

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE:  
AL ITA 6/2019

12 July 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 34/5, 35/11, 35/3, 34/21 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arrest and subsequent release of Ms. Carola Rackete, the opening of two criminal investigations against her, and alleged threats to the independence of the judiciary arising from public statements by the Minister of Interior of Italy, Mr Matteo Salvini.**

Concerns relating to 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' have already been expressed in a joint allegation letter of 15 May 2019 (AL ITA 4/2019), to which your Excellency's Government responded on 6 June 2019.

Ms. Carola Rackete is a German human rights defender and captain of the search and rescue vessel Sea-Watch 3, which rescued 53 migrants off the Libyan coast on 12 June 2019. As part of her work for the German organisation Sea Watch, she has participated in rescue operations off the Greek coast at the peak of the migration crisis. Prior to that, she had also worked on sea pollution with the organisation Greenpeace.

According to the information received:

On 12 June 2019, the humanitarian rescue vessel Sea-Watch 3, owned by the German organisation Sea Watch, rescued 53 migrants floating on an overcrowded rubber dinghy off the Libyan coast. The crew decided not to hand the rescued migrants over to Libyan coastguards due to the risks arising from the country being at war as well as the reported abuse, ill-treatment, imprisonment, sexual violence, and slavery against migrants in Libya. The closest European port to the location of the rescue operation was on the Italian island of Lampedusa. However, the port of Lampedusa had been closed to civil society vessels rescuing migrants in distress at sea.

On 14 June 2019, the Law Decree No. 53/2019 was passed, imposing fines on vessels for every person rescued at sea and transferred to Italian territory, as well as threatening them with having their licences revoked or suspended. The adoption of the decree was reportedly rushed to ensure its immediate applicability to Sea Watch, whose vessel entered Italian territorial waters the day after its passing.

Sea-Watch 3 remained at sea for two weeks, during which the health of many migrants on board deteriorated significantly, leading to the disembarkation of ten people on medical grounds on 15 June 2019 and the emergency evacuation of one person on 21 June 2019. On 29 June 2019, Ms. Rackete, carrying out her duty to protect lives as the captain of the vessel, decided to dock in the port of Lampedusa to ensure the wellbeing of people on board. She was detained and placed under house arrest on the same day after breaking a naval blockade in the port.

On 1 July 2019, Ms. Rackete appeared before the judge for preliminary investigations (Giudice per le Indagini Preliminari – G.I.P.) of Agrigento, who questioned her in relation to her vessel hitting a police patrol boat. She stated that it had been an accident and that she had decided to enter the port to ensure the wellbeing of migrants who had been at sea for over two weeks and whose health had been rapidly deteriorating.

On 2 July 2019, the judge ruled that the pre-trial detention of Ms. Carola Rackete was unlawful and ordered her immediate release.

Ms. Rackete was accused of disregarding the orders of the Italian law enforcement officers (Guardia di Finanza) not to dock at Lampedusa harbour and disembark the rescued migrants, and of having hit the boat of the Guardia di Finanza that was standing between the Sea-Watch 3 and the point of disembarkment.

The judge preliminarily ruled that article 1100 of the Navigation Code, relating to the crime of “resistance or violence against a military vessel”, was not applicable to the present case because the boat of the Guardia di Finanza could not be considered a “military vessel”.

In relation to the criminal charge of “resistance to a public officer” (article 337 of the Criminal Code), the judge considered that Ms. Rackete’s behaviour was justified, in accordance with article 51 of the Criminal Code, by the fact of having acted in fulfilment of a duty to rescue persons in distress at sea. Such a duty derives from a fundamental principle of public international law that prevails on national legislation by virtue of the provisions enshrined in articles 10 and 117 of the Italian Constitution.

For the same reason, the judge considered that article 11, para. 11-ter, of Legislative Decree No. 286/98, as introduced by the Law Decree No. 53/2019, according to which the Minister of Interior may “limit or prohibit the entry into,

transit through or docking of ships in the territorial sea”, was not applicable in the present case, taking into account that the article 11 explicitly provides that the prohibition can only be enforced if in compliance with international law, including the Convention on the Law of the Sea.

Ms. Rackete may still face up to 10 years in prison on possible charges of endangering the lives of four police officers. Further, she remains under investigation for facilitating irregular migration in separate criminal proceedings, for which she could face up to 15 years in prison. The hearing concerning the second investigation, initially scheduled for 9 July 2019, has been adjourned until 18 July 2019.

Ms. Rackete has since been moved to a secret location after receiving threats of rape and death. She has also been subjected to insults, many of which have been of a sexist nature. Upon entry into the port of Lampedusa on 29 June 2019, she was threatened and insulted by hostile groups. Furthermore, she has been targeted online through derogatory messages on social media and through emails sent to the Sea-Watch office containing death threats against her and threatening the organisation with destroying its rescue vessels.

On 2 and 3 July 2019, following the ruling of the judge of preliminary investigations of Agrigento, Mr. Salvini made a number of statements on his social media accounts that allegedly threaten the independence of the judiciary.

On 2 July 2019, the Minister of Interior wrote on Facebook that the decision “hurt Italy” and that he was “ashamed” of those who allow someone from abroad to come to Italy, disobey the laws and put the lives of Italian soldiers at risk.

In a direct webcast on Facebook, Minister Salvini allegedly referred to the decision adopted by the judge of preliminary investigations as a “political judgment” that allowed the liberation of a “criminal”, and called for the reform of the judiciary in Italy. He also allegedly pleaded the judge, referred to as a “leftist”, to reconsider her decision.

In a series of tweets, Mr. Salvini said that the ruling did not “make honour to Italy” and that judges who wanted to do politics had to “take off their robes and stand for elections”. Referring to the reform of the judiciary he proposed, he said that the criteria for selecting the judges should be reviewed “because this is not the justice that is useful for a country that wants to grow.”

During the question time at the Chamber of Deputies, broadcasted live on Salvini’s Facebook account, the Minister of Interior said that judges should “apply, not disregard, the law”, and that a judge who does not intend to apply the law “should take off the robe and become a candidate for the Democratic Parliament”.

On Twitter, Mr. Salvini also made statements that allegedly undermine the principle of presumption of innocence. He declared that he expected the judiciary to impose “severe penalties” to those who threaten the lives of Italian soldiers and disregard Italian legislation. In a separate tweet, Mr. Salvini stated that an order of expulsion for the “criminal captain” was ready because “she is dangerous for national security”.

On 3 July 2019, the National Association of Magistrates issued a press statement to point out that judges have a duty to interpret the law in accordance with the Constitution and international law standards, and that contemptuous comments towards a judicial decision “are likely to fuel a climate of hatred and aversion, as demonstrated by the numerous posts containing insults and threats against the judge of preliminary investigations of Agrigento”. The National Association of Magistrates decried that whenever a judge adopts a decision that the Minister of the Interior does not like, he or she “is immediately accused of doing politics”.

The National Association of Magistrates also pointed out that the prospect of a reform of the judiciary aimed at selecting magistrates so as to ensure that they adopt decisions in accordance with the will of the political majority of the moment “is extremely serious”.

The Italian Minister of Justice reportedly supported the position of the National Association of Magistrates. In a press interview, he declared that “judgments must be respected”, and that it is inappropriate for a politician to tell a judge to take off his robe and run for office, even if he disagrees with the content of the judgment.

Without prejudging the accuracy of the information received, concern is expressed at the arrest of and the criminal investigations against Carola Rackete. These actions appear to be directly linked to her peaceful work protecting the rights of migrants, in particular their fundamental right to life, and may deter humanitarian organisations from continuing their work rescuing migrants in distress at sea. We reiterate our concerns at the continued use of legislative measures to criminalize search and rescue operations carried out by civil society organisations in the Mediterranean, as well as at the intensification of the climate of hostility and xenophobia against migrants in Italy, reflected in the aforementioned threats made against Carola Rackete and the judge who released her.

Further concern is expressed at the personal attacks carried out by the Minister of Interior against the judge who released the Sea-Watch captain. If confirmed, such attacks would constitute a serious breach to the principle of judicial independence. Their effects might go far beyond the case adjudicated by the judge of preliminary investigations of Agrigento, since other judges may be deterred from adjudicating on similar matters before them impartially, on the basis of facts and in accordance with the law. Furthermore, some of the declarations made by the Minister of the Interior may also constitute a breach of the right to presumption of innocence, and may have the effect of undermining the outcome of criminal proceedings in politically-sensitive cases that may be brought before judicial authorities in the future.

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 comments which you may have on the above mentioned allegations.
2. Please provide information on the legal and factual basis of the arrest and criminal investigations against Ms. Carola Rackete, and explain how these are compatible with international human rights law.
3. In the event that your Excellency's Government has been informed about the threats of rape and death made against Ms. Carola Rackete, please provide information on the measures taken to ensure her safety and respect for her physical and psychological integrity.
4. Please provide detailed information on the remarks made by the Minister of Interior on his social media accounts, and explain how they may be deemed compatible with existing international and regional standards relating to judicial independence and the separation of powers between different branches of the State.
5. Please provide detailed information on the measures that your Excellency's Government intends to take to express full support for the independence of the judiciary and for the decisions adopted by individual judges. Please also provide information on the measures State authorities intend to put in place to ensure that such attacks are not repeated in the future.
6. Please provide detailed information on the constitutional and legal guarantees to protect and promote the independence of the judiciary in Italy, including legal remedies available to judges who may become victims of politically-motivated attacks perpetrated by representatives of the legislative or executive branches of power.
7. Please provide information on measures taken to ensure that all human rights defenders, including all those who work and advocate for the rights of migrants, can carry out their legitimate professional duties and activities without fear of reprisals, physical violence or other forms of intimidation and threats.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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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 I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

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## **Annex**

### **Reference to international human rights law**

The independence of the judiciary is enshrined in a number of international and regional human rights treaties to which Italy is a party, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Both instruments provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. The country's adherence to these treaties means that it must, *inter alia*, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.

As a member State of the European Union, Italy is also bound to respect and implement European Union treaties and the values they enshrine, including respect for the rule of law and human rights (art. 2 of the Treaty on the European Union). Article 47 of the European Union Charter of Fundamental Rights, which is binding on Italy, reflects fair trial requirements relating to an independent and impartial tribunal previously established by law.

In its General Comment No. 32 (2007), the Human Rights Committee noted that the requirement of independence refers, in particular, to the procedure for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and the legislature. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal (para. 19).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the Basic Principles on the Independence of the Judiciary. The Principles provide, *inter alia*, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

The Special Rapporteur on the independence of judges and lawyers stressed on a number of occasions that the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence. Outside these cases, the only remedy for "wrong decisions" adopted by judges is the overruling or modification of their decisions through the appeal process.

In a recent report on national judicial councils (A/HRC/38/38), the Special Rapporteur on the independence of judges and lawyers highlighted the essential role that judicial councils play in guaranteeing the independence and the autonomy of the judiciary, and included a number of recommendations relating to the establishment, composition and functions of judicial councils aimed at ensuring the independence of such bodies and their effectiveness in the discharge of their functions as guarantors of judicial independence.

The Council of Europe's Recommendation on judges: independence, efficiency and responsibility states that "[i]f commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal" (CM/Rec(2010)12 , para. 18).

In its Opinion No. 18 (2015) on "The position of the judiciary and its relation with the other powers of state in a modern democracy", the Consultative Council of European Judges (CCJE) has affirmed that "[a]nalysis and criticisms by one power of State of the other powers should be undertaken in a climate of mutual respect". Unbalanced critical commentary by politicians "is irresponsible and can cause serious problems", since it can undermine public trust and confidence in the judiciary and could, in an extreme case, amount to an attack on the constitutional balance of a democratic State". In particular, the CCJE has stressed that executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by physical attacks or intimidations directed at members of the judiciary, and that "politicians must never encourage disobedience to judicial decisions, let alone, as it has happened in certain states, violence against judges".

The right to presumption of innocence is enshrined, inter alia, in article 14, para. 2, of the ICCPR and Article 6, para. 2, of the European Convention on Human Rights. In its General Comment No. 32 (2007), the UN Human Rights Committee has affirmed that "[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused."

We would also like to refer your Excellency's Government to 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. 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.

Furthermore, we would like to bring to the attention of your Excellency's Government article 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders, which provides that the State shall take all necessary measures to ensure the



protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would further like to refer to Human Rights Committee General Comment no. 35 which states that the right to personal security obliges States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.

Moreover, we refer to paragraph 40 (b) of General Comment No.35 of the Committee on the Elimination of Discrimination against Women, which notes that States should provide appropriate and accessible protection mechanisms to prevent further or potential violence, without the precondition for victims/survivors to initiate legal actions. We would further like to refer to the report of the Special Rapporteur on violence against women, its causes and consequences, on online violence (A/HRC/38/47), in which she recommends that States, in accordance with the principle of due diligence, address new forms of online violence against women and girls as human rights violations that are interrelated with the broader framework of discrimination against women and girls, and that internet intermediaries uphold women's human rights standards.

We would also like to recall that humanitarian services play a central role in preventing migrants' and refugees' unlawful deaths. Detering 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.