

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 violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
AL ITA 5/2020

1 October 2020

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 violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/16, 44/11, 43/6, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the criminalisation of human rights defenders carrying out search and rescue missions in the Mediterranean Sea**.

Since 2014 up to 23 September 2020, the IOM's 'Missing Migrants' project has recorded the deaths of 16,069 migrants in the Mediterranean Sea.¹

The Iuventa is a search and rescue vessel that engaged in search and rescue missions off the Libyan coast between July 2016 and August 2017, rescuing over 14,000 people in distress at sea. The Iuventa was navigated by a crew composed of dozens of volunteers from different parts of the world that rotated over time. Some 200 volunteers took part in these search and rescue missions as crew members, including: Hendrik Simon, [REDACTED], Laura Martin, Miguel Castilho Soares Duarte, Ulrich Tröeder, [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

Ms. **Carola Rackete** is a human rights defender. She was formerly the shipmaster of the search and rescue vessel Sea-Watch 3, a vessel belonging to the German organisation Sea-Watch, that has operated search and rescue missions in the Central Mediterranean since 2015.

Several communications have previously been addressed to your Excellency's Government by various Special Procedures mandate holders concerning defenders of the rights of people on the move and the situation of migrants and asylum seekers. These have included JAL ITA 6/2019, expressing concern over the arrest and subsequent release of Ms. Rackete and the opening of criminal investigations against her, JAL ITA 4/2019 on the Directive for the unified coordination of surveillance activities of maritime borders and fight against illegal migration, and JAL ITA 2/2018 on the criminalization of migrant rights defenders, the obstruction of their work and smear campaigns against them.

¹ <https://missingmigrants.iom.int/region/mediterranean?>

While we appreciate the responses of your Excellency's Government to all of the above-mentioned communications, we would like to make reference to those submitted in response to JAL ITA 6/2019 and JAL ITA 2/2018, wherein concerns were raised as to, among other things, the situation of Ms. Rackete, and that of crew members of the Iuventa, respectively. In the brief response of your Excellency's Government to the communication referring to Ms. Rackete, dated 11 October 2019, it was stated that the Italian Authorities would provide information about all relevant proceedings in Ms. Rackete's case once available. We regret that despite this commitment, no further information has been received concerning her case. We also regret that the response of your Excellency's Government failed to address concerns raised in the relevant communication as to threats received by Ms. Rackete and the provision of a safe and enabling environment for those defending the rights of migrants in Italian territory, issues which were outlined as serious concerns in the communication. A response was received by your Excellency's Government to the communication referring to the Iuventa on 20 May 2019. While we appreciate the detailed description of the legislative and administrative landscape in Italy concerning protection for refugees, the prohibition of *refoulement* and the obligation of protection of victims of trafficking, among other points, we regret that your Excellency's Government did not engage with the concerns raised in the connected communication as to the criminalization of migrant rights defenders involved in search and rescue operations in the Mediterranean Sea, including crew members of the Iuventa.

According to the information received:

Concerning crew members of the Iuventa

In September 2016, a criminal investigation was opened against some of the Iuventa crew members following alleged irregularities in their search and rescue operations. The information forming the basis for these alleged irregularities was reportedly unsubstantiated and contradictory. It was submitted to the Italian Foreign Intelligence Service, the Italian police and politicians from the Lega Nord political party by private security guards on other search and rescue vessels operating in the Mediterranean Sea.

On 4 May 2017, the Iuventa was involved in two search and rescue operations involving 75 persons in distress at sea. During this operation, they received an order from the Migrant Rescue Coordination Centre (MRCC) in Rome to meet an Italian Coastguard vessel at a meeting point in the direction of the port of Lampedusa. Having disembarked 70 of the individuals in distress to larger search and rescue boats, the Iuventa turned towards the meeting point with 5 rescued persons on board. In order to respond to the MRCC's order, the Iuventa was obliged to ignore several emergency calls from people in distress at sea.

On 5 May 2017, as the Iuventa approached the designated meeting point, the MRCC cancelled the arranged meeting and ordered the vessel to continue to the port at Lampedusa.

On 6 May 2017, the Iuventa reached the port at Lampedusa. Upon docking, a recording device was covertly installed on the bridge of the vessel. This device began recording conversations of the vessel's crew on the same date.

On 2 August 2017, acting upon an order from the MRCC, the Iuventa vessel came to the port of Lampedusa to allow two people aboard to disembark. Upon arrival, Italian authorities seized the vessel as an alleged pre-emptive measure to prevent criminal acts, presenting a seize and search warrant signed by the Italian prosecutor in Trapani, Sicily. The stated basis for the warrant was the possible aiding and abetting of unlawful immigration. At the time of the seizure, the personal electronic devices of the Iuventa's Head of Mission were confiscated. This was the first occasion upon which the Iuventa crew were informed of a criminal investigation against them. The vessel has been impounded since this date and remains at the port in Trapani, with two appeals against its seizure dismissed.

On 20 June 2018, the Italian prosecutor in Trapani issued an official notification of an investigation against 22 persons, including crew members of the Iuventa, for “aiding and abetting in the commission of a crime” (illegal immigration) under article 12 of Law No. 286/1998 on international waters and national territory, read in conjunction with articles 81 and 110 of the Criminal Code. These crimes carry potential prison sentences of between 5 and 20 years and a fine of €15,000 for each person alleged to have been aided in entering Italy by those accused, according to Art.12 of the Consolidated Immigration Act.

Following this notification, legal documents detailing the full names of all of those targeted under the investigation were leaked to the Italian media. Subsequently, a smear campaign against them began to appear in the press. This coincided with the beginning of threats being made against them by far-right groups and campaigns of online trolling.

On 18 June 2019, a motion for the dismissal of this preliminary criminal investigation was filed on behalf of the accused Iuventa crew members in Trapani. This motion was taken note of by the presiding judge, however a formal decision in response to it was not made.

At the time of drafting this communication, the proceedings against the Iuventa crew members remain pending and without a formal decision by the presiding judge on the motion of dismissal. Also, the rescue ship Iuventa remains impounded in the port of Trapani after two appeals against the seizure of the vessel were rejected.

Concerning Carola Rackete

On 12 June 2019, the Sea-Watch 3, a search and rescue vessel operated by the NGO Sea Watch and captained by Ms. Rackete from early June 2019 onwards, rescued 53 persons in distress in the Mediterranean Sea about 47 miles off the coast of Zawya, Libya. On the same date, Ms. Rackete contacted the authorities of Italy, Libya, Malta and the Netherlands - under whose flag the Sea-Watch 3 sailed - about the persons in distress, informing them of the vessel's rescue

operation and citing its necessity under international law. She furthermore requested the authorities to indicate a Place of Safety at which the persons rescued could be disembarked.

On 14 June 2019, Ms. Rackete informed the Italian authorities that the Sea-Watch 3 was travelling towards Italian territorial waters on the basis of the identification of the port at Lampedusa as the closest Place of Safety for the disembarkation of the rescued persons. This decision was made in accordance with international maritime and human rights law, which excluded Tripoli, Libya as a Place of Safety given the well-founded threat of persecution or ill-treatment of the rescued persons there.

On 14 June 2019, a new security decree, Law Decree no. 53/2019 entered into force after its publication in the Official Gazzete. On 15 June, and on the basis of this decree, the Italian Ministry of the Interior signed an inter-ministerial order preventing the Sea-Watch 3 from stopping in Italian territory or entering it in transit. Also on 15 June, the *Italian Coast Guard* permitted ten rescued persons to disembark the Sea-Watch 3 onto Italian territory after a medical evaluation of their condition aboard the vessel. Following their arrival on shore, the Public Prosecutor's Office in Agrigento, Sicily, opened a criminal investigation against unknown persons for aiding and abetting illegal immigration.

On 26 June 2019, with the Sea-Watch 3 now having been stationary at sea for 15 days, Ms. Rackete wrote to the Italian Authorities at the port of Lampedusa stressing the deterioration of conditions on-board the vessel and signalling her intention to enter the port, being no longer capable of guaranteeing the safety of those on board if the vessel were to remain at sea.

On 28 June 2019, the Sea-Watch 3 was stopped on its way to the port at Lampedusa by a vessel of the Italian *Guardia di Finanza*. At the same time, following a complaint by the *Guardia di Finanza*, Ms. Rackete was added to the register of persons under investigation by the Public Prosecutor's Office in Agrigento for aiding and abetting illegal immigration and for violating Article 1099 of the Italian Code of Navigation for refusal to obey an Italian warship.

On 29 June 2019, the Sea-Watch 3 entered the port at Lampedusa, accidentally coming into contact with a *Guardia di Finanza* boat in the course of the manoeuvre. As soon as the boat was docked, Ms. Rackete was arrested by *Guardia di Finanza* officers. She was subsequently placed under house arrest. On the same date, the Sea-Watch 3 was seized within the framework of the criminal proceedings initiated against Ms. Rackete.

On 2 July 2019, Ms. Rackete's house arrest was ruled unlawful by the Judge for Preliminary Investigations of Agrigento who ordered her immediate release. The Judge ruled her actions to have been carried out in order to fulfil a duty to rescue persons in distress at sea. This decision was followed by a number of public statements, including by the former Minister of Interior Mr. Matteo Salvini, targeting the judge in question and Ms. Rackete with a series of unfounded accusations.

On 12 July 2019, an administrative order, separate to the previous criminal order connected to the proceedings against Ms. Rackete, was made for the seizure of the Sea-Watch 3.

On 17 September 2019, the Public Prosecutor of the Court of Agrigento ordered the release of the Sea-Watch 3 from the seizure order made against it in connection with the criminal proceedings against Ms. Rackete. The vessel nonetheless remained docked at the port of Licata, Sicily, with the administrative order over it still in vigour.

On 21 September 2019, Sea-Watch submitted an opposition complaint against the administrative seizure to the local representative of the Ministry of Interior competent for the administrative measure. No response was received.

On 9 October 2019, with the 10-day timeframe prescribed by law for the competent authorities to respond to the above-mentioned opposition complaint, the Sea-Watch 3 communicated its intention to leave the port at Licata. No response was received.

On 28 October 2019, the Sea-Watch 3 once again communicated its intention to leave the port. A response was received by the Italian Coast Guard, denying the vessel's request to depart. Following this, Sea-Watch lodged an urgent appeal with the Civil Court of Palermo, challenging the administrative seizure.

On 19 December 2019, the Civil Court of Palermo ruled that there was no legal basis for the Italian authorities to continue to detain the Sea-Watch 3 at the port of Licata.

On 17 January 2020, following an appeal by the public prosecution against the decision of the Judge for Preliminary Investigations of Agrigento, the Italian Supreme Court confirmed the original decision that Ms. Rackete should not have been arrested. In dismissing the public prosecution's appeal, the Supreme Court stated its consideration that the duty to rescue, as stipulated under the 1979 International Convention on Maritime Search and Rescue, is not fully fulfilled until those rescued are disembarked in a safe place. They further stated that the fulfilment of this duty by Ms. Rackete should have been considered by the *Guardia di Finanza* officials at the time of the arrest, and that on the basis of this consideration the arrest should not have been carried out. They also ruled that Ms. Rackete had not refused to obey an Italian warship, as the *Guardia di Finanza* boat relevant to this accusation could not be considered a warship given it was not commanded by an Italian Navy officer, and that Ms. Rackete had acted in a justified manner during the event in question, given the risks face by those aboard the Sea-Watch 3.

Despite the decision of the Supreme Court, the criminal proceedings against Ms. Rackete remain open. She faces charges of refusal to obey an Italian warship under Article 1099 of the Italian Code of Navigation for non-compliance with the prohibition to enter for transit or stop in Italian territorial waters, and of aiding and abetting illegal immigration under Articles 12(1) and 3(a) of

Legislative Decree 286/1998. She also faces a fine of between €10,000 and €50,000 under Article 12(6-bis) of Legislative Decree 286/1998 as amended by Law 53/201. Further to this, Sea-Watch also faces a fine of between €10,000 and €50,000 as a jointly liable party to the conduct of Ms. Rackete, given her role as captain of one of its vessels.

During the course of these events, as well as in their aftermath, Ms. Rackete has continuously been the subject of public statements by Italian political officials, in particular from former Minister Salvini, and has received threats, including death threats and threats of rape and sexual violence, and has been targeted online through sexist messages.

Without prejudging the accuracy of the information received, we express serious concern that the above-detailed allegations confirm the fears expressed in the previously sent communications concerning the crew of the *Iuventa* and Ms. Rackete. We further fear the information received indicates the continued criminalization of migrant rights defenders and the obstruction of their work saving lives in the Mediterranean Sea. That this appears to be continuing notwithstanding the previous engagement by various Special Procedures mandate holders with your Excellency's Government on the issue gives rise for further cause for concern. We fear that these cases are not disconnected, either from one another or from the communications addressed to your Excellency's Government on related issues, but rather that they together illustrate a pattern of obstruction of NGOs and human rights defenders working to protect lives in the Mediterranean Sea that has developed over a number of years. We express concern that this pattern has been accompanied by the conflation of the work of migrant rights defenders with criminality, and in particular human trafficking and that this has contributed to the creation of a hostile environment for their work, one in which serious threats and online harassment are issued and perpetuated with impunity. We are also particularly alarmed by the death threats and threats of rape and sexual violence received by Ms. Rackete, which amount to gender-based discrimination, and the lack of actions of your Excellency's government to identify and punish the authors of those threats.

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 allegations.
2. Please provide information on the legal and factual basis for the opening of legal proceedings against Ms. Rackete, and any updated information on these proceedings. In the event that your Excellency's Government has been informed about the threats made against Ms. Rackete, please provide information as to the measures that have been taken to ensure her safety.

3. Please provide information as the legal and factual basis for the opening of legal proceedings against some of the crew members of the Iuventa search and rescue vessel. Please include information as to the grounds for the continued retention of the Iuventa at the port in Trapani. In the event that your Excellency's Government has been informed about the threats made against some of the Iuventa's crew members, please provide information as to the measures that have been taken to ensure their safety.
4. Please provide detailed information on measures taken by your Excellency's Government to ensure that human rights defenders working and advocating for the rights of migrants and carrying out search and rescue operations in the Mediterranean Sea can carry out their work free from fear of reprisals of any kind.
5. Please provide information on measures taken by your Excellency's Government to eradicate and prevent online gender-based violence against women, including online threats of rape and sexual violence.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

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

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, with regard to the situation of migrants, Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978, provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of one's life. The Human Rights Committee, in its recently adopted General Comment no. 36 (CCPR/C/GC/36), confirmed that the right to life has crucial importance both for individuals and for society as a whole and that article 6 guarantees this right for all human beings, without distinction of any kind. This supreme right is not to be narrowly interpreted and includes acts and omissions that would cause any unnatural or premature death. Its protection thus requires that the State adopt positive measures, which are only discharged if individuals are protected by the State against violations of its own agents, and private persons and entities alike. Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility.

Further to this, we would like to refer 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.

We would also 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 recall the recommendations made in the Report of the former Special Rapporteur on the situation of human rights defenders in 2018, (A/HRC/37/51) which underline, inter alia, that States should ensure that migrant rights defenders are not threatened with and subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations and that States must ensure that domestic law and administrative provisions facilitate the work of all actors providing humanitarian assistance to, and defending the rights of, people on the move, including by avoiding criminalisation.

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.

We would like to recall the report by Special Rapporteur on violence against women (A/HRC/38/47), in which she highlighted that women human rights defenders receive online threats for their work, generally of a misogynistic nature, often sexualised and specifically gendered. She stressed that all forms of online gender-based violence are used to control and attack women and to maintain and reinforce patriarchal norms, roles and structures and an unequal power relationship. The Special Rapporteur recommended that States recognise online and ICT-facilitated violence against women as a human rights violation and a form of discrimination and gender-based violence against women, and that States clearly prohibit and criminalise it.

We would like to reiterate to your Excellency's Government the obligations enshrined in the International Convention on the Elimination of Discrimination against Women (CEDAW), ratified by Italy on 10 June 1985, in particular Article 7 which provides that States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasised that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. Today's rising fundamentalisms of all kinds and political populism, as well as unchecked authoritarian rule and uncontrolled greed for profit-making further fuel discrimination against women, intensifying the obstacles facing women human rights defenders. In addition to the risks of threats, attacks and violence faced by all human rights defenders, women human rights defenders are exposed to specific risks, such as misogynist attacks, gender-based violence (including sexual violence), lack of protection and access to justice as well as lack of resources. (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20938&LangID=E>)

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.