

**Universal Periodic Review (UPR) NGO Alternative Report (34th Session
October-November 2019)**

ITALY

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Islamic Human Rights Commission (IHRC) is a not-for-profit campaign, research and advocacy organisation founded and based in the United Kingdom. It was set up in 1997 and works for redress of human rights violations and a better understanding of rights and norms across confessional, ethnic, national, political and other boundaries.

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UNIVERSAL PERIODIC REVIEW ALTERNATIVE NGO REPORT, 34th Session (October-November 2019)

ITALY

Summary

1. Based on its fieldwork and networking with locally based human rights organisations IHRC has concerns about Italy's fulfilment of its international humanitarian obligations in the last 4 years, with regard to the following:
 - Issues relating to migration, the treatment of migrants in particular those seeking asylum. This includes penalising those who seek asylum in Italy, the designation of Libya as a safe state and the forcible return / refusal to physically accept refugees from or travelling via Libya; the running down of the reception system; the stoking of anti-migrant sentiment; the failure to protect migrants from exploitative and illicit labour practices including but not solely sexual exploitation; failing to provide status for migrants that allows them to integrate; racial and religious discrimination against migrants and settled minority communities. All of these violate in any number of the international obligations of the Italian state covered in Appendix A, in addition to the provisions in the Italian constitution itself.
 - Issues relating to political harassment and abuse in particular: attacks and harassment of human rights defenders, including using the law in a perverse manner contrary to the spirit of the law to prosecute them. The shielding of politicians from prosecution for violations of Italian and international law. See Appendix B for relevant instruments.
 - Violating international human rights norms in the prevention of migrant rescues at sea. See Appendix C.
 - Recommendations

Introduction

2. Italy has been at the forefront of migration flows into Europe for decades. Previous governments, despite various criticisms, have historically been supportive of EU efforts to support asylum processes, provide safety and security for those reaching European shores, and in particular providing sea rescue services to help migrants whose ships have floundered en route to Europe, in particular but not solely off the coast of Libya. The last four years has seen both the cassation of EU rescue missions, but also a change in political climate in Italy that has resulted in overtly anti-migrant / anti-refugee and anti-minority discourse and policy.

Issues relating to migration, the treatment of migrants in particular those seeking asylum

Libya designation as a safe country

3. As recent events including the Medecin San Frontiers rescue boat, and now the Mediteranea boat Mare Jonio evidence, the refusal to allow refugees to even dock in

Italy is a flagrant violation of the rights of those seeking asylum as well as the duties of Italy to allow disembarkment and provide initial asylum.

4. This escalation follows on from the attempt to circumvent international obligations by the government who have deemed Libya a safe country and therefore tried to argue they have no obligations to those arriving.
5. Additionally the refusal to accept boats of migrants and in some cases returning them to Libya further violate the rights of those seeking asylum potentially sending them back to torture, sexual and other forms of exploitation, slavery and even death, as well as violating the duties of the state. This abuse of legal provisions is also evidenced in 2 and 3 below.

Sprar System

6. The “Salvini decree” of late 2018 scrapped the “humanitarian protection” status for asylum seekers and has introduced new rules on who can be housed in council-run migrant reception centres. As a result those with “humanitarian protection” status are being expelled from centres across the country, including minors.
7. The situation of unaccompanied minors is of particular concern. The issues regarding potential homelessness as a result of the running down of the sprar system also affects young migrants, who currently are in theory not affected. However all centres and NGOs working with minors that IHRC spoke to, stated that the situation was ambiguous and there were real and serious concerns that their services and centres would also be run down.
8. As the situation stands, support for minors leaving centres aged 18 are being depleted, and societal issues such as high unemployment and limited housing options are compounded for young refugees who also face societal racism.
9. The abolition of humanitarian protection status, has also resulted in the exclusion of asylum seekers from accessing reception centres that are focused on social inclusion. Under the system, new asylum seekers are being excluded from these council-operated local reception centres, known as Sprar, which focus on integrating them into the community with language and job training. Based on IHRC fieldwork and interviews, there is expected to be an expansion of the use of larger, centralised detention centres, which lack the focus on integration that the Sprar have. The larger detention centres have poor living conditions, as a result asylum seekers decide to leave and go into illegal work in farms or fall into the hands of criminal gangs. We have heard reports of those who were given humanitarian status just before the law changed have been evicted from the Sprar as bureaucracy is too slow and has not fully registered their legal status.

Legal Assistance in Reception Centres and Health Care

10. There are shortcomings in the implementation of asylum procedures everywhere in the country, such as a chronic lack of adequate legal support. A lack of legal support is especially felt at the preparatory stage, before any hearing of an asylum case. Even if asylum seekers are entitled to protection while their status is being determined, many among them lack information about the legal procedures and judicial systems. Furthermore, many asylum seekers live in precarious conditions outside the reception centres and lack access to medical treatment.
11. Medical support is often provided by NGOs such as Emergency, despite in theory there being universal access to healthcare in Italy. Additionally many migrants have

experienced torture (indeed many NGO activists believe that the journeys undertaken across Libya in particular are so arduous and fraught with violations, that all migrants should be deemed to have suffered torture). Again it is left to NGOs like Emergency to offer psychological assessments with a view to referral to specialists. However e.g. in Sicily, such specialisation does not exist, whilst the refugee population in need of such services is very high. Other issues regarding healthcare involve women who have been trafficked to Italy for sex work. Many women have had multiple abortions within a short space of time.

12. Legal support is limited, and most lawyers do not speak English or French and therefore are unable to communicate with their clients. According to various case workers, there is a general lack of interest and a reduction in the time and attention dedicated to individual cases.

Conditions in Camps and Reception Centres

13. Managed by the Italian Ministry of Interior, monies from the EU Asylum, Migration and Integration Fund (AMIF) are used to support the reception of migrants and to provide for their basic needs during asylum proceedings. Although this support amounts to EUR 30-40 a day / person, migrants themselves only receive a daily allowance of about EUR 2.50, with the remainder being allocated to accommodation, food, legal support and the management of reception centres. In the reception centres, residents are often not given cash but rather food vouchers or even cigarettes, to the value of EUR 2.50 per person per day.
14. The limited financial resources at their disposal, the lengthy legal procedures and the high rates of rejection force many migrants and refugees to look outside of the formal system to find ways to secure their futures in Europe. These ways are not necessarily licit ones. Many migrants are being targeted by local and foreign criminal groups and are becoming involved in criminal activities, often without their consent.
15. State failure to address the protection needs of those who arrive in Italy and to process their status on the one hand allows for vulnerable people to fall through the cracks of the formal system right into the arms of organised crime groups. On the other hand, state policies targeting organised crime that exploits migrants and refugees focus primarily on arresting individuals and not addressing the vulnerability of people and its causes. By adopting this tunnel vision, Italy overlooks the greater need for protection of those being abused by criminal groups, creating a vicious cycle of vulnerability, exploitation and crime, and the role its policies regarding the asylum process play in this exploitation.

Exploitation of migrant workers on farms

16. Migrant labour is a booming business in Sicily, not only for farmers but also for the contractors who recruit men and women to work illegally in the fields. Italian labour unions say up to 300,000 illegal workers continue to generate billions of euros a year in profit for Italy's agricultural sector.
17. During non-harvest periods, an African worker usually receives €2-3 per hour, compared to Italy's agricultural minimum wage, agreed by the industry, of €7.13.
18. There are between 405,000-500,000 migrant workers in Italy's agricultural sector, around half of its total workforce. According to the Observatory Placido Rizzotto, which investigates worker conditions in the agricultural sector, 80% of those without contracts are migrant workers.
19. Salvini's immigration-security decree will accelerate the illegalisation of asylum seekers and push people further into irregular work without any labour protection.

“Humanitarian protection”, granted to African asylum seekers in previous years, will end. The Salvini decree increases exploitation, caporalato (the gangmaster system) and social degradation. This may be encouraging trafficking of humans so that can be continued to be employed on their farms illegally.

20. Conditions for workers include living in shared and overcrowded accommodation (sometimes non-segregated), sometimes without water, electricity or basic amenities on farms.

Issues relating to political harassment and abuse

21. Provisions in Italian law to hold politicians to account for violations of law have in recent weeks been circumvented by the granting of immunity to Salvini by the Italian senate. The Minister is facing kidnapping charge over migrants held on board the Diciotti in a standoff with the EU last August. The case relates to the rescue of 190 people by Italy’s Diciotti coast guard ship, who were left stuck at sea for five days without permission to dock.
22. In regard to the Mare Jonio disembarkment affair, whilst the boat was eventually allowed to dock and the refugees disembark, the master of the rescue ship Pietro Marrone and the head of mission, Luca Casarini, member of the NGO Mediterranea which runs the project is being investigate for “facilitating illegal immigration and trafficking in human beings”. Using anti-trafficking laws to harass and threaten not just those involved with the Mare Junio but as a deterrent to future such operations, the Italian government is violating the rights of human rights defenders and their own obligations as per Appendix B.

Violating international maritime law and human rights conventions

23. The rules regarding rescues at sea are spelled out in a number of international maritime law treaties and customary law principles, among which: SOLAS Convention on the Safety Of Life At Sea (Chapter V, Regulation 33), the 1979 International Convention on Maritime Search and Rescue (SAR) adopted in Hamburg (Chapter 2.1.10), and the 1982 UN Convention on the Law of the Sea (UNCLOS, artt.18 (2) and 98).
24. These provide for the duty of helping those who are shipwrecked from becoming lost at sea. This duty applies to all persons in distress, without distinction. The nationality of the vessels or of the persons, their legal status and the activity in which they are engaged are irrelevant. The fact that the persons are engaged in an unlawful activity should not make any difference to the duty to rescue. Also, the fact that the persons to be saved are migrants should not in any way hinder their right to be saved. Regrettably, it would seem that States and masters of ships have sometimes been less willing to proceed to the rescue of vessels transporting migrants and refugees. This distinction, however, is contrary to applicable law.

Place of safety

25. An important limitation to disembarkation options is the non-refoulement principle, which prohibits persons from being returned to the boundaries of States where their

life or freedom would be threatened or where they might be subject to torture or other inhuman or degrading treatment (the so-called "place of safety").

26. According to the 2004 Maritime Safety Committee's Resolution, "a place of safety means one in which a person's life is no longer under threat". Initially developed with respect to refugees (1951 Convention relating to the Status of Refugees, art. 33.), the principle now applies to any person who might suffer a violation of his or her right to life or freedom from torture (European Court of Human Rights, *Chahal v. The United Kingdom*, Judgment 15 November 1996, para. 74; ECtHR, *Hirsi Jamaa and Other v. Italy*, Judgment, 23 February 2012, para. 114).
27. In addition, as in many occasions stated by the UN Human Rights Committee on the extraterritorial application of the ICCPR, "a State party [to the ICCPR] may be responsible for extraterritorial violations of the Covenant if it is a link in the causal chain that would make possible violations in another jurisdiction." All EU member states and Libya are parties to the covenant. In light of this jurisprudence, any EU state assisting Libya to return people to Libya could be in breach of the covenant because the harm disembarked migrants face in Libya is a "foreseeable consequence" based on "knowledge the State party had at the time."

Recommendations

28. Based on fieldwork with human rights defenders, specialist organisations and practitioners as well as victims of abuses, IHRC recommends that the Italian government:
 - (i) reverse its designation of Libya as a safe country;
 - (ii) reverse the "Salvini decree" with a view to its obligations to provide asylum for those seeking it;
 - (iii) adhere to its obligations to prevent sexual and labour exploitation, including slavery of migrant populations;
 - (iv) provide for an adequate standard of accommodation, health and environment in reception centres;
 - (v) look to supporting and expanding where it exists best practice in the sprar system;
 - (vi) provide unconditional health support and medical services for all residents (including Italians) currently being provided by emergency NGO support;
 - (vii) desist in investigations and prosecutions of human rights defenders and organisations.
29. Finally, as per the recommendation of various personnel working within the asylum system, we recommend the desisting of using otherising language, including the demonised use of the term 'migrant'. There is a pressing need for Italian institutions to understand the impact those term has on equality provisions, and the dehumanisation of those seeking asylum, migrating to Italy or who are from settled minority communities.

Appendix A

We refer inter alia¹:

The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

UDHR: Article 4 prohibiting slavery and servitude. Article 23 providing the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration, and to the right to form and join trade unions. Article 24 providing the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay.

ICESCR Articles 6 to 10 recognizing the rights of everyone to (a) work which they freely choose or accept; (b) enjoy just and favourable conditions of work, including equal remuneration for work of equal value; (c) form and join trade unions; (d) social security, including social insurance; (e) the special protection from economic and social exploitation of children and young persons.

ICCPR: Article 8: prohibiting slavery, servitude and forced labour. Article 22 providing the right to freedom of association. Article 26 providing that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

CEDAW: Article 11 enshrining equal rights of men and women in the field of employment, including (a) equal remuneration, including benefits, and to equal treatment in respect of work of equal value; (b) the right to protection of health and to safety in working conditions; and (c) maternity protection.

ICERD: Article 5 providing the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in the enjoyment of civil rights and economic, social and cultural rights. Article 5(e)(i) providing the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration.

CRC: Article 32 recognizing the right of the child to be protected from economic exploitation and hazardous and harmful work, and requires States to specify a minimum age for admission to employment.

Additionally: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out minimum standards for migrant workers and members of their family, irrespective of their migratory status, in line with the principles of equality and non-discrimination, and with the provisions of other United Nations treaties, noting States' responsibilities to respect, protect and fulfil the human rights for all human beings, various articles including but not solely Article 11 sets out the prohibition of slavery, servitude and forced labour. Article 25 provides that migrant workers shall enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and other

¹ <https://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

conditions of work, etc. Article 25 also calls for equality between migrant workers and nationals in other terms of employment according to national law and practice, including minimum age of employment.

Additionally: International labour standards adopted by the International Labour Conference of the International Labour Organization (ILO) apply to migrant workers unless otherwise stated. The fundamental principles and rights at work set out in the eight Fundamental ILO Conventions apply to all migrant workers, irrespective of their migration status. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up requires all ILO member States to promote and realize the principles concerning the fundamental rights enshrined in these Conventions. A number of other ILO standards of general application and those containing specific provisions on migrant workers in the areas of employment, labour inspection, social security, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction, hotels and restaurants, and domestic work, are of particular importance to migrant workers in an irregular situation. In formulating national laws and policies concerning labour migration and the protection of migrant workers in an irregular situation, States are also guided by (a) the ILO Migration for Employment (Revised) Convention, 1949 (No. 97); (b) the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and (c) the accompanying Recommendations Nos. 86 and 151. The ILO Multilateral Framework on Labour Migration, approved for publication and dissemination by ILO's Governing Body in 2006 and which is based on international human rights and labour standards, provides useful guidance to governments, social partners and other stakeholders in the formulation and implementation of national labour migration policies.

Appendix B

In addition to those rights in ICCPR relating to the individual which are binding in states to uphold, Charter on the Rights of Human Rights Defenders² clarifies and provides specific protections to human rights defenders, including the rights:

- To seek the protection and realization of human rights at the national and international levels;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;

² <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

Additionally it provides for **the duties of States as having** a responsibility to implement and respect all the provisions of the Declaration.

Appendix C

We refer to *inter alia*³, IMO Resolution A 920 (22): safety measures and procedures for the treatment of persons rescued at sea

The objectives are to help ensure that:

.1 survivors of distress incidents are provided assistance regardless of nationality or status or the circumstances in which they are found;

.2 ships, which have retrieved persons in distress at sea, are able to deliver the survivors to a place of safety; and

.3 survivors, regardless of nationality or status, including undocumented migrants, asylum seekers and refugees, and stowaways, are treated, while on board, in the manner prescribed in the relevant IMO instruments and in accordance with relevant international agreements and long-standing humanitarian maritime traditions.

³ <https://www.unhcr.org/487b47f12.pdf>