

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE:  
AL ITA 3/2020

20 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 35/15, 34/21, 43/30, 35/5 and 41/17.

In this connection, we would like to bring to your attention information we have received concerning the **adoption of Inter-ministerial Decree n. 150 of 7 April 2020 and the decision to close the country's ports as a measure to fight against the spread of COVID-19; as well as the alleged failure to assist and/or to coordinate or to engage in coordinating assistance in the rescue of a rubber boat on 15 April 2020.** Please note that a letter expressing similar concerns is being sent to the Government of Malta.

According to the information received:

The Inter-ministerial Decree n. 150 of 7 April 2020 adopted by the Italian Minister of Infrastructure and Transport, in conjunction with the Ministers of Foreign Affairs, Interior and Health, established that during the health emergency relating to the coronavirus pandemic, Italian ports will no longer ensure the necessary requirements to be classified as "Place of Safety", under the definition of the Hamburg Convention on search and maritime rescue, for cases of rescue carried out by naval units flying a foreign flag, outside the Italian search and rescue (SAR) area.

The Decree was preceded by the closure of Italy's borders, including ports, on 28 March 2020

On 6 April 2020, the German authorities addressed a letter to civil society search and rescue organizations based in Germany, including Médecins sans Frontières (MSF) and Sea Watch, calling on them not to resume rescue activities in the Mediterranean Sea, as they will not be allocated a place of safety for disembarking rescued people.

On 10 April 2020, following a meeting with Libyan, German and Italian ambassadors to Malta, the Ministry for Foreign and European Affairs and the Ministry for Home Affairs, National Security and Law Enforcement of Malta stated that Malta would no longer accept or offer a safe place to irregular migrants and that it could not guarantee rescuing lives at sea.<sup>1</sup>

On 15 April 2020, a rubber boat in distress with about 63 people on board, including women and three children, that had previously fled Libya (Garabulli), received assistance by the Maltese Armed Forces<sup>2</sup> only after having been left days at sea, between the Lybian and the Maltese SAR, in spite of multiple distress calls allegedly sent to the Maritime Recue Coordination Centres (MRSCC) of Italy, Malta, Libya and Tunisia. Five people reportedly died and seven went missing. In addition, once rescued, the survivors were returned to Tripoli.

It is reported that also the European Union (EU) had been aware of the situation of the boat while it was in the Libya's SAR, as the EU flew its aircrafts over the area<sup>3</sup>.

Most recently, on 21 and 22 June 2020 respectively, rescue vessels Sea-Watch 3 and Mare Jonio were allowed to safely disembark close to 300 migrants in Sicily. These arrivals reportedly were the first of their kind since the outbreak of the coronavirus pandemic.

While we do not wish to prejudge the accuracy of the information received, we wish to express concern at the Inter-ministerial decree mentioned above and the decision to close the ports which, insofar as it may result in preventing people from seeking safety and asylum, may be in contravention of the right of everyone to life, as set forth in Article 3 of the Universal Declaration of Human Rights (UDHR); as well as in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy in 1978; and in violation of the international legal principle of non-refoulement, as codified in article 3 of the Convention against Torture (CAT).

We acknowledge that States have a sovereign responsibility to manage their borders. However, we stress that they need to do so in accordance with international human rights and refugee law, ensuring continued access to protection at borders, including sea borders. Denial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk. The principles of non-refoulement, the prohibition of arbitrary detention and of collective expulsion must always be respected in any response to the COVID-19 pandemic. Measures taken to protect public health and to limit COVID-19 transmission must be non-discriminatory,

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<sup>1</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/10/pr200650en.aspx>

<sup>2</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/15/pr200673en.aspx>.

<sup>3</sup> Ibid.

necessary, proportionate, subject to regular review, and reasonable in line with international law<sup>4</sup>.

Furthermore, in relation to the reported incident of 15 April 2020, we wish to recall that, pursuant to international maritime and human rights law, Italy is under an obligation to respond promptly and effectively to any situation of distress at sea of which it may become aware. The obligation to coordinate search and rescue operations may arise also when the distress situation occurs outside the Italian search and rescue region, at least until when coordination can be handed over to another State willing and able to assume responsibility in a manner compliant with maritime and human rights law.

The Special Rapporteur on extrajudicial, summary or arbitrary executions acknowledges that Protection on the high seas raises specific challenges, as a State's human rights obligations are typically bounded by its territorial limits or its jurisdiction or control over an area or person. However, even though such areas are outside the territorial jurisdiction of coastal States, the high seas impose another duty, the duty to provide an "adequate and effective" search and rescue service, as found in three Maritime Conventions. Rescue must be provided "regardless of the nationality or status" of the person in distress or the "circumstances in which that person is found". The intent of these treaties is to create a system to rescue all vessels in distress.

This is why, as noted by the UN High Commissioner for Human Rights, claims that distress calls to relevant Maritime Rescue Coordination centres have gone unanswered or been ignored, seriously calls into question the commitment of the States concerned to saving lives and respecting human rights<sup>5</sup>.

In Libya, the UN has repeatedly reported widespread, gross human rights violations against migrants by a range of actors, including smugglers, parties to the ongoing conflict in Libya, the Libyan Coast Guard and the Department for Combatting Illegal Migration. Interceptions of migrant boats by Libyan coast guards have involved

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- <sup>4</sup> United Nations High Commissioner for Refugees (UNHCR), COVID-19: Access Challenges and the Implications (27 April 2020): <https://reliefweb.int/sites/reliefweb.int/files/resources/COVID%2019%20-%20Access%20Challenges%20and%20Implication%20of%20Border%20Restrictions%20%28UNHCR%20and%20IOM%29.pdf>; UNHCR, Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic (9 April 2020): <https://data2.unhcr.org/en/documents/download/75453>; UNHCR, The COVID-10 crisis: Key protection messages (31 March 2020): <https://data2.unhcr.org/en/documents/download/75555>; UNHCR, Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response (16 March 2020): <https://www.refworld.org/docid/5e7132834.htm>; International Organisation for Migration (IOM), COVID-19 Emerging immigration, consular and visa needs and recommendations (16 May 2020): [https://www.iom.int/sites/default/files/documents/issue\\_brief\\_2\\_-\\_ibm\\_052020r.pdf](https://www.iom.int/sites/default/files/documents/issue_brief_2_-_ibm_052020r.pdf); IOM, COVID-19: Identification and monitoring of emerging immigration, consular and visa needs (30 April 2020): [https://www.iom.int/sites/default/files/issue\\_brief\\_-\\_ibm\\_042020.pdf](https://www.iom.int/sites/default/files/issue_brief_-_ibm_042020.pdf); Office of the High Commissioner for Human Rights: COVID-19 and the human rights of migrants: Guidance: [https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance\\_COVID19\\_Migrants.pdf](https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf)
- <sup>5</sup> Press briefing note on Migrant rescues in the Mediterranean - Spokesperson for the UN High Commissioner for Human Rights, 8 May 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25875&LangID=E>

actions that may constitute arbitrary killings. The International Criminal Court is considering “carefully examining the feasibility of opening an investigation into migrant-related crimes in Libya”.

We have repeatedly stressed that returning migrants to Libya or intercepting them in High Seas and demanding that they be “rescued” by Libya violate international human rights obligations, including the obligation to protect life against arbitrary killings, the prohibition against torture, and the obligation to protect against trafficking. We therefore reiterate our calls for a moratorium on all interceptions and returns to Libya, along with the High Commissioner for Human Rights<sup>6</sup>. We also stress that, despite COVID 19, SAR operations should be maintained and swift disembarkation ensured in a port of safety.

We are also concerned that humanitarian search and rescue vessels, which usually patrol the central Mediterranean area, may be prevented or obstructed from supporting migrants in distress.

As highlighted by the UN Special Rapporteur on extrajudicial, summary or arbitrary killings, civil society plays a central role in preventing migrants’ and refugees’ unlawful deaths. By deterring the services provided by civil society through their criminalization or other measures, States violate their obligation to prevent, combat and eliminate arbitrary killings and the deprivation of life. 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. 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<sup>7</sup>.

Under international human rights law, the absolute right to life entails a negative obligation on the State not to engage in acts that would jeopardize the enjoyment of that right. The prohibition, criminalization or impediment of humanitarian actions such as life-saving search and rescue operations violate Italy’s obligation to respect the right to life. We wish to remind your Excellency that any death linked to such prohibition would constitute an arbitrary deprivation of life. When the State is not 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 prevent it<sup>8</sup>. 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

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<sup>6</sup> Ibid.; and Oral update of the United Nations High Commissioner for Human Rights on Libya pursuant to Human Rights Council resolution 40/27:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25973&LangID=E>

<sup>7</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions, Saving lives is not a crime (A/73/314): <https://undocs.org/A/73/314>

<sup>8</sup> Ibid.

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<sup>9</sup>.

We emphasize that acts prohibiting or otherwise impeding humanitarian services violate State's obligation to respect the right to life. Any death that may be linked to such prohibition would constitute an arbitrary deprivation of life<sup>10</sup>.

Therefore, in light of the above, and as already noted, on different occasions, by the Special Rapporteur on extrajudicial, summary or arbitrary executions, we wish to reiterate that, as long as migrants and refugees who transit through or are returned to Libya are at risk of gross human rights violations, including arbitrary killings, Italy must provide search and rescue on the Mediterranean, uphold the prohibition on refoulement and ensure that NGOs can contribute fully to this end<sup>11</sup>.

We therefore echo the concerns expressed by the Council of Europe (COE) Commissioner for Human Rights on 16 April 2020 in relation to measures and practices adopted in Italy and Malta, which have led to the closure of ports to NGOs' vessels carrying rescued migrants, and to the discontinuation of activities to co-ordinate rescue operations and disembarkation of those in distress.

As noted by the COE's Commissioner, these have further aggravated existing gaps in SAR operations in the Central Mediterranean. The COE's Commissioner emphasized that the COVID-19 crisis cannot justify knowingly abandoning people to drown, leaving rescued migrants stranded at sea for days, or seeing them returned to Libya where they are exposed to grave human rights violations.

Furthermore, the COE's Commissioner, noted that States need to seek constructive co-operation with civil society, especially NGOs that engage in search and rescue activities and those that monitor and defend the human rights of migrants at sea<sup>12</sup>.

While acknowledging the two most recent disembarkations of late June mentioned above, we nevertheless reiterate the COE Commissioner's call on the States concerned to promptly respond to any call of distress at sea, deploy the necessary rescue

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> See OL ITA 3.2017:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23262>; and Italy-EU search and rescue code could increase Mediterranean deaths, UN expert warns:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21971&LangID=E>

<sup>12</sup> Ibid.

capacity in a timely manner, and effectively co-operate to identify a place of safety where survivors can be disembarked<sup>13</sup>.

Within this context, we wish to emphasize that all credible allegations of delay or non-response to distress calls should be effectively investigated.

In connection with the above alleged facts and concerns, please also 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 mandate 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 allegations.
- 2) Please explain how Inter-ministerial Decree n. 150 of 7 April 2020 and the Italian Government's decision to close the ports is compatible with Italy's international human rights obligations. In particular, please explain how the measure is necessary, proportional and non-discriminatory.
- 3) Please explain how, in practice, the Italian Government envisages to continue to carry out search and rescue operations in light of the Inter-ministerial Decree n. 150, also considering the decision of the Government of Malta to close its ports and given that Libya cannot be considered as a safe port for disembarkation. Please also explain how distress calls are being handled and whether any investigation has been launched into the allegations that such calls may be ignored or left unanswered.
- 4) Please explain whether, at any time, Italian authorities have been informed of the boat in distress of 16 April 2020, as reported above, and what steps have they taken to rescue it or to coordinate or engage in coordination of rescue operations. Please explain if any investigation has been launched in

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<sup>13</sup> COE's Commissioner for human rights, Statement: States should ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis: <https://www.coe.int/en/web/commissioner/-/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-during-the-covid-19-crisis>; COE's Commissioner for Human Rights, Letter: Commissioner urges Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress: [https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset\\_publisher/5cdZW0AJBML1/content/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2F%2Fcovid-19%3Fp\\_p\\_id%3D101\\_INSTANCE\\_5cdZW0AJBML1%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1](https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset_publisher/5cdZW0AJBML1/content/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2F%2Fcovid-19%3Fp_p_id%3D101_INSTANCE_5cdZW0AJBML1%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1);

order to ascertain the details and the possible responsibilities in relation to the incident.

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 accept, Excellency, the assurances of our highest consideration.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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

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

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; and Article 6 (1) of the International Covenant on Civil and Political Rights provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

In this regard, we would like to highlight that 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 their 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" (ICCPR/C/21/Rev.1/Add.13 (2004), Para. 10).

We would also like to recall that Article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination 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.

Additionally, we would like to draw 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, pursuant to 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 this regard, we recall that, in his report to the General Assembly (A/73/206), the Independent Expert on human rights and international solidarity specifically identified the refusal of docking rights to vessels carrying out SAR operations, among other acts targeting migrants and those who would act to support them, as a failure of international solidarity and cooperation and a human rights violation.

We wish to remind that the prohibition of refoulement is explicitly included in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. 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).

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 abroad 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.