

Mandates of the Special Rapporteur on the situation of human rights defenders; the 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 torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 34/5, 35/3, 34/21, 34/35, 34/19 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recent 'Directive for the unified coordination of surveillance activities of maritime borders and fight against illegal immigration according to article 11 of Legislative Decree n. 286/1998', alias Ministerial Circular n. 14100/141(8) (hereinafter: Directive)** addressed to the Italian Chief-of-Police, the General Command of the Carabinieri Corp, the General Command of Finance Police, the General Command of the Port Authorities, the Chief of Staff of the Armed Forces and the Chief of Defence and issued on 18 March 2019 by the acting Minister of Interior Matteo Salvini. This Directive, which calls on Italian maritime and military authorities to prevent private vessels that have carried out search and rescue activities in international waters – allegedly referring to the north of Libya – from accessing Italian territorial waters and ports, has the potential of seriously affecting the human rights of migrants, including persons seeking asylum and victims or potential victims of arbitrary detention, torture, trafficking in persons and other serious human rights violations.

On the criminalisation of civil society organisations carrying out search and rescue operations

The Directive states that 'vessels, either with Italian or foreign flag, rescuing migrants in waters that are outside Italy's responsibility and without the coordination of the authority internationally recognized as competent for coordinating rescue activities, and subsequently entering Italian territorial waters, harm the good order and security of the Italian State', since, in this case, the 'prerequisites for the designation of a place of safety in Italian ports are lacking'. The Directive considers that such private vessels conduct their operations 'with the aim to circumvent national legislation on border control and regular migration', constituting 'a threat to public order and national security

of the coastal State'. It is further mentioned in the Directive a specific case where 'the rescue and navigation conduct constituted a concrete manifestation of a modus operandi of a rescue activity carried out in an improper manner, in violation of international regulations on the law of the sea'.

There are reasonable grounds to believe that the Directive, due also to the time of its release, was issued with the aim of directly targeting the search and rescue operations of the NGO boat Mare Jonio, namely by preventing it from accessing Italian territorial waters and ports. Mare Jonio is a vessel, operated by an NGO, under Italian flag acting for the Mediterranean Platform that rescued 50 migrants off the Libyan coast during the night of 19 March 2019 and later headed towards the closest Italian harbour of Lampedusa, under difficult weather conditions at sea. As per information received, on 9 May 2019, the Italian Military Navy rescued 36 people; at the same time, Mare Jonio rescued 29 people from a rubber boat in breakdown in international waters, 40 miles from Libya and asked the Italian Maritime Rescue Coordination Centre for a safe port. The Minister of Interior had allegedly ordered the military authority to prevent the vessel from accessing Italian ports. However, Mare Jonio was subsequently allowed to disembark in Lampedusa by the competent authority and the vessel was immediately seized by the Finance Police, under suspicion of favouring 'illegal migration'. However, at the time of this letter, Mare Jonio staff has not been formally included in the register of persons under investigation by the public prosecutor of Agrigento.

The attempt to target the boat Mare Jonio for its search and rescue operations is further spelled out in another Directive – also n. 14100/141 (8) -, issued by the Minister of Interior on 15 April 2019 and directed to the Italian Chief-of-Police, the General Command of the Carabinieri Corp, the General Command of Finance Police, the General Command of the Port Authorities and the Chief of Staff of the Armed Forces. This Directive echoes the one previously issued – which is the main object of the current letter - but in addition to that, it explicitly accuses Mare Jonio to have carried out activities aimed at favouring 'illegal migration' and to be willing to continue to do so in the future.

We are deeply concerned about the approach taken by the Minister of Interior against the Mare Jonio boat through these Directives, which are not based on and have not been confirmed by any decision by the competent judicial authority. We believe that this represents yet another political attempt to criminalize search and rescue operations carried out by civil society organisations in the Mediterranean. It also further intensifies the climate of hostility and xenophobia against migrants, as previously denounced in two letters sent to your Excellency's Government on 19 October 2018 (ITA 4/2018) and on 12 November 2018 (ITA 2/2018) respectively, for which we are still awaiting a reply.

Although there are grounds to believe that the above-mentioned Directives mainly targets NGO ships, we also have concerns about the effect of such policies on other vessels (e.g. merchant, fishing) who may become increasingly reluctant to rescue migrants.

We also wish to express grave concerns over the draft 'Security Decree-bis', allegedly introducing sanctions to those that 'while carrying out search and rescue operations in international waters do not respect the obligations enshrined in international conventions'. As per information received, the amount of the sanctions could vary from

3.500 to 5.500 euro for each migrant transported on the vessel and, in case of persistently repeated infringements, if the vessel is under the Italian flag, it could lead to the suspension or the withdrawal of the licence from 1 to 12 months.

On the right to life and lack of reference to international human rights standards in the Directive

The Directive also attempts to justify restriction of search and rescue operations by private vessels, by invoking the Law of the Sea, such as the International Convention on Maritime Search and Rescue (SAR), the International Convention for the Safety of Life at Sea (SOLAS) and the Convention and the United Nations Convention of Montego Bay of 1982.

While we appreciate the reference made to international standards in the Directive, we wish to draw attention to your Excellency's Government to the United Nations Convention on the Law of the Sea of 1982. Article 98 of the Convention provides that every State "has a duty to (a) render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him". Similar obligations are further specified in the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR). We wish to recall your Excellency's Government that article 98 is considered customary law; that it applies to all maritime zones and to all persons in distress, without discrimination; and that it applies to all ships, including private and NGO vessels under a State flag.

We are also concerned that the Directive fails to duly take into account States' international human rights obligations arising in the course of search and rescue operations, of which the non-derogable obligation to respect and protect the right to life, as enshrined in article 6 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government in 1978, is paramount. The right to life constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights and it should not be interpreted narrowly. (CCPR/C/GC/36, paras 2-3).

In light of the above-mentioned international human rights standards, search and rescue operations aiming at saving lives at sea cannot represent a violation of national legislation on border control or irregular migration, as the right to life should prevail over national and European legislation, bilateral agreements and memoranda of understanding and any other political or administrative decision aimed at 'fighting irregular migration'. This is further expressed in the saving clauses of article 19 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, invoked by the Directive, as well as in the saving clauses of article 14 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, both supplementing the United Nations Convention against Transnational Organized Crime and ratified by your Excellency's Government on 2 August 2006. Both saving clauses read that: 'Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international

human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein’.

While commending the Italian Military Navy for its sustained efforts to save human lives, we wish to stress that, since the Italian government is not consistently providing rescue mechanisms to protect life and dignity, humanitarian actors are indispensable in delivering those services. The State has a positive obligation to seek and facilitate humanitarian action (through an act of delegation) and a negative obligation not to engage in acts that would jeopardize the enjoyment of the right to life.

We also wish to insist that laws and policies aimed at seeking to prevent the provision of life-saving and life-sustaining services to populations because of their ethnicity, religion or immigration status constitute a violation of article 6 of the International Covenant on Civil and Political Rights.

Italy cannot fail to discharge its obligation to respect and protect the right to life and then exacerbate and compound that failure by precluding others from undertaking activities aimed at providing that core obligation, particularly if the actions or inactions of the State are driven by discriminatory motives or result in discrimination (A/73/314).

On stigmatising migrants in distress at sea and denying their right to seek asylum and to be identified as victims of trafficking in persons

The Directive further justifies the closure of Italian ports by invoking ‘the peace, order and security of the coastal State’ whose assessment should be devoted to the discretion of national authorities in the light of the fight against smugglers and traffickers as well as by recalling the ‘irregular status’ of migrants at sea and that ‘concrete risks exist that potential terrorists or otherwise dangerous individuals threatening national security and public order could hide among migrants’, without however providing any factual information or any qualitative or quantitative data to substantiate such claims. In this context, highlighting such risks results in a blank criminalisation of all migrants in vulnerable situations.

In this regard, we wish to draw your Government’s attention to paragraph 2.1.10 of the 1979 International Convention on Maritime Search and Rescue, referred to in the Directive. With regards to coordination of search and rescue cooperation, it states that ‘parties shall ensure that assistance be provided to any person in distress at sea and shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found’. In its deliberation on the right to life, the UN Human Rights Committee considers that the right to life concerns an ‘entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death’. The Committee adds that ‘Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.’ (CCPR/C/GC/36 para 3).

We are also concerned that the Directive overly focuses on security and the fight against traffickers, while misunderstanding the underlying human rights obligations set

forth in the United Nations Convention against Transnational Organized Crime and its two Protocols (Protocol against the smuggling of migrants by land, sea and air and Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children).

The Directive claims that, through enhanced externalisation of border control, ‘a more efficient fight against trafficking in persons will be conducted, to avoid that migrants are exploited by trafficking networks and reduce incentives to irregular migration’. However, such an approach makes instrumental use of the fight against trafficking in persons, since restrictive migration policies contribute to exacerbate migrants’ vulnerabilities and, thus, to favour trafficking in persons, rather than prevent it and protect its potential victims.

We also wish to recall that according to article 14 of the Universal Declaration of Human Rights, everyone has the right to seek and enjoy asylum. The assessment of asylum application cannot be carried out at sea. According to the principle of solidarity at sea, established by the UN Convention on the Law of the Sea, particularly in its article 98, all vessels who encounter people in danger at sea, have to rescue them and transport them to a place of safety, regardless of who they are.

In addition, a search and rescue operation is not finished before the rescued persons have reached a place of safety. It has been widely documented in several UN and NGO reports that migrants in Libya are subjected to various human rights abuses, including trafficking in persons, prolonged arbitrary detention in inhuman conditions, torture and ill-treatment, unlawful killings, rape and other forms of sexual violence, forced labour, extortion and exploitation. Therefore, Libya cannot be considered a place of safety for the purpose of disembarkation of migrants. This is clearly demonstrated in a recent report prepared jointly by the UN Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Support Mission in Libya (UNSMIL) on 20 December 2018 (‘Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya’).

In light of the well-documented pattern of human rights abuses and trafficking in persons suffered by migrants in Libya, there are reasonable grounds to believe that, by the time migrants enter into the territory of Italy or are subjected to the jurisdiction of the Italian State, they should already be identified as victims or potential victims of trafficking. Therefore, the fight against trafficking in persons should not only encompass investigation and prosecution of traffickers but also comprehensively take into account States’ obligations to protect and provide assistance to victims of trafficking, as enshrined in article 6 of Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Palermo Protocol).

According to OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation not only to identify traffickers but also trafficked persons, as ‘a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights’. Identification is possible when a safe space and a relationship of trust have been created to allow victims

to share a traumatizing experience. It is therefore necessary to establish dedicated and confidential identification procedures at arrival areas, in cooperation with civil society organisations, in order to ensure the respect of trafficked persons' rights (A/HRC/38/45) and to identify vulnerabilities and protection needs, including - but not only limited - to victims of trafficking.

On the lack of consideration for the principle of non-refoulement

We wish to express serious concerns on the Directive's expressed delegation of responsibilities during search and rescue operations to the Libyan coastguard, declaring Libyan ports as 'able to provide migrants with adequate logistical and medical assistance'.

In this regard, we concur with the recent joint report issued by OHCHR and UNSMIL in December 2018, which called for the EU and its Member States, including Italy, to reconsider their policies on migration management in the Central Mediterranean. The report clearly documents a widespread pattern of human rights violations against migrants, as well as humanitarian organisations engaged in search and rescue activities included by the Libyan coastguard, with the financial and material support of the Italian Government and the European Union, as also previously denounced in a joint letter sent by 9 UN Special Rapporteurs to your Excellency's Government on 28 November 2017 (ITA 4/2017).

Unlike migrants and refugees rescued by European Union and foreign vessels in international waters, who are taken to Italy or other European ports, those rescued by the Libyan Coastguard in Libyan waters and, increasingly, in international waters, are brought to Libya.

In April 2019, following the escalation of military action in Libya, the UN High Commissioner for Human Rights stressed that Libya is not a safe port of return and called on the European Union and its member States to swiftly and collectively implement a coherent, human rights-based response to maritime migration from Libya. IOM Director General also recently expressed concern at the safety of migrants in detention, noting that 'Libya is not a safe place to return migrants who have tried and failed to make their way to Europe' (IOM Expresses Alarm for Safety of Libyan Civilians and Migrants in Detention, Press Release, 4 May 2019). Similarly, UNHCR denounced that the increase in interceptions and rescue operations conducted by the Libyan Coastguard resulted in greater numbers of persons disembarked and detained. It also highlighted that during rescues/interception at sea, the Libyan Coastguard has been accused of colluding with smuggling networks and has reportedly been involved in a series of human rights violations, including 'the deliberate sinking of boats using firearms'. It also added that restriction of critical activities of non-governmental organisation rescue boats have led to a higher percentage of people dying at sea than before (UNHCR Position on Returns to Libya – Update II, September 2018).

As stated above and also in view of the current deterioration of the security situation in Libya and intensification of violence due to the ongoing internal armed

conflict, Libya cannot be considered a place of safety for the purpose of disembarkation, following rescue or interception at sea.

Practices whereby countries of destination cooperate with another to prevent migrants and refugees from arriving have been characterized as ‘pullbacks’ and as violations of the principle of *non-refoulement*, which constitutes an integral part of the absolute and non-derogable prohibition of torture and other ill-treatment, enshrined in Article 3 of the CAT and Articles 6 and 7 of the ICCPR (A/HRC/37/50, paras 56-59).

In view of these observations and concerns, we urge your Excellency’s Government to withdraw the ‘Directive for the unified coordination of surveillance activities of maritime borders and fight against illegal migration according to article 11 of Legislative Decree n. 286/1998’, alias Ministerial Circular n. 14100/141(8), the Directive – also n. 14100/141(8) – issued on 15 April 2019, specifically targeting Mare Jonio and to halt the procedure eventually leading to the approval of ‘Security Decree-bis. We also encourage the competent judicial authorities to take into account this joint communication. We also call on Italy and other EU Member States to swiftly and collectively implement a coherent, human rights-based response to maritime migration from Libya. In particular, there is a need to ensure adequate search and rescue capacity in the Mediterranean and to prioritize the primary obligation to save lives at sea, while upholding the principle of non-refoulement under international human rights, refugee, and humanitarian law.

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 therefore 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 decrees.
2. Please indicate how your Excellency’s Government is planning to fulfil its obligations to prevent the loss of life of migrants in the Mediterranean Sea and abide by the principle of non-refoulement in coordinating the search and rescue operations involving the Libyan coastguard, in light of the recent UN reports documenting a pattern of human rights abuses against migrants in Libya, including when perpetrated by the Libyan coastguard or by the Department for Combatting Illegal Migration (DCIM), to whom migrants are entrusted upon disembarkation in Libya.
3. Please indicate what steps your Excellency’s Government intends to undertake to align Italy’s migration policies with international human rights obligations recalled in the present letter, especially in relation to the right to life and the prohibition of torture and ill-treatment under articles

6 and 7 of ICCPR, the principle of non-refoulement and article 6 of the Palermo Protocol.

4. Please provide disaggregated data on the number of migrants rescued by the Italian Maritime Coordination Centre in 2018-2019 and the number of individuals prosecuted or convicted of organized crime or other serious crimes who found themselves among those migrants rescued in the course of search and rescue operations.
5. Please provide information on the number of victims of trafficking identified following search and rescue operations conducted in connection with migrants fleeing from Libya, in line with international obligations under the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 may 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.

Please be informed that a copy of this letter is also being sent to the Government of Libya and to the European Union for their information.

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

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw attention to your Excellency's Government that these directives appear to be in contravention of human rights principles as well as the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders (A/RES/53/144). In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to recall that humanitarian services play a central role in preventing migrants' and refugees' unlawful deaths. Deterring humanitarian services for migrants, preventing life - saving rescue missions and transportation and impeding the provision of food, shelter, medical care and other services exacerbates the risks to life. Therefore, States must not criminalize or otherwise penalize the provision of support or assistance to migrants (A/73/314). International solidarity and cooperation are key principles underlying international law and are essential to ensuring States meet their human rights obligations while responding to shared challenges. Efforts to prevent such vessels from disembarking—and other acts targeting migrants and those who would act to support them—demonstrate a breakdown in human rights-based international solidarity, in addition to constituting a human rights violation. (A/73/206).

With regards to search and rescue operations, we would also like to refer to principle 4 of OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations, according to which States should protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance. This includes, among others, to (1) ensure that relevant national legal frameworks as well as arrangements for cooperation and coordination between States uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international human rights and refugee law, the international law of the sea, and other relevant standards; (2) to establish, operate and maintain adequate and effective services for search and rescue at sea regardless of presumed nationality or legal status of migrants who are in distress at sea or the circumstances in which they are found; (3) to ensure that search and rescue services and coordinating authorities operate under a broad understanding of distress, so that timely and necessary assistance is provided to migrants in unseaworthy vessels even if they are not in immediate danger of sinking (4) to ensure that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses including proactive patrolling when informed risk assessments suggest that migrants who may require assistance are likely to be present along a particular sea route; (5) to make every effort to protect migrants' right to life, wherever they are at risk on water or on land; (6) to ensure that rescue services are adequately resourced and provided with all necessary

equipment such as rescue beacons; (7) to avoid acts and inaction that are likely or expected to cause the unnatural or premature death of migrants, or deny them a dignified existence.

With regards to the principle of non-refoulement, we wish to draw your attention to the fact that the human rights obligation not to extradite, deport or otherwise transfer pursuant to article 6 and 7 of the Covenant and article 3 of the CAT is absolute and non-derogable and applies to all persons without discrimination and, in particular, regardless of their entitlement to refugee status. Therefore, States must imperatively allow all asylum seekers claiming a real risk of a violation of their right to life or of the prohibition of torture and ill-treatment to access to refugee or other individualized or group status determination procedures that could offer them protection against *refoulement*.

In its recent concluding observations to Italy, the UN Human Rights Committee recommended that your Excellency's Government ensure that bilateral and multilateral agreements be applied in such a way as to guarantee full respect of Covenant rights and strict compliance with the principle of *non-refoulement* and to suspend any agreement that does not include effective human rights protections (CCPR/C/ITA/CO/6 para 25 b). We also wish to remind your Excellency's Government that Italy has been previously condemned by the European Court of Human Rights for violation of article 3 of the European Convention on human rights on the prohibition of torture because the applicants had been exposed to the risk of ill-treatment in Libya (*Hirsi Jamaa and others v Italy*). This case was also recently recalled by the UN Committee Against Torture in its concluding observations to Italy, recommending Your Government to 'ensure that in practice no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal, foreseeable risk of being subjected to torture' (CAT/C/ITA/CO/5-6 para 20-21).

Furthermore while recalling Italy's obligations under the International Convention on the Elimination of All forms of Racial Discrimination – especially articles 1, 2, 5 and 6 -, the Committee on the Elimination of Racial Discrimination (CERD) in Recommendation 30 on Discrimination against Non-Citizens (2004) clarified that “differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim” (para. 4). In this context, CERD called upon States Parties to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and that laws and policies relating to immigration, deportation, or other forms of removal of non-citizens do not discriminate—in purpose or effect—on the basis of race, colour or ethnic or national origin (paras. 7, 9 and 25). States should ensure that all non-citizens “[...] have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies” (para. 25). CERD also reiterates the principle of non-refoulement and the international human rights law prohibition of collective expulsions (para. 27). In addition, CERD urges States to take resolute action against the tendency to target, stigmatize, stereotype or profile members of “non-citizen” population groups on the basis of race, colour, descent, and national or ethnic origin (para. 12).