

**Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women and girls, its causes and consequences**

Ref.: AL ITA 3/2024  
(Please use this reference in your reply)

24 June 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on the sale, sexual exploitation and sexual abuse of children; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 52/20, 51/8, 52/26, 51/15, 53/9 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Protocol on Migration Matters, concluded between the Government of Italy and the Government of the Republic of Albania for the provision of enhanced cooperation in the field of governing migration flows from third countries<sup>1</sup>, and the negative impact it would have on the human rights of migrants in distress at sea, including those in need of international protection.**

According to the information received:

On 6 November 2023, the Government of Italy and the Government of Albania announced having signed a Protocol on Migration Matters, also referred to as the Italy-Albania Memorandum of Understanding (hereinafter the MoU), as a response to large migration movements in the Mediterranean region. Specifically, the MoU, in its articles 3(1) and 4(1), authorises Italy to construct two migration centres within Albanian territory with the capacity to accommodate a maximum of 3,000 third country nationals rescued at sea.

The first centre, to be built close to the Port of Shengjin, would serve as a point of disembarkation, identification, first aid, and border procedures, including those related to asylum. The second centre, to be built close to the town of Gjader, would serve as a point of identification and border procedures, as well as a detention centre for individuals considered ineligible for asylum, and potentially subject to deportation. Both centres would only accommodate third country nationals rescued by vessels belonging to Italian authorities, in international waters.

The MoU also establishes that both centres will be entirely under Italian legislation and jurisdiction, including overseeing financial and managerial responsibilities within the facilities. The MoU clarifies that Albanian

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<sup>1</sup> See: [Protocollo-Italia-Albania-in-materia-migratoria.pdf \(esteri.it\)](#)

authorities will provide public order and security of the external perimeter, including detaining and returning individuals that leave the migration centres without authorization (article 6(6)). Moreover, according to article 4(3) *“Albanian authorities shall allow the entry and stay in the Albanian territory of the migrants accommodated in the facilities... for the sole purpose of carrying out the border or return procedures provided for by the Italian and European legislation and for the time strictly necessary for the same”*. In the case that *“the title to stay in the facilities ceases to exist”*, it falls under Italian authorities to *“transfer the migrants out of the Albanian territory”*, indicating that the agreement does not foresee migrants to enter Albanian territory at any other time.

While we do not wish to prejudge the accuracy of the information above, we would like to remind to the Government of your Excellency that arrangements made for migrants in the MoU, including the extra-territorialization of migration and asylum procedures, fall under direct responsibility of both signatory States, as they are responsible for border governance on their territory or in their effective control or authority<sup>2</sup>. We further wish to stress that Italy’s obligations under international human rights law as enshrined in the Universal Declaration of Human Rights and all the core international human rights treaties require that human rights be at the centre of migration and asylum governance, including in response to large and mixed movements<sup>3</sup>. The transnational nature of some State actions in the context of governing international borders does not exempt States from fulfilling positive human rights obligations, nor from accountability; rather, the responsibility of multiple States may be implicated in certain cases, for instance on the high seas, and elsewhere when States act extraterritorially<sup>4</sup>. Therefore, we are concerned that the lack of clarifications of several arrangements concluded under the MoU would fail to ensure sufficient protection against imminent and foreseeable risks or irreparable harm to migrants in distress at sea, including those in need of international protection.

We are particularly concerned that the agreement may distort search and rescue practices by pressuring the Italian Maritime Rescue Coordination Centre to prioritize the transfer of certain groups of people to Albania. This could jeopardize the safety of individuals in distress at sea, as rescue ships may be delayed in responding to emergencies. In that sense, longer return journeys for rescue ships to disembark survivors in Albania could reduce their presence in areas of the central Mediterranean where shipwrecks are frequent. This could lead to slower responses to distress situations and potentially lethal consequences.

Moreover, we are concerned that the MoU would distort the principle of disembarkation of persons in a place of safety *“as soon as reasonably practicable”* following the rescue, by pre-determining that survivors will be disembarked in Albania, which is over 500 nautical miles (700 kilometres) away from the area where rescues are commonly conducted, or by considering Italian rescue vessels as the first place of safety. This could lead to unnecessary delays in disembarkation in up to two

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<sup>2</sup> See A/70/303, paras. 11–13.

<sup>3</sup> See principle 1 in the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Global Migration Group publication entitled *Principles and Guidelines, on the human rights protection of migrants in vulnerable situations*, pp. 21–22.

<sup>4</sup> The extraterritorial applicability of human rights obligations is firmly established; the decisive criterion for jurisdiction (and hence responsibility) is not whether a person is within the territory of the State, but whether or not the State exercises effective control over the person. See Human Rights Committee, general comment No. 31 (2004), para. 10

days, exposing survivors to additional suffering and violating international standards on search and rescue. Delays in disembarkation prolong the time that survivors of shipwrecks spend onboard rescue ships, where crews may not be able to fully fulfil their needs. We remind the Government of your Excellency that survivors of shipwrecks are often traumatized and in need of urgent medical assistance.

In that connection 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 persons", and articles 6(1), 7 and 9 of the international Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978, which guarantees the inherent right to life of every individual, the prohibition of torture, as well as the right to liberty and security in person. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of State 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).

Particularly, we would like to refer Your Excellency's Government to the UN Human Rights Committee general comment No. 36 on article 6, right to life, that provides an "entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity" The Committee adds that "article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes" (CCPR/C/GC/36 para. 3). The convention also requires States parties "to respect and protect the lives of all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea" (CCPR/C/GC/36 para. 63).

Furthermore, in relation to the protection of individuals with vulnerabilities and in need of specific care, we are concerned that the lack of clear screening criteria and protection procedures, in the MoU, may breach Italy's positive obligations to establish an effective system to protect the right to life of individuals in situation of vulnerability. We are further concerned that the State's obligations to ensure assistance and protection for migrant children, pregnant women, victims of trafficking in persons and persons at risk of trafficking, or contemporary forms of slavery are not met in the MoU, leading to potential violations of the principle of the best interests of the child and protections against discrimination and non-punishment. We stress that mandatory and comprehensive vulnerability checks should be conducted on every individual rescued, with their consent, to promptly identify and refer those in vulnerable situations to appropriate services.

We are also concerned about the lack of clarity in the agreement, on whether assessments would occur on rescue vessels or after disembarkation in Albania. Onboard procedures could delay disembarkation, violating international law, while post-disembarkation assessments may expose individuals to further harm. The uncertainty on how Italian authorities will prioritize and assess individuals, risks accelerated and superficial assessment of vulnerabilities of individuals rescued at sea, leading to arbitrary decisions and consequent transfers of migrants, asylum seekers, and refugees in need of specific care to Albania, where the reception and care

conditions could not be adequate to meet their protection needs.

We regret that, despite declarations made by the Prime Minister of Italy suggesting that individuals in situation of vulnerability would be transferred to Italy, the agreement does not establish any clear procedures to be applied by the Italian authorities to identify, assist, and fairly assess migrants with specific needs. In this regard, we are deeply concerned that the lack of safeguards and tailored measures for individuals in situation of vulnerability will put migrant children and pregnant women in further risk of suffering harm. Moreover, we are worried that unfair or quick assessments would allow for them to be transferred to Albania, where they will potentially be subject to the same automatic detention procedure as other transferred individuals. We further regret that the MoU does not explicitly reject from its articles the detention of migrant children or pregnant women.

We would like to stress that every migrant child, regardless of their migration status, should be considered as a child first and foremost. All migrant children should be entitled in law and in practice to all the rights enshrined in the Convention on the Rights of the Child, to which Italy has been a party to since 26 January 1990. Heightened consideration must also be given to children in the context of salvages at sea, whereby the best interests of the child must be the paramount consideration in any action or decision taken by the State.

Regarding interceptions at sea and protection of victims of trafficking in persons and persons at risk of trafficking, we wish to recall that there is a positive obligation to identify and protect victims of trafficking in persons, as established in the international instruments on trafficking in persons, which also apply to Italy, including 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, and article 10 and 12 of the Council of Europe Convention on Action against Trafficking in Human Beings, ratified by all EU Member States and Council of Europe Member States.

Concerning arbitrary and prologued detention, we are worried that, under the MoU, third country nationals, including asylum-seeking migrants, will be subject to automatic detention once transported to Albania. As per article 4(3) of the MoU, third country nationals will have to stay in the centres while a decision is made on their situation. The agreement does not foresee the possibility for individuals to be released from the centres in Albania other than through transfer by Italian authorities. This poses a risk that individuals who successfully challenge their detention, or individuals subject to deportation, may remain detained until after their transfer is arranged, which could take a considerable amount of time. It is also not clear whether these transfers must always and in any case be towards Italian territory, or whether migrants could be transferred by Italian authorities to other third countries.

We are further concerned that delays in removal arrangements and case review could lead to extended periods of immigration detention beyond the initial 28 days outlined in the Italian legislation. Additionally, the utilization of the MoU alongside existing legislation on migration-related detention in Italy, which would operate on the denial of legal arrival of third country nationals on its territory, regardless of their physical presence, until granted entry by a border or immigration officer, known as the fiction of non-entry, raises further concerns. This fiction of non-entry allows authorities to detain individuals for up to 28 days while determining whether they

should be granted formal access to Italy. However, in practice, this detention period could be prolonged, potentially resulting in a continuous detention period for migrants disembarked in Albania.

Moreover, the MoU would allow for the automatic detention of migrants, asylum seekers, and refugees on the basis of extremely unclear parameters, which lacks a clearly defined maximum detention period. In this connection, we wish to recall that, according to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the UDHR and article 9.1 of the ICCPR. 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). Moreover, the Human Rights Committee stated in its general comment No. 35 on article 9, liberty and security of person, that detention in the course of proceedings for the control of immigration “must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time”. Additionally, the Working Group on Arbitrary Detention recommended that a “maximum detention period in the course of migration proceedings must be set by legislation”; and that when deportation orders cannot be implemented due to reasons that are not attributable to the subject of the removal order, “the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary” (Annex, A/HRC/39/45).

We would also like to refer to the revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, “alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure”. Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195). We would also like to refer your Excellency’s Government to the report of the Special Rapporteur on torture (A/HRC/37/50), in which he concluded that “criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration and should be regarded as arbitrary (para. 25).” The Rapporteur further emphasised that detention of migrants should never be used as a means of deterrence, intimidation, coercion, or discrimination (para. 73).

We wish to highlight that refugees, asylum-seekers, and migrants in Italy already face barriers to appealing against detention, and we are concerned that these barriers may become even more insurmountable for individuals detained by Italian authorities in Albania.

Finally, we are concerned that the MoU may be used to circumvent Italy’s obligations under international law, potentially leading to sub-standard and unfair asylum procedures for individuals transferred to Albania. This may deprive asylum

seekers of adequate procedural guarantees and judicial protection. In addition, article 4(3) of the MoU indicates that “*in the event that, for any reason whatsoever, the title to stay in the facilities (of third country nationals) ceases to exist, the Italian Party shall immediately transfer the migrants out of the Albanian territory, without any clarification on transfer procedures.* This exponentially increases the risk that deportations by Italian authorities to third countries will run contrary to the principle of *non-refoulement*. Moreover, while the MoU emphasizes that rescued individuals staying in Albania will remain subject to Italian jurisdiction, we are concerned that the physical distance between asylum seekers and relevant authorities may significantly curtail access to fair and effective asylum procedures. Factors such as limited access to legal assistance and remote interviews can hinder individuals' ability to fully express their case and participate in proceedings. We wish to remind the Government of your Excellency about article 14 of the Universal Declaration of Human Rights, which states that “everyone has the right to seek and enjoy in other countries asylum from persecution”.

We also regret that the MoU does not include any clear provision on the disciplinary authority or criminal jurisdiction for acts of human rights abuses and violations such as torture or ill-treatment that may occur inside the centres or at the external perimeters. We emphasize it is the joint responsibility of Italy and Albania to establish mechanisms to receive and address complaints of alleged human rights violations occurred inside the centres, or at the external perimeters and to ensure thorough investigations on these allegations.

In connection with the above 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 observations.
2. Please provide clear indications on how the establishment of the centres in Shengjin and Gjader, Albania, as outlined in the soon-to-be-implemented Memorandum of Understanding, complies with Italy's international obligations, particularly concerning its human rights commitments. Please indicate how Italy will ensure that the rights of migrants, asylum seekers, and refugees are upheld throughout the entire process, from rescue to reception and asylum determination.
3. Please clarify what measures are going to be implemented to avoid any delays in responses to emergencies that could jeopardize the safety of individuals in distress at sea. Please also provide clear indication on how your Excellency's Government will ensure the swift disembarkation of rescued persons in a “place of safety”, other than the rescue vessel, and which is over 500 nautical miles (700 kilometers) away from the area where rescues are commonly conducted.

4. Please provide clear information on measures taken to ensure that individuals rescued at sea, especially children, pregnant women, and survivors of trafficking and torture, among others with vulnerabilities, receive proper identification, immediate medical assistance, and psychosocial support. Please provide information on measures taken to prevent immigration detention of children and other individuals in need of specific care.
5. Please specify any measures planned to ensure that immigration detention is used as a measure of last resort for adults only for the shortest period of time, subject to judicial authorization and judicial review. Please clarify what specific steps are being taken to address the potential violations of the right to liberty, including automatic and prolonged detention, as highlighted in international human rights law and standards.
6. Please specify steps taken by Italy to comply with its international obligations with respect to the principle of non-refoulement. Please also provide details on how your Excellency's Government plans to facilitate access to fair and effective asylum procedures for asylum-seeking migrants transferred to Albania, considering the physical distance from relevant authorities and potential barriers to legal assistance and participation in proceedings.

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.

Further, we would like to inform that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit a case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We highly recommend that you consult the OHCHR's [Recommended Principles and Guidelines on Human Rights at International Borders](#) and the [Global Compact for Safe, Orderly and Regular Migration](#). We look forward to receiving further information on the issues mentioned in this letter, and we stand ready to cooperate with you to enhance the protection of the human rights of all migrants, asylum seekers and refugees in Italy and Albania.

Please be informed that a letter on this subject matter has also been sent to the Permanent Mission of Albania.

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

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

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences

## Annex

### Reference to international human rights law

In connection with the above concerns, we would like to refer Your Excellency's Government to the International Convention on Maritime Search and Rescue (SAR), to which Italy has been party since 27 April 1979, particularly paragraph 2.1.10 of chapter 2 of the annex to the Convention as amended, states that: "Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found." While Resolution MSC.167(78) of May 20, 2004, states in paragraph 6.21 that "Any operations and procedures such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation of survivors from the assisting ship(s)."

We would also like to refer to article 98 of the United Nations Convention on the Law of the Sea of 1982, to which Italy has been party since 7 December 1984, requiring coastal States to promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose. Further, according to conclusion No. 15 (1979), para. c of the UNHCR Executive Committee: "It is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge, to persons on board wishing to seek asylum." In that sense, it is required that States take all reasonable precautionary steps to protect life and prevent excessive violence.

We stress that delays in searching for and rescuing migrants, asylum seekers, and refugees in distress at sea, as well as in designated safe ports of disembarkation, may amount to torture or ill-treatment and undermine the right to life. As codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Italy on 12 January 1989, States must respect and ensure the right to be free from torture and ill-treatment without any discrimination. Any intentional infliction of severe pain or suffering "for any reason based on discrimination of any kind" including based on migration status, amounts to torture, regardless of whether it is inflicted by or at the instigation of state officials themselves, or merely with their consent or acquiescence (A/72/335).

Moreover, as described in the report of the United Nations High Commissioner for Human Rights on Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, a formal procedure to determine the best interests of the child should be conducted with certain safeguards. For example, such safeguards should include the meaningful participation of authorities responsible for child protection, as well as the right of the child to be heard and to have competent and independent legal representation (A/HRC/37/34, principle 6, guideline 6). We also stress that children should not be separated of their families.

We further wish to emphasize that restrictive migration or asylum policies render migrant and asylum-seeking children, including unaccompanied or separated

children, particularly vulnerable to suffering exploitation, violence, and sexual abuse during their migration journey and in countries of destination. Unaccompanied migrant and asylum-seeking children should have access to the national child-care system on an equal basis as national children and enjoy all relevant safeguards with regard to the protection of children. As per article 22 of the Convention, States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance. Further, State parties are obligated to protect the child from all forms of sexual exploitation and sexual abuse, sale and trafficking of children, and all other forms of exploitation, in accordance with articles 34 to 36.

In relation to the potential risk of detention procedures, we wish to strongly emphasize that the detention of any child for reasons related to their, their parents' or their legal guardians' immigration status can never be considered in the best interests of the child and always constitutes a violation of the rights of the child, in accordance with the applicable international human rights standards. The Committee on the Rights of the Child has clearly stated that the immigration detention of any child is a violation of children's rights and always contravenes the principle of the best interest of the child<sup>5</sup>. This position has been affirmed by joint general comment No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return. Alternative reception and care arrangements should be sought.<sup>6</sup> States are required to ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, and to undertake best interests assessments and determination procedures: "as part of, or to inform, migration related and other decisions that affect migrant children" (CMW/C/GC/3-CRC/C/GC/22, para. 31).

Several special procedures mandate holders have also stressed that immigration detention of children should be prohibited (para. 11, annex, A/HRC/39/45; para. 73, A/HRC/37/50; and para. 46, A/HRC/30/37). As per article 37 of the Convention and the Working Group on Arbitrary Detention's revised deliberation No. 5 on deprivation of liberty of migrants, the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.

For pregnant women, the impact of detention can be particularly acute. Research shows detention of pregnant asylum seekers increases the likelihood of stress, which can risk the health of the unborn baby<sup>7</sup> while the mother is likely to suffer irreparable damage both physically and psychologically.

The positive obligations to identify and protect victims of trafficking in persons have also been recognized by the consistent jurisprudence of the European Court of Human Rights, based on article 4 of the European Convention on Human

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<sup>5</sup> Report of the 2012 day of general discussion, Committee on the Rights of the Child, para 32: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

<sup>6</sup> A/HRC/20/24.

<sup>7</sup> [https://www.refugeewomen.co.uk/wp-content/uploads/2023/04/Indefinite-detention-of-pregnant-women\\_joint-briefing-April-2023.pdf](https://www.refugeewomen.co.uk/wp-content/uploads/2023/04/Indefinite-detention-of-pregnant-women_joint-briefing-April-2023.pdf)

Rights on the prohibition of slavery. We would also like to recall the obligations arising from article 12 of the Council of Europe Convention on Action against Trafficking against Human Beings for provision of specialised assistance and appropriate accommodations to victims of trafficking. Additionally, the report of the Special Rapporteur on trafficking in persons, especially women and children, to the Human Rights Council on “Refugee protection, internal displacement and statelessness” recalls that the positive obligations on the State to identify and protect victims of trafficking or persons at risk of trafficking arise also in the context of interceptions at sea and the duty to rescue persons in distress at sea. In this context, the report of the Special Rapporteur recalled the recommendation of the UN Human Rights Committee to review policy and practices during interceptions at sea, including on-water assessments, to ensure that all persons under the State’s jurisdiction who are in need of international protection have access to fair and efficient asylum procedures within the territory of the State, including access to legal representation, where appropriate, and to legal remedies<sup>8</sup>. The report also highlighted, drawing on the Human Rights Committee’s jurisprudence, the evolving functional concept of jurisdiction, and more specifically the special relationship of dependency that may arise in such contexts, and its relevance in determining whether persons directly affected by decisions taken by the State, in a manner that was reasonably foreseeable in the light of relevant legal obligations, are subject to its jurisdiction.<sup>9</sup> (see further references in the report of the Special Rapporteur on trafficking in persons, A/HRC/53/28, para. 39).

The Special rapporteur also highlighted that EU Member States are bound by “obligations arising under the Convention on the Rights of the Child and its Optional Protocols with regard to effective control exercised by a State outside of its borders, including in international waters or other transit zones where States put in place migration control mechanisms, which must be applied with respect to children who come under the State’s jurisdiction, including while attempting to enter its territory.”<sup>10</sup>

In this context the Special Rapporteur on trafficking in persons further highlighted the findings of the Committee on the Rights of the Child, which held that the State exercised jurisdiction *ratione personae* over the children who were the subject of the communication under consideration and had the capability and the power to protect the rights of the children in question.<sup>11</sup> As such, the obligation arising under article 35 of the Convention on the Rights of the Child, to take all appropriate national, bilateral and multilateral measures to prevent, *inter alia*, the traffic in children for any purpose or in any form, applies and imposes positive obligations on the State to ensure identification, assistance and protection and non-refoulement” (A/HRC/53/28, para. 40).

We would also like to draw your attention to international law obligations of non-discrimination with regard to children, in line with article 2 of the Convention on the Rights of the Child, prohibition of slavery, servitude, and forced labor in line with article 8 of the International Covenant on Civil and Political Rights as well as obligations of States parties to identify, assist and protect survivors of trafficking, to

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<sup>8</sup> [CCPR/C/AUS/CO/6](#), para. 34 b

<sup>9</sup> Human Rights Committee, *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017); Aphrodite Papachristodoulou, “The Ban-Opticon of migration: technologies at maritime borders and extraterritorial jurisdiction” (2022).

<sup>10</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families / No. 22 (2017) of the Committee on the Rights of the Child, para. 12.

<sup>11</sup> Committee on the Rights of the Child, *S.B. et al. v. France* (CRC/C/89/D/77/2019-CRC/C/89/D/79/2019-CRC/C/89/D/109/2019), paras. 1.4, 3.9 and 6.4.

prevent their revictimization and to ensure their access to justice and the punishment of perpetrators as set out in The Committee on the Elimination of Discrimination against women's general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration.

We would also like to draw your attention to obligations of States to prohibit and eliminate of racial discrimination in line with article 5 of International Convention on the Elimination of All Forms of Racial Discrimination and their obligations to take all appropriate measures, including legislation, to suppress all forms of traffic in women in line with article 6 of the Convention on the Elimination of Discrimination against women.

We would like to draw your attention to guideline 8, paragraphs 2 to 5 of the Office of the United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Trafficking (2002), which set out that States should consider ensuring that procedures are in place for the rapid identification of child victims of trafficking and locating family members where children are not accompanied by relatives or guardians with a view to consider either 1) facilitating the reunion of trafficked children with their families where this is deemed to be in their best interest or 2) establishing adequate care arrangements that respect the rights and dignity of the trafficked child in situations where the safe return of the child to his or her family is not possible or where such return would not be in the child's best interests.

In addition, we wish to recall that, according to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the UDHR and article 9.1 of the ICCPR. 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). Moreover, the Human Rights Committee stated in its general comment No. 35 on article 9, liberty and security of person, that detention in the course of proceedings for the control of immigration "must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time". Additionally, the Working Group on Arbitrary Detention recommended that a "maximum detention period in the course of migration proceedings must be set by legislation"; and that when deportation orders cannot be implemented due to reasons that are not attributable to the subject of the removal order, "the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary" (Annex, A/HRC/39/45).

We would also like to refer to the revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, "alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure". Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe,

Orderly and Regular Migration (objective 13, A/RES/73/195). We would also like to refer your Excellency's Government to the report of the Special Rapporteur on torture (A/HRC/37/50), in which he concluded that "criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration and should be regarded as arbitrary (para. 25)," The Rapporteur further emphasised that detention of migrants should never be used as a means of deterrence, intimidation, coercion, or discrimination (para. 73).

We wish to highlight that refugees, asylum-seekers, and migrants in Italy already face barriers to appealing against detention, and we are concerned that these barriers may become even more insurmountable for individuals detained by Italian authorities in Albania.

Finally, we also wish to stress that States should ensure that all border governance measures taken at the international borders, including those aimed at addressing irregular migration, are in accordance with the principle of *non-refoulement* and should provide adequate procedural guarantees and judicial protection. The principle of *non-refoulement* forms an essential and non-derogable protection under international human rights, refugee, humanitarian, and customary law present in the ICCPR, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Italy has been party since 17 July 1980. Moreover, the principle of *non-refoulement* is codified in the 1951 Refugee Convention, to which Italy is party since 15 November 1954, and is explicitly guaranteed in article 3 of the CAT.

We also wish to refer you to the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), known as "Istanbul Convention," which was ratified by your Excellency's Government in 2013 and whose objective is to protect women from gender-based violence, which must be recognized as a form of persecution and serious harm, giving rise to complementary protection. The Convention obliges States to ensure that women and girls who have been victims of gender-based persecution can safely reach the European Union and apply for asylum. According to the afore-mentioned Convention, parties shall take the necessary legislative or other measures to ensure that gender-based violence against women is recognized as a form of persecution within the meaning of article 1A(2) of the 1951 Convention relating to the status of refugees and as a form of serious harm that give rises to complementary and subsidiary protection. Parties must also take the necessary legislative and other measures to develop gender-sensitive reception procedures and support services for asylum-seekers. Article 61 of the Convention also imposes on parties the obligation to respect the principle of non-refoulement, in accordance with existing obligations under international law.

In addition, involuntary returns cannot be lawfully carried out without due process of law: under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual's circumstances, in accordance with the law and when procedural guarantees have been respected. Individuals facing deportation should have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism vested with the authority to review appeals of negative decisions. It should be noted that the principle of *non-refoulement* has been interpreted to apply to a wide range of

risks of irreparable harm and should be applied to prevent the return of persons in cases of risk of serious human rights violations. These risks include the rights to life, integrity, or freedom of the person, and of torture and ill-treatment<sup>12</sup>. In addition, under certain circumstances, the individual assessment of the risk of irreparable harm can include, among other elements, access to or the level of enjoyment of economic and social rights. (A/HRC/47/30, para. 42). As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement is characterised by its absolute nature without any exception and overrides not only national immigration laws but also contradicting international obligations, such as those of extradition treaties (A/HRC/37/50, para. 37). Therefore, any steps taken to legalize policies effectively resulting in the removal of migrants without an individualized assessment in line with human rights obligations and due process are squarely incompatible with the prohibition of *non-refoulement* (A/HRC/50/31, para. 70).

As noted by the preceding Special Rapporteurs on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children in their joint report (A/72/164), the repatriation of any child can only be decided when it is evidenced on a case-by-case basis that it is in his or her best interests and after ensuring, by means of a procedure with proper safeguards, that the child, upon return, will be safe and provided with proper care and custody.

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<sup>12</sup> OHCHR, “The principle of non-refoulement under international human rights law”, available at [www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrinciplenonrefoulementUnderInternationalHumanRightsLaw.pdf](http://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrinciplenonrefoulementUnderInternationalHumanRightsLaw.pdf).