

**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 ALB 1/2024  
(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 and asylum seekers 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 the Government of your Excellency that the arrangements made for migrants and asylum seekers in the MoU, including the extra-territorialization of border and return procedures, fall under direct responsibility of both signatory States, as they are respectively responsible for the individuals subject to these procedures either within their territory or jurisdiction.

We wish to emphasize that Albania’s obligations under international human rights law to respect, protect and fulfil the human rights of all individuals within its territory. We are concerned that the lack of clarifications of several arrangements concluded under the MoU would fail to ensure sufficient protection against imminent risks or irreparable harm to migrants and asylum seekers arriving to Albania, including those in need of international protection.

In particular, 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 the port of Shengjin and Gjader, which are over 500 nautical miles (700 kilometres) away from the area where rescues are commonly conducted. We are concerned that this provision could lead to unnecessary delays in disembarkation in up to two 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 medical and protection needs.

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 Albania on 4 October 1991, 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.

Moreover, we wish to stress that delays in disembarkation of migrants and asylum seekers rescued in distress at sea, 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), acceded by Albania on 11 May 1994, 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).

Furthermore, we are concerned that the lack of clarity in the MoU with respect to Albania's responsibilities towards a clear screening criteria and protection procedures, could negatively affect migrants, asylum seekers, and refugees in situation of vulnerability if disembarked in the country. More specifically, we regret that the MoU does not clarify whether screening procedures would take place on board rescue vessels or after disembarkation in Albania. Screening procedures on board of rescue vessels could lead to accelerated and superficial assessment of vulnerabilities of individuals rescued at sea, and their consequent transfers of migrants and asylum seekers in need of specific care to Albania, where the reception and care are not adequate to meet their protection needs. If such procedures are to be undertaken in Albania, it remains unclear if migrants, asylum seekers, and refugees in need of specific care would be able to claim against Albanian authorities over assessments made before or after disembarkation.

In that connection, we are concerned that the State's obligations to fulfil human rights through positive actions to facilitate the enjoyment of human rights, including to provide assistance and protection of migrant and asylum-seeking children, pregnant women, victims and survivors of sexual abuse, sexual exploitation, trafficking and contemporary forms of slavery are not met in the MoU. In particular, women and girls fleeing gender-based persecution should be granted a safe migration pathway and allowed to seek asylum.

Finally, we are concerned 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. We regret that the MoU does not foresee the possibility for individuals to be released from the centres in Albania, other than through transfer by Italian authorities outside of Albanian's territory. This could potentially cause individuals to remain detained in the centres longer than what could be justified by the principles of necessity and proportionality. The duration of detention might serve logistical conveniences and most individuals may be detained for the maximum period as foreseen in the MoU. In addition, individuals detained in these centres might be at risk of being subject to sub-standard and unfair migration or asylum procedures.

Alternatives to child detention should be sought.<sup>2</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).

We also regret that the MoU limits the responsibility of Albanian authorities to cases where individuals leave the centres without permission. The MoU does not include any clear provision on the disciplinary authority and 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

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<sup>2</sup> A/HRC/20/24.

responsibility of Albania and Italy 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 detailed information regarding the coordination mechanisms and protocols to be established between Albania and Italy to manage the operations of the centres in Shengjin and Gjader. Please specify how they will align with Albania's international human rights obligations, in particular with regard to the right to life and bodily and mentally integrity of individuals rescued in distress at sea.
3. Please provide clear information on how the Government of your Excellency will ensure that the human rights of migrants, asylum seekers, and refugees in situation of vulnerability are identified and that all individuals are protected throughout their stay in the country, including immediate medical assistance and psychosocial support. Please clarify the role of Albania in relation to migration and asylum procedures.
4. Please specify how the Government of your Excellency will work with the Government of Italy to prevent prolonged and arbitrary detention. Please provide information on any plans of Albania, jointly with Italy, to set up independent mechanisms to receive complaints, and investigate and address allegations of human rights violations of migrants, asylum seekers, and refugees in the centres. Please provide information on any concrete plans Albania has to assess the compliance of the centres with its international human rights obligations.
5. Please provide clear information on any training programmes to be provided for Albanian personnel protecting the outside perimeter of the centres. Please specify how these programmes will equip the personnel to handle the needs of migrants and asylum seekers in compliance with relevant international human rights 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.

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 Italy.

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

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Special Rapporteur on the human rights of migrants

Ganna Yudkivska  
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Mama Fatima Singhateh  
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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 to the above concerns, 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 duty to protect the right to life by law also includes an obligation for States parties to take appropriate legal measures in order to protect life from all foreseeable threats” (CCPR/C/GC/36 para. 22).

We also 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).

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”.