

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 and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 43/16, 44/11, 43/6 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the police search and seizure at the home of migrant rights defenders Lorena Fornasir and Gian Andrea Franchi.**

Ms. **Lorena Fornasir** is a 64 years old psychotherapist and migrant rights defender.

Mr. **Gian Andrea Franchi** is a 84 years old retired teacher and migrant rights defender.

Since 2015, both Ms. Fornasir and Mr. Franchi have been active in refugee and migrant support in Trieste, welcoming those arriving in the city and providing them with medicine, clothes, water and food. In 2019, they founded La Linea d'Ombra, a volunteer-led organisation focused on raising funds to provide for the basic needs of migrants in Italy and Bosnia.

According to the information received:

In the early morning of 23 March 2021, the home of Ms. Fornasir and Mr. Franchi, which also serves as the headquarters of La Linea d'Ombra, was raided by members of the Italian police. A warrant authorizing search and seizure on the premises was presented by the police, specifying Mr. Franchi's home, person, vehicle and property as the object of the raid, while also authorizing the search of any other persons present with Mr. Franchi at the premises.

The warrant further authorized the seizure of a wide range of items, including electronic devices and data, leading to the seizure of Mr. Franchi's personal phone and computer, along with three mobile phones belonging to La Linea d'Ombra. Ms. Fornasir's phone was also initially taken during the raid, before being returned to her after approximately 2 hours. As of the date of this communication, the items belonging to Mr. Franchi have not been returned to the human rights defender.

It is believed that the raid was carried out within the ambit of an investigation

opened against Mr. Franchi for aiding and abetting illegal immigration under article 12 of the 1998 Immigration Act, with the allegations against the human rights defender connected to his provision of aid, including accommodation for one night, to a family of migrants in Trieste in late July 2019.

While we do not wish to prejudge the accuracy of this information, we would like to express serious concern at the criminal investigation opened against Mr. Franchi, and the allegedly connected raid on the home of he and woman human rights defender

Ms. Fornasir, which we fear may represent the criminalization and stigmatization of their legitimate work aimed at ensuring the fulfilment of the rights of migrants.

We wish to stress the crucial role played by voluntary grassroots organisations and human rights defenders undertaking humanitarian action aimed at preventing and alleviating suffering of migrants, including through the provision of shelter, food, medical care and transportation. We further wish to underline the negative human rights impacts of efforts to deter the provision of such assistance, including on the rights to life, health, food, clothing and housing of migrants, as set forth in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, each respectively ratified by Italy in 1978. All States must refrain from criminalizing or otherwise penalizing either the provision of support or assistance to migrants or the organisations or individuals who carry out such essential activities, and in this regard we wish to note article 12, paragraph 2 of the 1998 Immigration Act, which establishes that humanitarian aid and assistance provided in Italy to foreigners in need, however present on the territory of the State, will not constitute a crime under the Act.

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 comment(s) which you may have on the above mentioned allegations.
2. Please provide detailed information as to the legal and factual grounds for the search and seizure of items at the home of Ms. Fornasir and Mr. Franchi.
3. Please also provide information as to the legal and factual basis of any investigation that may have been opened concerning Mr. Franchi, including the status of any such actions.
4. Please provide information on any measures to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants. In this regard, please indicate what specific legal and administrative measures have been taken to ensure that migrant rights defenders in Italy are able to carry out their legitimate work, in a safe and enabling

environment without fear of threats or acts of intimidations and harassment of any kind.

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, 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.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In relation to the above-mentioned allegations, we would like to remind your Excellency's Government that all people share the same universal human rights articulated in the Universal Declaration of Human Rights. We would like to stress that clear guidance has been issued by the treaty bodies responsible for the interpretation and supervision of the core instruments of international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, each respectively ratified by Italy in 1978, that the rights contained in these instruments apply without discrimination between citizens and non-citizens, and should be enjoyed by all people on the move.

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.

We would further like to bring to the attention of your Excellency' Government article 12 of the Declaration, and in particular paragraphs 2 and 3, which provide 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 wish to make reference to the report of the former Special Rapporteur on the situation of human rights defenders, presented at the 37th session of the Human Rights Council, on defenders of the rights of people on the move. Within the report, the former Special Rapporteur noted that migrant rights defenders are often subject to criminalization and restrictions above and beyond those faced by civil society generally¹, and that such criminalization has a chilling effect, leaving mainstream civil society organizations and private individuals more hesitant to engage with people on the move or to take action in relation to the challenges they face². We would like to refer to the recommendations made by the former Special Rapporteur to States in the report, and specifically to those recommendations made in paragraphs 66 (b) and (j), which call on States to publicly recognize the important role played by migrant rights defenders and to ensure that national law, administrative provisions and their application facilitate the work of all actors providing humanitarian assistance to people on the move, including by avoiding any criminalization or stigmatization contrary to international human rights law.

We would also like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the human rights of migrants on the right to freedom of association of migrants and their defenders (A/HRC/44/42), in which the Special Rapporteur expressed concern on the troubling reports that migrant leaders of

¹ A/HRC/37/51 para 54

² Ibid., para 55.

civil society organizations that work with migrants have been the target of unsubstantiated criminal indictments, unreasonable searches, surveillance, the seizure of assets or other harassment measures, as a way of interfering with the work of their organization. In this respect, the Special Rapporteur expressed concern over the misuse of laws that criminalize humanitarian acts or erect administrative obstacles against the work of these organizations, effectively censoring acts that embody the principles and values of humanity and civility. Noting that the activities that have been criminalized include the provision of assistance in seeking asylum or information related thereto, search and rescue missions, and the provision of humanitarian aid. Some civil society organizations have reported that even activities such as providing food, water, medical supplies and shelter along migratory routes have been criminalized. In this regard, the Special Rapporteur has urged States to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants. In this connection, the Special Rapporteur has further called States to strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants' rights issues.

We would also like to draw the attention of Your Excellency's Government to the report of the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2018, (A/HRC/38/45) in which the Special Rapporteur had already noted the pressure exerted by Italian authorities over humanitarian organizations performing search and rescue operations in the Central Mediterranean. The Special Rapporteur raised her concern that the multiple attacks and defamation campaigns these organizations faced is harmful for the protection of migrants. She further underlined that a human rights approach must be consistently applied across the whole spectrum of activities dealing with migration. This implies that humanitarian action aimed at rescuing lives should never be undermined or treated as promoting irregular migration. In this context we would like to recall the Special Rapporteur's recommendation in paragraph 71 calling States to ensure that organizations and individuals who rescue or assist people on the move are not criminalized or otherwise punished for doing so. The Council of Europe Convention on Action against Trafficking in Human Beings, which your Excellency's government ratified in 2010, sets important obligations aimed at improving the protection of victims of trafficking, and in particular we would like to refer to article 35 which imposes an obligation to cooperate with civil society to meet the objectives of the Convention and Article 12(5) which relates to provision of assistance to victims, specifically 'to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.'

We would also like to refer to the as the 8th General Report of the Group of Experts on Action Against Trafficking in Human Beings, in particular the thematic section on provision of assistance to victims of human trafficking which specifically highlights role of civil society.

Finally, we would like to highlight the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy. This relates specifically to how co-operation within civil society is essential in preventing and combating trafficking and assisting victims.