

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences

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Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/23, 34/16, 34/6, 35/3, 34/21, 34/35, 24/3, 35/5 and 32/19.

In this connection, we would like to express our concern in relation to the **signature of a Memorandum of Understanding (MoU) between the Italian Government and the Libyan Government of National Accord in February 2017**, which was the subject of a previous communication sent by the Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 2 February 2017.

The MoU has been signed and is being implemented in a context of increasing human rights violations and abuses against migrants transiting Libya to reach Europe through Italy. The most serious and recent manifestation of this trend is the practice of **enslavement and auctioning of enslaved African migrants in markets in Libya, which increasingly exposes them to trafficking and forced labour as well as other human rights violations.**

According to the information received:

I. On Italian cooperation with Libyan authorities

On 2 February 2017, a Memorandum of Understanding (MoU) on “development cooperation, illegal immigration, human trafficking, fuel smuggling and reinforcement of border security”, was signed between the Italian Government and Libyan Government of National Accord. The agreement follows the European Union agenda of externalizing border controls and curbing migratory flows, through bilateral agreements between countries of transit and countries of destination. The MoU outlines two main objectives; (1) control of migratory flows and (2) support to the development of the region. Concerns have been raised that, in its first implementation phase, the former appears to have gained overwhelming priority over the latter.

We wish to reiterate our concerns in relation to the following aspects of the MoU:

a. Italian cooperation in the creation of Libyan “temporary reception centres under the exclusive control of the Libyan Ministry of Home Affairs” for “clandestine migrants”

Not only does this provision delegate the management of migrants’ “reception centres” to the exclusive competence of the Libyan authorities, failing to include any type of international monitoring presence but it also falls short of taking into account the complex migratory status of people on the move, criminalising all migrants for the simple fact that they are undocumented, de facto depriving asylum seekers, including victims and potential victims of trafficking, of access to international protection and judicial guarantees.

b. Externalisation of borders

The main purpose of the MoU seems to be that of stopping migratory movements towards Europe, without taking into account the many human rights violations and abuses suffered by migrants in Libya, among which are victims and potential victims of trafficking, including those allegedly perpetrated by Libyan detaining authorities and the Libyan coastguard. Grave concern is expressed regarding how this MoU may result in increased non-refoulement, forcing migrants to remain in conditions such as slavery, arbitrary and indefinite detention, torture, rape, forced labour, exploitation and extortion, and may have to adopt more risky routes and modes of transport, putting them at greater risk of abuse by smugglers and at greater risk of falling victims of trafficking. The MoU lacks mitigating measures to reduce the risk of violations, such as alternatives to detention for migrants, access to legal assistance and other basic judicial guarantees, human rights monitoring by civil society, UN agencies or even Italian officials.

While recognizing that Italy bears a heavy burden in terms of migration control and management as first country of arrival, and commending its efforts in the fight against trafficking in persons, a criminal prevention approach to trafficking cannot be invoked to indirectly support the suspension of States’ obligations to respect, protect and fulfil the human rights of every person within their territories. Instead, the fight against human trafficking needs to encompass a victim-centred

perspective and cannot be carried out at the expense of migrants' human rights, including those of victims or potential victims of trafficking and other vulnerable groups.

c. Destination of Italian funds to support Libyan authorities in border control activities

As per the MoU, Italy commits to provide 'technical and technological support to the Libyan institutions in charge of the fight against illegal migration, and that are represented by the border guard and the coast guard of the Ministry of Defence and by the competent bodies and departments of the Ministry of Home Affairs'. There is little clarity on the destination of Italian funds envisaged to support Libyan authorities in stopping irregular migration flows. As per Italian Decree 4110/47, Italy has reportedly committed to dedicating a sum of 15 million euro to the "EU Emergency Trust Fund for Africa" originally envisaged to expand protection space and support local socio-economic development. However, the same Decree reads that a sum of 2,5 million euro has been channelled to provide technical support to competent Libyan authorities in "improving border control management, including the fight against human trafficking and search and rescue operations". Given the current management of search and rescue operations by the Libyan coastguard, it is worrying that Italy is de facto delegating search and rescue at sea to a State that may currently lack the capacity to properly carry out this role in respect of human dignity and international human rights norms.

We are concerned that strengthening activities, institutions and mechanisms that would increase the interception of migrants at sea and their unlawful return to Libya, a state where they are at risk of slavery, trafficking, torture and other ill-treatment, and enforced disappearance, would constitute a violation of the principle of non-refoulement.

II. On the human rights situation of migrants, including potential victims and victims of trafficking, in Libya

Recent information suggests the perpetuation, and possible extension, of a market of enslaved African migrants in Libya, which also involves victims of trafficking.

According to the information received, many migrants, including women and children, some of whom are victims or potential victims of trafficking, are subjected to forced labour and forced prostitution through fraudulent recruitment, confiscation of identity and travel documents, withholding or non-payment of wages, and debt bondage. After working during the day in farms, as domestic workers, construction and road paving workers, and rubbish collectors, some are reportedly taken back to detention centres in the evenings; others are held at the workplace for weeks or months at a time until they are able to buy their way out of detention. In some cases, employers give money to smugglers, traffickers, or guards from the Libyan Department of Combating Illegal Migration (DCIM) as payment for the work – though the full amount never reaches the trafficked

persons. Working conditions are often unbearable and employers often provide inadequate food and potable water. As a result, the health conditions of these workers deteriorate rapidly, making them unsuitable to work and further exposing them to trafficking.

Migrants, among whom are trafficked persons, also recount that in order to force them to work, employers, smugglers, traffickers and DCIM staff often threaten them, beat them with sticks, metal bars and gun butts, or shoot at them. Survivors also witnessed the killing of friends who were unable to work or had attempted to escape.

Information received indicates that racism, forced labour, rape and sexual exploitation also take place in detention, including by or with the complicity of the Libyan detaining authority. It is further reported that, in Shuhadaa Al Nasr Detention Centre, the largest in West Libya and run by DCIM, sexual exploitation and rape of female detainees is widespread, including by authorities in charge of the detention centre. A similar situation was reportedly registered in Surman Detention Centre and Sebratha Detention Centre, where rape resulted in pregnancies with no access to medical or legal assistance for victims.

It has been reported that the level of violence migrants have been subjected to has increased since April 2017, following the signing of the MoU between the Italian and Libyan authorities due to the externalisation of borders. In particular, migrants from Sub-Saharan Africa are at a heightened risk of abuse and exploitation, allegedly due to widespread racial discrimination and xenophobia in Libya. After crossing the border between Niger and Libya, migrants were repeatedly sold from one militia to another. During these transactions, migrants were detained, including in caves or “holes” in the ground, where they were forced to wait for several days before their journey to their new destination was organized and where they faced serious human rights abuses, including gang rape. The migrants were then transferred from one Libyan city to another in trucks and cargo vans. It is reported that they were often hidden under piles of bricks that they themselves had to build and pile up before departure. During the journey, their lives were constantly threatened; other than lack of water and food, they were also confined in very limited spaces, which made it hard for them to breathe. It has been alleged that migrants repeatedly have been sold and bought as labour workforce. It is reported that forced labour was always accompanied by long and very harsh periods of detention, during which migrants, among which were trafficked persons, were held in inhuman and degrading conditions, including in government-run detention facilities and following their interception at sea. They were often abducted by militias who forced them to work while held at gunpoint but also by private armed individuals who forced them to work without any payment and with the promise of a future, uncertain liberation.

Moreover, migrants in Libya, whether seeking employment in Libya or transiting Libya *en route* to Europe are extremely vulnerable to trafficking. Abuse of power or of victims’ position of vulnerability by traffickers, increases migrants’

vulnerabilities and exposure to trafficking, including for purposes of sexual and labour exploitation and extortion, as it is allegedly reported in Libya.

The outrageous practice of slavery and auctions of enslaved Africans, which undermines the very essence of humankind and civilisation, represents the ultimate act of dehumanization and deprivation of the human dignity of migrants traveling to Libya with the hope of reaching European shores, in a context already marked by political instability and widespread gross human rights violations and abuses against them, including racism, torture and other inhumane and degrading treatment, abduction, arbitrary detention, sexual violence, forced labour and trafficking.

A significant number of migrants are people from Sub-Saharan Africa and the auctions are reminiscent of one of the darkest chapters in human history, when millions of Africans were uprooted, enslaved, trafficked and auctioned to the highest bidder. Enslavement was intolerable then, and enslavement is intolerable now; such acts of cruelty must be condemned by all, and it has no place in modern society

We express grave concerns about the presence of a slave market in Libya, which is intimately related to racism, trafficking, forced labour and sexual exploitation of migrants, some of whom are victims or potential victims of trafficking, traveling from sub-Saharan Africa to Europe. The auctioning of migrants in slave markets in Libya, in which perpetrators did not even have to resort to violence and victims did not offer resistance, is an indicator of the level of psychological subjugation to which victims have been subjected, prior to being sold as merchandise. Some Africans are allegedly held as hostages until their families pay ransom, while others are sold for labour. Some are allegedly sold even after their families have paid their ransoms. Enslaved Africans are allegedly sold at auctions and forced to work to pay off their so-called debts, only to be sold again and again.

III. On search and rescue operations and the Code of Conduct for non-governmental organizations

It is well-known and extensively documented that the vessels used for crossing the Mediterranean are in large majority unseaworthy, lack standard life-saving equipment, and do not have sufficient fuel to reach European shores. It is further reported that when migrant boats are intercepted by the Libyan coastguard, they are usually transferred to DCIM detention facilities or to private houses and farms, sometimes for a fee, where they are often subjected to forced labour and trafficked for the purpose of sexual exploitation. Information received also indicates that migrants who were intercepted at sea were brought back to Libyan shore and beaten with sticks or gun butts, and robbed of their belongings.

The Code of Conduct for NGOs active in search and rescue (SAR) operations, which according to information received was proposed in the European Commission Action Plan on the Central Mediterranean Route and received

support by EU Justice and Home Affairs Ministers, was recently implemented by the Italian authorities. Attempts to restrict search and rescue operations by NGOs risk endangering thousands of lives by limiting rescue vessels from accessing the perilous waters near Libya and doubts arise in relation to the legality of such provisions, especially in view of international maritime law obligations.

Reportedly, as a result of the implementation of the Code of Conduct, most NGOs active in search and rescue operations have interrupted their activities and reported several episodes of intimidation and attacks against civil rescue organisations both in Libyan territorial waters and on the high sea as well as against vessels carrying migrants and asylum seekers. Information received further indicates that confrontations between NGOs active in search and rescue operations and Libyan coastguard are frequent and not just isolated incidents; in October 2016, it was reported that dozens of people drowned after the Libyan coastguard damaged an overloaded rubber dinghy and later tried to tow the dinghy from international waters back into Libyan territorial waters. In May 2017, it was reported that the crew of a Libyan coastguard patrol vessel fired shots from an automatic weapon in the direction of several vessels carrying migrants/refugees during another allegedly illegal refoulement. In this case, an NGO vessel was reportedly caught in the crossfire. Most recently, in November 2017, another incident between an NGO carrying out SAR activities and the Libyan coastguard has been reported, allegedly resulting in the death and disappearance of several migrants, including children. Those that did not die at sea nor were rescued by the NGO were reportedly beaten and ill-treated by the Libyan coastguard and most likely brought back to detention centres, whose conditions have already been described above.

The Prosecutor of the International Criminal Court (ICC) has noted with grave concern reports of arbitrary detention, torture, rape and other ill-treatment of migrants in official and unofficial detention centres in Libya, including those funded by the European Union. Consequently, she has instructed her Office to continue its inquiries into alleged crimes against migrants transiting through Libya as these crimes could fall within the jurisdiction of the Court. The role of the Italian rescue coordination centre needs to be clarified in this regard.

Serious concern is reiterated at the Code of Conduct for NGOs active in search and rescue operations that is restricting their life-saving activities.

All assistance in the context of entry control and to the Libyan coastguard in search and rescue operations must be viewed in this light. Funding initiatives to Libya where human rights violations are endemic must seek to enhance protection and not aid or contribute to known violations in the name of migration or border control. For your information, a letter of similar content is being transmitted to the Government of Libya (case no. LBY 6/2017).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned issues.
2. Please provide detailed information on the current status of the MoU, on the destination of Italian funds to Libyan authorities and on measures taken to ensure that such funds are not indirectly fuelling human rights violations, in particular slavery and other forms of labour or sexual exploitation.
3. Please provide information on the measures and precautions taken before signing the MoU with the Government of Libya in compliance with Italy's obligations under international law. In particular, to ensure that migrants intercepted at sea will be taken to places of safety, in accordance to international human rights obligations and standards, particularly the principle of non-refoulement
4. Please explain whether any analysis and/or consultation has been undertaken to assess the impact of such a MoU on the human rights of vulnerable migrants, asylum seekers, refugees as well as trafficked persons and those at risk of trafficking from among them. Please share the outcome of any such analysis or consultation.
5. In this regard, please share Italy's strategy with respect to the assessment of human rights implications of any migration management programmes and policies that Italy might implement, renew or reinforce in coordination and partnership with the Government of Libya.
6. Please provide information on existing mechanisms to promote capacity-building and support search and rescue operations conducted by Libyan authorities under already existing partnership framework approaches, as well as their respective human rights implications assessments, in accordance to Italy's obligations under international law.
7. Please specify how trainings to Libyan authorities address the human rights of migrants, victims of trafficking and those at risk of trafficking in a comprehensive way.
8. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law –

particularly with regard to the principle of non-refoulement – are taken into account.

9. Please provide information on measures in place to identify victims or potential victims of trafficking in persons during the search and rescue operations, especially those including the Libyan coastguard and how their protection from non-refoulement is ensured during such operations, including in relation to the most recent incidents
10. Please indicate how your Excellency's Government is planning to fulfil its obligations to prevent the loss of life of migrants in the Mediterranean and abiding by the principle of non-refoulement in coordinating the search and rescue operations involving the Libyan coastguard. In this regard, please provide information on how search and rescue operations by NGOs are not restricted by the Code of Conduct for NGOs in life-saving activities.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Sabelo Gumedze
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Maud de Boer-Buquicchio
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Fernand de Varennes
Special Rapporteur on minority issues

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Felipe González Morales
Special Rapporteur on the human rights of migrants

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences

Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Dubravka Šimonović
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The International Law Commission in article 16 of its Articles on State Responsibility sets forth the appropriate standards: "A State, which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

While we understand that most of these human rights violations and abuses are allegedly taking place within Libyan territory, European and Italian support to Libyan authorities may constitute an indirect violation of the following international human rights conventions.

Slavery and slave trade are in all forms prohibited under international humanitarian and human rights law. State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. The first universal treaty outlawing slavery and the slave trade was the Slavery Convention in 1926. This was supplemented in 1956 by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, outlawing debt bondage, serfdom and inheritance or transfer of women or children. The prohibition of slavery, servitude and the slave trade is a non-derogable right under the International Covenant on Civil and Political Rights and the regional human rights conventions.

Similarly, your Excellency's Government is bound by obligations included in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by proscribed means for the purpose of exploitation, which includes, *inter alia*, forced labour or services, or servitude. In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking ("Recommended Principles and Guidelines"), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors". Your government has also ratified and is therefore bound by the ILO Forced Labour Convention (1930) and its Protocol, which define forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (art. 2) and by the ILO Convention No. 182 on the worst forms of child labour (1999), which includes among worst forms of child labour

all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (art. 3).

In this context, we would like to bring to your Excellency's Government's attention to Article 6 of the International Convention on the Elimination of all forms of Discrimination against Women (acceded to by Italy on 10 June 1985), which provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. Reference is also made to the United Nations Declaration on the Elimination of Violence against Women clarifying that violence against women shall be understood to encompass trafficking and forced prostitution.

We would also like to recall that Article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Italy on 6 January 1976, obliges States to eliminate racial discrimination in all its form and to guarantee the right of everyone, without distinction, to equality before the law in the enjoyment of their human rights. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution. In addition, Article 2 obliges States not to "sponsor, defend or support racial discrimination by any persons or organizations".

Additionally, we would like to draw your Excellency's Government's attention to Article 28 of the Universal Declaration of Human Rights, which calls on States to create a social and international order in which all human rights and fundamental freedoms can be fully realized, and to Article 2 of the International Covenant on Economic, Social and Cultural Rights (ratified by Italy on 15 September 1978), in which States undertake to take steps through international assistance and cooperation in order to ensure the full realization of covenant rights. We recall that international solidarity and cooperation are key principles underlying international law and are essential to ensuring that States meet their human rights obligations while responding to shared challenges.

In addition, we would like to draw attention to article 9.1 of ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (CCPR/C/21/Rev.1/Add.13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). We would also like to draw your attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

We wish to recall your Excellency's Government that the prohibition of refoulement is explicitly included in the 1951 Convention Relating to the Status of

Refugees and its 1967 Protocol, ratified by Italy. Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also ratified by your Excellency's Government. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed. With regards to regional human rights instruments, the European Court of Human Rights (ECtHR) has already found Italy in violation of article 3 of the European Convention on Human Rights in the Hirsi Jamaa case. The principle of non-refoulement is a jus cogens obligation for all States, regardless of their ratification of relevant international human rights treaties and it still very much applies to the case of Libya: handing over individuals to Libyan authorities, including the Libyan coastguard, allegedly involved in ill-treatment and other human rights violations, including slavery, forced labour and other forms of exploitation, does not exempt Italy from its international human rights obligations, including the customary international law obligation of non-refoulement. Concerns related to possible violation of the principle of non-refoulement have been recently raised in a letter to your Government by the Commissioner for Human Rights of the Council of Europe on 28 September 2017.

Finally, we refer to CEDAW general recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women in which the Committee "reiterate[d] the obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement⁸ cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving States and/or voluntary repatriation to their State of origin."