

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Working Group on Arbitrary Detention and the Special Rapporteur on the human rights of migrants

Ref.: AL ITA 4/2025
(Please use this reference in your reply)

30 April 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Working Group on Arbitrary Detention and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 53/9, 51/8 and 52/20.

In this connection, we would like to express our concern in relation to allegations of serious human rights violations arising in the context of Voluntary Humanitarian Return programs under the Multi-Sectoral Support for Vulnerable Migrants in Libya Project implemented by the International Organization for Migration with support from the Government of Italy.

Similar concerns regarding the partnership arrangements between Italy and third States and related interception, detention and unlawful return of migrants, refugees and asylum seekers have been the subject of previous joint communications, including [UA ITA 1/2017](#), [AL ITA 4/2017](#) and [AL ITA 3/2024](#). While we appreciate the replies on the communications provided by your Government, we remain concerned that similar arrangements may breach Italy's positive obligations, including the duty to take operational measures to protect migrants, refugees, asylum seekers and potential or confirmed victims of trafficking from human rights violations including onward refoulement and re-trafficking, as well as to provide assistance measures to enable recovery, and to ensure effective access to remedies.

According to the information received:

From 2017 to date, Italy has financed over 56.5 million Euros for interventions in Libya through the 'Fund for extraordinary interventions to boost dialogue and cooperation with African countries and other countries of priority importance for migratory movements', or 'Migration Fund'.¹ On 13 June 2024, the Directorate General for Italian Citizens Abroad and Migration Policies of the Italian Ministry of Foreign Affairs and International Cooperation entered into a partnership arrangement with the International Organization for Migration (IOM) to provide financial support to IOM activities in Libya for the implementation of the project 'Multi-Sectoral Support For Vulnerable Migrants in Libya' spanning from 1 July 2024 to 30 June 2026. IOM projects preceding the newest agreement received two additional fundings and underwent remodulations of activities in the span of three years.²

¹ The Migration Fund was established through an extension provided by article 1, paragraph 878 of Law No. 160 of 27 December 2019 of the so-called "Africa Fund," established by article 1, paragraph 621 of Law No. 232 of 11 December 2016.

² The 'multi-sectoral support for vulnerable populations and communities in Libya' project from 1 September 2021 to 1 January 2025 received sixteen million Euros through the "Migration Fund," and the 'comprehensive and

Under the latest partnership arrangement, a total of seven million Euros has been committed from the Fund for extraordinary intervention to promote dialogue and cooperation with key African states on migration established by the Budget Law No. 232/2016 (Art. 1(621)). About a quarter of the total funding equivalent to 2.48 million Euros is dedicated to voluntary humanitarian return and reintegration, which is carried out by the Libyan Coast Guard, Ministries of Interior, Labour and Local Governance. Nearly one million Euros are specifically allotted to facilitate the voluntary return of 820 migrants, refugees and asylum seekers who are rescued at sea and subsequently detained in detention centres or stranded in urban and rural areas in Libya. The project also aims to improve the operational capacity of Libyan authorities to conduct specialised search and rescue operations through the provision of technical, operational and in-kind support.

We wish to reiterate our concerns in relation to the following aspects of the partnership arrangement:

Voluntary return and reintegration

Voluntary Humanitarian Return (VHR) is a measure introduced by the IOM specifically for the Libyan context and is characterised by the integration of a humanitarian component in the project, alongside technical support provided to authorities in Specialised Search and Rescue (SAR) operations. VHR programs are aimed at assisting migrants, refugees and asylum seekers rescued at sea, detained in detention centres or stranded in Libya, and when deemed necessary, may be complemented with socioeconomic reintegration support. VHR programs constitute an increasingly significant part of IOM projects funded by the Italian Ministry of Foreign Affairs and International Cooperation in Libya, despite concerns in relation to the voluntariness of returns administered under previous projects that have been funded by the Italian Government with similar partnership arrangements. Reports indicate that women, children, victims of trafficking and people with medical vulnerabilities have been returned directly from Libyan detention centres and in the absence of adequate safeguards or due procedural guarantees, potentially in violation of the obligation of non-punishment, the obligation to ensure assistance and protection measures, recovery and access to remedies, the principle of non-refoulement, and the prohibition of collective expulsion. These patterns are also acknowledged in the project document of the new IOM project, which notes that 43 per cent of ‘beneficiaries’ of their program in 2023 were in detention at the time of their identification and close to 7 per cent were victims of trafficking. The project document also notes that “the criminalization of irregular entry and exit under Libyan law provides a basis for the apprehension and detention of undocumented migrants... [who] have no access to legal recourse and are therefore prone to detention in dismal and deplorable conditions where they remain at constant risk of being subjected to severe abuse and human rights violations by State or non-State actors.”

multi-sectoral action plan in response to the migration crisis in Libya’ project spanning from September 2017 to April 2021 received twenty million Euros through the “Africa Fund.”

In line with these findings, approximately 76.5 per cent of repatriated migrants, refugees and asylum seekers have been reportedly held in Libyan detention centres before repatriation, among whom were women, children, trafficked persons, and people with medical vulnerabilities. As such, VHR programs function in practice as the last and only solution to interceptions and prolonged detention for an indeterminate period. In the absence of alternatives, migrants, refugees and asylum seekers may be compelled to accept returns to unsafe situations, where they risk being exposed to the same conditions they fled from. Moreover, it is unlikely that migrants, refugees and asylum seekers were able to give free, prior, and informed consent due to lack of adequate assistance, which *de facto* deprives them of access to international protection, including asylum, and judicial guarantees, and renders individual consideration of the merits of their protection claims nearly impossible. Against this backdrop, concerns have been raised that VHR programs may open forced mobility channels to countries of origin and legitimise cooperation with Libya in violation of the principle of non-refoulement. These conditions may also force migrants, refugees and asylum seekers to remain in other harmful situations, such as slavery, arbitrary and indefinite detention, torture, rape, forced labour, exploitation and extortion. Migrants, refugees and asylum seekers may also have to adopt more risky routes and modes of transport, at a greater risk of abuse by smugglers and of falling victims of trafficking. It is also noteworthy that the level of violence against migrants, refugees and asylum seekers have reportedly increased, following the signing of the Memorandum of Understanding between the Italian and Libyan authorities in 2017. Despite these pronounced and repeated protection concerns, information on human rights concerns under previous projects, including on repatriated individuals, have been limited, with uneven or no publicly available details provided on the location of detention centres or disaggregated data by age, gender and nationality. The new project also has limited preventive and mitigating measures against the risks of trafficking or unlawful return of migrants, refugees and asylum seekers or monitoring mechanisms to ensure that funding and cooperation for returns are compliant with international human rights law.

Reintegration support is also limited and lacks context specificity. Under Output 1.2 on reintegration of returning migrants, refugees and asylum seekers in selected countries of origin, Activity 1.1.1 of the project aims to provide VHR assistance to migrants, refugees and asylum seekers and is measured by two indicators, i.e., the number of returnees receiving reintegration support and the percentage of beneficiaries declaring employment or in training within six months of reception of reintegration assistance. The latter indicator is predicated on the assumption that returnees are willing and able to pursue employment opportunities or to enrol in trainings in their countries of origin, all of which relies heavily on the willingness of migrants, refugees and asylum seekers as opposed to their capacity and external conditions. Under the same Output, Activity 1.2.1 aims to provide individualised reintegration assistance managed and coordinated by IOM offices in returnees' countries of origin. As part of this reintegration support to returnees, costs pertaining to medical and psychosocial support, housing, vocational training, income generation and other areas deemed relevant and appropriate during counselling sessions would be covered.

Individual reintegration plans would also be uploaded on the IOM case management tool using specific reference for each ‘beneficiary’ to allow for easier monitoring and evaluation of support provided and to ensure case follow-up and continuum of care. It is noted that in order “to ensure complementarity between IOM projects, reintegration assistance will be offered to beneficiaries of nationalities that do not have access to reintegration support under different funding streams, particularly EU funding.” Additionally, while Outcome 3 of the project seeks to provide regularised and dignified employment opportunities in a well-managed and improved business environment characterised by fair and indiscriminatory recruitment practices, it is unclear how the project would specifically contribute to ensuring fair wages, safe working conditions and access to essential services for migrants, refugees and asylum seekers who are able to work.

Externalisation of migration management and protection

The new partnership arrangement also contains elements of external migration management and protection through the provision of technical, operational and in-kind support for Specialised Search and Rescue (SAR) operations. Output 2.1 of the project specifically focuses on providing Libyan authorities the necessary infrastructure and equipment to perform SAR operations at the western border along Tunisia-Libya border region with a view to deploying mobile patrolling stations equipped with essential operational tools, including auxiliary generators, photovoltaic power stations, water tanks and water, sanitation and hygiene facilities. The project also seeks to establish basic first aid clinics across the Sahara Desert, ensuring the provision of first aid assistance and equipment in remote locations. Furthermore, the project seeks to build capacity of Libyan authorities to provide assistance and emergency first aid to migrants, refugees and asylum seekers in the context of SAR operations, and specifies that rights-based capacity building and sensitisation covering international protection principles will be delivered under Output 2.2, targeting key entities involved in SAR operations, including the Libyan Border Guard, Department of Combating Illegal Migration (DCIM) and the Customs Authority.

While these measures may help enhance the operational and technical capacity of relevant authorities in assisting migrants, refugees and asylum seekers, strengthening such activities and mechanisms may concomitantly increase prevalence of interception of migrants, refugees and asylum seekers at sea and their unlawful return to Libya. It is also crucial to note that obligations under international refugee and human rights law cannot be avoided by employing transfer or extraterritorial processing modalities, and in the absence of adequate safeguards or where misapplied, such practices may be unlawful and constitute externalisation of protection due to their design or implementation. Measures need to guarantee protection and responsibility for identifying or meeting protection needs cannot be shifted to another State or entity. Should the financial or technical assistance to Libyan authorities constitute aiding and abetting, the support given would be a mode of liability in international criminal law.

Monitoring and data collection

The outlined project outputs and activities present several potential human rights concerns related to the collection, analysis, and dissemination of migration data, as well as the reintegration of returning migrants, refugees and asylum seekers. Output 4.1, which involves tracking migration trends and making data available through the Displacement Tracking Matrix, raises concerns regarding the privacy and protection of personal information of migrants, refugees and asylum seekers, particularly if data is not anonymised or is shared without adequate safeguards, potentially exposing concerned persons to risks, such as discrimination, targeting or exploitation. Activity 4.1.1 of the project, which seeks to expand the coverage of monitoring on initiatives and migration trends through collecting data on the demographics and profiles of migrants, refugees and asylum seekers, may inadvertently contribute to increased surveillance without ensuring the concerned persons' informed consent or considering the potential misuse of data by authorities or non-State actors. Activity 4.1.2 focuses on publishing assessment reports on migration flows, mobility patterns and labour migration within Libya based on the geographic presence of migrants, refugees and asylum seekers in the country and their demographic profiles and origins. However, the Activity lacks safeguarding measures that ensure these findings do not lead to reprisals, reinforce stereotypes, stigmatisation, or policies that restrict the rights of migrants, refugees and asylum seekers, particularly in contexts where they already face xenophobia and limited access to services. Furthermore, Outcome 1 and Output 1.2 of the project, which measure reintegration success based on employment and training indicators, assume the availability of economic opportunities without addressing structural barriers, such as discrimination in hiring or lack of accommodations for migrants, refugees and asylum seekers, especially those with disabilities. The failure to provide alternative livelihood support pathways risks leaving returnees, including women, older persons, persons with disabilities and victims of trafficking, without sustainable means of survival, ultimately undermining their right to a dignified return and reintegration, and the right to life. Data collection needs to be ethical, incorporate protection measures for migrants, refugees and asylum seekers and compliant with international human rights law.

In light of the above concerns, a joint appeal was filed before the Italian Administrative Court (TAR Lazio) in November 2024 requesting the suspension and annulment of 970,000 Euros allotted to VHR measures and the subsequent reallocation of funds to humanitarian measures. The Court of Cassation ruled on 17 February 2025 that handing over migrants to Libyan coast guards is unlawful, as Libya does not represent a safe port. In a related case, the Supreme Court ruled in sentence number 4557/2024 that facilitating the interception of migrants, refugees and asylum seekers by the Libyan coast guards falls under the crime of abandonment in a state of danger of minors or incapacitated people and arbitrary disembarkation and abandonment of people, and that collective refoulement to a country considered unsafe contravenes the European Convention on Human Rights.³ It should also be noted that the Court

³ See https://i2.res.24o.it/pdf2010/S24/Documenti/2024/02/20/AllegatiPDF/P_4557_2024_SENTENZA.pdf. See also European Court of Human Rights judgment on *J.A. and others v Italy*, application 21329/18.

of Cassation (Fifth Criminal Section) delivered a ruling earlier on 1 February 2024 declaring that Libya is not a safe harbour and that returning individuals to countries where there is risk of inhuman and degrading treatment constitutes a violation of the principle of non-refoulement.

While we do not wish to prejudge the accuracy of the information above, we would like to remind your Excellency's Government that arrangements made for migrants, refugees and asylum seekers under the partnership arrangement, including the extra-territorialisation of migration management and voluntary return, fall under direct responsibility of the concerned signatory State, as it is responsible for ensuring the rights of migrants, refugees and asylum seekers and victims of trafficking on its territory or subject to its effective control. In this context, we would like to express concern that the partnership arrangement and related project do not provide adequate procedural guarantees for individualised and procedurally fair assessments of safety and dignity of removal of persons concerned, protection against refoulement and resolution of disputes. We underscore that practical protection measures and monitoring mechanisms need to be implemented to give meaningful effect to the assurances stated in the partnership arrangement. We further wish to stress Italy's obligations under international and regional human rights law to ensure that all return processes are carried out in a safe, human rights law and refugee law-compliant and dignified manner. In this regard, any legitimate and necessary pre-removal detention needs to follow a case-specific and individual determination, ensuring that victims of trafficking and children are not detained.

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 detailed information on the destination and administration of Italian funds to Libyan authorities and on measures taken to ensure that such funding and cooperation on assisted returns do not indirectly fuel human rights violations, in particular arbitrary and indefinite detention, involuntary return, trafficking, slavery and other forms of labour or sexual exploitation.
3. Please provide information on the measures taken to provide human rights-compliant alternatives to detention and unlawful return and to ensure that migrants, refugees and asylum seekers will be taken to places of safety and receive adequate reintegration support.
4. Please share any strategy on the assessment of human rights implications of migration management programmes and policies that Italy might implement, renew or reinforce in coordination and partnership with

relevant authorities under the partnership arrangement.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether one or more cases of deprivation of liberty were arbitrary or not. This letter in no way prejudices any opinion the Working Group may render as part of its regular procedure. The Government is required to respond separately to this letter of allegation and the regular procedure.

Please also be informed that a copy of this letter has also been sent to the Permanent Mission of Libya and the International Organization for Migration.

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

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Special Rapporteur on trafficking in persons, especially women and children

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Gehad Madi
Special Rapporteur on the human rights of migrants

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 this context, we would like to stress that non-refoulement is an international obligation under articles 6, 7 and 13 of the International Covenant on Civil and Political Rights (ICCPR), which Italy ratified on 15 September 1978. We note that article 9(1) of ICCPR provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but extended to all persons. The detention of migrants, refugees and asylum seekers should thus be a measure of last resort. Article 9(4) of the ICCPR further notes that anyone deprived of their liberty by arrest or detention be entitled to take proceedings before the court, in order that the court may decide without delay on the lawfulness of the detention and order release if deemed unlawful. Article 10 of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity.

We recall that the Human Rights Committee, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant clarified that "a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party" (CCPR/C/21/Rev.1/Add.13, para. 10). The Committee also clarified that the Covenant rights "must also be available to all individuals, regardless of 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" (Ibid.). The Committee reiterated this principle in its general comment No. 36 (2019) on article 6: right to life, noting that the jurisdiction of the ICCPR covers the rights of persons "outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner" (CCPR/C/GC/36, para. 63). Furthermore, the General Comment establishes that "States also have obligations under international law not to aid or assist activities undertaken by other States and non-State actors that violate the right to life" (Ibid.). The same principle is stated in article 2 of the International Covenant on Economic, Social and Cultural Rights, which Italy ratified on 15 September 1978, which calls on States Parties to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind.

We wish to recall that the prohibition of refoulement is explicitly included in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ratified by Italy on 15 November 1954. Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Italy ratified on 12 January 1989. Non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is

respected even in cases where non-refoulement under refugee law may be circumscribed. CAT should also be interpreted in line with international criminal law jurisprudence. Article 4(1) of the CAT refers to the individual criminal liability of a person for complicity or participation in torture. While most of the provisions of the CAT have no spatial imitation, jurisdictional clauses are found in articles 2(1), 5(1)(a), 5(2), 6(1), 7(1), 11, 12, 13 and 16(1), as well as in article 4(1) of the Optional Protocol to the Convention. In this context, Italy may be in breach of articles 1 and 2 of CAT if the support provided under the partnership arrangement are found to have contributed to human rights violations.

Additionally, the Committee against Torture, in its general comment No. 2 (2007) on the implementation of article 2 by States parties, notes that “where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking” (CAT/C/GC/2, para. 18).

We would also like to bring to your attention to article 6 of the International Convention on the Elimination of all forms of Discrimination against Women, which Italy acceded to on 10 June 1985 and provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” Reference is also made to the United Nations Declaration on the Elimination of Violence against Women clarifying that violence against women shall be understood to encompass trafficking. We also refer to the Committee on the Elimination of Discrimination against Women general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which the Committee reiterated the “obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving States and/or voluntary repatriation to their State of origin” (CEDAW/C/GC/32, para. 14).

Furthermore, the Committee on the Elimination of Discrimination against Women general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration stresses that “Combating trafficking in women and girls in the context of global migration requires the engagement of the larger protection framework stemming from international humanitarian law, refugee law, criminal law, labour law and international private law, the conventions against statelessness, slavery and the slave trade and international human rights law instruments. The Convention

reinforces and complements the regional and international law regime for victims of trafficking, in particular in cases in which explicit gender equality provisions are absent from international agreements. The Committee recognizes that women and girls retain the concurrent protection of those legal instruments” (CEDAW/C/GC/38, para. 13). The Committee further clarified that “States parties bear a legal obligation to respect and ensure the rights set out in the Convention to anyone within their power or effective control, even if not situated within their respective territories. The direct obligation of States parties to prevent, investigate, prosecute and punish acts of trafficking in women and girls and offer redress to victims extends to the acts or omissions of all perpetrators” (CEDAW/C/GC/38, para. 17). The Committee called States parties to “ensure that all governance measures taken at international borders, including those aimed at addressing irregular migration and combating transnational organized crime, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions” (CEDAW/C/GC/38, para. 85).

We would like to recall that article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Italy on 6 January 1976, obliges States to eliminate racial discrimination in all its form and to guarantee the right of everyone, without distinction, to equality before the law in the enjoyment of their human rights. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution. In addition, article 2 obliges States not to sponsor, defend or support racial discrimination by any persons or organisations.

The Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration clarifies that States must ensure the primacy of the rights of the child in the context of international migration and 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 (CMW/C/GC/3-CRC/C/GC/22, para. 13). States must also 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/3CRC/C/GC/22, para. 31).

We would like to recall articles 2 and 3 of the Convention on the Rights of the Child, which Italy ratified on 5 September 1991, which calls States parties to respect and ensure the rights of children within their jurisdiction without discrimination of any kind and to take all appropriate legislative and administrative measures to ensure protection and care for children, with primary consideration given to the best interest of the child.

Additionally, we would like to draw your attention to article 13 of the Universal Declaration of Human Rights, which states that everyone has the right to leave any country, including his or her own, and to return to his or her own country. Article 28 of the Declaration also calls on States to create a social and international order in which all human rights and fundamental freedoms can be fully realised. Furthermore, while Italy is not a State Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, we wish to highlight that the

provisions and positive obligations apply.

We would like to recall Security Council resolution 2598 (2021), which reaffirmed the necessity to put an end to the ongoing proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking of persons in the Mediterranean Sea off the coast of Libya. The report of the Secretary-General on the implementation of Security Council resolution 2598 (2021) addressed the situation of smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, including allegations of human rights violations committed against migrants and refugees during interception operations (S/2022/655). The Prosecutor of the International Criminal Court has also noted with grave concern the reports of arbitrary detention, torture, rape and other ill-treatment of migrants in official and unofficial detention centres in Libya, including those funded by the European Union.

In the report on trafficking in persons, mixed migration and protection at sea, the Special Rapporteur on trafficking in persons, especially women and children recalls that the obligation of non-refoulement and the prohibition of collective expulsion applies to protect any person, citizen or non-citizen, without discrimination subject to the de jure or de facto control of a State party, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law (A/HRC/50/60, para. 48). The Special Rapporteur also cautions against the gendered risk persecution on return in the context of trafficking in persons, which may be heightened due to reprisals and re-trafficking. In a situation in which a State provides material support or assistance to another party, there is an obligation to take all reasonable measures to ensure compliance with the prohibitions of refoulement and collective expulsion.

The Special Rapporteur on the human rights of migrants also notes in the report that “the conditions under which migrants request assisted voluntary return do not allow for the return to be qualified as voluntary, as they do not fulfil the requirements of a fully informed decision, free of coercion and backed by the availability of sufficient valid alternatives, such as temporary permits for work, study or humanitarian purposes, or opportunities for permanent residence or citizenship... States and other stakeholders who carry out returns under an assisted voluntary return programme to States that are not safe and in which migrants face violations of their fundamental human rights may be in violation of the principle of non-refoulement” (A/HRC/38/41, para. 30). The Special Rapporteur also emphasises that “any programme for assisted voluntary return and reintegration should comprise a transparent, credible and public monitoring and evaluation system, also with regard to financial transparency and accountability” (A/HRC/38/41, para. 53), and that “a return cannot be considered voluntary if a migrant decides to return in order to, inter alia, avoid deportation or detention, flee from abusive or exploitative situations in destination or transit countries, or avoid the deprivation of socioeconomic rights in the destination country” (A/HRC/38/41, para. 88).

In addition, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment notes that “denying the applicability of extant legal standards to torture or other ill-treatment committed, sponsored, aided or effectively controlled or influenced by States outside their territories can create incentives for States to avoid absolute legal obligations and amount to serious breaches of international law” (A/70/303, para. 13). The Special Rapporteur emphasises that no

vacuum of human rights protection should be created due to inappropriate and artificial limits on territorial jurisdiction, and urges “migration authorities to ensure that measures do not further traumatize victims; that there are alternatives to detention; that reception centres comply with international human rights standards; and that migrants and asylum seekers should be individually assessed, including their need for protection” (A/70/303, para. 42). The Special Rapporteur notes that these recommendations are in line with the pronouncement by the Human Rights Committee as well as the European Court of Human Rights in *Soering v. The United Kingdom*, both of which emphasised the responsibility of the extraditing State party to provide safeguards even where the mistreatment at issue is subsequently beyond their control.

In the final report of the Independent Fact-Finding Mission on Libya, experts highlight the lack of efforts towards creating the necessary conditions for voluntary and dignified return and stressed that immigration control by Libya and European States must be exercised in compliance with their international law obligations, especially the principle of non-refoulement, and in accordance with the Global Compact for Safe, Orderly and Regular Migration (A/HRC/52/83, para. 47).

While human rights violations and abuses are allegedly taking place within Libyan territory, European and Italian support to Libyan authorities may constitute an indirect violation of relevant international human rights conventions. In this context, we wish to recall article 16 of the International Law Commission Articles on State Responsibility, which sets forth the appropriate standards that a “State, which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.”

Similarly, your Excellency’s Government is bound by obligations included in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by proscribed means for the purpose of exploitation, which includes, *inter alia*, forced labour or services, or servitude. In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (“Recommended Principles and Guidelines”), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors”. Your government has also ratified and is therefore bound by the ILO Forced Labour Convention (1930) and its Protocol, which define forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (art. 2) and by the ILO Convention No. 182 on the worst forms of child labour (1999), which includes among worst forms of child labour all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (art. 3).

With regards to regional human rights instruments, the European Court of Human Rights has already found Italy in violation of article 3 of the European Convention on Human Rights in the case of *Hirsi Jamaa and Others v. Italy*. The principle of non-refoulement is a *jus cogens* obligation for all States, regardless of their ratification of relevant international human rights treaties and it applies to the case of Libya. In this context, handing over individuals to Libyan authorities, including the Libyan coastguard, allegedly involved in ill-treatment and other human rights violations, including slavery, forced labour and other forms of exploitation, does not exempt Italy from its international human rights obligations, including the customary international law obligation of non-refoulement. Concerns related to possible violation of the principle of non-refoulement have been recently raised in a letter to your Government by the Commissioner for Human Rights of the Council of Europe on 28 September 2017.

Finally, the Note on the externalisation of international protection published by the United Nations High Commissioner for Refugees (UNHCR) stresses that protection and responsibility sharing arrangements among States need to be consistent with the widest possible exercise of fundamental rights of refugees. UNHCR further clarifies that “measures preventing asylum-seekers from entering safe territory and claiming international protection, or transfers of asylum-seekers and refugees to other countries without sufficient safeguards, can amount to externalisation of international protection responsibilities. Such measures have the potential to erode the international protection system, and if adopted by many States, could render international protection increasingly inaccessible, placing many asylum-seekers and refugees at risk of limbo, mistreatment or refoulement.”