

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially women and children**

REFERENCE:  
AL ITA 7/2020

9 November 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 situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; 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 44/5, 43/16, 44/11, 43/6, 43/20 and 44/4.

In this connection, we would like to bring to your attention information we have received concerning the **detainment of the search and rescue vessel, the Sea-Watch 4 in Italy on 19 September 2020 and other incidents of obstruction of search and rescue capacity by the Italian authorities.**

Several communications have previously been addressed to your Excellency's Government by various Special Procedures mandate holders concerning the obstruction of search and rescue capacity including through impounding of vessels and criminalisation of defenders of the rights of people on the move and the situation of migrants and asylum seekers. These have included **JAL ITA 5/2020** on the alleged criminalisation of human rights defenders carrying out search and rescue missions in the Mediterranean Sea, **JAL ITA 3/2020** concerning the closure of Italy's ports and the alleged failure to assist and /or to coordinate or to engage in coordinating assistance in the rescue of a rubber boat in April 2020, **JAL ITA 6/2019**, expressing concern over the alleged arrest and investigations against a human rights defender, **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 alleged criminalization of migrant rights defenders, the obstruction of their work and smear campaigns against them.

While we appreciate the responses of your Excellency's Government to four of the above-mentioned communications, we reiterate the observations on the replies in relation to **JAL ITA 6/2019** and **JAL ITA 2/2018** contained in JAL 5/2020. With regard to the reply to **JAL ITA 4/2019**, we recognise the complexity of the situation and welcome assurances that the directives are not meant to sanction or criminalize rescue at sea, however we remain concerned that this is the *de facto* impact of the Directive. We remind that deliberate intent on the part of the State is not required for a deprivation of life to be deemed arbitrary and that, in deterring lifesaving services through their criminalization or other measures, States violate their obligation to prevent, combat and eliminate arbitrary killings and the deprivation of life. With regard to the reference to European Union legislation, we note that the European Union has conceded that interfering with the provision of humanitarian aid, and thereby failing to

assist those in need, would violate the Charter of Fundamental Rights of the European Union. With regard to the identification of potential victims of trafficking we are concerned at the interpretation of the international norms that Italy had made in their response to JAL 4/2019, in particular paragraph 27, by implying that payment of a transport fee to a smuggler is incompatible with a situation of trafficking in persons.

With regards to the reply to **JAL ITA 3/2020**, we remain concerned that Decree **150/2020** appears to be discriminatory as it has been applied only to NGO Search and Rescue vessels and not to commercial vessels who have rescued people at sea. While we recognise the need to take measures to prevent the spread of COVID-19, we note that this objective could be achieved by other more proportionate measures, such as applying the same preventive protocols to rescued refugees and migrants as to other individuals entering Italy, while still respecting their rights to life, to seek asylum and to be protected against refoulement. We further highlight that imposing a blanket measure to prevent admission of refugees or asylum-seekers and denial of access to territory without measures in place to protect against refoulement is discriminatory and cannot be justified on the grounds of any health risk. Regarding the use of quarantine ships, we welcome that the Minister of Interior has indicated that minors should be transferred to onshore reception centers and that it has halted the transfer of people with positive COVID-19 results from reception centers to quarantine ships. However, we remain concerned that the use of quarantine ships may limit the access of refugees and migrants to protection services, such as those for victims of sexual and gender-based violence, and may pose a risk to the mental health of those on board while the level of access to health care is not clear.

According to the information received:

#### Detainment of the Sea-Watch 4

On 19 September 2020, the Italian Coast Guard decided to detain the Sea-Watch 4 search and rescue ship in the port of Palermo.

After an 11-hour inspection of the Sea-Watch 4 by the Italian port authorities, the ship was issued with a detention order on the basis of “irregularities of a technical nature such as to compromise not only the safety of the crews but also of the people who were and who could be recovered on board.”

The irregularities noted by the Italian coastguard ranged from a Stability Information Booklet not being translated into English, to several non-functioning lights, all of which can be repaired within a short timeframe and are being addressed.

Other irregularities are impossible to address and are based on a distorted interpretation of maritime law provisions. For example, one of the irregularities given as grounds for detention is the fact that the total number of persons for which life-saving appliances are provided on the ship are 30, while in its recent mission Sea-Watch 4 carried 354 people, following three rescue operations and one trans-shipment from another vessel, which took place in August 2020.

However, this assessment reflects a disingenuous interpretation of the maritime legal framework and disregards the fact that rescue operations, as per the duty

of ship masters to provide assistance to people in distress at sea enshrined in the International Convention on Maritime Search and Rescue, are considered force majeure situations and thus “persons who are on board a ship by reason of force majeure or in consequence of the obligation laid upon the master to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to a ship of any provisions of the present Convention” (International Convention for the Safety of Life at Sea, Article IV, (b)). The assessment is particularly problematic given the Sea-Watch 4 was instructed to take on board more people from the vessel in question and that Italian coast guard vessels were also on scene and evacuated forty-nine vulnerable people, with the Sea-Watch 4 taking onboard the 152 remaining survivors.

Furthermore, in the “Additional Comments” in their Inspection Report, the Italian port authorities state that “the ship is engaged in assisting migrants at sea while it is not certified for the intended service”. The flag state of the Sea-Watch 4, Germany, has confirmed that, from their point of view, the ship’s certification is in line with international and German regulations, as is its safety equipment. By requiring that the Sea-Watch 4 be certified as a rescue ship, Italian authorities exploit the fact that the ship’s flag-state, Germany, does not provide such a type of certification, which makes this irregularity impossible to rectify and effectively blocks the ship for an indefinite period.

The inspection is justified by the authorities under the category “overriding factors” of EU Directive 2009/16/EC, however, none of the factors listed in the directive cover “assistance to migrants at sea”. In fact, the category “assisting migrants at sea” is not covered in maritime law.

The detention order relies on a skewed interpretation of maritime law and safety regulations in order to obstruct Sea-Watch 4’s rescue operations at sea.

Such Port State Controls have been specifically used to target NGO search and rescue ships in a discriminatory way. Over the past six months, six civilian search and rescue vessels have been subjected to Port State Controls in Italian ports and have been detained in the immediate aftermath of the inspection, while commercial ships, which have also conducted rescues at sea, have not been subjected to the same level of scrutiny.

#### Detainment of other vessels

On 5 May 2020, the Alan Kurdi, operated by Sea-Eye was detained by Italian authorities in the port of Olbia in Sardinia after disembarking 150 people. On 6 May 2020, the Spanish-flagged Aita Mari, operated by Salvamento Marítimo Humanitario was also blocked. These two detainments took place in the context of the closure of Italian ports to search and rescue vessels with foreign flags. Blocking the two ships also resulted in the complete lack of search and rescue capacity in the Central Mediterranean between the beginning of May and the end of June, during which time several shipwrecks off the coast of Libya claimed the lives of over 100 people.

On 8 July 2020, the Sea-Watch 3 was detained. It was eventually permitted on 17 September 2020 to sail to Burriana, Spain for repairs but remains effectively blocked from returning to sea.

On 22 July 2020, the Ocean Viking of SOS MEDITERRANEE was also detained in Porto Empedocle after an 11-hour Port State Control. As has been the case for Sea-Watch 4, one of the grounds for detention of the Ocean Viking is the claim by the Italian authorities that “the ship has been carrying more persons than the number certified according to the Cargo Ship Safety Equipment Certificate.”

On 25 September 2020, it was reported that the Italian-flagged Mare Jonio operated by Mediterranea has also been effectively blocked in the port of Pozzallo after two of its rescue crew were denied access to the ship by port authorities, after the Public Prosecutor’s office of Ragusa had opened two legal proceedings against the ship’s captain and ship-owner for allegedly “failing to comply with the prescriptions ordered by the Authorities.”

On 9 October, Alan Kurdi was detained in the port of Olbia in Sardinia for the second time in six months.

#### Detainment of a humanitarian aircraft

On 8 September 2020, the humanitarian aircraft Moonbird, operated by Sea-Watch in partnership with the Foundation Humanitarian Pilots Initiative, was also grounded and issued with a prohibition of flight by the Italian authorities. The aircraft is one of the two civilian air assets used to monitor the situation in the Central Mediterranean Sea and relay information regarding boats in distress to authorities and NGO ships. The Italian Civil Aviation authority ENAC claims that Moonbird performs Search and Rescue activities in the Italian search and rescue area without the authorization of the competent authorities, therefore representing a threat to the safety of aerial navigation and endangering search and rescue operations carried out by state actors.

Since the end of the lockdown, the crews of Moonbird and the other aircraft, Seabird, flew 59 missions, sighting more than 3334 persons in distress, documenting severe human rights violations, such as non-assistance cases, situations of cooperation between European authorities and Libyan authorities. It is believed that the Italian authorities want to prevent reporting of the grave violations of human rights committed by European States on a daily basis.

#### Human cost of non-assistance at sea

This approach by the Italian authorities has resulted in further reduction of the, already limited, search and rescue capacity in the Central Mediterranean Sea and directly endangered the lives of people fleeing conflict, violence or extreme poverty.

A total of 473 lives have been lost so far in 2020. August registered the highest number of fatalities in the Central Mediterranean Sea so far this year, with 111 people reported dead or missing by the International Organisation for

Migration (IOM). In September, at least 73 people reportedly lost their lives in several shipwrecks off the coast of Libya, according to IOM.

Since Sea-Watch 4's detainment on 19 September 2020, two shipwrecks off the coast of Libya occurred on 25 September 2020, during which at least 34 people went missing or drowned. Another shipwreck that is presumed to have led to the death of at least 110 people was reported on 21 September 2020, but has not yet been confirmed by the United Nations. On 11 October 2020, 13 more people died, while 9 were reported missing after another shipwreck confirmed by IOM.

Individuals rescued by the Sea-Watch 4 prior to its detention indicated they had spent at last 3 days at sea, with no food or water and without receiving assistance. Many were in an extremely precarious physical condition, following long hours and, in some cases, days of being abandoned at sea. Many had fuel burns and intoxication, caused by the exposure to the mixture of saltwater and gasoline while on the rubber dinghies.

Sea-Watch 4 is required to operate because of the absence of state-led search and rescue capacity in the Central Mediterranean, in order to fill a gap and save lives.

While we do not wish to prejudge the accuracy of the information received, we wish to express concern at the alleged detainments of search and rescue vessels including the Sea-Watch 4 preventing them from operating, on the basis of discriminatory application of port state controls that 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 articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy in 1978.

We recognize that the aforementioned allegations are of concern to all the Member States of the European Union and to the EU itself, and that Italy's geographical location means that it is responding to a disproportionately high number of search and rescue operations compared to other EU member states while these ought to be a shared responsibility. We also acknowledge that European member States have largely failed to implement agreed policies with regard to the re-distribution of refugees and migrants across European states. We will thus communicate to the EU the aforementioned allegations and concerns, which we consider to be Italian and European.

We acknowledge that States should have in place port state controls to ensure the safety of navigation at sea. However, these should be applied in a non-discriminatory and non-arbitrary way. We are concerned that this is the latest allegation in a pattern of practices apparently aimed at preventing or obstructing humanitarian search and rescue vessels, which usually patrol the central Mediterranean area from supporting migrants in distress. Moreover, the Special Rapporteur on Torture noted in a 2018 report on migration, that arbitrarily exposing migrants to conditions of hardship, increased the risk of torture and ill-treatment (A/HRC/37/50, para 25).

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 neither the provision of support or assistance to migrants, nor the organisations or individuals who carry out such essential activities. We insist that saving lives is not a crime. 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>1</sup>.

The Special Rapporteur on trafficking in persons, analyzing States' obligations to identify and protect victims of trafficking during search and rescue operations also reaffirmed that Member States should ensure that national legal frameworks and policies as well as bilateral/multilateral cooperation uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international law and standards. They should also ensure that organizations and individuals who rescue or assist people on the move are not criminalized or otherwise punished for doing so.

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's Government 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>2</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 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>3</sup>

We emphasize that acts prohibiting or otherwise impeding humanitarian services violate a 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>4</sup>

Within this context, we also 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.

---

<sup>1</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>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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 provide information on the measures taken to ensure port state controls are applied in a non-discriminatory and non-arbitrary manner, equally to all vessels.
- 3) Please provide information on the steps taken to ensure search and rescue vessels and planes are not prevented or obstructed from operating in a discriminatory or arbitrary manner. Please provide information on whether any instructions have been given to port authorities regarding the treatment of NGO search and rescue vessels and if so, how these are compliant with Italy's international obligations.
- 4) Please provide information on Italy's current search and rescue capacity in the Central Mediterranean, as well as the capacity to detect migrants in vulnerable situations, in particular victims of trafficking, and their referral to appropriate services for early support.

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.

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 would like to inform your Excellency's Government that a copy of this letter will be sent to Germany and the European Union.

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Nils Melzer

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

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children



## **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 search and rescue 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 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).

We would also like to recall the obligations stemming from the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in particular article 6 regarding protection and assistance to victims. We would also like to recall the recommendations set forth by the Special Rapporteur on trafficking in persons in her report to the Human Rights Council in 2018, A/HRC/38/45 regarding identification and early support during search and rescue operations, in particular, the non-criminalization of organizations and individuals who rescue or assist people on the move, as well as recommendations regarding identification of vulnerabilities to trafficking in mixed migration flows and regarding search and rescue activities, facilitate such identification by creating safe and confidential spaces to carry out individual interviews. Such interviews should be performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support, also in order to separate potential victims from traffickers.

We recall as well the recommendations made by the Group of Experts against trafficking in human beings (GRETA), of the Council of Europe, regarding the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy in 2018. In paragraphs 285 and 286, GRETA raised concerns on the adoption of a Code of Conduct for NGOs undertaking activities in migrants' rescue operations at sea and urges the Italian authorities to review the Code of Conduct for NGOs undertaking activities on migrants' rescue operations at sea with a view to enabling the identification of victims of trafficking amongst migrants and refugees at sea and in ports.

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.

We would additionally 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 the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- and article 12, paragraphs 2 and 3, 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.