

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
AL ITA 2/2021

16 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; 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 43/4, 41/12, 43/16, 44/8, 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 a recently revealed **alleged pattern of wire-tapping and surveillance by public prosecutors in 2017 of several journalists, as well as staff members of humanitarian relief organisations and human rights defenders, who appear to have been covering or working on the central Mediterranean migration crisis at that time. In particular, we bring to your attention the seemingly baseless wire-tapping of the mobile telephone of journalist Ms. Nancy Porsia, and the indiscriminate recording of confidential conversations she had with sensitive sources in relation to her legitimate journalistic activities, as well as two conversations she had with two defence lawyers, Mr. Michele Calantropo and Ms. Serena Romano.**

Ms. Nancy Porsia is a freelance journalist, researcher, and expert on North Africa and the Middle East, with a particular expertise on Libya and the trafficking of persons to and from the country by criminal groups. She has published or presented her work in numerous widely-read Italian and international newspapers and news outlets. Mr. Michele Calantropo and Ms. Serena Romano are two Palermo-based lawyers.

The United Nations Special Procedures have previously raised human rights concerns about policies, activities, or legislation implemented by your Excellency's Government in relation to migrants or refugees in a broad range of communications since 2017 (including ITA 1/2017, ITA 4/2017, ITA 2/2018, ITA 4/2019, ITA 6/2019, ITA 3/2020, ITA 5/2020, ITA 7/2020, and ITA 1/2021). Some of these communications addressed an alleged stigmatisation or criminalisation of the activities of civil society actors working on or around this issue (e.g. ITA 2/2018, ITA 4/2019, ITA 6/2019, ITA 5/2020). We thank your Excellency's Government for its responses to these communications. We are looking forward to receiving a response to ITA 1/2021, which was recently sent in March 2021. We nevertheless remain concerned about this issue due to new information received and detailed below.

According to the information received:

In August 2017, in the context of an investigation concerning individuals working with or for several humanitarian relief organizations, who had been accused of collaborating or colluding with criminal human trafficking groups in the Mediterranean in 2016, one of the ships at the centre of this investigation, had been seized and had its onboard phones and computers confiscated by authorities in the port of Lampedusa, and had allegedly been bugged at that time. In addition, it has been alleged that tracking devices and communication interceptions had similarly been placed or carried out on other rescue ships as well. For instance, the head of mission of another NGO rescue ship, whose crew had been accused of abetting illegal immigration, was allegedly wiretapped in 2017, and conversations he had had with a journalist were recorded. It is unclear if warrants had been issued for all of these alleged surveillance activities.

During 2017, in the context of this investigation into alleged complicity between humanitarian relief organizations and human trafficking groups, it appears that the Sicilian Public Prosecutor had also approved the wiretapping of the phones of several journalists who were covering these cases and the Mediterranean migration crisis more broadly. In particular it has been alleged that prosecutors secretly recorded conversations between journalists and humanitarian relief staff and other sources, in which travel details and other confidential information in relation to their journalistic investigations had been discussed. The names of sources, their private contact information, and relationships and other personal details were reportedly gathered by the authorities, in apparent contravention of the Italian Code of Criminal Procedure. While the exact number of wire-tapped journalists is unclear, some have claimed that the authorities wiretapped hundreds of phone conversations involving at least 15 journalists. The reasons why they may have been under surveillance in the first place, and in particular whether they were even being investigated for any crimes at that time, also remain unclear.

Ms. Porsia is said to have been one of the journalists who was affected by this wire-tapping authorised by Sicilian prosecutors. In particular, over the summer of 2017, while she was undertaking research about Libyan human trafficking networks, the prosecutors had reportedly wiretapped her mobile phone during a significant period, recorded her communications, and tracked her movements by using its geolocation capabilities. It seems that personal details, contact information, and the names of her sources were also collected, some of which may have included at risk individuals and whistle-blowers. In at least one instance, prosecutors allegedly listened in while she and another journalist were discussing how to gather video evidence of acts of violence perpetrated against migrants in Libyan detention facilities. All information gathered while she was under surveillance, for reasons that remain unknown, seems to have been shared with the Central Operations Service, a department of the Italian police.

It has further been alleged that among the telephone conversations recorded, transcribed, and deposited by the Sicilian prosecutors, there had been two conversations which Ms. Porsia had had with two Palermo lawyers, Ms. Romano and Mr. Calantropo, regarding two separate and reportedly highly sensitive criminal cases, in which the Central Operations Service were key

prosecution witnesses. Ms. Porsia had been called by the two defence lawyers, due to her investigative contributions to these cases, as a witness and technical consultant of the defence. Over the course of the two recorded telephone conversations in question, the content of which has been described as extremely confidential, the lawyers openly discussed defence strategies with Ms. Porsia in order to prepare for her examination in court before the State prosecutor.

It seems that one of these cases was related to an Eritrean individual who had been detained by Italian authorities and imprisoned in the country's most secure detention facility. This individual, who was being defended by Mr. Calantropo, had been accused of heading a large-scale criminal group that had allegedly trafficked thousands of people through networks spanning 11 countries. In 2019, this defendant had been acquitted, as it turned out that this person had been wrongly accused in an apparent case of mistaken identity, seemingly solely because this individual shared the same nationality and initials with the actual trafficker. It has separately been alleged that Sicilian prosecutors also wiretapped the telephone conversations of another journalist who had also been working on this case, and who had apparently been central to exposing the alleged mistaking of the identity of the defendant. It seems that at least two confidential conversations between this second journalist and one of his key sources had been recorded by Sicilian prosecutors. It has further been alleged that communications between this second journalist with two Eritrean individuals, who were acting as mediators in the defence talks between Mr. Calantropo and the defendant, may also have been bugged by Sicilian prosecutors at this time.

Like the other affected journalists, Ms. Nancy Porsia, as well as lawyers Ms. Romano and Mr. Calantropo, seem to have been unaware that their communications had been recorded until early April 2021, when the allegations of widespread wiretapping were made public.

On 6 April 2021, the Italian Justice Ministry indicated that it had formally and urgently launched a preliminary investigation into the Trapani Prosecutor's office. At around the same time, the Trapani Public Prosecutor reportedly expressly stated that Ms. Porsia had never been under an official investigation, neither in relation to the aforementioned case regarding the activities of three humanitarian relief organizations in 2016 nor in any other criminal proceedings.

It has further been alleged that there have been several other instances of wire-tapping of confidential communications between lawyers across various Italian cities and regions in recent years, in both the north and south of the country. While the exact details and extent of this allegedly coordinated nation-wide system of wire-tapping are unclear, the Central Operations Service is said to be a key and recurring instigator of this reportedly growing pattern. According to the information received, affected lawyers and clients are generally unwilling to speak out and openly criticise such activities, as the clients are often under ongoing investigations and they do not want any verdicts to potentially be influenced in any way by making such allegations public. Judges who have issued irregular wire-tapping warrants may occasionally be reprimanded internally, but are said to rarely face serious criminal consequences, as the relevant Italian legislation does not yet outline and impose significant

punishments for such activities. It has been noted that this alleged pattern has coincided with an alleged trend, which started around 2019, where laws and other measures were passed in Italy which strengthened the power of prosecutors to the detriment of those of defendants.

While we do not wish to prejudge the accuracy of the above information, we would like to express serious concern at the seemingly unfounded surveillance of the professional and private activities of several Italian journalists in 2017, as well the broader alleged pattern of wiretapping of civil society actors working on the Mediterranean migration crisis. We express deep concern at the apparent disregard for the prohibition on unlawful and arbitrary interference in the private life of individuals and the seemingly repeated violations of media freedom that these allegations seem to entail. The monitoring of confidential communications of journalists, including the exposure of call records or tracking of geolocation data, are particularly troubling, as they could adversely affect the work of journalists and seriously compromise their sources who, considering the broader context of human trafficking relevant to this case in particular, may in some instances be likely to face accentuated risks of reprisals. We note with particular concern that Ms. Porsia's phone seems to have been tapped even though she has not been under any criminal investigation at any time. We recall that the protection of journalistic sources is one of the basic conditions for press freedom under international human rights law. Without such protection guarantees, sources may be deterred from assisting the press in informing the public on matters of public interest, which in turn may compromise the ability of the press to provide accurate and reliable information and ultimately undermine its essential role as public monitor more broadly. We are also concerned that the reported violations of the right to privacy and freedom of expression may deter other journalists from reporting on issues of public interest and human rights in Italy.

Moreover, the alleged recording of her conversations with defence lawyers Ms. Calantropo and Ms. Romano, raises additional concerns about violations of vital protections and privileges of the legal profession under both international human rights law and Italian domestic law. We are particularly concerned by the fact that the Italian police are said to have listened in to their confidential conversations even though the police were key prosecution witnesses in the sensitive criminal case being discussed at that time. It is deeply troubling that this may just be one example of a far wider and potentially nationwide-wide pattern of wire-tapping by or with the involvement of the Central Operations Service. We recall that the right to counsel entails that lawyers should be able to carry out their functions in private and to communicate in conditions that fully respect the confidentiality of their communications, without influence or interference of any kind (CCPR/C/GC/32, para. 34). These heightened protections under international human rights law are justified by the fact that lawyers are assigned a fundamental role in a democratic society and that lawyers cannot carry out this essential task if they are unable to guarantee to those that they are defending that their exchanges will remain confidential. Accordingly, indirectly but necessarily dependent upon this essential guarantee is the right of everyone to a fair trial.

Should the above allegations be confirmed, they would be in violation of articles 14, 17, and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy in 1978, which respectively guarantee the rights of all individuals to: the right to a fair trial and defence guarantees, including the right to confidentially communicate with legal counsel ; the right to not subjected to arbitrary or unlawful

interference with his/her privacy, family, home or correspondence, and the right to the protection of the law against any such interference; the right to freedom of expression and to seek, receive and impart information and ideas of all kinds.

Finally, we also reiterate our deep concerns about the broader alleged pattern of “criminalisation of sea rescues” and other activities related to migrants and refugees in the Mediterranean, that the above allegations seem to illustrate. In this regard we would like to recall the Special Rapporteur on trafficking persons recommendation to ensure that organizations and individuals who rescue or assist people on the move are not criminalized or otherwise punished for doing so (A/HRC/38/45). By hindering humanitarian efforts to identify and protect victims and potential victims of trafficking, States fail to fulfil its obligations to protect victims of trafficking emanating from their responsibilities under article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ratified by Italy in 2006.

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 further 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 alleged wire-tapping of the telephone of Ms. Porsia in 2017, and in particular her confidential conversations with lawyers Ms. Serena Romano and Ms. Michele Calantropo, and how this was in line with international human rights law, in particular articles 14, 17 and 19 of the ICCPR. If the above allegations are accurate, please provide information on any investigations and/or proceedings that have been initiated against the Sicilian prosecutors and any other actors who may have been involved, in line with article 12 of the ICCPR.
3. Please also provide information as to the legal and factual basis of other alleged acts of wire-tapping and surveillance of the activities of other journalists and human rights defenders in 2017 and their compliance with international human rights law. In particular please indicate how any such activities, if confirmed as accurate, were in line with the right to privacy and to freedom of expression, as protected under articles 17 and 19 of the ICCPR and related international jurisprudence. Please also elaborate upon how many journalists were placed under surveillance.
4. Please indicate what independent authority, if any, is in charge of oversight of any State entity carrying out surveillance, whether it is a law enforcement or national security agency, and which are the specific legal

safeguards and legal basis utilised for the authorization of privacy-intrusive measures such as wire-tapping, the monitoring of geolocation data, and the monitoring and recording of private conversations, among others.

5. Please indicate what legislative measures have been taken to ensure and protect the right to legal defence and the right to fair trial, and related guarantees such as confidentiality of conversations between lawyers and their clients, in Italy. Please indicate how many wire-tapping warrants have been issued in 2019 and 2020, and whether those figures are in line with annual averages of previous years.
6. Please indicate the measures taken by your Excellency's Government to protect all human rights defenders in Italy, and to ensure that they are able to carry out their legitimate human rights work free from any restrictions.

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.

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers

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 connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular we wish to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978.

We would firstly like to draw your attention to the right to privacy, which is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, which state that no one should be subjected to "arbitrary or unlawful interference with his privacy, family, home or correspondence". In this regard we would like to recall resolution 34/7 which "(Recognizes) that the right to privacy can enable the enjoyment of other rights and the free development of an individual's personality and identity, and an individual's ability to participate in political, economic, social and cultural life, and (notes) with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference". We recall that this resolution also notes "with deep concern that, in many countries, individuals and organizations engaged in promoting and defending human rights and fundamental freedoms are frequently subject to threats, harassment and insecurity as well as to unlawful or arbitrary interference with their right to privacy, as a result of their activities".

The Human Rights Committee further determined that the right to privacy required that robust, independent oversight systems were in place regarding surveillance, interception and hacking, including by ensuring that the judiciary was involved in the authorization of such measures, in all cases, and by affording persons affected with effective remedies in cases of abuse, including, where possible, an ex post notification that they had been placed under surveillance or that their data had been hacked (See report of the Special Rapporteur on freedom of opinion and expression on surveillance and human rights, A/HRC/41/35 para. 25)).

We further recall that Article 14 of the Covenant provides that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that in the determination of any criminal charge against him or her, everyone is entitled to a number of minimum guarantees, including the right to be informed promptly and in detail a language which s/he understands of the nature and cause of the charge against him/her, the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of his/her own choosing and the right to be assisted by a lawyer of one's own choice.

We further recall that the Human Rights Committee has stated that the right to counsel entails that lawyers should be carry out their functions in private and to communicate in conditions that fully respect the confidentiality of their communications and generally "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34). We further note that article 8 of the European Convention

on Human Rights, which protects the confidentiality of all correspondence between individuals, affords strengthened protections when these communications relate to the legal profession. We reiterate that these heightened protections under international human rights law are justified by the fact that lawyers are assigned a fundamental role in a democratic society and that lawyers cannot carry out this essential task if they are unable to guarantee to those that they are defending that their exchanges will remain confidential. Accordingly, indirectly but necessarily dependent upon this essential guarantee is the right of everyone to a fair trial.

We respectfully recall Article 19 of the Covenant enshrines the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As stated by the Human Rights Committee, "Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights", CCPR/C/GC/34, para. 3. In this context, we recall that, under article 19 (3) of the Covenant, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. We also reiterate that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights, and that it constitutes one of the cornerstones of a democratic society (CCPR/C/GC/34, para. 3.).

We would like to refer your Excellency's Government to 22 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[e]veryone shall have the right to freedom of association with others..." In this connection, "States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights).(A/HRC/41/41, para. 13).

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 also like to refer to article 5 (b) and (c), which provides for the right to form, join and participate in non-governmental organizations, associations or groups and the right to communicate non-government or intergovernmental organizations.

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.

Moreover, as emphasised by the Special Rapporteur on the human rights of migrants, the work of migrants' rights defenders and support from civil society organisations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities (A/HRC/44/42). Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of expression and association further hinder migrants' enjoyment of other rights. Furthermore, the importance of the right to defend the human rights of migrants was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must "respect and support the activities of human rights defenders who promote and protect the human rights of migrants".

In addition to the obligations derived from the Palermo Protocol already highlighted, we also wish to recall the Council of Europe Convention on Action against Trafficking in Human Beings ratified by Italy in 2010 and recommendations extended by its monitoring body GRETA on the subject of criminalization of organizations providing support to victims and potential victims. In its second report on Italy published in 2019, GRETA "urged 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". It also further considered that the "Italian authorities should continue building strategic partnerships with NGOs and trade unions, through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process, the provision of assistance to victims of trafficking, and the long-term reintegration and rehabilitation of victims of THB, including by ensuring long-term funding for anti-trafficking activities of NGOs". Finally, we also wish to draw Your Excellency's Government attention to the obligations derived from article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ratified by Your Excellency's Government in 1955, as well article 8 of the International Covenant on Civil and Political Rights.