

ITALY

**Submission to the United Nations Committee Against
Torture (CAT) Pre-Sessional Working Group.
9 November – 4 December 2020**

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Executive Summary

This briefing is submitted by Refugee Rights Europe (RRE), with substantive contributions from the non-governmental organisations Association for Juridical Studies on Immigration (ASGI), WeWorld, Diaconia Valdese and Befree, in advance of the adoption by the Committee against Torture (hereafter The Committee) of a list of issues prior to the Committee's consideration of Italy's Seventh Periodic Report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention).

This briefing presents several concerns of RRE regarding Italy's shortcomings in regards to the implementation of Articles 3, 11 and 16 of the Convention. In particular, RRE is concerned about Italy's failure to uphold the principle of non-refoulement by engaging in summary pushbacks as well as implementing bilateral readmission agreements without sufficient guarantees as per the Convention, international human rights and refugee law. Moreover, RRE is alarmed over insufficient safeguards in the asylum procedures, and the use of excessive force and other degrading treatment by law enforcement officials against asylum seekers and displaced individuals. Prolonged and arbitrary detention characterised by a lack of procedural and legal safeguards, as well as insufficient external access to and monitoring of detention sites and reception facilities are of further concern. Furthermore, RRE is concerned over the substandard living conditions for asylum seekers and displaced individuals in reception facilities and camps.

About Refugee Rights Europe (RRE)

Refugee Rights Europe (RRE) is a human rights advocacy organisation and registered charity. Founded in 2016, the organisation researches and documents the situation for refugees and displaced people seeking protection in Europe, with a particular focus on human rights violations and inadequate humanitarian conditions experienced. The organisation uses its research findings to advocate for human rights-centered policy development, to ensure the rights of refugees and displaced people are upheld on European soil, in accordance with the Universal Declaration of Human Rights. RRE is independent of any political ideology, economic interest or religion.

Article 3 – Non-refoulement

- **Refoulement to Libya**

The ports of Libya cannot be considered safe given the numerous human rights violations¹ and the risk of being subjected to inhuman and degrading treatment or torture. Despite this, *refoulement* to Libya continues to unfold. A specific example took place in 2018, when the naval unit tugboat flying the Italian flag *Asso28*, brought back displaced people, rescued at sea, to Libya². The *Asso28* ship initially seemed to be coordinated by the Italian Coast Guard but in fact returned individuals rescued on international waters to Libya. The reconstruction of this event is, however, difficult as the Italian government claims that it was the Libyan coast guard that requested that displaced people were

¹ See Refugee Rights Europe's submission to the Universal Periodic Review on Libya in 2019: <https://refugee-rights.eu/wp-content/uploads/2019/10/Universal-Periodic-Review-of-Libya-Written-submission-by-RRE-1.pdf> See also: <https://www.ilpost.it/2018/08/01/asso-28-migranti-libia/>

² <https://www.lastampa.it/cronaca/2018/07/31/news/oltre-100-migranti-soccorsi-e-riportati-in-libia-e-il-primo-respingimento-di-una-nave-italiana-1.34035525>

brought back to Libya,³ and that the MRCC was not involved. Different associations and people have demanded clarity regarding the responsibilities and involvement of the Italian Coast.⁴ The UNHCR has moreover requested files and information to assess whether there was a violation of international law.⁵

In 2018, the Global Legal Action Network (GLAN) filed a legal complaint before the European Court of Human Rights (ECtHR) against Italy “over its coordination of Libyan Coast Guard pull-backs resulting in migrant deaths and abuse”.⁶ The complaint is based on evidence collated by Forensic Oceanography, which produced a detailed reconstruction of what happened in November 2017 when a rescue vessel operated by the NGO Sea Watch (SW) and a patrol vessel of the Libyan coastguard, informed by the MRCC of the Italian coastguard, were both *en route* towards a migrants’ boat, in distress in international waters which resulted in a confrontational rescue operation leading to at least twenty people dying before or during the incident and forty-seven passengers being ultimately ‘pulled back’ to Libya.⁷

In November 2019, the Italy-Libya Memorandum of Understanding (MoU) setting the terms for the two countries’ co-operation on migration was automatically extended for a further three years, from February 2020, without any amendments.⁸ This was despite the fact that NGOs had been calling for the MoU to be denounced and revoked. Following pressures from Parliamentarians regarding the negative human rights consequences of the agreement, the Italian government committed⁹ to amending it, and to thus require Libya to: allow for free and unconditional access of humanitarian operators to detention centres; ‘progressively’ proceed with the closure of unofficial centres for displaced people; ensure the respect of human rights standards in the centres; and the release of women, children and vulnerable people.¹⁰ At the time of writing (June 2020), no amendment has yet been approved.

Through this memorandum, Italy continues to support the Libyan coastguard, despite the fact that the situation in Libya does not allow for the upholding of human rights. Various NGOs have accused Italy of indirectly pushing back displaced people to Libya therefore exposing them to torture and inhuman and degrading treatments.¹¹ The number of instances of interception by the Libyan coast guard in 2019 reached approximately 8,000.¹² At the end of 2019, the Italian journalist Nello Scavo, who required to be escorted due to threats from Libyan traffickers, published his investigation on the case of the suspected high-profile trafficker known as Bija (Abd al-Rahman Milad) who attended Italy migration talks in 2017. The investigation raised concerns regarding the relation between the Italian Government and Libya.¹³

³https://www.repubblica.it/cronaca/2018/08/08/news/migranti_presentato_un_esposto_sul_comportamento_del_rimorchiatore_italiano_asso_28-203654671/

⁴ <https://www.asgi.it/allontamento-espulsione/liba-asso-28-respingimento-mediterraneo/> ; <https://www.asgi.it/notizie/libia-respingimenti-migranti-asso-28/> and https://www.repubblica.it/cronaca/2018/08/08/news/migranti_presentato_un_esposto_sul_comportamento_del_rimorchiatore_italiano_asso_28-203654671/?ref=search

⁵ https://twitter.com/UNHCRItalia/status/1024196125983744000?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1024196125983744000&ref_url=https%3A%2F%2Fwww.ilpost.it%2F2018%2F08%2F01%2Fasso-28-migranti-libia%2F and Report UNHCR “Viaggi disperati – gennaio dicembre 2018” – p. 14

⁶ https://www.camera.it/application/xmanager/projects/leg18/attachments/upload_file_doc_acquisiti/pdfs/000/001/986/UNHCR_document.pdf

⁷ GLAN, May 2018 <https://www.glanlaw.org/single-post/2018/05/08/Legal-action-against-Italy-over-its-coordination-of-Libyan-Coast-Guard-pull-backs-resulting-in-migrant-deaths-and-abuse>

⁸ Forensic Oceanography report <https://forensic-architecture.org/investigation/seawatch-vs-the-libyan-coastguard#toggle-id-3>

⁹ Amnesty International, Italy [Report](#) 2019

¹⁰ Statewatch [Article](#) March 2020

¹¹ [Draft](#) on the new Memorandum by the Italian newspaper *Avvenire* (in Italian)

¹² USDOS – US Department of State: Country [Report](#) on Human Rights Practices 2019 - Italy, 11 March 2020 (accessed on 15 May 2020)

¹³ <https://altreconomia.it/soccorsi-mediterraneo-navi-umanitarie-isolate/>

¹⁴ <https://www.avvenire.it/attualita/Pagine/migranti-armi-e-petrolio-tre-mesi-di-misteri-su-bija>

- **Allegations of pushbacks to Slovenia and Greece that amount to refoulement**

Italy moreover carries out irregular pushbacks of people arriving via the Balkan route.¹⁴ In 2019, Italy continuously pushed people back at the Slovenian border. Under the readmission agreement between Italy and Slovenia, 361 people were readmitted to Slovenia during the period between July 2018 and July 2019.¹⁵

The readmission agreements are in violation of the right to seek asylum and in the case of Slovenia,¹⁶ asylum seekers are at risk of being ‘chain-refoulement’, namely being repatriated to Slovenia first, and subsequently to Croatia, Bosnia and Serbia where the living conditions and the right to seek asylum are not always respected.¹⁷ On this matter, the ECtHR has stated¹⁸ that the State has a duty to refrain from rejecting displaced people who risk a process of ‘chain-refoulement’ to a country where they may face inhuman and degrading treatment or conditions.¹⁹ This is also in violation of Article 3 of the Convention against Torture.

The practice of pushbacks moreover continues to take place in the Adriatic Ports. In fact, different NGOs have confirmed the practice of sending people back to Greece where more than 190 people have been pushed back.²⁰ In this regard, the situation in Greece does not always permit for the respect of rights of asylum seekers. Italy has already been convicted in the case *Sharifi and Others v. Italy and Greece*²¹ for the readmission to Greece in cases where people end up living in inhuman conditions.²² Despite this, the readmission to Greece continues.²³ To highlight one specific example, the *Border Violence Monitoring Network* has reported a case of two Afghan men, who were victims of violence by police officers in Ancona during a pushback from the Adriatic port to Greece.²⁴

- **Allegations of refoulement due to Italy SAR policy**

Throughout 2018-2019, Italy adopted a policy of ‘closure of ports’²⁵ delaying the access to the procedure of international protection, as described below. In 2020, during the COVID-19 emergency, Italy declared itself as “not a safe harbour” with the inter-ministerial Decree No. 150/2020.²⁶ The Decree Law No. 53/2019²⁷ stipulated the possibility for the Minister of Interior to restrict or prohibit the entry, transit or stay of ships in the territorial sea (Art. 1). Article 2 also established the case of confiscation of the ship and an administrative penalty for the captain in cases where prohibitions imposed by law were not respected.

¹⁴ Amnesty International “Italy: refugees and migrant’s rights under attack” <https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf>, p.9: “Italy has also summarily returned people who entered irregularly through the “Balkan route”, and ignored their asylum claims. (...) in June 2018 reported that they had reached Trieste, Italy, and expressed their intention to apply for asylum. However, the Italian authorities ignored their requests.”

¹⁵ ASGI, AIDA Report 2019, P. 31

¹⁶ Bilateral readmission agreement signed with Slovenia

¹⁷ ASGI, “Rotta balcanica, ASGI: interrompere le riammissioni illegali al confine italo-sloveno”(05.06.2020):<https://www.asgi.it/allontamento-espulsione/rotta-balcanica-asgi-interrompere-le-riammissioni-illegali-al-confine-italo-sloveno/>

¹⁸ *Ilias and Ahmed v. Hungary*, 2019

¹⁹ *Ilias and Ahmed v. Hungary*, 2019 available at <http://hudoc.echr.coe.int/eng-press?i=003-6563123-8684799>

²⁰ ASGI, AIDA Report 2019, p. 29

²¹ <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-4910702-6007035%22%5D%7D>

²² <https://altreconomia.it/migranti-grecia-turchia-crisi-umanitaria-annunciata/>

²³ <https://www.asgi.it/notizie/respingimenti-italia-indagine-caso-sharifi/> and the Press Release available in EN:

<https://sciabacaoruka.asgi.it/en/refoulement-at-the-adriatic-ports-press-release/>

²⁴ <https://www.borderviolence.eu/violence-reports/april-23-2020-2000-ancona-port/>

²⁵ ASGI, AIDA Report 2019, available at <https://www.asylumineurope.org/reports/country/italy> P.25: “The Decree Law n. 53, issued on 14 June 2019 and later converted by Law 77/2019, tried to give a legal basis to the Minister of the Interior bans on entry, transit or stop to ships engaged in rescue at sea, further discouraging the saving of lives at sea.”

²⁶ http://www.immigrazione.biz/upload/decreto-interministeriale_n_150_del_07-04-2020.pdf

²⁷ DL 53/2019 converted by L 77/2019- <https://www.gazzettaufficiale.it/eli/id/2019/08/09/19A05128/sg>

The new provisions directly affect rescue operations at sea, discouraging boats to undertake such operations. Some NGOs accused the Italian government of encouraging *refoulement*, limiting the rescues at the sea of displaced people through pressuring NGOs²⁸ who normally carry out rescue operations in the Mediterranean.²⁹ UN experts moreover sent a letter to the Italian government expressing concern for the Law No. 132/2018, which compromises the right to life and the principle of *non-refoulement*.³⁰

- **The Hotspot approach and the risk of indirect refoulement**

Furthermore, the ‘Hotspot approach’ risks deporting individuals to their country of origin without giving them adequate information or an individual examination of their case.³¹ In fact, in the Hotspots, people are arbitrarily divided up, categorised as possible asylum seekers and so-called ‘economic migrants’ for instance on the basis of the country of origin.³² Suspected ‘economic migrants’ are subjected to a faster procedure and often lack access to information regarding their rights and the possibility to ask for international protection.³³ The main information is provided in the *foglio notizie* or orally.³⁴ The Hotspots - assigned to the first phase of identification of displaced people - plays a crucial role in the identification of international protection needs. In this regard, ASGI reported, in particular with regard to Lampedusa, the difficulties of identifying needs in relation to the application for international protection due to the presence of prejudices, stereotypes and the short time available. Indeed, the product of all of this is almost an automatic separation, on the basis of objective conditions of the displaced people, in asylum seekers and economic migrants.³⁵

Critical issue have been reported by civil society with regard to the use of "*foglio notizie*" and information sheets which people arriving in the hotspots must fill-in.³⁶ For instance, during a monitoring activity of ASGI³⁷ in Lampedusa in April 2019, the organisation found that different versions of the *foglio notizie*³⁸ were given to different country nationals. This document, given to the applicant after the identification phase, contains relevant information regarding the possibility of expulsion. In the case observed by ASGI, the applicants were asked to provide a signature, declaring that they did not wish to ask for asylum. The declaration is written in Italian only, which clearly poses a significant concern.³⁹ Indeed, ASGI noted that the individuals in question did indeed wish to claim asylum in the Hotspot, but after signing the information sheet, they were brought to the CPR with a

²⁸ AI – Amnesty International: Human Rights in Europe - Review of 2019 - Italy [EUR 01/2098/2020], 16 April 2020 <https://www.ecoi.net/en/document/2028200.html> (accessed on 15 May 2020)

²⁹ USDOS – US Department of State: Country Report on Human Rights Practices 2019 - Italy, 11 March 2020 <https://www.ecoi.net/en/document/2027526.html> (accessed on 15 May 2020)

³⁰ USDOS – US Department of State: Country Report on Human Rights Practices 2019 - Italy, 11 March 2020 <https://www.ecoi.net/en/document/2027526.html> (accessed on 15 May 2020)

³¹ Amnesty International, “Italy: refugees and migrant’s rights under attack” <https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf>, p.9: “The “hotspot approach” aims to identify and fingerprint all arrivals, separate asylum-seekers from those considered irregular migrants, and repatriate the latter. Those deemed to be irregular migrants are singled out for a rapid forcible return and are not given adequate information regarding their status and rights, or given a genuine opportunity to seek asylum.”

³² ASGI, AIDA Report 2019, p. 33

³³ Amnesty International, “Italy: refugees and migrant’s rights under attack” <https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf>

³⁴ ASGI, AIDA Report 2019

³⁵ ASGI, In Limine, <https://inlimine.asgi.it/wp-content/uploads/2020/04/Ombre-in-frontiera.-Politiche-informali-di-detenzione-e-selezione-dei-cittadini-stranieri.pdf>

³⁶ ASGI, AIDA Report 2019, p. 33:

³⁷ ASGI, Associazione per gli studi giuridici sull’immigrazione (Association for Legal Studies on Immigration) <https://www.asgi.it/chi-siamo/english-version/>. “The Association for Juridical Studies on Immigration (ASGI) is a membership-based association focusing on all legal aspects of immigration. As a pool of lawyers, academics, consultants and civil society representatives, ASGI’s expertise relates to various areas of immigration and migrants’ rights, including but not limited to antidiscrimination and xenophobia, children’s and unaccompanied minors’ rights, asylum and refugee seekers, statelessness and citizenship. ASGI’s members provide their contribution at various levels: administrative, policy-making and legal, both in national and European contexts.”

³⁸ ASGI, project *In Limine* <https://inlimine.asgi.it/wp-content/uploads/2019/04/Foglio-notizie.pdf>

³⁹ ASGI, project *In Limine* <https://inlimine.asgi.it/wp-content/uploads/2019/04/Scheda-informativa.pdf>

rejection order. Tribunals have published different decisions on expulsion and detention in relation to the use of “foglio notizie” and “scheda informativa”.⁴⁰ For instance, the Tribunal of Palermo underlines in its decision that the “foglio notizie” and “scheda informativa” are not sufficient to discharge the obligation to give complete, comprehensible information regarding the international protection.⁴¹

It is disconcerting that prospective asylum seekers who are provided with incomplete information risk being repatriated without due process. Repatriated individuals without the possibility to access the asylum procedure and accessing complete and comprehensible information, subsequently risk being exposed to torture and inhuman and degrading treatment upon return.

- **Introduction of the safe country of origin concept in the Italian legislation and the risk of refoulement**

Law No. 132/2018 moreover introduced the ‘safe country of origin’⁴² concept⁴³. Asylum seekers must prove that the country is not safe for them. Otherwise, there is a presumption of safety for people coming from a certain country identified as ‘safe’. The Decree⁴⁴ does not specify particular categories of persons or parts of a certain country which cannot be considered safe.⁴⁵ Hence, the law fails to take into account possible exclusions for being part of, for instance, particular social, religious or political groups, which might intensify the risk of repatriation of people who may risk being subjected to persecution, torture, inhuman and degrading treatments in their country of origin.

People coming from ‘safe countries’ may be subjected to accelerated procedures⁴⁶, prioritised examination⁴⁷ and border procedures⁴⁸. The application of individuals from such countries risk being rejected as ‘manifestly unfounded’ and there is not an automatic suspensive effect of the refusal.⁴⁹ Without the automatic suspension, the asylum seekers risk being repatriated, as the expulsion order is not interrupted by the filing of the appeal but need a request from the lawyer. Asylum seekers have the right to an effective remedy against expulsion.

- **Other new provisions in Italian legislation which increase the risks of refoulement**

⁴⁰A comprehensive examination of how the situation of displaced people in the hotspots can face with different Tribunal decision with regard of the detention and expulsion on the basis of the approach to the *foglio notizie e scheda informativa* and the right to ask for asylum and be informed: ASGI, project *In Limine* <https://inlimine.asgi.it/esiti-delle-procedure-attuate-a-lampedusa-per-la-determinazione-della-condizione-giuridica-dei-cittadini-stranieri/>

⁴¹ ASGI, first attachment: <https://inlimine.asgi.it/esiti-delle-procedure-attuate-a-lampedusa-per-la-determinazione-della-condizione-giuridica-dei-cittadini-stranieri/>

⁴² ASGI, AIDA Report 2019, p. 84: “According to the law, a third country can be considered a safe country of origin if, on the basis of its legal system, the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution as defined in the Qualification Decree, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict.”

⁴³ The following are identified as “safe countries” in the list adopted the 4 October 2019: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine <https://www.gazzettaufficiale.it/eli/id/2019/10/07/19A06239/sg>

⁴⁴ Law Decree No. 113/2018 converted into Law No. 132/2018

⁴⁵ ASGI, AIDA Report, 2019, p. 85: “Indeed, information collected by the Ministry of Foreign Affairs, assisted by the CNDA COI Unit, had indicated, for many countries, categories of persons or parts of the country for which the presumption of safety cannot apply. The existence of parts of the territory or categories for which the country cannot be considered safe should have led to the non-inclusion of these countries in the list.”

⁴⁶ ASGI, AIDA Report, 2019, p. 70

⁴⁷ ASGI, AIDA Report, 2019, p. 44

⁴⁸ ASGI, AIDA Report, 2019, p. 66

⁴⁹ ASGI, AIDA Report, 2019, p. 86 – 86: “On 22 January 2020, the Civil Court of Florence deemed the exclusion of the automatic suspensive effect to an appeal lodged by an asylum seeker from Senegal as illegitimate due to the applicant’s belonging to a category, that of LGBTI, whose treatment in Senegal, also according to CNDA indications, should have resulted in the exclusion of Senegal from the list of safe countries or should have determined at least the provision, within the decree, of a specific exception for this social group to the rules dictated for asylum applications submitted by safe countries nationals. Consequently, according to the Court, the Territorial Commission should not have refused the asylum application as manifestly unfounded only because of the safe country of origin of the applicant.”

The ‘Circular 13 January 2020’⁵⁰ of the Minister of Interior also states that when a negative asylum decision is appealed, there is no automatic suspension of the decision in the following cases:

- Person detained in CPR or in one of the centres of art. 10-ter TUI
- Inadmissibility of the application pursuant to art. 29 dlgs 25/2008 (e.g. subsequent application without giving new reasons)
- Manifestly unfounded application pursuant to art. 28 ter dlgs 25/2008 (e.g. safe country of origin)
- If the application (asylum request) is made after the applicant was stopped for avoiding or trying to elude the border controls or at the sole scope to prevent a pushbacks/expulsion order.

In these cases, the request for the suspension of the decision must be asked of a judge as it is not automatic. In the case of the Art. 35-ter dlgs 25/2008, for instance, and in the new Art. 29-bis (introduced by Law 132/2018 “subsequent application during the execution of an expulsion order”), the proposition of the appeal or the precautionary injunction does not suspend the executive effectiveness of the refusal order. In the *Circolare*, named above, there is stated that this is a derogation of the right of asylum seekers to stay in the territory until the end of the decision regarding the appeal and that the request is considered inadmissible⁵¹ with no examination of the application.⁵² Due to the new Law, some asylum seekers face the serious risk of not having access to the asylum procedure while asking for a subsequent application. On this point, Tribunals have acted in different ways.⁵³

For instance, a woman having undergone Female Genital Mutilation/Cutting (FGM/C), who applied for asylum multiple times but was never granted with international protection, reported that the police had not proceeded to register the asylum request but rather notified her with an expulsion order and the decision to detain her. The Rome Tribunal found the applicant's detention illegitimate as it was not validated by a judge and also considered the refusal to receive the asylum application illegitimate, preventing access to international protection.⁵⁴ Moreover, the Court underlines that the applicant must always have a reasoned answer from the competent authority in order to proceed to an appeal. In this case, the asylum seeker didn't receive an answer to her asylum request as it was classified as inadmissible.⁵⁵ Preventing access to international protection or/and an effective remedy and proceeding to the expulsion of asylum seekers risk to breach the principle of *non-refoulement* and the right to ask for asylum.

On this issue another story of a woman, asking for asylum, was brought to the Repatriation center by the police. In the CPR of Ponte Galeria in Rome she has been in touch with an anti-trafficking association *Befree*⁵⁶ and she explained her history of trafficking and that she was afraid to tell her true story before. The anti-trafficking association operated to prevent the expulsion.⁵⁷ *Befree* wrote a report to various institutional bodies as the National Guarantor for deprivation of liberty, the Guarantor for deprivation of liberty - Lazio Region, UNHCR and the Territorial Commission for the recognition of international protection. Thanks to this effort, this woman was able to be heard again

⁵⁰ <https://openmigration.org/wp-content/uploads/2020/02/circolare-mininterno-13-1-2020.pdf>

⁵¹ ASGI, AIDA Report 2019, p. 82 - <https://www.asylumineurope.org/reports/country/italy>

⁵² Amnesty International, “Italy: refugees and migrant's rights under attack”

<https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf>, p.8 - 9: “Relevant procedures do not provide for an adequate and individualized assessment by the judicial authorities of the risks which foreign nationals would face if returned to their country of origin. Appeals against expulsion decisions do not automatically suspend the procedure, making them an ineffective remedy.”

⁵³ <https://www.open.online/2020/01/24/ponte-galeria-cpr-roma-dove-le-donne-vittime-di-tratta-e-violenza-rischio-rimpatrio-collettivo/>

⁵⁴ The complete Judgment : https://www.meltingpot.org/IMG/pdf/tribunale_di_roma_ord_25112019.pdf

⁵⁵ https://www.meltingpot.org/IMG/pdf/tribunale_di_roma_ord_25112019.pdf

⁵⁶ BeFree is a cooperative working against trafficking, violence, discrimination born in 2007 (<http://www.befreecooperativa.org/>)

⁵⁷ <https://openmigration.org/analisi/storia-di-antihonia-detenuta-in-un-cpr-e-quasi-espulsa-in-barba-alle-regole/>

by the TC and now holds refugee status.⁵⁸ This case is emblematic due to the fact that a woman who is recognised as a refugee was at risk of being repatriated due to the new legislation.⁵⁹

The Law No. 132/2018 also introduced the Border Procedure, which can be applied at the border and transit zones. This leads to asylum claims being processed under an accelerated procedure with high chances that people do not receive sufficient information, legal support and therefore a chance to be protected; this might in turn result into the expulsion to countries not safe, and therefore constitute *refoulement*. As such, the entire procedure of international protection is undertaken in a compromised manner in the border zones.⁶⁰ As above, the border procedure can be applied to people coming from a ‘safe country of origin’ or that the application is made after avoiding or trying to avoid border controls.⁶¹ Although vulnerable people are excluded from accelerated border procedure, in practice ASGI has evidence of two single parents against whom the border procedure was applied because they were coming from a ‘safe country of origin’.⁶²

The border procedure was applied, after 20 days of detention in Lampedusa, also to some Tunisian citizens rescued at the sea at the beginning of October 2019. Due to the Circular 18 October 2019 that underline the impossibility to proceed with the border procedure for people rescued at the sea,⁶³ the procedure was converted into an accelerated procedure as they were coming from a safe country of origin. The Tunisian citizens were involved in the accelerated procedure not due to a decision by the President of the TC, as prescribed by law (art. 28, 1bis Dlgs 25/2008), but after the decision of the Questura.⁶⁴

Moreover, in this example, the asylum seekers were not sufficiently informed regarding the particular procedure carried out, which is of particular concern in cases where it is up to the applicant to invoke the serious reasons for which their return to the country of origin cannot be considered safe. They were not informed about the judicial procedure (i.e. the 30 days to appeal for the accelerated procedure and 15 days for the safe country of origin) or regarding the fact that the suspension is not automatic. When they received the rejection of their request of international protection, they received at the same time expulsion decrees and the detention order in the CPR⁶⁵. Furthermore, the 15 days to appeal did not expire and the people were detained illegitimately.⁶⁶ Moreover, the practice of delivering the expulsion order together with the answer of the TC does not comply with the right of the applicant to stay in the territory for the entire duration of the right to appeal (15 days) and the right of asking for a suspension order until the decision of the Tribunal. The risk is the violation of the principle of *non-refoulement* and the exposure of the applicant to the repatriation before the decision on the appeal. On this, the Tribunal of Agrigento cancelled the expulsion orders due to the unlawful use of this procedure while pending the appeal.⁶⁷

⁵⁸ *Befree*, hearing in front of the Commission human rights in the Senate in Italy <http://www.befreecooperativa.org/2020/02/12/audizione-befree-commissione-dei-diritti-umani-presso-il-senato/>

⁵⁹ <http://www.befreecooperativa.org/2020/02/12/audizione-befree-commissione-dei-diritti-umani-presso-il-senato/>

⁶⁰ ASGI, AIDA Report 2019, p. 67- 68: “Circulars expressly excludes the application of the border procedure for attempting to avoid border controls to people rescued at sea following SAR operations and to those who spontaneously turn to the authorities to seek asylum without having been apprehended at the time of landing or immediately afterwards. They also exclude the accelerated procedure to be applied to unaccompanied minors and to vulnerable persons, referring to regulatory obligations”

⁶¹ ASGI, AIDA Report 2019, p. 68: “In this sense the provision does not comply with Article 43 the Asylum Procedures Directive, as the attempt to evade border controls is not included in the acceleration grounds laid down in Article 31(8) of the Directive which could lead to the application of a border procedure.”

⁶² ASGI, AIDA Report 2019, p. 68

⁶³ The border procedure can't be applied to people rescued at the sea

⁶⁴ ASGI, AIDA Report 2019, p. 69

⁶⁵ ASGI-project *In Limine*, A Buon Diritto Onlus: https://www.questionegiustizia.it/articolo/le-nuove-ipotesi-di-procedure-accelerate-e-di-frontiera_09-01-2020.php

⁶⁶ ASGI-project *In Limine*, A Buon Diritto Onlus: http://www.questionegiustizia.it/articolo/le-nuove-ipotesi-di-procedure-accelerate-e-di-frontiera_09-01-2020.php

⁶⁷ ASGI, *In Limine* <https://inlimine.asgi.it/giudice-di-pace-di-agrigento-illegittimo-il-provvedimento-di-espulsione-prima-che-sia-decorso-il-termine-previsto-per-limpugnazione-delle-pronunce-di-diniego-della-domanda-di-protezione-inte/>

Article 11 - Arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment

• Detention of asylum seekers & displaced individuals

The Italian Government has permitted the UNHCR, NGOs, media and parliamentarians to enter detention centers.⁶⁸ However, various cases of denial of access have been reported over time. One example was reported by the ASGI, whose request to enter in the Hotspot of Lampedusa was formally denied.⁶⁹ ASGI reported, also, various denials of access to the CPR.⁷⁰

The introduction of the new law No. 132/2018 also called "*Decreto Salvini*" states, in Art. 2 (that modify the art. 14 of the L.286/1998) that the maximum period inside the CPR is 180 days.⁷¹ Before this change, the maximum length of detention was 90 days. The *National Guarantor for deprivation of liberty*, in its "*Relation to the Parliament – 2019*", explains that the new law makes concern regarding a wider possibility to detain displaced people and the extension of the period of detention.⁷² About the period of detention up to 180 days the *Guarantor* stated that this is excessive and disproportionate for identification purpose⁷³.

In the CPR of Rome, the confiscation of mobile phones was reported, and for this reason it is more difficult to obtain information regarding deportation,⁷⁴ and it can also compromise the rights of people detained because in the CPR there is not a complaints mechanism as expected in prisons.⁷⁵ In the CPR of Potenza, a violation of the right of defence was reported, due to the omission of communications from the defender,⁷⁶ which is an impairment of the fundamental legal safeguard, and a violation of the right to adequate time to prepare the appeal and the right to have legal assistance.

Law No. 132/2018 also introduced the possibility of detaining people in Hotspots for up to a maximum of 30 days if nationality cannot be established (Art. 3, introducing the art.3-bis in the D.lgs. No.142/2015). In this case, people must be placed in specific places for identification purposes. Displaced people can also be detained in CPR, for a maximum period of 180 days, when it was not possible to determine the nationality or identify the person (Law No. 132/2018, art.3, comma 1, lett.a). Concerning the Hotspots, it is difficult to obtain information due to the fact that organisations allowed to enter have no possibility to share information.⁷⁷

⁶⁸ USDOS – US Department of State: Country [Report](#) on Human Rights Practices 2019 - Italy, 11 March 2020 (accessed on 15 May 2020) Section on Independent Monitoring;

⁶⁹ ASGI: AIDA Report, 2019 – p. 90

⁷⁰ ASGI: AIDA Report, 2019 - p.139-140 "However, in June 2019, the parliamentarian Riccardo Magi asked to access the CPR of Trapani with a delegation from ASGI and LasciateCIEntrare. Generally referring to the rules on access to CPR, the Prefect of Trapani refused the entry of the delegation. ASGI lodged an appeal before the Administrative Court of Sicily, which, on 20 September 2019, declared that the public administration has no discretion to limit the access of a Member of Parliament and those accompanying him. (...) In April and May 2019 ASGI asked access to the CPR of Caltanissetta but it was denied. In November 2019, ASGI asked access to the CPR of Turin but it was formally denied. The Prefecture of Turin, after collecting the negative opinion by the Ministry of Interior, used order and security reasons and considered ASGI not included among the subjects allowed to access CPRs according to the MOI Decree issued on 20 October 2014 (CPR regulation)."

⁷¹ AI – Amnesty International: Human Rights in Europe - Review of 2019 - Italy [EUR 01/2098/2020], 16 April 2020

<https://www.ecoi.net/en/document/2028200.html> (accessed on 15 May 2020) And at p.74

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/b5f75f04cf7948ef41f19d4728d230ee.pdf>

⁷² <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/00059ffe970d21856c9d52871fb31fe7.pdf>, p.39

⁷³ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/17ebd9f9895605d7cdd5d2db12c79aa4.pdf> and

<https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf> : "Italy's NPM has highlighted several concerns in relation with the new provisions: the new terms of detention, 30 days in hotspots and up to 180 days in centres for repatriation, appear excessive and disproportionate to the purpose of identification; the four types of places where people can be detained are structurally inadequate and wholly indeterminate, rendering it impossible for the NPM to pursue its mission of accessing and visiting all places of detention; there is no primary legislation regulating detention in hotspots and regional hubs; and the new law fails to list the circumstances which render detention necessary for the purpose of identification and determination of nationality, contrary to the principles of necessity and proportionality which must be upheld when the right to liberty is at stake"

⁷⁴ <https://www.open.online/2020/01/24/ponte-galeria-cpr-roma-dove-le-donne-vittime-di-tratta-e-violenza-rischio-rimpatrio-collettivo/>

⁷⁵ ASGI, AIDA Report 2019, p. 136

⁷⁶ <https://www.lasciatecientrare.it/cpr-di-palazzo-san-gervasio-la-campagna-lasciatecientrare-presenta-un-esposto-violato-il-diritto-di-difesa/>

⁷⁷ ASGI, AIDA Report 2019 – p. 32

In relation to the situation at the border, the *National Guarantor for deprivation of liberty* has identified critical issues with regard to the restriction of freedom for persons detained at the airports. In the report, they underline that the situation of people detained in specific locations at the border crossing, is a *de facto* deprivation of personal freedom with respect to article 5 of the ECtHR and the paragraphs 1 and 13 of the Italian Constitution. In the Airports of Rome and Milan, people have been detained up to 7-8 days.⁷⁸

The *National Guarantor for deprivation of liberty* has moreover pointed out that the information provided to the displaced people at the border are insufficient. This lack of information relates to the legal status of displaced people and the procedure to seek asylum.⁷⁹ The right to have information on the possibility to seek asylum is part of the access to the international protection procedure. The Guarantor points out the need for cultural mediators at the airport, required to give exact information to the applicants.⁸⁰

During a field visit at the Milan-Malpensa airport, the Guarantor was able to see the case of a citizen from Bangladesh, with a document in which he was identified as a minor, that was conducted outside the airport to carry out medical checks in violation of the provisions introduced with Law No. 47/2017 with regard to the age assessment. Furthermore, in this case there was a risk of *non-refoulement*, adoption of an immediate rejection measure, and the lack of a cultural mediation that could explain the situation to the minor.⁸¹

There is evidence of the deprivation of liberty up to 24 hours, lack of information and access to lawyers and parents in the airport transit zone.⁸² In the “*Report on visits to rooms used by police forces at some border crossings (January - February 2019)*” the *National guarantor for the rights of persons detained or deprived of personal liberty* outlined evidence from 2017 and 2018 of deprivation of liberty for people issued with a rejection order, under Art. 10 of the TUI (Consolidated Act on Immigration) who were made to wait inside a boat and who were then brought back to the country of origin directly.⁸³

Antigone Association, reported that detainees are not always informed in a language that they understand.⁸⁴ In fact, their data show that in 2018 less cultural mediators and translators were used in prison.⁸⁵ The *Guarantor*, during the visit to the prisons in Calabria in 2018, pointed out the widespread lack of cultural mediation service. The staff is obliged to use other people detained to translate.⁸⁶ A recruitment process was announced for linguistic and/or cultural mediators in the prison administration, but the selection tests were postponed from 2018 to September 2019.⁸⁷

⁷⁸ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>, p.5.

⁷⁹ Report, Garante Nazionale dei diritti delle persone detenute e private della libertà personale p.10 -

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>

⁸⁰ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>, p. 12

⁸¹ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>, p.12

⁸² https://www.asgi.it/wp-content/uploads/2019/05/Zona-di-transito-Malpensa_rev.pdf

⁸³ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>, p. 14:” La situazione di persone relegate a bordo di una nave battente bandiera italiana, all’interno di acque territoriali italiane, per un periodo prolungato di tempo in una condizione di totale assoggettamento al vettore responsabile del loro, in teoria, immediato allontanamento, appare determinare una situazione di privazione della libertà *de facto* di dubbia compatibilità con il portato costituzionale e convenzionale.”

⁸⁴ USDOS – US Department of State: Country Report on Human Rights Practices 2019 - Italy, 11 March 2020

<https://www.ecoi.net/en/document/2027526.html> (accessed on 15 May 2020) Detained foreign nationals did not systematically receive information on their rights in a language they understood, as required by law. Associazione Antigone reported almost one-fourth of foreigners arrested in 2017 could not consult a lawyer before authorities interrogated them due to language barriers and a lack of interpreters.

⁸⁵ Antigone association - XV Report on the detention condition <http://www.antigone.it/quindicesimo-rapporto-sulle-condizioni-di-detenzione-stranieri-in-carcere/> : “In conclusione, uno sguardo va rivolto alla vita dentro le carceri e alla presenza di interpreti, traduttori e mediatori culturali. I mediatori culturali operativi nel 2018 nelle carceri italiane sono stati 165, in diminuzione rispetto ai 223 dell’anno precedente e ai 208 del 2008. Un calo, quello del 2018, segno dei tempi bui e della disattenzione generale e pubblica ai bisogni dei migranti.”

⁸⁶ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f93df459771eed1628272230e6f3a077.pdf>, p. 7 (report published January 2020)

⁸⁷ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f93df459771eed1628272230e6f3a077.pdf>, p.31

- **Conditions in CPR (expulsion centres)**

Concerning the CPR, in these structures there must be a separation between asylum seekers and people coming from prison, which is not always respected.⁸⁸ In 2019 and 2020, there were riots⁸⁹ inside the center for repatriation. In this regard, people detained in CPR do not have access to complaints rights as required for people in prison.⁹⁰ Poor conditions were detected in CPR of Torino - which saw the revolt of the people detained in 2019⁹¹ - and in November 2019 a hunger strike was carried out to protest against the living conditions in the repatriation center: cold shower, no mattresses, lack of hygiene products and health care.⁹²

An investigation⁹³ in the CPR of Potenza (San Gervasio) shows how migrants have been abused.⁹⁴ The conditions in the detention center are poor⁹⁵. During the Covid-19 emergency people detained there started a hunger strike for the condition of detention.⁹⁶ In the CPR of Gradisca, in January 2020, a citizen from Georgia was found dead. Initially, numerous newspapers reported the news that he was beaten by police officers adding also that the witnesses were, soon after, repatriated.⁹⁷ The coroner, after the autopsy, seems to have ruled out the use of violence and identified the cause of death as resulting from pulmonary edema. The prosecutor and the guarantor for the detainees have asked for caution on the case and they are waiting for the closure of the investigation.⁹⁸

Also, in the CPR of Trapani⁹⁹ poor living conditions have been reported. In January 2019, *LasciateCientrare* published the case of an unaccompanied minor from Tunisia detained in the CPR,¹⁰⁰ hence failing to comply with the provisions which stipulate the incompatibility of detention in the CPR for underage individuals. In the CPR of Caltanissetta a citizen from Tunisia was found dead. The coroner declared that he died, at 34 years, for natural reasons. Substandard living conditions were reported inside the CPR.¹⁰¹ After this death, a riot started in CPR and there was no possibility to use the toilet and have food and people had to wait outside in the cold.¹⁰²

Article 16 – Acts of cruel, inhuman or degrading treatment or punishment

- **Italy SAR policy also leads to inhuman and degrading treatments of displaced people intercepted at sea**

⁸⁸ ASGI, AIDA Report 2019, p. 135

⁸⁹ https://torino.repubblica.it/cronaca/2020/01/07/news/rivolta_nel_cpr_di_torino_sei_arresti_si_sospetta_una_regia_comune-245183503/

⁹⁰ ASGI, AIDA Report 2019, p. 136

⁹¹ <https://video.corriere.it/torino/torino-migranti-rivolta-cpr-urlo-liberta-video-esclusivo/ed00f2cc-aa49-11e9-a88c-fde1fa123548>

⁹² <https://www.lastampa.it/torino/2019/11/25/news/rivolta-al-centro-di-permanenza-e-rimpatrio-un-incendio-dimezza-la-capacita-di-accoglienza-1.37993884>

⁹³ <https://www.ilmattinodifoggia.it/news/basilicata-free/46746/maltrattamenti-nel-cpr-di-palazzo-san-gervasio-la-scoperta-del-giornalista-investigativo-amendola-su-panorama-sedavano-gli-immigrati.html> and <https://www.panorama.it/violenze-al-centro-accoglienza-potenza-video>

⁹⁴ <https://www.meltingpot.org/L-Orrore-della-Guantanamo-Italiana-Il-CPR-di-Palazzo-San.html#.Xtuu8kUza00>

⁹⁵ ASGI, AIDA Report 2019, p. 136

⁹⁶ <https://www.meltingpot.org/CPR-Palazzo-San-Gervasio-PZ-I-reclusi-in-sciopero-della.html#.XtuvBkUza00>

⁹⁷ https://www.repubblica.it/cronaca/2020/01/22/news/migrante_picchiato_nel_cpr_di_gradisca_nuovo_caso_cucchi_-246431601/ and <https://www.ilfattoquotidiano.it/2020/01/22/migrante-morto-a-gorizia-magi-europa-come-cucchi-hanno-espulso-dei-testimoni-procuratore-prima-li-abbiamo-interrogati/5682220/>

⁹⁸ <https://www.ilfattoquotidiano.it/2020/01/27/migrante-morto-nel-cpr-a-gradisca-lautopsia-deceduto-per-edema-polmonare-il-pm-non-escludiamo-cause-di-tipo-violento/5687029/>

⁹⁹ ASGI, AIDA Report 2019, p. 136

¹⁰⁰ <https://www.lasciatecienrare.it/lasciatecienrare-un-msna-trattenuto-al-cpr-di-trapani/> and <https://www.meltingpot.org/Un-minore-trattenuto-al-CPR-di-Trapani.html#.Xt3pQEUza00>

¹⁰¹ <https://www.lasciatecienrare.it/aymen-morto-di-cpr-a-caltanissetta/#:~:text=Il%20freddo%2C%20le%20stanze%20senza.richiesta%20di%20assistenza%20senza%20risposte.&text=In%20questo%20luog>

<o%20abominevole%20che.naturale%20dice%20il%20medico%20legale.>

¹⁰² <https://www.tpi.it/cronaca/muore-ragazzo-cpr-caltanissetta-20200113528487/>

The Italian authorities have delayed the disembarkation of displaced people in distress, without opening the port or with the prohibition of the disembarkation.¹⁰³ In 2018 different ships were blocked before reaching the port in Italy.¹⁰⁴ One of them, the Italian coastguard ship *Diciotti*, was not allowed to disembark the people rescued by an order of the Ministry of the Interior,¹⁰⁵ which was later accused of a crime.¹⁰⁶ The Prosecutor of Agrigento opened a file on that matter and registered the (now former) Minister of Interior in the register of suspects. The request for the authorisation to proceed against the Minister of the Interior was formulated by the Court of Ministers of Catania¹⁰⁷ (for reasons of competence) but rejected by the Senate.¹⁰⁸ The Minister of Interior was accused of aggravated kidnapping, with abuse of powers, for the precise will to determine the deprivation of personal freedom of 177 displaced people, blocked in the boat *Diciotti* after being rescued. On this, the Court of Catania, underline also that this behaviour is in violation of international regulation and national implementation standards regarding rescue operations as SAR Convention, Resolution MSC167-78 and Directive SOP009 / 15 for not allowing, without justified reason, a place of safety (POS) upon request by MRCC.¹⁰⁹

Legal proceedings are pending after Italy's senate has formally authorised in February 2020 a criminal case against Matteo Salvini accused of kidnapping in 2019, when he was Interior Minister and prevented 131 migrants from disembarking from the coast guard ship *Gregoretti*.¹¹⁰

During the course of 2019, different ships were blocked before to reach the port: *Sea Watch*, *Ocean Viking*¹¹¹, *Gregoretti*¹¹² and *Mare Jonio*¹¹³.¹¹⁴ In all these cases the people rescued reported having experienced torture and inhuman treatment across their migration paths, in particular in Libya, and a prolongation of the deprivation of liberty inside a boat can compromise the precarious health and psychological condition. Moreover, the deprivation of liberty must be authorised by a judge (violation of art. 13 of the Italian Constitution and 5 ECtHR).

With regard to the situation of displaced people on the *Ocean Viking*, a rescuer of the SOS Méditerranée explains that the ship is not appropriate to host people for several days, as people are sleeping on the ground, the boat is crowded, and there is limited access to showers and water.¹¹⁵ She also underlines that these people spent months in Libya in tremendous conditions and that they subsequently need and deserve a safe place for their physical and mental health.¹¹⁶ Moreover, the situation in the boat *Gregoretti* was critical as the ship was not equipped to host people.¹¹⁷ In fact, the

¹⁰³ ASGI, AIDA Report 2019, p. 25

¹⁰⁴ *Aquarius* <https://www.ilpost.it/2018/06/11/aquarius-migranti-sbarco/>; <https://www.avvenire.it/attualita/pagine/migranti-sarost5>; *Diciotti* <https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/08/24/diciotti-guardia-costiera-migranti> and <https://www.ilpost.it/2019/02/01/salvini-accuse-diciotti/>; *Alexander Maersk* <http://www.rainews.it/dl/rainews/articoli/In-attesa-di-autorizzazione-al-largo-di-Pozzallo-la-nave-danese-Alexander-Maersk-con-110-migranti-80ec3a3a-adc5-4556-a0fc-ec83cfbd108.html>

¹⁰⁵ https://www.repubblica.it/politica/2019/03/20/news/salvini_voto_diciotti_senato-222049852/

¹⁰⁶ <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/02/18/diciotti-matteo-salvini>

¹⁰⁷ For the complete decision – Court of Catania, Ministerial offenses section, 7 December 2018: https://www.asgi.it/wp-content/uploads/2019/01/trib_catania_decreto_salvini.pdf

¹⁰⁸ The authorization to proceed against the Minister of Interior wasn't allow: <https://www.rainews.it/dl/rainews/articoli/Caso-Diciotti-il-Senato-nega-autorizzazione-a-procedere-per-Salvini-ed7056ec-1f1d-47d1-a0e9-366860296683.html> An overview on the Case Diciotti: <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/02/18/diciotti-matteo-salvini>

¹⁰⁹ https://www.asgi.it/wp-content/uploads/2019/01/trib_catania_decreto_salvini.pdf

¹¹⁰ [Article by the Guardian](https://www.theguardian.com/world/2019/08/21/italy-senate-accuses-matteo-salvini-of-kidnapping)

¹¹¹ https://www.repubblica.it/cronaca/2019/08/22/news/ocean_viking_noi_bloccati_con_356_a_bordo_da_13_giorni_e_altri_continuano_a_morire_-234092505/; <https://www.ilpost.it/2019/10/28/ocean-viking-104-migranti/>

¹¹² <https://www.avvenire.it/attualita/pagine/motovedetta-gregoretti-migranti>

¹¹³ https://www.ansa.it/sito/notizie/topnews/2019/08/31/mare-jonio-bloccati-situazione-grave_ecf941d7-64bc-48fb-a1e5-1b03324df3c3.html

¹¹⁴ http://www.questionegiustizia.it/articolo/lo-stato-di-emergenza-sanitaria-e-la-chiusura-dei-porti-sommersi-e-salvati_21-04-2020.php. Article on the politics of closure of ports and the different cases of ships without a safe harbour since 2018 (note No.5).

¹¹⁵ https://www.repubblica.it/cronaca/2019/08/21/news/ocean_viking_bloccata_tra_malta_e_lampedusa_con_356_migranti_la_francia_pronti_ad_accogliere_40_-234022015/

¹¹⁶ https://www.repubblica.it/cronaca/2019/08/21/news/ocean_viking_bloccata_tra_malta_e_lampedusa_con_356_migranti_la_francia_pronti_ad_accogliere_40_-234022015/

¹¹⁷ <https://www.ilpost.it/2019/07/31/gregoretti-salvini-sbarco/>

displaced people were sleeping on the deck, with one bathroom for 116 people and with tight space.¹¹⁸ The displaced people on the *SeaWatch* were reported as dehydrated. Women and children sleeping in one room while the men on the bridge; some of them had serious burns due to the travel.¹¹⁹

Moreover, displaced people on the *SeaWatch3*, have been detained irregularly before in the boat and after for 11 day in the Hotspots, where, with the Law No. 132/2018 it is possible to detain people for the purpose of identification without any authorisation.¹²⁰ On the irregularity of the deprivation of liberty, we must point out that with regard to the Art. 13 of the Italian Constitution, the personal freedom is inviolable and the restriction to this freedom must be authorised by the judicial authority. Additionally, Art. 5 of the ECtHR establish that the deprivation of liberty shall be brought in front of a judge and the person shall be entitled to a trial. Regarding this point, the *National Guarantor for the rights of people detained or in deprivation of liberty* asked for information regarding the case of 177 displaced people in the boat *Diciotti* of the Italian Guardian Coast, rescued and waiting for a port¹²¹. In fact, the mandate of the Guarantor is also to control the detention *de facto*¹²² that can violate the rights of people.

- **Substandard living conditions**

The Law No. 132/2018, Art.12, has changed the reception conditions. In fact, the second-line reception centre (SPRAR – for asylum seekers and refugees) has changed to a reception centre for international protection holders or unaccompanied minors, SIPROIMI. Asylum seekers are hosted in first reception system CARA or CAS¹²³ and they cannot access the second-line centres without the recognition of international protection.¹²⁴ The new CAS no longer provides economic, social integration and psychological support services, but are now merely providing food and accommodation.¹²⁵

In this way, the Italian government prefers a reception system in large structures rather than the diffused reception in apartments.¹²⁶ Concerning **the reception centres**, families are oftentimes divided: the woman and children in a facility and the man in another place. There are no standard mechanisms regarding gender-based violence in the reception centre.¹²⁷ Furthermore, the new law risks increasing the deterioration of reception conditions for women.¹²⁸ In fact, vulnerable people, including pregnant women, survivors of trafficking and gender-based violence only have access – until a formal recognition as international protection holder – to the CAS where the services, as explained before, are limited.¹²⁹ Vulnerable people are not provided with the support they need.

In relation of the situation in the **Hotspots**¹³⁰, these have become places where displaced people stay longer than expected. The Hotspots are often overcrowded and characterised by poor hygiene

¹¹⁸ <https://www.ilpost.it/2019/07/31/gregoretti-salvini-sbarco/>

¹¹⁹ <https://www.ilpost.it/2019/05/16/sea-watch-migranti-situazione/>

¹²⁰ ASGI, project In Limine (July 2019): <https://inlimine.asgi.it/da-un-confinamento-allaltro-il-trattenimento-illegittimo-nellhotspot-di-messina-dei-migranti-sbarcati-dalla-sea-watch/>

¹²¹ The National Guarantor for the rights of people detained or deprivation of liberty http://www.garantenazionaleprivatiliberta.it/gnpl/it/dettaglio_contenuto.page?contentId=CNG3560&modelId=10021

¹²² The National Guarantor for the rights of people detained or deprivation of liberty http://www.garantenazionaleprivatiliberta.it/gnpl/it/dettaglio_contenuto.page?contentId=CNG3560&modelId=10021

¹²³ Asylum seekers can stay in a CAS just in case there is not availability in the CARA.

¹²⁴ <https://www.amnesty.org/download/Documents/EUR3002372019ENGLISH.pdf> p. 8: “the new measures exclude asylum-seekers from the local authorities’ network of reception facilities, making their integration harder to achieve.”

¹²⁵ ASGI, AIDA Report 2019, p. 107 and https://www.actionaid.it/app/uploads/2020/05/CentridItalia_2019.pdf

¹²⁶ On the condition in the reception center, p.104-108: ASGI, AIDA Report 2019 -<https://www.asylumineurope.org/reports/country/italy>

¹²⁷ ASGI, AIDA Report 2019, p. 116

¹²⁸ Human Rights Watch, “Italy: Revoke Abusive Anti-Asylum Decrees” (January 2020) <https://www.hrw.org/news/2020/01/31/italy-revoke-abusive-anti-asylum-decrees>:

¹²⁹ GREVIO, Baseline evaluation Report Italy (published January 2020), p.88: <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

¹³⁰ For a general overview of the reception condition in Hotspots see: ASGI, AIDA Report 2019: p. 134 - 135

standards. People there are in a *de facto* detention.¹³¹ For instance, displaced people disembarked from the *Seawatch3* were in a *de facto* detention condition in the hotspot of Messina and they were unable to communicate outside or with the lawyer.¹³² In the Hotspots in Lampedusa people are not allowed to go in or out of the centre.¹³³ The Lampedusa Hotspots hosted between 260 and 300 people in September 2019¹³⁴, compared to 96 in August 2019¹³⁵. ASGI wrote to the ECtHR to underline the critical situation in the hotspots of Lampedusa.¹³⁶ The Court asked for information from the Italian Government in relation to this¹³⁷. A video¹³⁸ from the Hotspots shows a degradation of the structures and their overcrowded nature.

Regarding the situation in the **Red Cross camp of Ventimiglia** (Campo Roja), this is at the time of writing (June 2020) hosting nearly 100 people, and almost 250 during the emergency period related to Covid-19. There is a separation between male adults, female adults, families and unaccompanied children. The latter are hosted in different containers but this separation is not effective due to the fact that there is not a real separation inside the camp. This is a reason for concern for the associations working in the camp, which led to the launch of a project related to trafficking in human beings (THB): “HTH Liguria: Hope this helps, the Liguria system against trafficking and child exploitation”.¹³⁹ Indeed, displaced people stay in adjacent containers and the camp is open without separate fixed structures.¹⁴⁰ Families and children have a personal bathroom but unaccompanied minors should use the same bathroom as an adult. In the camp they have 7 modules used as a bathroom and one real bathroom just for families.¹⁴¹ Public order within the camp is not always respected, with a high risk of traffickers and problems between ethnic groups. Warm water is not always available.¹⁴²

Concerning the situation in **informal settlements**, the *National Guarantor for deprivation of liberty* visited in 2018¹⁴³ the informal settlement in San Ferdinando, Calabria, where a lot of displaced people live and work in the countryside, often victims of labour exploitation. The Guarantor defined the situation in the informal camp as unacceptable in terms of protecting fundamental human rights.¹⁴⁴ Moreover, the Law No. 132/2018 erased the permit to stay for humanitarian reasons and this is meaning that a lot of displaced people are losing their residence permit and become irregular in the country and they will go to informal settlements where living conditions are precarious.¹⁴⁵

¹³¹ ASGI, AIDA Report 2019, p. 134

¹³² Ammirati, A., Gennari, L. and Massimi, A. (2020). Forced Mobility and the Hotspot Approach: The Case of the Informal Disembarkation Agreements. Available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/02/forced-mobility>

¹³³ ASGI <https://www.asylumineurope.org/reports/country/italy/detention-asylum-seekers/legal-framework-detention/duration-detention>

¹³⁴ Melting pot <https://www.meltingpot.org/Il-confine-Lampedusa-Prassi-illegittime-indifferenza-e.html#nb2>

¹³⁵ https://palermo.repubblica.it/cronaca/2019/08/22/foto/lampedusa_1_hotspot_e_sovraffollato_i_migranti_di_open_arms_8_in_una_stanza-234093874/1/#1

¹³⁶ ASGI, December 2019: https://www.asgi.it/asilo-e-protezione-internazionale/lampedusa-migranti-cedu/#_ftn1

¹³⁷ ASGI, December 2019: https://www.asgi.it/asilo-e-protezione-internazionale/lampedusa-migranti-cedu/#_ftn1

¹³⁸ RAI news <https://www.rainews.it/tgr/sicilia/video/2019/12/sic-Lampedusa-migranti-video-ba909fc1-998b-41f9-af3e-b66d688afa4b.html>

¹³⁹ The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, project manager WeWorld Onlus - project “Ventimiglia: migrants in transit”. The project on THB is “HTH Liguria: Hope this helps, il sistema Liguria contro la tratta e lo sfruttamento minorile” financed by the Liguria Region, the partners are ODV Caritas, Intemelia, Coop. Soc. Jobel, Healthcare Districts N.1, 2, 3 and the Municipality of Ventimiglia.

¹⁴⁰ The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, project manager WeWorld Onlus - project “Ventimiglia: migrants in transit”

¹⁴¹ The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, project manager WeWorld Onlus - project “Ventimiglia: migrants in transit”

¹⁴² The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, project manager WeWorld Onlus - project “Ventimiglia: migrants in transit”

¹⁴³ The report has been published in January 2020

¹⁴⁴ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f93df459771eed1628272230e6f3a077.pdf>, p.59

¹⁴⁵ INTERSOS, “Campaigns of hate”. A report on the condition of informal settlement in Apulia <https://www.intersos.org/en/campaigns-of-hate-year-of-project-capitanata/>

Regarding the **identification of vulnerability**, different guidelines¹⁴⁶ have been published.¹⁴⁷ EASO has operated in Italy since 2013 and during his operation underwent training activity.¹⁴⁸ The Cooperative *Befree*, during a hearing in front of the Italian Parliament in February 2020, pointed out how the Italian system is lacking regarding the identification of people that experienced **trafficking**.¹⁴⁹ From March 2019 to May 2020, *Befree* met 81 women in the CPR, 21 of them were survivors of trafficking or SGBV and *Befree* took charge of them. Other women have trafficking indicators but were not able to take in charge of them.¹⁵⁰ All these women spent a long time in Italy before receiving proper identification.

Regarding the identification of vulnerability, a number of women were interviewed in the Red Cross Camp in Ventimiglia from December 2019 to March 2020, and only two of these women, before entering the Camp, had been recognised as victims of trafficking and held a permit to stay for this reason. One of them had previously filed a complaint against her exploiters but was still waiting for the TC and had never entered the anti-trafficking program. One woman talked recently with anti-trafficking units in Milan but she had decided not to enter the program for survivors of THB. Five of these women, with strong indicators of exploitation, have never been involved in programs related to THB and are now waiting to audition in the TC. One woman, who was hearing from the TC two times, and now waiting for the other TC has talked for the first time with the anti-trafficking of Genoa¹⁵¹. The TC has the duty to collect information regarding indicators of THB.¹⁵² One woman is awaiting the Commission but no current or past exploitation indicator was deemed to exist.¹⁵³

Difficulties relating to the asylum procedure in the identification of vulnerability as survivors of trafficking and underage are reported from different sources.¹⁵⁴ In Ventimiglia cases of lack of attention to **psychiatric people** inside the camp are reported. In the camp, they have telephone access with the mental health department but this is not a real follow-up to a suitable structure. People with psychiatric problems are often obliged to sleep on the street because often they have criminal records and they are not allowed to go into the Red Cross Camp. From July to December 2019, *Diaconia Valdese* was in contact with ten individuals with mental health problems.¹⁵⁵ The Cooperative *Befree* refer that two Nigerian women with psychiatric problems were detained in the CPR and after that expelled in February 2020. One of these women is a trafficking survivor and for that reason was recognised in Italy with a permit to stay. When *Befree* encountered her it was not possible to speak with her due to her psychological situation, previous to the CPR she went in prison for aggression to her partner.¹⁵⁶ It is important to underline that the conditions of detention must be compatible with the health condition¹⁵⁷ and that refugee status can be granted to people with psychiatric problems.¹⁵⁸ On this, psychological support in CPR is not always provided. The detention centers for identification purposes are inadequate to support and identify vulnerable people.¹⁵⁹

¹⁴⁶<http://www.pariopportunita.gov.it/contrasto-della-tratta-di-esseri-umani/>; <http://www.pariopportunita.gov.it/wp-content/uploads/2017/12/Piano-nazionale-di-azione-contro-la-tratta-e-il-grave-sfruttamento-2016-2018.pdf>; http://www.salute.gov.it/imgs/C_17_pubblicazioni_2624_allegato.pdf; <https://www.unhcr.it/wp-content/uploads/2017/09/Vittime-di-tratta-Linee-guida-compresso.pdf>; <https://www.siproimi.it/wp-content/uploads/2018/03/Dossier-TUTELA-DELLA-SALUTE-2018.pdf>;

¹⁴⁷ ASGI, AIDA Report 2019, p. 73 - 74

¹⁴⁸EASO https://www.easo.europa.eu/sites/default/files/OP-Italy-2019_0.pdf; <https://easo.europa.eu/sites/default/files/operating-plan-italy-2020.pdf>; <https://www.easo.europa.eu/training-easo-interim-caseworkers-it>; <https://www.easo.europa.eu/training-advanced-inclusion-thb>

¹⁴⁹ *Befree* <http://www.befreecooperativa.org/2020/02/12/audizione-befree-commissione-dei-diritti-umani-preso-il-senato/>

¹⁵⁰ The information collected in this paragraph was obtained with the collaboration of Francesca De Masi, *BeFree*

¹⁵¹ The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, Caritas Intemelia Odv

¹⁵² UNHCR <https://www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf>

<http://www.pariopportunita.gov.it/wp-content/uploads/2017/12/allegato-2-linee-guida-rapida-identificazione.pdf>

¹⁵³ The information collected in this paragraph was obtained with the collaboration of Jacopo Colomba, Caritas Intemelia Odv

¹⁵⁴ USDOS – US Department of State: Country Report on Human Rights Practices 2019 - Italy, 11 March 2020

<https://www.ecoi.net/en/document/2027526.html> (accessed on 9 June 2020)

¹⁵⁵ The information collected in this paragraph was obtained with the collaboration of Simone Alterisio, *Diaconia Valdese*

¹⁵⁶ The information collected in this paragraph was obtained with the collaboration of Francesca De Masi, *BeFree*

¹⁵⁷ Regulation issued by the Ministry of the Interior on 2.10.2014 prot. n. 12700 regarding CPR -

http://www.prefettura.it/FILES/AllegatiPag/1199/Regolamento_Unico_dei_CIE_-ora_C.P.R.-.pdf

¹⁵⁸ https://www.meltingpot.org/Status-di-rifugiato-ad-un-giovane-cittadino-gambiano.html#_XuCbeUUza00

¹⁵⁹ ASGI, AIDA Report 2019, p. 127-128

Glossary

CARA (Centri di accoglienza per richiedenti asilo): First line reception center

CAS (Centri di Accoglienza Straordinaria): Emergency first line reception center

CPR (centro rimpatrio permanente): Formerly CIE, center for expulsion

Garante nazionale dei diritti delle persone detenute o private della libertà personale: The National Guarantor for the rights of people detained or deprivation of liberty (also « Garante nazionale privati libertà », National Guarantor for deprivation of liberty). Also *The Guarantor*

Law Decree No. 113/2018: Later converted into Law No. 132/2018 also called “Decreto Salvini” or “Decreto Sicurezza”

MRCC: Maritime Rescue Coordination Centre

NAC (Commissione Nazionale Asilo): National Asylum Commission

Questura: Police Headquarter

SIPROIMI (former SPRAR): Reception center for holder of international protection and unaccompanied minors

TC (Commissione Territoriale per il riconoscimento della protezione internazionale): Territorial Commission for the recognition of the international protection

Key Resources

English version of the Italy-Libya agreement: The memorandum text (2017) <http://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf>

Association for Legal Studies on Immigration (ASGI), AIDA Report (2019) <https://www.asylumineurope.org/reports/country/italy>