian visas could be progressive and be first introduced in countries where the presence of persons from top refugee-producing States is most demanding and there is either a presumption of lack of safety/need for protection from *refoulement*¹⁸⁷ or the need to relieve the hosting countries from high influxes of refugees. A strategy of controlled roll-out in progressive phases in selected countries would be required.¹⁸⁸ Also, discussions and agreements with third countries on the consequences for them regarding hosting additional international protection seekers at least temporarily should be carried out.¹⁸⁹

Whether this proposal would be a viable option for significant numbers of refugees has not been tested yet, but it certainly has potential and should be further explored.

5 Conclusion

The focus of this chapter has been on the HCs, as they had more impact than other instances when humanitarian visas have been used. The HCs were born as a pilot project at the end of 2015. The three most important features of the HCs highlighted here are: (1) the aim of creating a legal pathway to admission for people who need international protection, taking into consideration State's concerns such as security issues; (2) the focus on a wide understanding of vulnerability of the beneficiaries, encompassing those who would qualify for asylum, assessed together with integration potential and avoidance of secondary movements; (3) the FBOs' role, sponsorship, and involvement from the selection process to the reception and community-based integration activities. Moreover, the HCs have given an opportunity for lobbying towards a wider use of humanitarian visas and private sponsorship projects. It was pointed out that in Italy, the HCs were possible due to the influence that the catholic groups have often played in immigration policy and legislation, both through direct lobbying of political parties and call-up of the public.

Whereas a drawback of the HCs and the use of humanitarian visas in general in Italy is that they are based on non-binding instruments and the

¹⁸⁷ van Ballegoij (n 146) 74.

¹⁸⁸ *ibid* 75.

¹⁸⁹ Pollet (n 165) 74, 93.

sovereign discretion of the State, the recourse to soft law and discretionary mechanisms was a necessary evil given the lack of international legal obligations. In order to have a significant impact in the context of the issues that they try to address, the HCs would require to be extended, expanded and developed at the European level.¹⁹⁰ For an effective programme, responsibility for protection should be shared between civil society and the State, and regulated by law. At the European level, a harmonised policy approach to alternative pathways would be needed for those who seek protection and are still in transit countries. In particular, a uniform understanding of rights and qualification criteria for the issuance of humanitarian visas would be required in order to adopt a coordinated action in compliance with EU values and principles. Without it, 'legal certainty, foreseeability, and the similar application and implementation of the relevant rules cannot be guaranteed.'¹⁹¹ Member States and asylum seekers' trust in the system 'depends on the existence of a level playing field, which Member States acting alone cannot provide'.¹⁹² While it is recognised that this proposal may clash with reality, it has a number of merits, which, among others, would address the protection gaps present in CEAS, increase control over the visa application process, and allow for better screening of beneficiaries and predictability of arrivals.

190 M Collyer (n 5) 4.

191 van Ballegooij (n 146) 60.

192 *ibid.*

Appendix

Interviewee	Affiliation	Date of interview and location of interviewee
M Bonafede	Representative, Waldensian Church at the Italian Federation of Evangelic Churches; Promoter, Humanitarian Corridors	Turin, Italy, 13 May 2018
A Capannini	Volunteer, Operazione Colombia	Rome, Italy, 24 May 2018
B Chioccioli	Project and Communication Officer, Mediterranean Hope	Rome, Italy, 12 May 2018
Coordinator	Community of Sant'Egidio	Rome, Italy, 19 April 2018
O Forti	National Coordinator, Humanitarian Corridors for Caritas	Rome, Italy, 7 February 2019
C Hein	Board Member and Founder, Italian Refugee Council; Adjunct Professor, Department of Political Science, Luiss University	Rome, Italy, 26 April 2018
G de Monte	Journalist, Communication Office, Mediterranean Hope	Rome, Italy, 12 February 2019
P Naso	Professor of History and Religion, Faculty of Literature, Sapienza University; Coordinator, Mediterranean Hope	Rome, Italy, 26 April 2018
C Pani	Head of Humanitarian Corridors in Ethiopia, Community of Sant'Egidio	Rome, Italy, 15 February 2019
D Pompei	Coordinator, Humanitarian Corridors, Community of Sant'Egidio	Rome, Italy, 3 May 2018
Researcher	Oxford University	Oxford, UK, 18 April 2018
S Scotta	Operator, Mediterranean Hope in Lebanon	Beirut, Lebanon, 24 May 2018 and 28 January 2019
C di Stasio	Lecturer, Faculty of Law, University of Brescia	Brescia, Italy, 26 April 2018
Social worker	Social services	Genoa, Italy, 24 April 2018

