

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences.**

REFERENCE:  
AL ITA 2/2018

12 November 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences., pursuant to Human Rights Council resolutions 33/1, 34/18, 32/32, 34/5, 35/3, 34/21, 34/35, 34/19, 35/5 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the criminalization of activities of migrants rights defenders involved in search and rescue operations in the Mediterranean Sea including the refusal to allow disembarkation to NGO vessels, as well as vessels belonging to the Italian Coastguard, in Italian ports. Furthermore, we have also received information referring to the adverse implications of the implementation of the new Decree on Immigration and Security on the rights of migrants, including victims or potential victims of trafficking in persons.**

We recall that two communications related to the situation of migrants and asylum seekers have previously been sent to Your Excellency's Government: communication JUA ITA 1/2017 sent on 2 February 2017 and communication JAL ITA 4/2017 sent on 28 November 2017. We thank the Italian authorities for the responses to these communications, received on 21 February 2017 and 7 February 2018 respectively. Furthermore, JAL ITA 4.2018 was sent to Your Excellency's Government on 19 October 2018 concerning the climate of hostility, racial hatred and xenophobia which also affects migrants. We are looking forward to the reply of the Italian authorities to the concerns raised.

In view of the allegations highlighted in the present letter, we continue to express concern about the violations of the human rights of migrants traveling along the Central Mediterranean route, as well as about violations of the rights of human rights defenders protecting and defending the human rights of migrants, including by rescuing them at sea. A further matter of concern is the impact on the human rights of migrants of the implementation of the Decree on Immigration and Security (Decreto Immigrazione e Sicurezza).

According to information received:

In 2017, over 110,000 migrants reached the Italian coast and over 3,000 others are estimated to have died while attempting to reach Europe on precarious vessels. Over 45,400 persons were rescued by non-governmental organizations (NGOs). In 2018 to date, 22,087 migrants reached the Italian coast and at least 1,130 others died at sea.

#### *Smear campaigns against civil society*

At the end of 2016, Italian media started publishing articles accusing NGOs of colluding with smugglers and being involved in a “human trafficking business”. NGOs have also been the subject of harsh criticism by State officials claiming that, through their activities aimed at rescuing migrants, members of humanitarian organizations encourage their departure from Libya. The former Vice-President of the Chamber of Deputies, currently Minister of Labour and Social Policies, labelled the NGOs “taxis of the sea”. More recently, the current Minister of the Interior described NGOs helping migrants as “vice-smugglers”. This narrative has been amplified by the pre-existing hostile media outlets, spreading false reports and accusing NGOs of aiding and abetting smugglers and traffickers.

Several human rights defenders defending migrants’ rights have also been subjected to verbal attacks and threats, in particular on social media. Mr. Roberto Saviano, writer and human rights defender, who has been under police protection for more than ten years for carrying out investigative journalism and publicly denouncing organized crime in Italy, received verbal threats from the Minister of the Interior related to the possible loss of his police protection immediately after he voiced his criticism of the Government’s anti-immigration policy.

As a result, of the smear campaign against NGOs helping migrants, civil society organizations have witnessed a drastic reduction in public and private donations, which is allegedly impacting on their operability both at sea (search and rescue operations) and on land (providing protection and life-saving assistance to migrants), increasing migrants’ vulnerabilities to trafficking and other forms of exploitation.

In 2011, the former Minister of the Interior released an order prohibiting the press and civil society from accessing immigration centres. Journalists report increasing

difficulties in accessing immigration centres and interviewing public officials in relation to the phenomenon of migration. More recently, authorities have engaged in practices aimed at discouraging the investigative work of journalists. In June 2018, journalists who were covering a rescue operation conducted by the NGO Sea-Watch were requested to give all their videos to the police under the justification of confidentiality.

### *Criminalization of human rights defenders*

In February 2017, an Italian Prosecutor announced the opening of an investigation regarding the NGOs' delivery of humanitarian aid to migrants at sea, on the grounds of possible ties between these organizations and Libya-based smugglers, and specifically the alleged financial flows between them. The Prosecutor later confirmed he has not received any evidence regarding these accusations and, so far, the investigation has not revealed any wrongdoing. Nevertheless, several criminal investigations were opened against NGOs and their members for "abetting irregular migration", a crime punishable with a jail sentence of up to five years and a fine of up to 15,000 euros for each migrant illegally transported.

Against this backdrop, since August 2017, the *Iuventa* ship, of the German NGO *Jugend Rettet*, has been confiscated and thus unable to operate. The staff members have been accused by the Prosecutor of abetting irregular immigration. The Prosecutor later found that the operations conducted by the vessel were carried out for humanitarian reasons and that there was no evidence of collusion between the NGO members and Libyan smugglers.

In March 2018, the vessel *Open Arms*, of the Spanish NGO *Proactiva Open Arms*, refused to turn over the 218 migrants rescued at sea to the Libyan coastguard taking into consideration the risk of human rights violations migrants are facing in Libya. When they refused to turn over the migrants, the Libyan coastguard threatened to shoot the crew. On 18 March 2018, the vessel *Open Arms* was seized by the Italian authorities in Catania. Shortly after the incident, the *Open Arms*' captain, the mission leader and the Director of *Proactiva Open Arms* were accused of criminal conspiracy and of aiding illegal migration. In April 2018, a judge ordered that the ship be returned to *Proactiva Open Arms* and ruled that the organization's actions were legitimate given that "Libya isn't yet capable of welcoming migrants rescued at sea [while] respecting their fundamental rights". In June 2018, the Prosecutor of the city of Palermo dropped all charges against *Proactiva Open Arms* and another NGO, *Sea Watch*, accused of similar charges in a separate case.

### *Other measures obstructing the support to migrants*

In February 2017, in line with the European agenda aimed at externalising border control and curbing migratory flows through bilateral agreements between countries of transit and destination, a Memorandum of Understanding was signed with Libya (see UA ITA 1/2017 and JAL ITA 4/2017). The agreement committed

the Italian authorities to provide support to Libyan authorities that are responsible for official immigration centres. Despite allegations of torture and ill-treatment in these centres, as well as of the Libyan coastguard's violent conduct during interceptions of boats, Italy continued to implement measures aimed at increasing the Libyan coastguard's capacity to intercept migrants and bring them back to Libya.

In July 2017, Italy imposed a Code of Conduct on NGOs conducting SAR operations off the Libyan coast, limiting their capacity to rescue migrants and asylum seekers (see AL ITA 4/2017). Some organizations, such as Médecins sans Frontières and Jugend Rettet, refused to sign the agreement on the grounds that it would grant Italian authorities additional power to control the work of NGOs and contribute to the smear campaign against them. As a result of the implementation of the Code of Conduct, most NGOs active in SAR operations have had to halt their activities and reported several episodes of intimidation and attacks against civil rescue organisations in Libyan territorial waters and on the high sea, as well as against vessels carrying migrants. The absence of NGO vessels in the Mediterranean Sea has also led to an increasing information gap with regards to the situation of migrants at sea. Based on figures released by IOM, it is clear that the probability to drown while attempting to cross the Mediterranean Sea is much higher in 2018 than it was in previous years.

In June 2018, the Italian Minister of the Interior and the Minister for Transport refused the docking of the humanitarian vessel Aquarius of the NGO SOS-Méditerranée and Médecins sans Frontières at Italian ports. The ship carried more than 600 migrants who were rescued at sea as well as 123 unaccompanied minors, 11 children and seven pregnant women. After seven days at sea, the Aquarius was finally allowed to dock in Spain, in the city of Valencia. The Italian Government later declared that all Italian ports would remain closed for NGOs conducting SAR operations flying foreign flags. On 28 June 2018, the Governments of Italy and Malta denied NGO vessels access to dock at their ports, not only when transporting migrants but also if they needed to refuel or take on supplies. This decision led to a sharp reduction of search and rescue activities by NGO vessels, significantly raising the risk of migrant deaths. Since 26 August 2018 more than 500 deaths of migrants at sea have been reported, adding to a suspected high number of unreported cases.

The Italian authorities have also refused or delayed disembarkation to two foreign navy ships and to at least two commercial ships that had rescued people from drowning in the Mediterranean Sea.

On 19 August 2018, the Italian coastguard vessel Ubaldo Diciotti reached the port of Catania with 177 migrants on board. The migrants were rescued days earlier, but the vessel was not allowed to dock amidst a dispute between Malta and Italy on whose responsibility they were. After docking in Sicily, the people aboard the Ubaldo Diciotti were blocked from disembarking on the orders of the Minister of the Interior. Based on the statements of said minister, the migrants were used as

leverage to put pressure on the European Union to support Italy and share the responsibility for arriving migrants. After two days, prosecutors from Agrigento visited the vessel and subsequently opened an investigation – also against the Minister of the Interior, for abuse of office, arbitrary arrest and aggravated abduction of people. While 27 unaccompanied minors were allowed to disembark the evening after the visit of the prosecutors, the others could only leave after Ireland, the Catholic Church, and Albania had agreed to host the migrants. In November 2018, the Public Prosecutor of Catania dismissed the last charges against the Minister of the Interior on the basis that the decision against the disembarkation was taken for political reasons and that the separation of power would not permit a criminal prosecution of such a decision.

### Private individuals

In August 2016, the Mayor of Ventimiglia issued a municipal decree forbidding “non-authorized people” to provide migrants and asylum seekers with food or water. In March 2017, when the decree was enforced, French citizens were charged for giving sandwiches to migrants who gathered in the city. Following several protests held by human rights organizations, the decree was repealed and the charges brought against the French volunteers were dropped.

The same year, 15 activists of the movement “No Borders” were banned from the city of Como for providing food supplies to migrants and participating in a peaceful assembly requesting the opening of borders. The regional administrative court later declared these orders illegal.

In the past year, several individuals have been accused of abetting irregular migration. Most of them were providing food supplies or shelter to migrants and asylum seekers. Mr. Félix Croft, a French citizen, was charged with abetting irregular migration in Italy after attempting to bring a Sudanese family of five to France, including two young children. The Prosecutor requested a three-year sentence on the basis that the human rights defender was acting in collusion with a terrorist organization. In April 2017, the Judge dropped the charges, recognizing Mr. Croft had acted for humanitarian reasons.

### Changes to the immigration law

In July 2018, the Minister of the Interior released a circular on humanitarian protection status (Circolare Tutela Umanitaria) in order to call the asylum territorial commissions to work with heightened attention and to grant asylum with utmost strictness and conscientiousness only. The argument mentioned in the circular was that the interest of the community is weighing more than the rights of the asylum seekers. The circular was regarded by various sources as attempting to give a political direction to the work of the commissions that are the first instance authorities for asylum claims.

As a further step in toughening immigration policies, the Minister of the Interior proposed a Decree-Law on immigration and security (Decreto Immigrazione e Sicurezza) which was approved on 24 September 2018 by the Council of Ministers and, following the approval of the President of the Republic, came into force on 5 October 2018. The Decree-Law consists of three parts; part one proposes changes to the immigration law, part two relates to public security and organized crime, while part three refers to the goods confiscated from the Mafia. The Decree-Law 113/2018 has been placed under emergency procedure and was converted into law by the Senate on 07 November 2018, to be approved by the House of Deputies. This is expected to have dramatic consequences on the rights of migrants in Italy and it raises questions regarding the compatibility with the Constitution, notably Article 10 Paragraph 3. The humanitarian protection would be repealed and replaced by five other types of residence permits which would not provide the same level of protection. Particularly vulnerable migrants such as victims of trafficking and of other forms of exploitation will no longer benefit from special protection measures, increasing their risk of being exposed to trafficking or to other forms of exploitation.

The first article of the Decree-Law further creates new residence permits that can be granted in restricted ‘special cases’, as for example: persons affected by ‘exceptionally serious’ medical conditions; persons who cannot return to their home countries due to ‘exceptional natural disasters’; and persons who have carried out ‘exceptional civil acts’.

We acknowledge the important and exemplary role which Italy has played in rescuing migrants at sea over the past years and we recognize the country’s challenges in the absence of a comprehensive European Union policy of solidarity with Member States at the European Union’s external borders. However, we believe that these circumstances cannot be used as a justification to infringe on the human rights of migrants and to disrespect international obligations.

We are concerned that the new Decree-Law reduces not only the scope of protection and the number of potential beneficiaries but also the duration of the stay for third-country nationals falling into the above-mentioned ‘special’ categories. Whilst persons granted the ‘humanitarian’ status were provided with a two-year renewable residence permit, the permits issued in the new ‘special cases’ allow residence in Italy for shorter periods: six months for exceptional natural disasters or violence and one year in the other for ‘special protection’, ‘medical reasons’ and other ‘special cases’. Such permits are renewable and allow the holder to work but – differently from the humanitarian residence permit – they cannot be converted into a work permit when the circumstances for which they were issued cease to exist. Only in the event that the foreigner has accomplished exceptional civil acts, whose nature is not further specified, the person – at the discretion the Minister of the Interior – can be issued a residence permit lasting two years.

Another important amendment contained in article 1 of the Decree-Law is related to those who already benefit from humanitarian residence permits at the time in which the

Decree enters into force: their permits will not be renewable anymore on humanitarian grounds, even if the circumstances for which the permit was granted in the first place still exist. Therefore, unless beneficiaries are granted a conversion of their humanitarian permit into a work or study permit, or they fall under the new special cases listed in the decree law, they will find themselves in an irregular situation and will risk being returned.

Furthermore, we express concerns about article 12 of the Decree-Law, which restricts access to the System for the Protection of Asylum Seekers and Refugees (SPRAR) to already recognized refugees and beneficiaries of subsidiary protection, as well as unaccompanied minors, while asylum seekers will be hosted in collective reception centres (CARA CDA) or temporary reception centres (CAS). This means that asylum seekers, as well as other vulnerable groups, such as victims or potential victims of trafficking, will only be granted a basic level of reception and will no longer benefit from the social integration and language programs provided by SPRAR.

We are also concerned about the provisions of the Decree-Law aimed at making returns more effective, which extends the duration in return centres from 90 to 180 days and allows for foreigners to be held in other ‘appropriate facilities’ and in border offices in case the reception capacity of return centres is exhausted. It is not clear what will happen if those migrants cannot be returned after the 180 days, for example in the absence of bilateral agreements. We are concerned that such loopholes will put migrants at greater risk of exploitation and generally in vulnerable situations. In addition, we are concerned that article 3 of the Decree-Law expands grounds for detention in hotspots, setting a maximum duration of 30 days for the purpose of identification. In the absence of identification within this timeframe, administrative detention may be imposed on affected individuals for up to 180 days. The mandatory detention of migrants is not compliant with international human rights law. Overall, the new measures mentioned in the Decree-Law raise serious concerns in terms of compatibility with article 31 of the 1951 Geneva Convention on the Status of Refugees and article 13 of the Italian Constitution.

We are concerned at reports alleging multiple attacks, including judicial proceedings and defamation campaigns, implemented by the authorities against migrant rights defenders, including journalists, individuals criticizing the Government for its management of migrant arrivals and civil society actors engaging in rescue operations at sea and providing life-saving humanitarian assistance on land. We are additionally concerned that these measures allegedly intend to circumscribe the activities and dissuade civil society, journalists and individual human rights defenders from carrying out their legitimate and necessary activities to provide humanitarian aid to migrants. We are deeply concerned with the “chilling effect” these attacks and measures could have on migrant rights defenders and on civil society in general. Ongoing attempts to restrict SAR operations by NGOs risk endangering thousands of lives by limiting rescue vessels from accessing the perilous waters near Libya. Smear campaigns against migrant rights defenders and NGOs as well as their criminalization further contribute to the stigmatisation of migrants and refugees, fuelling their stigmatization and reinforcing xenophobia in Italy (see also JAL ITA 4/2018).

We finally express our concerns that the creation of “special residence permits” that cannot be converted into work permits will further reduce migrants’ chances to regularize their position in the country. Hence, these measures could exacerbate the vulnerability of migrants who are already based in Italy as well as those trying to reach Italy, and expose them to increased risks of trafficking and various forms of exploitation. Furthermore, the decree law 113/2018, if passed as currently discussed, could severely impact the situation of migrants that arrive in Italy due to a lack of protection of their human rights. It may furthermore lead to an increase in undocumented migrants or migrants in irregular situations, which will not only increase their vulnerability but it may also lead to social and security challenges. It is therefore our view that this cannot be in the interest of your Excellency’s Government.

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 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 factual and legal bases for the charges brought against individuals and civil society organizations for “abetting irregular migration” and explain how such charges are compatible with international human rights law and standards, in particular the treaty obligations undertaken by Italy under the ICCPR.
3. Please indicate how the refusal by the Italian authorities to allow NGO vessels carrying rescued persons to dock at Italian ports, or the refused or delayed permission to disembark, are in line with international obligations in relation to the protection of the right to life, such as under article 6 of the ICCPR.
4. Please indicate how your Excellency’s Government is planning to fulfil its obligations to prevent the loss of life of migrants in the Mediterranean Sea and abide by the principle of non-refoulement in coordinating the search and rescue operations involving the Libyan coastguard.
5. Please indicate what measures have been taken to ensure that migrant rights defenders in Italy are able to carry out their legitimate work, including through the use of their right to freedom of opinion and expression, freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

6. Please provide information on how your Excellency's Government intends to live up to its international obligations in view of the Decree-Law 113/2018, how the new norms are in conformity with the Constitution, the EU Qualification Directive, and international law, and on how the human rights of migrants, including victims or potential victims of trafficking and of other forms of exploitation, will be protected in Italy. In this regard, please also provide information regarding procedures or mechanisms in Parliament to review and ensure the compatibility of draft legislation with Italy's obligations under international human rights law.
7. Please provide information on how your Excellency's Government intends to regularize migrants' residence status in view of the Decree-Law 113/2018 by, inter alia, providing them with access to the labour market as a measure to prevent trafficking in persons and labour exploitation.
8. In view of the Decree-Law 113/2008, please provide information on how your Excellency intends to ensure early identification, referral to services and protection of victims and potential victims of trafficking and of other forms of exploitation. Kindly clarify how the expansion of the maximum duration in hotspots and the subsequent limitation of their freedom, can be considered in line with State's obligation to protect victims and potential victims of trafficking and other migrants in vulnerable situations.
9. In view of the newly approved Decree-Law 113/2018, please provide information on how your Excellency's Government intends to ensure protection of victims of trafficking in persons and victims of other forms of exploitation that may not have been properly identified upon arrival and may reside in the country on humanitarian protection grounds. Please clarify which measures that your Government intends to put in place to avoid that they become undocumented migrants and are forcibly returned, even when they are at risk of persecution and retaliation. Please also clarify what measures are put in place to ensure that victims of trafficking in persons and victims of other forms of exploitation are provided with access to remedies, including accommodation and access to decent work in order to facilitate their social inclusion into society.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration. Furthermore, the letter as well as your Excellency's Government's response will be made public on OHCHR's designated website 60 days after being sent, together with any response received until then.

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 intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Urmila Bhoola

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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**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.

We wish to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978, and in particular, articles 19, 21 and 22 on the right to freedom of expression, the right to freedom of peaceful assembly, and the right to freedom of association, respectively. We recall that the aforementioned provisions can only be restricted in cases strictly limited by law and in accordance with the principles of necessity and proportionality established by international law.

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We recall that Resolution 24/5 of the Human Rights Council also reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

We would further like to recall the recommendations made in the Report of the Special Rapporteur on the situation of human rights defenders in 2018, (A/HRC/37/51) which underline, inter alia, that States should ensure that migrant rights defenders are not threatened with and subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations and that States must ensure that domestic law and administrative provisions facilitate the work of all actors providing humanitarian assistance to, and defending the rights of, people on the move, including by avoiding criminalisation.

We would also wish to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and

fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Likewise, we would like to draw the attention of your Excellency's Government to Article 12 in paras. 2 and 3 of this Declaration, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this regard, everyone has the right, individually or in association with others, to be effectively protected by national law when he or she reacts by peaceful means against activities and acts, including those resulting from omissions, attributable to the State and has resulted in violations of human rights and fundamental freedoms, as well as in acts of violence perpetrated by groups or individuals that hinder the exercise of human rights and fundamental freedoms.

With regard to the situation of migrants, Article 6(1) of the ICCPR provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of one's life. The Human Rights Committee, in its recently adopted General Comment no. 36 (CCPR/C/GC/36), confirmed that the right to life has crucial importance both for individuals and for society as a whole and that article 6 guarantees this right for all human beings, without distinction of any kind. This supreme right is not to be narrowly interpreted and includes acts and omissions that would cause any unnatural or premature death. Its protection thus requires that the State adopt positive measures, which are only discharged if individuals are protected by the State against violations of its own agents, and private persons and entities alike. Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility.

As stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions, in her most recent report to the General Assembly, all States should ensure that migration governance measures respect, protect and fulfil the right to life of all refugees and migrants, and that, in particular, no policies or practices rely on the likelihood, risk or severity of the harm refugees and migrants may incur to deter entry. The Special Rapporteur recommended all States to work with the UN Refugee Agency (UNHCR) to develop and implement asylum protection-sensitive border management systems (A/72/335 para. 95).

Article 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which Your Excellency has ratified on 2 August 2006, states that each State Party shall give appropriate consideration to humanitarian and compassionate factors.

As a general principle of OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States shall ensure that trafficked persons are

protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings

The Special Rapporteur on trafficking in persons, especially women and children, has already expressed her concerns regarding the dramatic harmful impact these measures have on migrants and asylum seekers in the Mediterranean Sea. She recalled that, “in terms of the proportion of rescues being undertaken in the Central Mediterranean area under the coordination of the Italian Maritime Rescue Coordination Centre, non-governmental organization (NGO) vessels rescued the most number of individuals”, as reported by the Italian Maritime Rescue Coordination Centre itself. She also highlighted that “while attempting to reduce the number of deaths and to fill the gap left by European States in complying with their international obligations, NGOs strive to save lives, despite their scarcity of means” (A/HRC/38/45, para. 13 and 14). The Special Rapporteur further underlined that “a human rights approach must be consistently applied across the whole spectrum of activities dealing with migration. This implies that humanitarian action aimed at rescuing lives should never be undermined or treated as promoting irregular migration” (A/HRC/38/45, para. 15). In her opening statement at the 38<sup>th</sup> session of the UN Human Rights Council, she specifically called upon Your Government to facilitate access to your ports for the MSF boat ‘Aquarius’, reminding all States that ‘refusing access to ports, and in particular to the nearest port of safety, to ships in distress and, more generally, refusing to render assistance to people in urgent need of medical care, food, water or any other basic needs, not only constitutes a violation of the Law of the Sea but also a grave infringement on a wide range of human rights and a violation of the principle of non-refoulement, which is a customary international law norm to which all States are bound.’ With regards to the practice of hotspots, she expressed concerns about the fact that existing procedures were not primarily aimed at detecting vulnerabilities, including trafficking, but rather at detecting so-called “economic migrants”, who were by consequence excluded from the international protection framework or any other protection scheme (A/HRC/38/45, para 16).

Most recently, in her opening speech before the 39th session of the Human Rights Council, the UN High Commissioner for Human Rights raised concern at the devastating consequences of these developments in Italy. She noted that “although the number of migrants crossing the Mediterranean has fallen, the fatality rate for those making this treacherous crossing has in the first six months of this year been even higher than previously.”

Further, we would like to bring to your Excellency’s Government’s attention to article 13 of the ICCPR, stating that an alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against this expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

In this regard we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR ratified by your Excellency's Government are 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).

Let us remind your Excellency's Government of Human Rights Council resolution 9/5 (ref A/HRC/RES/9/5), which deals with the rights of migrants, and which "Requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". The Resolution also reaffirms that "when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international obligations and commitments, the principle of the best interests of the child and family reunification."

We would like to bring the attention of your Excellency's Government to article 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Italy on 15 September 1978, guaranteeing the rights to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions as well as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

We would also like to recall that Article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination 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 organizations".

Additionally, we would like to draw your Excellency's Government's attention to Article 28 of the Universal Declaration of Human Rights, which calls on States to create a social and international order in which all human rights and fundamental freedoms can be fully realized, and to Article 2 of the International Covenant on Economic, Social and Cultural Rights (ratified by Italy on 15 September 1978), in which States undertake to take steps through international assistance and cooperation in order to ensure the full realization of covenant rights. We recall that international solidarity and cooperation are key principles underlying international law and are essential to ensuring that States meet their human rights obligations while responding to shared challenges. In his forthcoming

report to the General Assembly (A/73/206) the Independent Expert on human rights and international solidarity specifically identifies the refusal of docking rights to vessels carrying out SAR operations, among other acts targeting migrants and those who would act to support them, as a failure of international solidarity and cooperation and a human rights violation.

We finally wish to recall your Excellency's Government 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. 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), also ratified by your Excellency's Government. This absolute prohibition against refoulement is broader than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, 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. With regards to regional human rights instruments, the European Court of Human Rights (ECtHR) has already found Italy in violation of article 3 of the European Convention on Human Rights in the *Hirsi Jamaa* case. 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 still very much applies to the case of Libya: 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.