

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the human rights of migrants

Ref.: AL ITA 1/2023
(Please use this reference in your reply)

7 February 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 43/16, 50/17 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning alleged due process violations and other worrying developments related to the ongoing trial of human rights defenders in Trapani and the regulation of civilian search and rescue in Italy.**

Ms. **Kathrin Schmidt** and Messrs. **Dariusz Beigui, Sascha Girke** and **Urich Troeder** are human rights defenders and members of the Iuventa search and rescue crew. Between July 2016 and August 2017, the Iuventa was engaged in search and rescue activities in the Central Mediterranean, rescuing over 14,000 persons in distress at sea, with its missions involving approximately 200 volunteers.

Serious concern as to the impounding of the Iuventa ship in August 2017 and the opening of a criminal investigation targeting several of its crew members, as well as other human rights defenders involved in search and rescue operations in the Central Mediterranean, were previously addressed to your Excellency's Government on 1 October 2020 (ITA 5/2020). While we appreciate the response received from your Excellency's Government to this communication, we renew our concern in relation to the case and the broader context for defenders of the rights of migrants, refugees and asylum seekers in Italy in light of the below-detailed information received.

Since 2014 and as of the time of writing, the International Organization for Migration (IOM), through its 'Missing Migrant' project, has recorded the deaths and disappearances of 20,257 migrants along the Central Mediterranean route. IOM highlights “gaps in search-and-rescue capacity and restrictions on the life-saving work of NGOs” as one of the factors contributing to making the route the world's deadliest for migrants.¹ The data on deaths and disappearances collected through the project likely represents a significant undercount.

Aside from the above-referenced communication on the specific case at hand, concerns related to the criminalization of human rights defenders working in support of migrants, refugees and asylum seekers in Italy and at its borders have been raised with your Excellency's Government by multiple Special Procedures mandate holders on several other previous occasions (see, most recently, ITA 1/2022, ITA 2/2021, ITA

¹ https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

1/2021 and ITA 7/2020). We welcome your Excellency's Government's continued engagement on this issue through its responses to these communications.

According to the information received:

Concerning the trial of the Iuventa crew and others

In early 2021, after an investigation of over four years examining the search and rescue activities of ships of non-governmental organisations (NGOs) in the Central Mediterranean between 2016 and 2017 (see ITA 5/2020), charges were pressed by Trapani prosecutors against Ms. Schmidt and Messers. Beigui, Girke and Troeder, along with 17 other individuals, including other search and rescue crew members, two NGOs and a shipping company, for aiding and abetting unauthorised immigration under article 12.3(a) and (d) and 12.3bis of Legislative Decree 286/1998. The prosecutors alleged aggravating factors in perpetration of the supposed crime, leaving those accused facing up to 20 years in prison if convicted, along with heavy fines. The prosecution's case centres on alleged instances of collusion between the human rights defenders and supposed smugglers during missions to rescue persons in distress at sea between September 2016 and October 2017. Those accused deny the charges against them, with the supposed criminal activity imputed to the Iuventa crew strongly contested, including on the basis of a detailed forensic reconstruction of the events in question.

On 21 May 2022, preliminary criminal proceedings in the case were opened at the Court of Trapani, with the judge to examine the argument for the advancement of the proceedings to a full trial. Since this date, multiple hearings in the preliminary proceedings have taken place, with delays repeatedly ordered by the court in response to the prosecution's failure to comply with due process guarantees designed to safeguard the defendants' right to a fair trial, including their right to be properly informed about the proceedings and served with adequate notice of the charges against them. Delays have also been required due to the failure of the authorities to provide adequate interpretation for foreign defendants in the case during police questioning and court proceedings. While the case file was left untranslated by the prosecution at the outset of proceedings, the presiding judge subsequently ordered the translation of its summary – a document prepared by the police. The complete case file, including attachments laying out the evidence proposed by the prosecution, remain untranslated. Such issues are reportedly common in cases involving foreign defendants, and notably migrants, in Italy.

On 19 December 2022, both the Prime Minister's Office and the Ministry of Interior applied to the court to join the case as plaintiffs, seeking compensation for alleged moral and financial damage caused by crimes alleged by the prosecutors. This request is currently under consideration by the court. On the same date, the court ordered the provision of additional interpretation for foreign defendants in the trial.

The next date in the proceedings is set for 10 February 2023.

Concerning new practices related to the indication of ports of disembarkation and the impact of Decree-Law 2 January 2023, n. 1 on civilian search and

rescue activities

Since late December 2022, a new practice has been observed in relation to the indication of ports of disembarkation for persons in distress rescued by search and rescue ships crewed by non-governmental organisations (NGOs).

In a change from previous procedure, whereby NGO search and rescue ships were regularly instructed to navigate towards ports in southern Italy to disembark persons rescued in distress in the Central Mediterranean, such ships are now being uniformly instructed to navigate to ports in north and central Italy to disembark rescued persons, requiring them to embark on much longer journeys, with persons in distress left on board for much greater periods of time. Such practice was observed, for example, on six dates between 22 December 2022 and 25 January 2023, with NGO search and rescue ships complying with instructions on each occasion, including on at least one instance in which severe weather conditions forced a ship's captain to request a new port of disembarkation – a request which was denied. A total of 542 persons in distress were involved in these six instances, including women and children. Ports indicated for disembarkation have included those in Ancona, Livorno and La Spezia, all at several days sailing further than ports in southern Italy. On at least one instance, a request to tranship rescued persons from one NGO ship to another, to avoid both being obliged to navigate to a distant assigned port, was rejected by the authorities.

The measures appear to have thus far been applied exclusively in situations in which NGO search and rescue ships request ports of disembarkation, with the Italian Coast Guard and Guardia di Finanza continuing to receive instructions to disembark rescued persons in ports in southern Italy.

In a further development, on 2 January 2023, a new decree-law regulating the activities of civilian search and rescue organisations was adopted following signature by the President. The Decree, which modifies Decree-Law 21 October 2020, n.130, grants power to the Minister of Interior to limit or prohibit the transit or stay of civilian search and rescue ships in Italian territorial waters for reasons of public order and security, and lays out a set of requirements for ships to comply with in order to avoid such exclusion or restrictions. These requirements are as follows:

- a) that any ship carrying out systematic search and rescue activities at sea ensure their operations conform with the requirements of the flag State, including any required certifications, and comply with technical requirements related to safety of navigation;
- b) that persons rescued by such ships be promptly informed of their right to seek international protection and that, where those rescued express a desire to exercise their right, that the crew members gather data relevant to their claim to be shared with the authorities;
- c) that requests for the indication of a port of disembarkation will be requested immediately;

- d) that the port indicated by the competent authorities will be reached without delay;
- e) that the crew members will cooperate with the police and national search and rescue authorities so as they may reconstruct rescue operations carried out;
- f) that search and rescue activities will not be carried out in a way that would create danger or interfere with reaching the indicated port of disembarkation promptly.

Failure to comply with these requirements may be subject to sanction through fines ranging from 10,000 to 50,000 Euro, while any violation may result in the seizure of the ship involved for a period of two months. Repeated violations may result in the confiscation of the ship.

Without wishing to prejudge the accuracy of the information received, we express our serious concern as to the alleged due process violations in the criminal proceedings against the Iuventa crew and others. In particular, we underline our concerns as to the failure to provide the defendants with crucial documents in the case in a language they understand and to ensure their full and effective participation in the court proceedings through the provision of suitable interpretation. We further express our concern that such failings may be systematic in court proceedings brought against non-Italian speaking defendants in Italy, and represent a much broader trend of impingement of the right to a fair trial.

We reiterate our concern, expressed in the above-cited communication to your Excellency's Government from October 2020, that the opening and pursuit of the case against the human rights defenders amounts to the criminalisation of their legitimate human rights activities, namely, saving lives at sea. In this regard, we express our concern at the repeated use of article 12 of Legislative Decree 286/1998 to target human rights defenders working in the area of the human rights of migrants (see ITA 1/2022 and ITA 1/2021), and underline our concerns as to the compatibility of the legislation with international standards on people smuggling, and notably with the definition of smuggling provided in article 3(a) of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air.

We express profound regret at the Government's decision to apply to join the case as a plaintiff, which would appear to signal a conviction on the part of the State to pursue the further conflation of the essential work of human rights defenders as criminal activity, and, in particular people smuggling. We underline that such an approach severely undermines Italy's stated commitment to uphold human rights and actively support human rights defenders.

We believe the enactment of Decree-Law 2 January 2023, n.1 and the new practice relating to the indication of ports of disembarkation for NGO search and rescue ships not to be disconnected from the prosecution of human rights defenders engaged in search and rescue activities. With the Iuventa ship seized since 2017, and its crew members facing the threat of criminal prosecution since the same year, the search and rescue activities it had been carried out have been forced to a halt. Similarly, the cumulative effect of the new practice of indicating ports of disembarkation in northern and central Italy and the new Decree-Law, in particular its

imposition of an obligation on NGO captains to request ports of disembarkation immediately and to sail to them without delay, appears to be the removal of NGO search and rescue ships from the Central Mediterranean – the area in which their presence is required – with subsequent negative impacts on the human rights of migrants in distress at sea, impeding on their right to exercise their legitimate activities for the protection and promotion of human rights. The effective prohibition of multiple rescues on the same voyage would appear to further compound this impact. We express serious concern about the compatibility of the new Decree-Law and practice with international law, as detailed in the Annex below.

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 as to the rationale and factual basis motivating the request of the Prime Minister's Office and Ministry of Interior to join the case against the Iuventa crew and others as plaintiffs. In particular, please provide information as to the compatibility of this action with the State's responsibility to create and maintain a safe and enabling environment for human rights defenders and NGOs and their work.
3. Please provide information as to the measures put in place to guarantee the right of the Iuventa crew members and others accused in the trial to a fair trial, in particular by ensuring adequate translation of documents relevant to the case and suitable interpretation during court proceedings.
4. Please provide information as to any assessment undertaken to assess the compatibility with Decree-Law 2 January 2023, n. 1 and the new policy on the indication of ports of disembarkation with Italy's obligations under international human rights law, international maritime law and the law of the sea, as referenced in the below Annex. If such assessments have not been carried out in connection with either the Decree-Law or the policy, please provide detailed information as to their compatibility with the referenced standards.

We would appreciate receiving a response within 60 days. Past 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 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

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with the allegations detailed above and our connected concerns, with regards to the situation of migrants in distress in the Central Mediterranean, and as in previous communications addressed to your Excellency's Government on the matter, we refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978. Article 6(1) 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 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. The 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. The Committee has made this clear, stating that the State duty to respect the right to life includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even where those threats and situations are not caused directly by the State. 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. 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).

In connection with our concerns as to undue restrictions imposed on the activities of organisations engaged or seeking to engage in search and rescue activities by Decree-Law 2 January 2023 and the new policy relating to the indication of ports of disembarkation, we refer your Excellency's Government to the following elements of relevant international law.

Under international maritime law and the law of the sea, a range of actors have obligations to render assistance to persons in distress at sea, including flag States, the captains of ships, coastal States and States responsible for the coordination of relevant search and rescue zones. The United Nations Convention on the Law of the Sea (UNCLOS), obliges flag States to require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed *with all possible speed* to the rescue of persons in distress.² The International Convention for the Safety of Life at Sea (SOLAS Convention), similarly provides that any ship master at sea who is in a position to be able to provide assistance, *upon receiving information that persons are in distress at sea must proceed with all speed to their assistance*, and that "[t]his obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found."³

² UNCLOS, article 98

³ SOLAS Convention, chapter V, regulation 33(1)

The SOLAS Convention further carries an obligation for Governments to co-ordinate and co-operate to ensure that shipmasters providing assistance by embarking persons in distress at sea are released from their obligations with “*minimum further deviation* from the ship’s intended voyage”.⁴ The International Convention on Maritime Search and Rescue (SAR Convention) reinforces this obligation upon States.⁵

The IOM, recalling the provisions of the above-cited Conventions, clarified the obligations of States and shipmasters flowing from them in its Guidelines on the Treatment of Persons Rescued at Sea. In doing so, it reinforced that paragraph 1.1 of SOLAS Regulation V/33 and paragraph 3.1.9 of the Annex to the SAR Convention, as amended, were introduced to ensure the provision of a place of safety within a reasonable period of time in all cases.⁶ It further clarified that all persons in distress at sea should be assisted without delay, that “flag and coastal States should have effective arrangements in place for timely assistance to shipmasters in relieving them of persons recovered by ships at sea”⁷ and that a ship “should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable.”⁸

In further connection with Decree, we would also like to refer to the OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations, and in particular principle 4, 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. In order to fulfill this duty, the Guidelines outline that States should ensure that relevant national legal frameworks 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, and that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses.

Furthermore, we would also like to draw your attention to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur recalls that States are required to take all reasonable precautionary steps to protect life and have committed to cooperate internationally to save lives and prevent migrant deaths and injuries, in accordance with international law. In this regard, delays in searching for and rescuing migrants in distress on land and at sea, as well as in designating safe ports for disembarkation, may amount to torture or ill-treatment and undermine the right to life (para. 44).

In relation to the ongoing criminal proceedings against the Iuventa crew members and others, we would like to refer to article 14 of the ICCPR, which guarantees equality before courts and tribunals the right to a fair trial. As stated in the article, the right to a fair includes the right to have the free assistance of an interpreter if one cannot understand or speak the language used in court. The Human Rights Committee, in its General Comment No.32 (CCPR/C/GC/32), has clarified that this

⁴ SOLAS Convention, chapter V, regulation 33(1.1)

⁵ See SAR Convention, Annex, para. 3.1.9, as amended

⁶ MSC 78/26/Add.2, Annex 34, adopted 20 May 2004, para 2.5

⁷ Ibid. para 3.1

⁸ Ibid. para 6.3

right arises at all stages of the oral proceedings, and applies to foreign nationals as well as nationals.

We would also 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 Declaration, 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.

Finally, we would like to make reference to the recommendations made in the recent report of the Special Rapporteur on the situation of human rights defenders to the UN General Assembly (A/77/178), on the situation of defenders of the rights of refugees, migrants and asylum seekers. In particular, we wish to underline her key recommendation that States publicly promote the lifesaving work of defenders working on these issues, intervene to stop them from being attacked, desist from targeting them, including through spurious legal procedures, and provide a safe, accessible and supportive environment for their work, both in law and in practice.