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TABLE OF CONTENTS

INTRODUCTION.....2

1. NEW LEGISLATIVE MEASURES CONCERNING MIGRANTS AND
ASYLUM SEEKERS' RIGHTS.....3

2. ON THE ITALIAN POLICIES AGAINST MIGRANTS AND THEIR
HUMAN RIGHTS DEFENDERS:.....9

INTRODUCTION

1. FIDH (International Federation for Human Rights) is an international human rights non-governmental organisation with its headquarters in Paris, France. FIDH was founded in 1922 and it brings together 184 national human rights organisations from 112 countries across the world. FIDH's mandate is to defend all human rights enshrined in the Universal Declaration of Human Rights, including civil, cultural, economic, political and social rights. FIDH is involved in strategic litigation before domestic jurisdictions (France, Guinea Conakry, Ivory Coast, etc), regional courts and bodies (African Commission and Court on Human and Peoples' Rights, Inter-American Court of Human Rights, European Committee of Social Rights, European Court of Human Rights) and international/ised jurisdictions (International Criminal Court, Extraordinary Chambers in the Courts of Cambodia).

2. The *Unione forense per la tutela dei diritti umani* (hereinafter "UFTDU") is a non-profit association set up on March 2nd, 1968 by a group of Italian lawyers, judges and scholars with the double purpose of disseminating knowledge on the national and international human rights framework and promoting the actual and effective respect of such rights at the judicial, administrative and legislative level. UFTDU, the corresponding national member of FIDH, is particularly active in the field of capacity-building for legal professionals and legal advocacy before national and international fora.

3. This joint submission addresses the following issues of concern with respect to human rights in Italy: recent legislative measures that jeopardise the rights of migrants and asylum seekers; violations of the *non-refoulement* principle under international human rights and refugee law; restrictive policies of the Italian government restricting entry of irregular migrants into Italian territory and criminalisation of NGOs and defenders of the rights of migrants, asylum seekers and refugees. It puts forward suggestions for recommendations that may be addressed to the Italian government in the context of this review.

4. The observations and comments contained in the present submission are based on the desk and field research activities undertaken by the members of the two organisations, and take into account the information received from institutional partners and organizations to which FIDH and UFTDU are particularly grateful.

1. NEW LEGISLATIVE MEASURES CONCERNING MIGRANTS' AND ASYLUM SEEKERS' RIGHTS

5. During the last two years, Italy has been enacting and implementing norms that hamper the conditions under which migrants can enjoy their rights. Indeed, the Italian legislator, by amending both the procedural and the substantive domestic law concerning immigration, has modified Italian migration law in a way that represents a step back in international protection standards granted to migrants and asylum seekers. This starkly contrasts with the duty to develop policies so as to further enhance protection of migrants' rights, as stated by **Recommendations No. 145.159 to No. 145.163, No. 145.166 and No. 145.169.**

6. This section will analyse in particular two main regulations recently enacted: the Law Decree No. 13/2017, later transposed with amendments into Law No. 46/2017 (the so-called *Minniti-Orlando* Law Decree)¹ and the Law Decree No. 113/2018, later transposed with amendments into Law No. 132/2018 (the so-called *Salvini* Law Decree or Security Law Decree)².

7. To this point, some preliminary considerations are necessary before entering into the analysis of the main issues concerning the two pieces of legislation.

8. The Italian government has heavily relied upon emergency legislation to amend migration law by circumventing the ordinary parliamentary legislative procedure. It is not by chance that both regulations have been adopted via a non-parliamentary procedure. Indeed law-decrees represent regulations of legislative nature passed by the government through a "decree" merely in cases of extraordinary urgency and necessity. These two requirements allow the government to skip the ordinary parliamentary procedure (according to Article 77 of the Italian Constitution). However, the Parliament must transpose the law-decree into law within 60 days from its entry into force; otherwise it shall lose all effect.

9. In the cases under analysis, two anomalies in the enactment process should be highlighted. First, migration does not represent a newly rising issue nor an emergency in Italy, but rather a systemic and sensitive issue since the early nineties, and as such it would require a comprehensive and thorough response by the legislator: consequently, the requirements of extraordinary necessity and urgency under article 77 of the Constitution were not fulfilled. Second, both law decrees were converted into law through votes of confidence by the government.

10. Hence, the role of Parliament was undermined and voided twice: firstly, through the use of the law-decree instrument and, secondly, by using the vote of confidence to impede a discussion and any modifications or the non-approval of the said law-decrees.

¹ Law Decree No. 13/2017 (www.gazzettaufficiale.it/eli/id/2017/02/17/17G00026/sg) later transposed with amendments into Law No. 46/2017 (www.gazzettaufficiale.it/eli/id/2017/04/18/17G00059/sg) containing "Urgent provisions to accelerate the procedures concerning international protection, and countering illegal immigration" (Annex 1).

² Law Decree No. 113/2018 (www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg) later transposed with amendments into Law No. 132/2018 (www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg) containing: "Urgent provisions concerning international protection and immigration, public security, as well as measures for the functionality of the Ministry of the Interior and the organization and functioning of the National Agency for the administration and destination of assets seized and confiscated to organized crime." (Annex 2).

The Minniti-Orlando Law Decree

11. This regulation enacted by the former Italian government had two main goals: accelerating the proceedings regarding international protection and introducing effective measures to combat irregular migration.

12. On a potential positive side, the law decree entailed a professionalisation of the Territorial Commissions, the authorities entrusted with assessing the applications for the recognition of international protection at the local level. 250 new officials were hired (since May 2018) following a public competition, which was provided for by Article 12 of the Law Decree No. 13/2017.

13. Article 1 has established specialised sections on migration, international protection, citizenship, statelessness and free movement of EU citizens within 26 ordinary Tribunals in each of the 26 cities where there is a seat of a Court of Appeal, with the purpose of rapidly responding to relevant caseload. According to Article 2, judges presiding them should be chosen from magistrates that have specific skills, such as knowledge of English or French, previous experience on the matter or have participated to training courses organised in cooperation with EASO and UNHCR.

14. However, Article 1, § 2 of the law-decree raises a budgetary limitation: no extra burden is to be placed upon public finances, and the workforce is not to be increased. The consequence is an excessive use of honorary judges, often with no specific competences in these sensitive subjects.

15. Moreover, the decree introduced new proceedings for cases concerning the appeal of the decisions on international protection issued by the territorial commissions. These innovations raised many concerns for several reasons. First of all, one must note that the new regulation introduced special and speedy chamber proceedings, different from the ordinary ones. According to Article 6, the appeal shall be introduced within thirty days from the notification of the decision issued by the Territorial Commission (sixty if the applicant resides abroad). This deadline runs also during the summer mandatory judicial suspension period (namely during the month of August), contrary to what is provided for under ordinary procedure.

16. The appeal against the decision automatically suspends its enforcement.

17. The actual start of the adversarial procedure occurs through the Territorial Commission, which sends to the Tribunal the relevant documentation constituting the basis for the decision, within twenty days from the notification of the application.

18. The consequence is that the applicant is in practice forced to draft its application without being allowed access to the Commission's files, as they are transmitted to the judges only after the application has been introduced. This procedure is in clear breach of the full exercise of the right of defence. Besides, due to the high number of applications, the Commission often does not send the relevant applicant's dossier to the Tribunal.

19. In addition, it is worth noting that this new proceeding does not foresee the right to be heard, on the assumption that the judges should use the video recording of the audition and its transcript. Therefore, generally there is no hearing. A hearing can only take place in case of necessity and at the discretion of the judges.

20. The result is a judicial procedure where the right to be heard is not assured, causing arbitrary disparities in its implementation and in violation of international fair trial standards.

21. Most notably, the law-decree repealed the possibility to challenge the negative judgment of the Tribunal before a second instance judge, namely the Court of Appeal. Hence, the fundamental right to asylum, which in the Italian legal system has constitutional standing (according to Article 10, § 3 of the Constitution), has only two degrees of judicial review: the first instance on the merit and the Court of Cassation, which in the Italian system can only rule on the legality of proceedings before first and second instance courts, whereas a decision on the merit falls outside its remit. This is a *unicum* for the civil rights field in Italy. Indeed, all the other rights can be challenged throughout three degrees: the first instance and the second instance (Tribunals and Court of Appeals) on the merit and last instance (Court of Cassation) only in point of law.

22. In light of the above, the choice of having the Chamber proceeding in front of the specialised sections of the first instance Tribunals paves the way to a judicial proceeding that is exclusively based on written documentation.

23. Finally, there is a settled and speedy time-set. The Tribunal, in collegial composition, is to settle with decree the dispute within four months of the appeal, and its decree can be only appealed directly before the Court of Cassation, within thirty days from its notification by the Registry. The Court of Cassation then decides on the appeal within six months. Finally, the appeal lacks automatic suspensive effects on the first instance decree, unless, in the presence of reasonable grounds, the applicants asks to the first instance judges to allow for the suspension of its effects.

24. Under these considerations, this law-decree represents an evident step back in the protection of migrants' rights in terms of judicial procedural guarantees, in violation of Article 10 of the Universal Declaration of Human Rights; Article 2, § 1 (CCPR General Comment No. 18), Article 14 (CCPR General Comment No. 32, §13), Article 16 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR), as well as other regional, including EU and CoE, international protection standards.

The Salvini Law Decree

25. The law-decree n. 113/2018 has a peculiar perspective on migration, which has been approached by the new government as a public order issue.

26. One of its main goals was to **repeal humanitarian protection**, as previously disciplined by Article 5, § 6 of the Legislative Decree No. 286/98 (the consolidated text on immigration). The humanitarian protection was an atypical legal regime, which fulfilled obligations stemming from Article 10, § 3 of the Constitution, by granting protection to vulnerable categories of asylum seekers on grounds of serious reasons of humanitarian nature. This legal institute was introduced in the Italian legal system with a view to being resorted to when the two main international forms of protection, namely the refugee status and the subsidiary protection, did not apply albeit the asylum seeker's human rights were at risk.

27. This type of protection had been increasingly recognised by Italian authorities to asylum seekers because of the broad range of cases that it was able to embrace. Indeed, in 2017 permits based on humanitarian reasons constituted the highest

number, around 25% of the whole number of requests, while both refugee status and subsidiary protection were respectively granted in 8% of the applications. The remaining 58% of the applications were rejected³.

28. The security law-decree follows the purpose to cut down the number of humanitarian permits. With this view, the law decree introduces far more limited special cases of temporary residence permits for migrants in the presence of specific humanitarian needs, such as:

- ✓ particularly serious health conditions;
- ✓ social protection reasons, for victims of domestic violence and for victims of labour exploitation;
- ✓ contingent natural calamity situations in the country of origin, which do not allow the safe return or permanence;
- ✓ acts of particular civil value;
- ✓ danger of persecution or torture in case of denial of the application for international protection.

29. The difference with the previous approach is stark. Indeed, while the former regime was an open catalogue that allowed a wide margin of appreciation to the Territorial Commission in ascertaining situations of particular vulnerability, consistently with the evolution of the national and international human rights protection system, the new provisions provides for a closed list of permits. Furthermore, the competence to grant such special protection has shifted from the Territorial Commission to the police, with no role left for the Territorial Commissions to signal its necessity.

30. This approach is discriminatory, since it treats similar situations differently, on the basis of unjustified and arbitrary distinctions. Hence, the law decree No. 113/2018 opens the door to possible violations of the principle of non-refoulement, denying a stay permission to those who face serious threats to their fundamental rights.

31. Accordingly, since its application there has been a drastic drop in the number of protection granted by Italian authorities: while statistics in 2018, according to data collected by the Ministry of Interior, showed a percentage of 21% of permits for humanitarian protection granted⁴, in December 2018 and in January-February 2019 (after the definitive entry into force of the Salvini Law Decree), such percentage has

³ See “Cruscotto statistico immigrazione”, available at: www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/dati_asilo_2017_.pdf.

⁴ See data available at: www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepi_logo_anno_2018.pdf.

⁴ See data available at: www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepi_logo_anno_2018.pdf.

⁵ See data available at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/dicembre_2018_.pdf.

dropped respectively to 3%⁵ and 2%⁶. Consequently, the denial rate of applications has risen to 82% and 83% respectively.

32. Additionally, the Law Decree No. 113/2018 has **undermined the efficacy of the most efficient Italian reception system for asylum seekers and refugees**, namely the former SPRAR, now renamed as SIPROIMI (Reception system for holders of international protection and for unaccompanied foreign minors). This reception system was created under law No. 189/2002 and consisted of a network of local authorities that set up and run reception projects. At a local level, the local authorities, with the support of civil society, guaranteed an “integrated reception” that went well beyond the mere provision of food and housing, but included complementary services such as legal and social assistance as well as the development of personalised programmes for the social-economic integration of individuals. This system thus pursued the goal to facilitate the integration of asylum seekers into Italian society-

33. Therefore, this reception approach was not only driven by solidarity reasons, but rather by the duly fulfilment of Italy’s international obligation, choosing in practice to adopt a human rights based approach.

34. The above-mentioned Law Decree overhauls this system. Indeed, it restricts the access to the new SIPROIMI system only to those who have already been granted international protection and to unaccompanied minors. Asylum seekers are hence not anymore entitled to be hosted in these reception centers and they are now allocated in the “centers for asylum seekers reception” (the so-called CARA), throughout the entire duration of their pending application. Holders of humanitarian protection are not to be included in this system either.

35. With another troubling provision, contained under Article 2, the maximum length of stay of asylum seekers in facilities of first acceptance (CPR) was doubled from 90 to 180 days. In case of CPR space constraints, they can be transferred in not well-defined “different and adequate structures in the availability of public authorities”. As a result, from the time of their arrival, asylum seekers’ freedom of movement can be limited for around 210 days, also considering the length of stay of 30 days inside the hotspots, before their request is examined.

36. The change of perspective is radical. Indeed, law decree No. 113/2018 shifts from a regular, human-rights based system of integration based on the former SPRAR toward an emergency approach. This system relies upon the confinement of asylum seekers in facilities whose function should be the first reception while instead they are turned in *de facto* administrative detention facilities. This amounts to a clear violation of the right to liberty granted under Article 9 ICCPR, as interpreted by HRC General Comment No. 35, §§12, 17, 33, 38 and 56. It also violates Directive 2013/33/EU which provides that asylum seekers cannot be held in detention for the sole reason that they are seeking international protection, and that in any event administrative detention should be a last resort measure to be applied only in exceptional circumstances when other non-custodial alternatives to detention are not available.

⁵ See data available at: http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/dicembre_2018_.pdf.

⁶ See data available at: www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/gennaio_2019_.pdf and http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/febbraio_2019_0.pdf.

37. Moreover, this repressive approach seriously jeopardises the possibility to pursue a substantive and long-term policy of integration for asylum seekers into the society, fuelling instead insecurity, discrimination, exclusion and ultimately social conflict, making refugees easy targets for organized criminality, in blatant contradiction to **Recommendations No. 145.175-177 and No. 145.182**.

38. The security decree, as converted in law n. 132/2018, has also increased the likeliness to see the refugee's claim to obtain international protection rejected because considered ill-founded.

39. Among others, the following are of utmost concern. Article 7 of law decree 113/2018 establishes a rebutting presumption of inadmissibility of the application if the Italian authorities label the migrant's country of origin as "safe third country". Therefore, this norm shifts the burden of proof to the migrant, since in order to win the presumption, he/she has to demonstrate that there are serious reasons affecting his/her personal situation in the country of origin, which put at risk his/her fundamental rights.

40. Migrants' application could be dismissed also on the basis of the new provision, which states that a claim is ill-founded if it is not presented immediately after the migrant's arrival in Italy, if the delay is not justified. This norm does not explicit which are the criteria to establish if the delay is justified or not and thus leaves a broad margin of appreciation to the administrative authorities, in contrast with the principle of legal certainty.

41. These strict admissibility conditions affect as well asylum seekers' right to an effective remedy. Indeed, the security Law decree modifies the legal aid regime.

42. As a matter of fact, Article 15 establishes that the legal aid afforded by the State to the applicant's lawyer for the entire civil proceeding shall be denied if the application is declared inadmissible. Therefore, this provision shifts to the defence lawyer the cost of the defence in case of rejection of the refugee's claim. This provision, together with the increased number of causes of inadmissibility, makes lawyers less willing to defend asylum seekers. This makes the provision to grant legal aid substantively ineffective, in stark contrast with the provisions set forth by Article 2 ICCPR (as interpreted by the CCPR General Comment No. 18) and Article 14 ICCPR (see, in particular, the CCPR General Comment No. 32, §10).

43. Finally, the Salvini Law Decree enforces more restrictive rules on citizenship and residency.

44. Indeed, it sets out that the residency permissions for asylum seekers do not constitute a valid title for foreigners to enrol in civil registries. As such, the norm is in blatant violation of Article 6, § 7, D. Lgs. No. 286/1998, according to which the conditions for valid enrolment in civil registries must be the same for both Italians and foreigners lawfully staying in Italy, in compliance with the principle of non-discrimination. It is also worth mentioning that the impossibility to register affects asylum seekers' capability to enjoy all rights and services linked to such registration, including the right to employment, health, education, housing as well as social services, banking, insurance etc. It is thus of the utmost importance that the Italian legislator specifically indicates which title permits asylum seekers to enrol in civil registries.

45. Furthermore, and of even greater concern, the new regulation provides for the loss of citizenship for naturalised citizens who represent a danger for national security, having been sentenced for serious crimes of terrorism or insurgency. This norm proves

to be discriminatory (and contrary to Article 2 ICCPR) since it applies only to naturalised citizens, while citizens of Italian roots are excluded from its scope. Additionally, this provision is inconsistent with the prohibition of new stateless, as set out by Article 8, § 1 of the Convention on statelessness reduction, to which Italy is a party.

Recommendations:

- keep protection of migrants' rights at the heart of any migration policy and ensure that a proper democratic debate takes place before any legislative change is implemented, with a view to allowing for public scrutiny and accountability for public action;
- in all proceedings regarding their application for international protection, ensure that all procedural safeguards are put in place to ensure that asylum seekers have access to a fair procedure in line with national and international fair trial standards
- ensure asylum seekers and refugees receive proper legal and social assistance to meet their basic needs while their application is under consideration in order to facilitate their integration in Italian society
- ensure that asylum seekers are not held in detention for the sole reason that they are seeking international protection and that administrative detention is only used as a last resort in exceptional circumstances when other non-custodial alternatives are not available
- repeal the provisions providing for the loss of citizenship for naturalised citizens who represent a danger for national security, as it unreasonably discriminates against them; and ensure new legislation does not lead to cases of statelessness through loss of citizenship

ON THE ITALIAN POLICIES AGAINST MIGRANTS AND THEIR HUMAN RIGHTS DEFENDERS

46. In the last few years, Italy has failed to cooperate with international partners in promoting policies that pursue the goal to reinforce migrants' human rights. Rather, since 2014 Italian governments have been implementing strategies that clearly aim not to engage Italy's jurisdictions in dealing with irregular migration from North Africa, most notably from Libya. In this respect, the following paragraphs will highlight three different but related aspects of Italian migration policy, which starkly contrast with the duty to respect, protect and fulfil migrants' fundamental rights. Such policies do not meet **Recommendations No. 145.163; 145.164-168; 145.176-178; 145.180.**

On the no-entry policies implemented by the Italian government.

47. The newly elected Italian government, and its Minister of the Interior, Matteo Salvini in particular, has adopted since June 2018 a strict no-entry policy, prohibiting both NGOs' and Italian coast guard's vessels to disembark in Italian ports, if migrants are on board. This practice violates the international obligation to allow their immediate disembarkation, according with the following relevant international norms.

48. The international Convention on search and rescue (SAR), which Italy has ratified, imposes an obligation to provide assistance to ships in distress, described as a “*situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance*” (§ 1.3.13). This obligation is reinforced by the duty to ensure prompt disembarkation on a place of safety (annex § 3.1.9), which is defined by the 2004 IMO Guidelines on the Persons Rescued at Sea as “*any place where the survivors’ safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met*” [Resolution MSC. 167 (78)]. Moreover, a direct obligation to grant access to vessels inside national ports is set out by article 10 (1) of Regulation EU No. 656/2014, according to which in the framework of search and rescue operations, disembarkation of the rescued persons has to be carried out rapidly and effectively.

49. Italy’s practices do not meet **Recommendation 145.176**.

50. The Italian government’s no-entry policies have turned into several episodes of NGO vessels denied to dock and left in stand-by while being either on the high seas or in territorial waters, notwithstanding the presence of a number of shipwrecked migrants on board. In this respect, the UFTDU is in possession of first hand information since its legal team has submitted an application before the European Court of Human Rights on behalf of several applicants, who were among the 629 migrants coming from Libya and rescued in June 2018 by the “Aquarius” NGO boat. Notably, on June 10 2018, Aquarius, a vessel operated by NGOs *SOS Méditerranée* and *Médecins sans frontières*, rescued more than 600 migrants in international waters, under the direction and control of the Italian Maritime Rescue Coordination Centre (MRCC⁷). However, “Aquarius” was denied to dock in Italy⁸, and was hence forced to reach Valencia after more than one week of navigation. It is worth mentioning that such decision—was taken notwithstanding the fact that rescued migrants were exhausted, the vessel was overcrowded and the crossing toward Valencia exposed migrants to further agony due to severe adverse weather conditions⁹.

51. Italy has deprived shipwrecked migrants of the right of freedom of movement, as they are unlawfully forced to remain on board. In addition, the prolonged permanence on board exposed migrants, above all minors, to further and unnecessary physical and mental suffering, which be considered as amounting to degrading treatment under Article 3 ECHR.

52. Similar considerations could be made in relation with several and similar cases of denial of access to Italian ports that have happened hitherto. Notably, on 14 August 2018, Italy blocked again the “Aquarius” on the high seas, notwithstanding 141 shipwrecked persons on board¹⁰. On 26 August, of the same fate awaited the “Diciotti”, a vessel of the Italian coast guard, prevented for days to disembark 137 saved migrants¹¹. On 28 October Italian and Maltese authorities prohibited “Aquarius 2” to dock, notwithstanding 58 migrants on board, some of them suffering from

⁷ See the following article: <https://www.ilfattoquotidiano.it/2018/06/14/aquarius-cosi-i-629-migranti-sono-arrivati-su-nave-della-ong-ecco-la-ricostruzione/4427724/>.

⁸ See the following article: <https://www.lastampa.it/2018/06/11/italia/migranti-litalia-sfida-malta-salvini-chiudiamo-i-porti-bVoFCfoAr11187cT5qJ4rL/pagina.html>.

⁹ See the following tweet: <https://twitter.com/SOSMedItalia/status/1006989094663147520>.

¹⁰ See the following article: https://www.repubblica.it/cronaca/2018/08/13/news/aquarius_e_il_soccorso_rifiutato-204002144/?ref=RHPPLE-BH-I0-C8-P10-S1.8-T1.

¹¹ See the following article: http://www.ansa.it/sito/notizie/politica/2018/08/25/migranti-la-linea-del-viminale-non-cambia.-pm-sente-funzionari_b802314b-890d-436d-b168-d4a8d70d852d.html.

serious health conditions¹². In January 2019, the “Sea Watch” has been prevented for more than 15 days to disembark 47 migrants on board, among whom 15 minors¹³. Lastly, at the time this report is written, the Italian Government impeded Jonio, an Italian vessel having saved 49 migrants, to access Italian territorial waters, ordering their disembarkment in Libya, in blatant disregard for the ECtHR’s judgment *Hirsi Jamaa & others v. Italy*¹⁴. The refusal to obey and the consequential disembarkment in Lampedusa led to the seizing of the vessel and into prosecutions against crew members¹⁵.

Recommendations:

- Ensure that any measure adopted by Italy to counter irregular migration respects the country’s international search and rescue obligations, including the obligation to allow all vessels conducting search and rescue operations to dock in their ports, disembark people who have been rescued, and return to sea in a timely manner
- Ensure migrants rescued at sea receive all necessary care to ensure their well-being and are in a position to file an application for international protection and to undergo an individual assessment of their asylum claims
- Ensure that rescued migrants are not pushed back or returned to countries where they would face persecution or other human rights violations, in violation of the principle of non-refoulement

On the contrast and criminalization of Non-Governmental Organizations

53. The no-entry policy has been followed and fostered by a continuous strategy to delegitimise NGOs operating on the high seas to rescue shipwrecked migrants. This policy, together with bilateral agreements with migrants’ countries of origin and transit, follows the purpose to cut down the number of migrants’ arrivals in Italy and outsource responsibility for migration management to countries with poor human rights records, in disregard for any humanitarian consideration and Italy’s international obligations.

54. At first, the former Minister of the Interior, Mr Minniti, on 31 June 2017, introduced a code of conduct to be subscribed by NGOs involved in search and rescue operations on the high seas, in order for them to lawfully conduct their activities¹⁶. Following the introduction of such code, the number of vessels operated by NGOs

¹² See the following article: <https://ilmanifesto.it/bloccata-al-largo-di-malta-lodissea-dellaquarius-2/>.

¹³ See the following article: <https://www.ilpost.it/2019/01/31/sea-watch-3-migranti-sbarcati/>.

¹⁴ See ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], judgment of 23 February 2012: the ECtHR condemned Italy for the interception at the high sea and push-back of a vessel of irregular migrants coming from Libya: this case was lodged by UFTDU’s President, Anton Giulio Lana. FIDH intervened as third-party in the case. For the link: hudoc.echr.coe.int/eng?i=001-109231.

¹⁵ See the following article: https://www.adnkronos.com/fatti/cronaca/2019/03/20/sequestro-mare-jonio-notifica-comandante_5WwIOhLebYa0V6FQGuvO4N.html.

¹⁶ Here the Ministry press release: <http://www.interno.gov.it/it/sala-stampa/comunicati-stampa/codice-condotta-ong-oggi-terzo-incontro-viminale> and a link to the Code of Conduct: http://www.interno.gov.it/sites/default/files/codice_condotta_ong.pdf.

dropped, reducing their capability to assist migrants at sea¹⁷. Some NGOs indeed, such as *Médecins sans frontières*, did not subscribe to this code because they deemed it to be too restrictive for their activities, for example because it suggested, *inter alia*, the presence on board of law-enforcement agents¹⁸.

55. Moreover, Sicilian public prosecutors, both in Catania and in Trapani, initiated several judicial investigations against NGOs.

56. These investigations usually concerned alleged collusions between NGOs and traffickers of human beings, and often led to the seizure of the vessels (i.e. Open Arms vessel of the Spanish NGO Proactiva Open Arms, the Aquarius vessel¹⁹, the Sea Watch, etc). One of these NGOs was as well accused of unlawful discharge of toxic waste.

57. So far, the enquiries resulted to be ill-founded²⁰ and the confiscation withdrawn²¹. However, such investigations received a huge media exposure, fueling the rhetoric against NGOs and having a chilling effect on civil society organisations and activists providing assistance to migrants.

58. Recently, on 31 January 2019, the Sea Watch vessel, after having received the permission to disembark asylum seekers on board, was ordered by the Italian authorities to dock in Catania's port for administrative controls. Such controls lasted more than 20 days, without any irregularity being ascertained²².

59. Lastly, on 19 March 2019, the "Jonio" vessel, ran by the Italian NGO *Mediterranea*, was seized by Italian authorities after having disobeyed Italian orders not to enter in the Italian territorial waters and above all to disembark 49 rescued migrants in the island of Lampedusa²³. Once again, the Minister of the Interior ~~Mr Salvini~~, exceeding his constitutional competences, publically called for the entire crew to be convicted, labelling them as criminals²⁴.

60. Alongside these attempts to criminalise NGOs humanitarian efforts, politicians have further fostered hateful discourse against NGOs humanitarian activities²⁵. An aura of illegality has been risen against NGOs, delegitimising their efforts in the eye of public opinion and further obstructing their work. As a result, in the last months, most of NGOs were practically forced to end their search and rescue

¹⁷ See the following article: <https://www.tpi.it/2018/01/19/fallimento-codice-condotta-ong-minniti/>.

¹⁸ See the following article: www.medicisenzafrontiere.it/news-e-storie/news/codice-di-condotta-la-lettera-di-msf-al-ministro-dellinterno/.

¹⁹ See the following article: www.ilpost.it/2018/11/20/nave-aquarius-sequestrata-gestione-rifuti/.

²⁰ See the following articles: www.ilfattoquotidiano.it/in-edicola/articoli/2018/08/11/linchiesta-madre-ong-scafisti-verso-larchiviazione/4552584/; <https://www.medicisenzafrontiere.it/news-e-storie/news/tribunale-del-riesame-nessun-traffico-illecito-di-rifuti-sulla-nave-aquarius/>.

²¹ See the following article: www.avvenire.it/attualita/pagine/aquarius-il-tribunale-del-riesame-annulla-il-sequestro.

²² See the following article: <https://www.lastampa.it/2019/02/22/italia/via-libera-alla-seawatch-ha-lasciato-il-porto-di-catania-OpwVqTMRRxSfXcsWZpzD6I/pagina.html>.

²³ See the following press release: www.adnkronos.com/fatti/cronaca/2019/03/19/nave-ong-lampedusa-divieto-sbarco_DdFGQIXdoV724mUC860R0O.html.

²⁴ See the following article: http://www.ansa.it/sito/notizie/topnews/2019/03/19/salviniarrestare-responsabili-mar-jonio_c3cb5aff-7f04-4f4a-a887-a3f020017e44.html.

²⁵ See, for example, the following article: www.ilpost.it/2019/02/01/sea-watch-3-yacht/.

activities²⁶. At the date of writing, very few NGOs, if any, are still carrying out such operations²⁷.

61. This adds to a climate of generalised hostility towards NGOs and activists working on migration which, coupled with an increasingly nationalist and xenophobic public discourse, contributes to fuelling hatred and violence against migrants, asylum-seekers and refugees and those who provide assistance to them, shrinking civil society space and in violation of Italy's national and international human rights commitments.

Recommendations

- End any act of harassment, including at the judicial level, against NGOs assisting migrants in distress at sea and ensure search and rescue NGOs are able to carry out their legitimate and peaceful humanitarian work without hindrance or fear of reprisals;
- Conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Articles 1 and 12.2;
- Guarantee an enabling environment for NGOs, including NGOs working on migration, where these can carry out their fundamental role in a democratic society, and refrain from any action aimed at obstructing or delegitimising their work;
- Refrain from adopting hateful and xenophobic positions and messages and voicing them publicly, but rather take measures aimed at countering xenophobic discourse and condemn hate speech.

On the violation of non-refoulement principle due to bilateral agreements ratified by Italy

62. Several bilateral agreement have been concluded by Italy with a number of countries in order to limit migration flows and outsource responsibility for migration managements to non-EU countries with poor human rights records. As a result, these agreements often led to blatant violations of the non-refoulement principle. Here below, some examples:

- ✓ Memorandum of Understandings between Italy and Sudan, ratified on 4 August 2016. On the basis of this memorandum, on 24 August 2016, around 40 Sudanese nationals were transported from Ventimiglia to Turin to be forcibly returned with a flight of the Egyptair company to Khartoum, in Sudan. Before being expelled, they were detained in the Centre for identification and expulsion (CIE) of Ventimiglia, without receiving any information on how to lodge a claim to seek international protection, notwithstanding the fact that they had clearly stated that they escaped from Darfur due to the persecutions and grave violations of fundamental human

²⁶ See the following article: <https://www.msf.org/aquarius-forced-end-operations-europe-condemns-people-drown>.

²⁷ See the following article: altreconomia.it/mediterraneo-senza-soccorso/.

rights they suffered because of their ethnicity²⁸, and despite two international arrest warrants issued in 2009 and 2010 by the International Criminal Court against Sudanese president's Omar Al-Bashir for, among others, crimes against humanity, war crimes, genocide and torture.

- ✓ Memorandum of Understanding between Italy and Libya, ratified on 2 February 2017²⁹. This memorandum aims to preclude migrants from leaving Libya toward Europe. Italy has been building capacity for Libyan patrol forces by providing them with new vessels, assistance and training to intercept and bring back migrants to Libya³⁰. Due to this policy, in 2017 around 20.000 persons are estimated to have been forcibly returned to Libyan detention centers, where degrading and inhumane conditions and torture are notorious and widely documented³¹.

63. On 31 July 2018, an Italian flagged ship, the “Asso 28”, after having rescued 108 shipwrecked persons, was ordered by the Italian Guard coast to push them back to Tripoli, following the instruction of the Libyan authorities³². This was a clear case of refoulement.

64. More recently, on 11 February 2019, Libyan patrol forces rescued and brought back around 150 shipwrecked migrants³³.

65. Coherently with this policy, the Minister of the Interior pushes for the recognition of Libya as a “safe country”, to which EU member states could push back asylum seekers. These attempts are of serious concern, not only because Libya can in no way be considered as a “safe country”, but also because they would be of nature to trigger more violations of the non-refoulement principle, taking notably into account that Libya is not a State Party to the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. In addition, they constitute a violation of the duty to protect the right to life enshrined in Article 6 ICCPR, as elucidated by HRC General Comment No. 36 on the right to life, §§ 22-27. Italy is also not acting in compliance with the landmark ECtHR judgment *Hirsi Jamaa* cited above³⁴. **Recommendation No. 145.168** has not been met.

Recommendations

- Put an end to refoulement of migrants and their return to countries where they would be at risk of persecution or other human rights violations
- Refrain from concluding, and suspend all existing cooperation agreements in the area of migration with other countries which do not have ratified the Geneva Convention relating to the Status of Refugees, do not have a functioning asylum

²⁸ See the following article: www.ilfattoquotidiano.it/2016/08/24/migranti-prima-espulsione-di-gruppo-48-presi-a-ventimiglia-e-rispediti-in-sudan-ma-khartoum-viola-diritti-umani/2993664/.

²⁹ Here a link to an Italian version of the MoU: www.asgi.it/wp-content/uploads/2017/02/Libia.pdf.

³⁰ See the following article: www.ilfattoquotidiano.it/2018/08/06/motovedette-libia-ok-della-camera-al-decreto-382-si-il-pd-non-partecipa-al-voto-nessuna-garanzia-sui-diritti-umani/4541047/.

³¹ On this point, see the following press release: www.amnesty.it/italia-libia-un-anno-laccordo-sullimmigrazione/.

³² See the following article: www.ilpost.it/2018/08/01/asso-28-migranti-libia/.

³³ See the following article: mediterraneaescue.org/news/aggiornamento-catturate-150-persone-riportate-nellinferno-libico/.

³⁴ See the following press release: www.fidh.org/en/region/europe-central-asia/italy/european-court-declares-that-italy-s-policy-against-irregular.

system in place and do not offer sufficient guarantees of protection of the rights of migrants, asylum-seekers and refugees, and

- Ensure that any cooperation agreement with other countries on migration fully respects international and European human rights obligations, and is negotiated in a public, transparent and accountable way which allows for democratic oversight and accountability for public action.