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SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST
TORTURE

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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination of Italy's fifth and sixth periodic reports on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), on 14-15 November 2017.

This briefing aims to provide a description of Amnesty International's main concerns regarding the implementation of the Convention by Italy, based on the organization's most recent research. It focuses in particular on the shortcomings of the new law introducing the crime of torture in the Italian legal system; on violations of the prohibition of *refoulement*; on the *de facto* complicity or participation of Italian authorities in the torture and cruel, inhuman or degrading treatment of refugees and migrants in Libya as a result of its cooperation with Libyan authorities on border control; and on the failure to investigate and remedy allegations of torture and other ill-treatment against asylum-seekers and migrants during identification procedures. As such, the briefing is not an exhaustive account of Amnesty International's concerns regarding torture and other ill-treatment in Italy and in no way does it intend to detract from the seriousness and importance of other violations.

2. FLAWS OF THE LAW INTRODUCING THE CRIME OF TORTURE IN THE ITALIAN LEGAL SYSTEM

Having ratified the Convention in 1989, Italy introduced the crime of torture in its legal system nearly 30 years later with Law 14 July 2017, n. 110.¹ As noted by the *Garante nazionale dei diritti delle persone detenute e private della libertà personale* – the Italian National Preventive Mechanisms (NPM) established in accordance with the Optional Protocol to the Convention against Torture in 2013² – the law was the result of

¹ LEGGE 14 luglio 2017, n. 110 Introduzione del delitto di tortura nell'ordinamento italiano, at <http://www.gazzettaufficiale.it/eli/id/2017/07/18/17G00126/sg>

² DECRETO-LEGGE 23 dicembre 2013, n. 146 Misure urgenti in tema di tutela dei diritti fondamentali dei detenuti e di riduzione controllata della popolazione carceraria, at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-12-%2023;146/vig=>; Italy ratified the Optional Protocol to CAT with law LEGGE 9 novembre 2012, n. 195 Ratifica ed esecuzione del Protocollo opzionale alla Convenzione delle Nazioni Unite contro la tortura e altri trattamenti o pene crudeli, inumani o degradanti, fatto a New York il 18 dicembre 2002, at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-11-09;195/vig=>

years of negotiations and its intricate formulation will require considerable efforts to ensure implementation in line with the requirements of the Convention.³

Amnesty International is concerned that key provisions in the new law are not in line with the Convention's requirements, and in particular:

Article 1 of Law 110/2017 introduces Article 613-bis in the Italian Criminal Code and defines torture as follows:

“Anyone who with serious violence or threats, or acting with cruelty, causes acute physical suffering or a verifiable psychic trauma to a person deprived of his/her liberty or entrusted to his/her custody, authority, supervision, control, care or assistance or who is in a situation of vulnerability [diminished ability to defend oneself] is punished with four to ten years of imprisonment if the offence is committed by multiple acts or if the offence involves inhuman and degrading treatment for the person’s dignity.”

Amnesty International considers this definition problematic on several counts. First, there is a confusing and prohibitive accumulation of requirements for an act to constitute torture resulting in establishing a higher threshold than that of Article 1(1) of the Convention. In particular, by adding the elements of “serious violence or threats”, “cruelty”, “verifiable psychic trauma” and “multiple acts”, which are not contained in the Convention. The added requirement that it involves “inhuman and degrading treatment for the person’s dignity”, while not having a narrowing or expanding effect, adds to the lack of clarity. In fact, to the extent that there is an attempt to include cruel, inhuman or degrading treatment or punishment (CID) within the definition of torture, this is counterproductive, as cruel, inhuman or degrading treatment would then fall within the stricter requirements that apply for torture, thus weakening protections.

Secondly, elements of Article 1 (1) of the Convention which give the Convention’s definition focus and clarity, are missing, namely a reference to the intention and purpose (including discrimination) of an act of torture.

Thirdly, the crime can be committed by anyone and not only by a public official or other person acting in an official capacity, which dilutes the meaning of the term “torture”, although it should be noted that the provision requires the victim to be in the custody, or subjected to the authority, supervision, control, care or assistance of the perpetrator.

The new Article 613-bis further reads:

“If the acts referred to in the first paragraph are committed by a public official or by someone in charge of a public service, with abuse of power or in violation of the duties inherent to their function or service, the penalty is five to twelve years of imprisonment.”

In Amnesty International’s view, even taking into account that “instigation” to commit torture is dealt with in a separate provision of the new Italian law (see below), this provision is narrower than Article 1(1) of the Convention, as elements of the Convention’s definition are missing, namely “with the consent or acquiescence”. Furthermore, the introduction of the elements of “with abuse of power or in violation of the duties inherent to their function or service” suggest that an official could inflict torture *without* abusing his/her power or violating their duty. This expansion of the definition may be used to claim a defence of superior orders, explicitly prohibited in Article 2(3) of the Convention. It is important to note that there is no explicit denial of such a defence elsewhere in Law 110/2017.

Article 1 of Law 110/2017 also introduces Article 613-ter, entitled Instigation to commit torture by a public official, which reads:

The public official or a person in charge of a public service who, in the performance of their duties or service, instigates in a concretely adequate way another public official or another person in charge of a public service to commit the crime of torture, if the instigation is not accepted or if the instigation is accepted but the crime is not committed, is punished with six months to three years of imprisonment.

Amnesty International considers that this provision is narrower than Article 1(1) of the Convention, in that the person being “instigated” must also be an official, whereas no such requirement exists in the Convention.

³ Comunicato stampa Roma, 6 luglio 2017, Anche l’Italia riconosce la tortura quale crimine grave da punire, at <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/7c335c7d5981bb096ba176a96bdcc3e4.pdf>

Furthermore, there is no requirement that the instigation is done in a “concretely adequate” way in the Convention.

Article 5 of Law 110/2017 entitled Invariance of expenditure reads:

“The implementation of this law must not result in new or increased expenditure for the State’s budget.”

The Convention includes provisions whose implementation clearly requires resources to be allocated. For example, Article 10 on education and training; Article 11 on the review of interrogation policies; Article 14 on redress, in addition to the general obligation to prevent torture and other ill-treatment, to investigate complaints, *et cetera*. The strict provision of Article 5 of Law 110/2017 is a recipe for non-implementation of the law and of the obligations in the Convention.

Amnesty International notes that Law 110/2017 does not contain any implementing provisions of Article 5(2) and Articles 6 to 9 of the Convention, on the obligation to extradite or prosecute (*aut dedere aut judicare*). However, Amnesty International considers that following the approval of Law 110/2017, read together with Article 7(5) of the Italian Criminal Code⁴ and/or with Article 3(1)(c) of Law 498/1988⁵ on the ratification of the Convention, Italian authorities must initiate criminal investigations whenever a persons suspected of criminal responsibility for torture is found in any territory subject to the jurisdiction of Italy, unless the person concerned is extradited or surrendered to another state or an international criminal court, respectively.

In addition, Amnesty International is concerned that Law 110/2017 contains no clear provisions on the following areas:

- The inadmissibility of any justification for torture, in order to bar the applicability of certain defences, as required under Article 2(2) of the Convention;
- The obligation to ensure that education and information regarding the prohibition against torture are fully included in the training of all relevant official, as required by Article 10 of the Convention; and
- The obligation to keep under systematic review all interrogation policies and practices and arrangements regarding the custody and treatment of persons deprived of liberty to prevent torture, as required by Article 11 of the Convention.

⁴ According to which “The citizen or the foreign national who commits one of the following crimes on foreign soil is punished according to Italian law: ...5) every other crime for which special provisions of the law or international conventions state that Italian criminal law applies.” (“È punito secondo la legge italiana il cittadino o lo straniero che commette in territorio estero taluno dei seguenti reati: ... 5) ogni altro reato per il quale speciali disposizioni di legge o convenzioni internazionali stabiliscono l'applicabilità della legge penale italiana.”), available at: <https://www.laleggepertutti.it/codice-penale/art-7-codice-penale-reati-commessi-allestero>

⁵ Article 3(1) of Law 498/1988 states : It is punished according to Italian law upon request of the Minister of Justice: a) the citizen who commits abroad an act amounting to a crime which is qualified as torture under Article 1 of the convention [CAT]; b) the foreign national who commits abroad an act indicated under letter a) against an Italian citizen; c) the foreign national who commits abroad one of the acts described at letter a) when they find themselves on Italian soil and no extradition has been decided. (Art. 3. 1. E' punito, secondo la legge italiana, a richiesta del Ministro di grazia e giustizia: a) il cittadino che commette all'estero un fatto costituente reato che sia qualificato atto di tortura dall'articolo 1 della convenzione b) lo straniero che commette all'estero uno dei fatti indicati alla lettera a) in danno di un cittadino italiano c) lo straniero che commette all'estero uno dei fatti indicati alla lettera a) quando si trovi sul territorio dello Stato e non ne sia disposta l'estradizione.) LEGGE 3 novembre 1988, n. 498 Ratifica ed esecuzione della convenzione contro la tortura ed altre pene o trattamenti crudeli, disumani o degradanti, firmata a New York il 10 dicembre 1984, available at: http://www.gazzettaufficiale.it/eli/id/1988/11/18/088G0547/sg;jsessionid=A2S3N60EIdPMoYHp9cfZhw_.ntc-as3-guri2b

2.1 RECOMMENDATIONS

Amnesty International recommends that the State party:

- Amend the definition of torture in Law 110/2017 to bring it into line with the Convention's definition and amend all other elements of the new law which are not in compliance with the requirements of the Convention;
- Ensure that, notwithstanding the numerous shortcomings and gaps of the new law, its implementation by all relevant authorities is carried out in a manner fully consistent with Italy's international obligations under the Convention and the Optional Protocol to the Convention, including as to the obligation to extradite or prosecute (*aut dedere aut judicare*); the inadmissibility of any justification for torture; the inclusion of education and information regarding the prohibition against torture in the training of all relevant official; and the systematic review of all interrogation policies and practices and arrangements regarding the custody and treatment of persons deprived of liberty; and
- Allocate adequate resources for the full implementation of its obligations under the Convention.

3. VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT (ARTICLE 3)

Amnesty International is concerned about Italy's failure to uphold the principle of *non-refoulement* in two areas in particular: with regard to the expulsions of irregular migrants to their presumed country of origin; and with regard to expulsions on national security grounds. In both cases, 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. Furthermore, appeals against expulsion decisions do not automatically suspend the procedure, making them an ineffective remedy to protect people from the serious human rights violations they could face upon repatriation. Furthermore, readmission agreements between Italy and third countries devised to ensure swift forcible returns through a fast identification and registration process of the people Italy wishes to expel add to the risk inherent in the expulsion procedure, by allowing the forcible return to happen quickly.⁶

⁶ European Commission, Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, 7 June 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf
Italy has negotiated bilateral readmission agreements with many countries, including Egypt, Tunisia, Morocco and Nigeria. Few have been published or discussed in parliament. Expulsion orders against nationals of these countries have been issued only a few hours or days after disembarkation in Italy. The European Commission has noted that such agreements allow for a "48 hour return procedure" and has encouraged Italy to guarantee "swift forced returns". See European Commission, Progress Report on the implementation of the hotspots in Italy, 15 December 2015, , <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0679>

3.1 FORCIBLE RETURNS OF IRREGULAR MIGRANTS

Increasing the number of irregular migrants returned to their countries has become a political priority for Italy and the EU, particularly since the adoption of the “hotspot approach” to control borders.⁷ The “hotspot approach” aims to identify and fingerprint all arrivals, screen people to separate asylum-seekers from those considered irregular migrants, and repatriate the latter.⁸ Those deemed to be irregular migrants, following a flawed screening process, are singled out for a rapid forcible return and are not given adequate information regarding their status and rights and a genuine opportunity to seek asylum.⁹ Foreign nationals who decide not to seek asylum in Italy, for example because they want to seek asylum in another country where they have family or community networks, are also exposed to the risk of a forcible return in breach of the principle of *non-refoulement*, especially if they are nationals of a country with which Italy has a readmission agreement.

3.1.1 THE COLLECTIVE EXPULSION OF DARFURI MEN TO SUDAN ON 24 AUGUST 2016

The agreement Italy negotiated with Sudan in 2016 may have led within three weeks to a collective expulsion of several Sudanese nationals belonging to a persecuted minority. Known as the Memorandum of Understanding with Sudan, the agreement was signed by Italian and Sudanese police authorities in Rome on 3 August 2016.¹⁰ The agreement does not permit the return of someone who has requested asylum in Italy. However, it provides for an identification process that is so superficial that it should be expected to lead to the rapid transfer to Sudan of individuals who, though not having submitted a request for asylum in Italy, nonetheless risk facing severe human rights violations if returned to Sudan.

According to the agreement, the Sudanese authorities commit to assisting the determination of the nationality of persons Italy wishes to return to Sudan, confirming their identity and immediately issuing a laissez-passer to allow their quick repatriation. Upon request by the Italian police, Sudanese authorities in Italy, operating not only in consular offices but also in ports, police stations and detention centres, immediately proceed to the identification by means of an interview, with the explicit exclusion of any further investigation into the person’s identity. In fact, the agreement explicitly states that a more thorough inquiry to establish the returnee’s identity and nationality is only to be conducted in Khartoum, once the person is returned there. What is more, in urgent cases the whole identification process is to take place in Sudan.

In application of the agreement, on 24 August 2016, a group of 40 people identified as Sudanese nationals were repatriated from Italy to Sudan. Amnesty International interviewed on the phone two men from Darfur

⁷ The European Commission tabled the “hotspot approach” in its Agenda on Migration in May 2015, stating: “[T]he European Commission will set up a new ‘Hotspot’ approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants... Those claiming asylum will be immediately channelled into an asylum procedure... For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants...”, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁸ Amnesty International has documented human rights violations by Italian authorities in connection with the implementation of various aspects of the hotspot approach in “Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights”, Index: EUR 30/5004/2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

⁹ Amnesty International’s concerns on the flaws of the screening upon arrivals in hotspots include that it is carried out at the wrong time, when people are exhausted and traumatized from the difficult sea journey immediately after they touch land; that the wrong questions are asked about the purpose of their journey by police officials not trained in identifying protection needs; and that the question is asked without the provision of information about the legal consequences of one’s answer. See pp.34-39 of “Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights”, Index: EUR 30/5004/2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

¹⁰ The Italian government did not disclose the text of the agreement upon its adoption, however members of parliament obtained a copy and published it in October 2016, see: Memorandum d’intesa tra il Dipartimento della pubblica sicurezza del Ministero dell’Interno Italiano e la Polizia nazionale del Ministero dell’Interno Sudanese per la lotta alla criminalità, gestione delle frontiere e dei flussi migratori ed in materia di rimpatrio, Rome, 3 August 2016, http://www.asgi.it/wp-content/uploads/2016/10/accordo-polizia-Italia-Sudan_rev.pdf

who were part of the group, a few days after their return to Khartoum.¹¹ The men said that in Khartoum they were handed over to members of the National Intelligence and Security Service (NISS – an agency known to be responsible for serious human rights violations), and that all those repatriated were interrogated and at least one of them was beaten. A small group of Sudanese nationals who was due to be expelled through the same flight opposed such strenuous resistance to the forcible embarkation that the pilots requested that they be let out of the plane. Seven of these, all belonging to persecuted groups, were subsequently granted refugee status in Italy.

Amnesty International has reviewed the judicial documents relating to the expulsion of one of the men repatriated, as well as an application filed with the European Court of Human Rights in February 2017 by Italian lawyers acting for five of the Sudanese men who were repatriated. The application alleges the violation by Italian authorities of the prohibition against torture, of the right to an effective remedy and of the prohibition against collective expulsions. The lawyers were able to meet their clients in Khartoum in December 2016, together with a delegation of members of the European Parliament.¹²

From the information reviewed, several elements of concern emerge regarding the way in which the forcible return took place.

First, in the days before the flight the police were looking specifically for irregular migrants of Sudanese nationality in the area of Ventimiglia, at the border with France. The Director for immigration and border police at the Ministry of Interior wrote to the magazine L'Espresso in September 2016 and stated, *inter alia*, that the preparation for the repatriation flight had started on 12 August 2016. In Amnesty International's experience, when a charter flight is organized for carrying out forcible returns to a specific country, police forces have been requested to look specifically for irregular migrants of that nationality to ensure that the flight is filled.¹³ When police is under pressure to ensure a repatriation flight is filled to capacity, there is a risk that their activities can be conducted in an arbitrary and discriminatory manner.

Secondly, the very short time in which the whole operation was carried out, less than a week, from detaining the men to having them identified and registered by Sudanese authorities, to adopting the expulsion order and having judicial approval of the expulsion, calls into question whether an individual assessment of the circumstances of each of them could realistically have been carried out. This concern is supported also by the circumstance that about 40 of the Sudanese men stopped in Ventimiglia were sent by dedicated coach to Taranto, in Apulia, where they all had a repatriation order with forcible accompaniment to the border – a form of expulsion under Italian law - judicially validated on the same date. A smaller number of Sudanese nationals remained in detention in the area of Ventimiglia.

Thirdly, a number of procedural flaws affected the outcome of the hearing before the judge of the peace, at least with regard to the Darfuri men on whose case Amnesty International has acquired information.¹⁴ In particular, the hearing may have happened in the place of detention rather than in a courtroom. The hearing was extremely brief and the interpretation inadequate. No documents regarding the expulsion decision and the judicial process was notified, provided or shared with the men about to be expelled. No information about the possibility to seek protection was provided. The express, reiterated request by the Sudanese men not to be sent back because of their belonging to a persecuted group was ignored. The documents regarding the expulsion, including the validation by the judge of the peace, in at least the cases reviewed by Amnesty International, contained no indication that an assessment was conducted regarding individual circumstances

¹¹ See pp.43-49 of "Hotspot Italy, How EU's flagship approach leads to violations of refugee and migrant rights", Index: EUR 30/5004/2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

¹² See the note on the press conference given by the lawyer at the time of the filing of the application at: Conferenza stampa – Rimpatriati in Sudan presentano ricorso contro l'Italia, 16 February 2017, <https://www.asgi.it/asilo-e-protezione-internazionale/conferenza-stampa-sudan-rimpatri/>

¹³ See the internal police communication leaked to the press in February 2017 requesting police forces in some Italian cities to locate and detain a specific number of Nigerian nationals to fill a return flight specified with a precise date. In the communication, Police authorities are required to release from detention centres nationals of other countries if necessary to make place for the Nigerian nationals in the days before the flight, giving a clear impression that both the detentions and releases are carried out in an arbitrary manner for logistic reasons, with scarce consideration for respect of the right to liberty of the person. See Amnesty International statement in Italian on this case at <https://www.amnesty.it/italia-rimpatrio-dei-migranti-irregolari-lecito-la-violazione-dei-diritti-umani-no/>

¹⁴ On the flaws of proceedings before the judge of the peace with regard to expulsions and other shortcomings of Italian laws and procedures on immigration, see the report of ICJ, Undocumented justice for migrants in Italy, 2014, <https://www.icj.org/icj-report-highlights-undocumented-justice-for-migrants-in-italy/>

which could trigger a risk of human rights violations in case of return to Sudan, notwithstanding the Sudanese nationals clearly stated that they were from Darfur and feared for their lives if returned. In Amnesty International's experience, it is frequent that police documents regarding an expulsion and decisions of judges of the peace validating the expulsion contain vague, formulaic statements along the lines of "it was established that the person was not in need of international protection". The Italian Court of Cassation has ruled that "article 19.1 of Law Decree 286/98¹⁵ obliges the justice of the peace, when ruling on the challenge of the validity of the expulsion decree, to assess and decide on the real risk, claimed by the opponent, of being subject to inhuman and/or degrading treatment ... because the provision introduces a humanitarian measure with negative character, that gives the right-holder the right not to be exposed again to a situation of great personal risk, if this condition is ascertained by the judge."¹⁶ In Amnesty International's experience, however, judges of the peace do not always abide by this jurisprudence.¹⁷

Fourthly, no information about the possibility to oppose the expulsion was provided to the Sudanese nationals. However, even if the Sudanese nationals had been informed that they could oppose the expulsion and had been notified the decision – which they were not – the remedy would not have been effective as under Italian law the appeal against an expulsion decision does not have automatic suspensive effect.¹⁸

Amnesty International considers that the described forcible returns were carried out in violation of the principle of *non-refoulement* and of the prohibition against collective expulsions.

3.2 EXPULSIONS ON GROUNDS OF NATIONAL SECURITY

This Committee noted in its 2007 Concluding Observations on Italy (Para 12 CAT/C/ITA/CO4) that the procedure followed by authorities to carry out expulsions on grounds of national security does not provide for sufficient and effective safeguards against the risk of *refoulement*. Amnesty International is concerned that no improvements to avoid the risk of *refoulement* have been introduced, while expulsions on grounds of national security have increased, especially since 2015.

Since January 2015 the Minister of Interior and prefects have ordered more than 200 expulsions by drawing on two provisions: Article 13.1 of law 256/1998, on administrative expulsions on grounds of public order and national security¹⁹, and Article 3 of law 144/2005, regulating expulsions to prevent terrorism as part of urgent measures to counter international terrorism.²⁰

In the first eight months of 2017, authorities expelled 73 foreign nationals from Italy on grounds of national security, almost six times as many as in 2014.²¹ On 20 April 2017, the Italian Minister of Interior stated that expulsions on grounds of national security constituted "a very precious preventive tool to squash radicalization before it can give rise to terrorism-related plans".²²

Such expulsions give rise to concerns on a number of counts. First, there is a lack of clarity in the law about the grounds on which these expulsions can be imposed (for example the law does not define what constitutes "radicalization"; a "threat to national security"; the facilitation of "terrorism-related activities or

¹⁵ Article 19 lists the cases in which expulsions must not be carried out. See Testo Unico sull'Immigrazione, Decreto legislativo, testo coordinato, 25/07/1998 at <http://www.altalex.com/documents/news/2014/04/08/testo-unico-sull-immigrazione-titolo-ii#titolo2>

¹⁶ Court of Cassation, First Civil Section, judgment of 17 February 2011 no. 3898 (unofficial translation); judgment of 3 May 2010, no. 10636

¹⁷ See concerns regarding the judge of the peace role in expulsion proceedings in "Undocumented" Justice for Migrants in Italy, A mission report, 2014, <http://www.refworld.org/pdfid/5452554a4.pdf>

¹⁸ See Article 13(8) of Legislative decree 286/1998 and Article 18 of Legislative decree 150/2011

¹⁹ Testo Unico sull'Immigrazione, decreto legislativo 286/1998, <http://www.altalex.com/documents/news/2014/04/08/testo-unico-sull-immigrazione-titolo-ii#titolo2>

²⁰ <http://www.camera.it/parlam/leggi/051551.htm>

²¹ . In 2015 and 2014, 66 foreign nationals were expelled each year,

http://www.interno.gov.it/sites/default/files/relazione_al_parlamento_anno_2015.pdf. In 2014, authorities adopted 13 expulsion orders on grounds of national security,

http://www.interno.gov.it/sites/default/files/relazione_al_parlamento_2014.pdf

²² http://www.tgcom24.mediaset.it/politica/terrorismo-e-migranti-minniti-espulsioni-per-chi-si-radicalizza_3065870-201702a.shtml

organizations”²³). Further, the highly discretionary powers attributed to the Minister of Interior to impose an expulsion, can only be subjected to a formal assessment by the Lazio administrative tribunal.²⁴ The preventive nature of the provisions, their unclear formulation and the highly discretionary powers of the Minister of Interior to resort to these provisions do not provide sufficiently precise indications to individuals on how the law limits their conduct.²⁵

Secondly, several lawyers have raised concern with Amnesty International about the lack of information provided by the Minister of Interior when appealing against an expulsion. Moreover, some have highlighted that the Lazio administrative tribunal competent to hear appeals against expulsion decisions ordered by the Minister of Interior denied them access to the full information on the basis of which the Minister of Interior had decided the expulsion. The lack of information provided to the defence, together with the highly discretionary power of the Minister of Interior and the prefects when ordering expulsions which the judge can only formally assess, raise concerns about the “equality of arms” and the ability to exercise one’s right to defence. The impact of inequality of arms before the judge and in general of a diminished right to defence could lead to risks for the person to be expelled. They could for example belong to a group persecuted or subjected to serious violations in the person’s country of origin, and such a circumstance could be kept from their lawyer, restricting its capacity to raise a *refoulement* risk.

Thirdly, the expulsion procedure in domestic law only requires that the judge of the peace validates the expulsion order on procedural grounds and not on the merits. Furthermore, as explained above, an appeal can be filed with the Lazio regional administrative tribunal, the only competent court for ministerial expulsions, but the expulsion order ex Article 13.3 of Law 286/1998 and Article 3.4 of Law 144/2005, remains immediately enforceable and the appeal is not automatically suspensive. While theoretically the tribunal could suspend the application of the order before hearing the case, as expulsion orders are immediately enforceable, they are usually carried out within one or two days after having been notified to the person concerned. Those who file an appeal usually do so only after they have already been expelled. The European Court of Human Rights has found in several cases that the expulsion of foreign nationals under article 3.1 of law 144/2005 violated the prohibition of torture and other ill-treatment under article 3 of the ECHR.²⁶

3.3 RECOMMENDATIONS

Amnesty International recommends that the State party:

- Suspend the execution and scrap the Memorandum of Understanding with Sudan, as well as any other bilateral readmission agreement providing for return procedures that breach Article 3 of the Convention and other international obligations; and that it refrain from establishing new readmission agreements that provide for similar return procedures;
- Ensure that expulsion procedures are amended to provide for an individualized assessment by the police authorities and the judge of the peace that the person will not be at risk upon return and that such assessment is duly recorded. This must take place before a decision is taken and before any information on the identity of the persons due to be expelled is shared with the consular authorities of the country of origin;

²³ Decreto legge n. 144 of 27 July 2005 and legge di conversione n. 155 of 31 July 2005,

<http://www.altalex.com/documents/news/2007/12/06/misure-urgenti-per-il-contrasto-del-terrorismo-internazionale>

²⁴ Council of State, judgement 4471 of 23 September 2015, paragraph 6.8,

<http://www.tcnotiziario.it/Articolo/Index?idArticolo=322640&tipo=&cat=ULTLAV&fonte=Teleconsul.it%20-%20Ultimissime%20Lavoro>

²⁵ See Martin Scheinin, (former) UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Commission on Human Rights, E/CN.4/2006/98, para. 46: “The first requirement of article 15, paragraph 1, [ICCPR] is that the prohibition of terrorist conduct must be undertaken by national or international prescriptions of law. To be ‘prescribed by law’ the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct”.

²⁶ O. v Italy, Saadi v Italy, CBZ v Italy and Trabelsi v Italy (judicial expulsion).

- Amend legislation to ensure that any appeal against expulsion orders has automatic suspensive effect, until a final judicial decision is rendered; and
- Take measures to ensure that all relevant authorities have a clear appreciation of the principle of *non-refoulement* and of its being separate from the right to seek asylum.

4. COMPLICITY IN TORTURE RESULTING FROM COOPERATION ON MIGRATION WITH LIBYA

Since 2016, faced with the reluctance of other EU Member States to share responsibility for the reception of refugees and migrants crossing the central Mediterranean from Libya to Italy, the Italian government has focused on reducing the number of arrivals.

To this end, with the support of the EU and the encouragement of many of its member states, Italy has put in place measures to support Libyan authorities, as well as informal leaders and groups to better control their land and maritime borders and combat human smuggling. Italy has offered Libyan authorities and informal leaders and groups training, equipment, technical and logistical assistance, and projects to strengthen the local economy, notwithstanding the Italian authorities being fully aware of the serious and widespread human rights violations occurring in Libya, including at the hands of or owing to the failures of the authorities, leaders and groups to whom support is being provided.

The measures Italy has put in place to strengthen the capacity of Libyan actors to control borders, are trapping hundreds of thousands of people in a country where they are constantly exposed to the risk of serious human rights violations and abuses and where they have no access to any form of protection (UNHCR operations in Libya are extremely limited due to security risks and Libya does not have an asylum system).

4.1 VIOLATIONS AND ABUSES AGAINST REFUGEES AND MIGRANTS IN LIBYA

Amnesty International has extensively documented the situation of refugees and migrants in Libya. Thousands are arbitrarily detained in centres formally managed by the Libyan Ministry of Interior; others in informal detention centres run by militias and criminal gangs. In both types of centres, they are systematically exposed to torture and other cruel, inhuman and degrading treatment, including sexual violence, usually to extort a ransom. Many are killed or left to die after being tortured. Foreign nationals are also sometimes sold for forced labour and other forms of exploitation. Those who are not held captive are nonetheless constantly at risk of being unlawfully killed, ill-treated and exploited, and are exposed to the

generalized lawlessness and violence generated by the internal conflict. Refugees and migrants of sub-Saharan African origin are particularly vulnerable to abuses due to the rampant racism in Libyan society.

Amnesty International has interviewed hundreds of people, in Italy and Tunisia, some as recently as July 2017, who survived the sea crossing from Libya to Italy, including some who attempted it more than once, having been intercepted by the Libyan Coastguard in their initial attempts.²⁷ Amnesty International has also documented several incidents exposing the reckless conduct at sea of the Libyan Coastguard and the ways in which it has repeatedly endangered refugees and migrants in boats in distress, as well as the crews of other rescue boats, by resorting to firearms and violence, but also by operating at sea in plain disregard of basic security protocols and international standards.²⁸

Recent detailed UN reports have also described the widespread, serious human rights violations and abuses to which refugees and migrants are exposed, including at the hands of the Libyan Coastguard.

A report by the UN Support Mission in Libya (UNSMIL) and the Office of the High Commissioner for Human Rights, published in December 2016 contained scathing allegations against members of the Libyan Coastguard, alleged to be corrupt or of colluding with smugglers and of abusing migrants they intercepted: “When migrant boats have been intercepted by the Libyan Coast Guard, migrants are typically transferred to DCIM [Department to Counter Illegal Migration] detention facilities or to private houses and farms, sometimes for a fee, where they are often subjected to forced labour and, in the case of women, rape and subject to other sexual violence. Libyan Coast Guard staff have apparently also seized boats and engines, and then sold them onwards. A number of migrants interviewed by UNSMIL who were intercepted at sea by armed men believed to be members of the Libyan Coast Guard, said that some were in military camouflage uniforms and others were in civilian clothes. The migrants were brought back to shore and made to queue, sometimes for many hours without adequate shelter. Several migrants recounted being beaten with sticks or gun butts, and robbed of their belongings, usually mobile phones and money.”²⁹

The report published on 1 June 2017 by the UN Panel of Experts on Libya and addressed to the UN Security Council President contains serious allegations of collusion between factions of the coastguard and smugglers and of violations and abuses committed by coastguard factions against migrants. Under the heading Human rights violations against migrants, the report states: “104. Abuses against migrants were widely reported, including executions, torture and deprivation of food, water and access to sanitation. The International Organization for Migration (IOM) also reported enslavement of sub-Saharan migrants. Smugglers, as well as the Department to Counter Illegal Migration and the coastguard, are directly involved in such grave human rights violations. [...]”; and “105. Abd al-Rahman Milad (alias Bija), and other coastguard members, are directly involved in the sinking of migrant boats using firearms. In Zawiyah, Mohammad Koshlaf opened a rudimentary detention centre for migrants in the Zawiyah refinery. The Panel collected information on abuses against migrants by several individuals (see annex 30) [...]”.³⁰

In August 2017, the Special Rapporteurs on extrajudicial, summary or arbitrary execution³¹, as well as the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture³², all expressed their concern about the situation of refugees and migrants in Libya especially as a result of Italy’s measures to assist the Libyan Coastguard to carry out interceptions resulting in disembarkation in Libya.

Speaking at the UN Human Rights Council, on 11 September 2017, the UN High Commissioner for Human Rights denounced the “horrific abuses migrants face after being intercepted and returned to Libya.” He

²⁷ Amnesty International, *A Perfect Storm: The Failure of European Policies in the central Mediterranean*, 6 July 2017, Index number: EUR 03/6655/2017, <https://www.amnesty.org/en/documents/eur03/6655/2017/en/>

²⁸ See pp. 21-26 of *A Perfect Storm: The Failure of European Policies in the central Mediterranean*, 6 July 2017, Index number: EUR 03/6655/2017, <https://www.amnesty.org/en/documents/eur03/6655/2017/en/>

²⁹ “Detained And Dehumanised” Report on Human Rights Abuses against Migrants in Libya, 13 December 2016 http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf

³⁰ Final report of the UN Panel of Experts on Libya established pursuant to resolution 1973(2011), S/2017/466, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>

³¹ Italy-EU search and rescue code could increase Mediterranean deaths, UN expert warns, 15 August 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21971&LangID=E>

³² EU ‘trying to move border to Libya’ using policy that breaches rights – UN experts, 17 August 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21978&LangID=E>

added that “Extra-judicial killings, slavery, torture, rape, human trafficking and starvation are only some of the abuses reportedly inflicted on migrants in both official and informal detention centres in the country.”³³

Despite current efforts by UN agencies to provide assistance to refugees and migrants at 12 disembarkation points in Libya – as well as to contribute to the EU-organized training of the Libyan Coastguard - the reality remains that those intercepted at sea and disembarked in Libya are transferred to detention centres where they are held in inhuman and degrading conditions with no prospect of judicial review and exposed to systematic, serious violations and abuses. Many centres remain out of reach to international agencies.³⁴

Overall, hundreds of thousands of foreign nationals are currently trapped in Libya. According to IOM, there are over 270,000 migrants in Libya, but according to some estimates the real number could be much higher.³⁵ Over 42,800 people were registered as refugees or asylum-seekers with UNHCR as of August 2017.³⁶ Migrants may be able to benefit from IOM Assisted Voluntary Return programmes, which are being expanded with financial contributions from the EU. However, for refugees return is not an option. Nor can they apply for asylum in Libya as the country has no asylum system. In the absence of serious commitments by European governments to offer them opportunities for resettlement, they risk remaining stuck in a cycle of human rights violations in Libya. Faced with the prospect of continuing to suffer abuses and violations, particularly in detention centres, some may choose to avail themselves of “voluntary” return programmes to their countries of origin despite the risk of violations they would face there.³⁷

Despite statements acknowledging the gravity of the human rights situation in Libya, the Italian authorities have so far failed to take adequate measures to address concerns regarding the impact that Italy’s migration related cooperation with Libya is having on refugees and migrants. Funding and expanding the programmes of international agencies, which Italy and the EU are doing, is important but insufficient and does not remove the need to ensure that that any cooperation on migration with Libya does not violate human rights, including the prohibition of torture.

³³ UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein highlights human rights concerns around the world in an address to the 36th session of the Human Rights Council in Geneva, 11 September 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22044&LangID=E>; See also: Returned migrants are being robbed, raped and murdered in Libya, Opinion by Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights, 8 September 2017

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22039&LangID=E>

³⁴ According to statements provided by the Representative to Libya of UNHCR to the Italian Senate Commission on Human Rights in September 2017, UNHCR attends, together with IOM, 12 disembarkation points on Libyan coasts, where refugees and migrants intercepted by the Libyan Coastguard are disembarked, briefly assisted by the staff of international agencies, and then taken into custody by personnel of the Libyan Department to Counter Illegal Migration (DCIM) which decides to which detention centres they will be sent. UNHCR personnel and its partners visit detention centres to offer assistance, hygiene kits and clothing, and basic medical care, and to identify those in need of international protection. Due to the difficulty in accessing the centres, the selection is often based on nationality. However, security risks and the fact that many informal detention centres remain unknown limit greatly the extent of the assistance which international agencies can provide. See: Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, Senato della Repubblica, audizione del Rappresentante UNHCR in Libia, 26 September 2017, <https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=1044704>

³⁵ According to UNHCR, more than 1.3 million people, including the internally displaced, migrants, refugees and asylum seekers and host communities are in urgent need of humanitarian assistance, <http://www.unhcr.org/uk/news/latest/2017/5/5922a4df4/libya-crisis-deepens-unhcr-chief-steps-assistance.html>

³⁶ UNHCR has registered 42,834 asylum-seekers and refugees as of August 2017. However, Amnesty International believes the real number to be considerably higher, due to the extreme difficulty for UNHCR to conduct registrations in many parts of the country where refugees and migrants are present. <http://reporting.unhcr.org/sites/default/files/UNHCR%20Libya%20Registration%20Fact%20Sheet%20-%20August%202017.pdf>

³⁷ As of 1 September 2017, IOM had assisted 7,084 people to return from Libya to their country of origin, against 2,775 for the whole of 2016.

https://eeas.europa.eu/sites/eeas/files/20170906_fifth_progress_report_on_the_partnership_framework_with_third_countries_under_the_earm_en_0.pdf

4.2 ITALY'S COOPERATION ON MIGRATION IN LIBYA AND ITS IMPACT

Italy's cooperation on migration with Libya has focused on providing assistance to the Libyan authorities, including the coastguard, border guards and the Ministry of Interior, as well as to non-state actors to increase their capacity to control Libyan territory and borders so that entry into, transit through and departure from Libya are considerably reduced.

4.2.1 ASSISTING THE LIBYAN AUTHORITIES AND PERPETUATING THE UNLAWFUL DETENTION OF FOREIGN NATIONALS

On 3 February 2017 the European Council meeting in Malta agreed a Declaration (the Malta Declaration) focusing on the central Mediterranean route.³⁸ EU leaders agreed to prioritize the provision of "training, equipment and support to the Libyan national coast guard and other relevant agencies". They also agreed to implement measures "to ensure adequate reception capacities and conditions in Libya for migrants, together with the UNHCR and IOM"; and to support IOM in "significantly stepping up assisted voluntary return activities".

In the Malta Declaration, EU leaders also welcomed and affirmed their support for Italy's bilateral efforts to cooperate with Libya in the area of migration, through the implementation of a Memorandum of Understanding (MoU) signed on 2 February 2017 by the Italian Authorities and the Chairman of the Presidential Council al-Serraj.³⁹ The MoU commits Italy to provide technical and technological support, as well as training and financial support, not only to the Libyan Coastguard and border guards but also to the Libyan Ministry of the Interior, which is responsible for migrants' detention centres.

Specifically, under Article 1, among other things, Italy commits to provide technical and technological support to Libyan institutions tasked with combatting "clandestine migration" such as the Ministry of Defence's border guards and coastguard, and "the competent departments of the Ministry of Interior" (which include DCIM and detention centres).

Under Article 2, among other things, the parties commit to take action with regard to the "upgrading and financing of the above mentioned reception centres already active in compliance with relevant legislation, using available Italian and EU funds" (it should be noted that the preamble to the MoU refers to 'temporary reception camps under the exclusive control of the Libyan Ministry of Interior' rather than to centres). Also under Article 2, "Italy contributes through the provision of medicines and medical equipment for the health reception centres [sic], to meet the medical needs of illegal migrants [sic], for the treatment of transmissible and grave chronic illnesses." Further, the parties commit to take action with regard to the "training of Libyan personnel in the above-mentioned reception centres to cope with the conditions of illegal migrants [sic], supporting Libyan research centres [sic] operating in this sector, so that they can contribute to identify the most adequate methods to face the phenomenon of clandestine migration [sic] and human trafficking."

According to Article 4, Italy commits to fund the measures mentioned in the MoU, or proposed by a committee set up according to the MoU, without additional expense for the Italian budget, but using EU funds.

Amnesty International is concerned that the MoU of February 2017 completely ignores the systematic and widespread human rights violations and abuses suffered by refugees and migrants in Libya and especially in detention centres. Amnesty International is extremely concerned that the agreement expressly includes a

³⁸ Available at <http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

³⁹ See Appendix. Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana, available at <http://www.statewatch.org/news/2017/feb/it-libya-memo-immigration-border-security-2-2-17.pdf>. The MoU repeatedly uses the term "clandestine" referred to migrants and does not mention refugees and asylum-seekers. At Article 5, the parties commit to implement the agreement in compliance with international law, including human rights treaties.

commitment by Italy to provide personnel training, equipment and other forms of support for the detention centres where serious human rights violations have been extensively documented.

The agreement does not include any request of assurances from the Libyan authorities nor any mechanism to verify that Italy's assistance will not contribute to human rights violations. Furthermore, the unclear language in the Italian version of the agreement makes it difficult to understand, with regard to several provisions, what Italy is committing to and to whom and for which projects assistance will be provided, rendering accountability for misuse in human rights violations difficult.

4.2.2 ASSISTING THE LIBYAN COASTGUARD TO INTERCEPT REFUGEES AND MIGRANTS

The centrepiece of Italy's and EU's strategy to reduce migration towards Europe has been the strengthening of the Libyan Coastguard, with the clear expectation that the Libyan Coastguard would intercept refugees and migrants attempting the sea crossing and disembark them back in Libya, sparing EU governments from the duty to rescue them on the high seas and disembark them in a European safe port. To achieve this, Italy has been at the forefront of EU efforts to train the Libyan Coastguard and has undertaken further bilateral projects to support it.

In June 2016, the mandate of the European naval operation EUNAVFOR MED was amended to include capacity building and training of the Libyan Navy and Coastguard. As of the end of July 2017, 136 Libyan personnel participated in training activities.⁴⁰

In March 2017, Italian coastguard officials at the Maritime Rescue Coordination Centre (MRCC) in Rome confirmed to Amnesty International that they had been requested by the Italian government to assist the Libyan authorities in setting up a Libyan MRCC, with a view to Libya eventually being able to coordinate search and rescue activities in its own search and rescue (SAR) region.

In May 2017 Italy provided Libyan authorities with patrolling assets, namely four speedboats, with a further six to be delivered in the near future. These had initially been donated to Libya during Colonel Gaddafi's rule but had never been delivered.⁴¹

In July 2017, a EUR 46.3 million project was approved under the EU Trust Fund for Africa, to strengthen the capacity of the Libyan Coastguard, as well as that of Libyan border guards along the southern borders, and to assist the Libyan authorities in establishing two operational coordination centres and defining a Libyan SAR region.⁴²

On 2 August 2017, upon a request from the Libyan government, Italy launched a naval operation in Libyan waters and deployed Navy officials on Libyan soil to support Libyan authorities in their activities against irregular migration and human smuggling. The Italian mission aims at providing: technical and logistical support and advice to the Libyan Navy and Coastguard; protection to their vessels involved in activities against irregular migration; reconnaissance capabilities to determine activities to be carried out; and support to set up a centre responsible for coordinating operations.⁴³

⁴⁰ The training covers basic seamanship, more advanced specialist skills as well as human rights and international law. A new training, involving 87 Libyan personnel, began in Taranto, Italy, on 17 September 2017. https://eeas.europa.eu/csdp-missions-operations/eunavfor-med/32315/operation-sophia-new-training-modules-libyan-coastguard-and-navy-arranged-italy_en; <http://www.consilium.europa.eu/en/press/press-releases/2017/07/25-eunavformed-sophia-mandate-extended/>

⁴¹ <http://www.interno.gov.it/it/notizie/controllo-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica>

⁴² http://europa.eu/rapid/press-release_IP-17-2187_en.htm

⁴³ http://www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

As a result of these measures, the number of people intercepted at sea by the Libyan naval authorities and disembarked in Libya has increased considerably.⁴⁴ According to reports, about 3,000 people were stopped by the Libyan Coastguard in just one week in September 2017, bringing the total for 2017 to over 16,500.⁴⁵

To Amnesty International's knowledge, no accountability or monitoring mechanism has been set up to ensure that resources provided to Libyan authorities to strengthen their search and rescue capacity and migration control are not contributing to human rights violations and abuses, with the exception of a recent and still untested mechanism established by EUNAVFOR MED in July 2017 to monitor the conduct of Libyan Coastguard personnel who has taken part in EUNAVFOR MED training.⁴⁶ In particular, Italy failed to request the establishment of a system to register and trace all people disembarked in Libya including as a result of Italy's assistance to the Libyan Coastguard since the start of the Italian naval operation in Libya. Foreign nationals intercepted at sea and disembarked in Libya are routinely taken to official and informal detention centres where they are exposed to serious human rights violations and abuses.

Amnesty International is concerned that Italy, by providing the Libyan Coastguard with training, equipment, and technical and logistical support for interceptions at sea, risks becoming complicit in the human rights violations which the Libyan Coastguard may commit against refugees and migrants and also in those to which refugees and migrants are likely to be subjected after disembarkation in Libya, when they are taken into detention.

Furthermore, the considerable uncertainty regarding the level of control exercised by the Libyan Government of National Accord over all naval units and officers, in light of reports that irregular groups and militias are exercising coastguard-like functions in certain areas, heightens the risk that resources and assistance being provided by the Italian government to the Libyan authorities are contributing to human rights violations and abuses, including torture and other ill-treatment.⁴⁷

4.2.3 ASSISTING NON-STATE ACTORS AND ARMED GROUPS IN CONTROLLING BORDERS AND TERRITORY

During 2017, Italy has also increasingly engaged in cooperation with local authorities and informal leaders and groups in Libya, not all under the control of the recognized Libyan government. In March 2017, the Italian Minister of Interior met in Rome with representatives of tribes controlling the southern Libyan territories, Awlad Suleiman, Tebu and Tuareg. A peace and reconciliation agreement was negotiated,⁴⁸ which, according to the Italian Minister of Interior, was necessary to create a border guard to control Libya's southern borders.⁴⁹

On 13 July 2017, in Tripoli, the Italian Minister of Interior met the mayors of 14 Libyan towns. Another meeting took place in Rome on 26 August 2017, with the participation of the Italian and Libyan Ministers of Interior and mayors of Libyan towns. Italy promised financial and other assistance to Libyan local authorities, including through access to the EU Trust Fund for Africa,⁵⁰ in exchange for their commitment to tackle

⁴⁴ The Libyan Coastguard reportedly intercepted and pulled back to Libya 18,904 refugees and migrants in 2016. <https://www.iom.int/news/iom-eu-train-libyan-mediterraneanmigrant-rescuers> <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-131772-2017-deaths-reach-2556>

⁴⁵ https://www.iom.int/sites/default/files/situation_reports/file/Libya_SR_20170907-21.pdf;

<http://www.middleeasteye.net/news/libyan-coastguard-intercepts-more-3000-migrants-past-week-2014774729>

⁴⁶ A monitoring mechanism of trainees of the EUNAVFOR MED programme was set up in July 2017 following repeated requests by NGOs. See EUNAVFOR MED Operation Sophia: mandate extended until 31 December 2018, 25 July 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/07/25-eunavformed-sophia-mandate-extended/>

⁴⁷ This was clearly stated in the report issued by the UN panel of Experts on Libya, which also referred to serious allegations of collusion of some units with smugglers and traffickers, Final report of the Panel of Experts on Libya established pursuant to resolution 1973(2011), S/2017/466, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>

⁴⁸ <http://www.arapacisinitiative.org/news/its-peace-awlad-suleiman-and-tebu-tribes-of-the-libyan-south-sign-reconciliation-agreement-in-roma/>

⁴⁹ <http://www.lastampa.it/2017/04/02/esteri/libia-le-trib-del-sud-siglano-la-pace-e-si-impegnano-a-bloccare-i-migranti-qzNs23DGe00SdJi7G285FK/pagina.html>

⁵⁰ <http://www.interno.gov.it/it/notizie/immigrazione-riunione-viminale-cabina-regia-ciad-italia-libia-mali-e-niger>

irregular migration.⁵¹ Italy's Minister of Interior pledged to support the mayors in the creation of new economic opportunities in their territories "if they help us in the fight against smuggling of human beings and in the management of migration from central Africa".⁵²

According to media reports, Italy also has struck a deal involving representatives of the Libyan Government of National Accord and the so-called "Al-Ammu" and "Brigade 48" militias, which control Sabratha.⁵³ The militias committed to prevent migrants from attempting the crossing; while authorities committed to provide militias with equipment, boats and salaries. Some of the militias would be formally integrated in the ranks of the Libyan Government of National Accord as a result of the negotiations.⁵⁴

As a result of such deals, in August and September 2017 Libyan authorities, tribes and militias took action to stop refugees and migrants from attempting the sea crossing, from travelling from the south towards the northern coasts and from entering Libya in the south.

Amnesty International is concerned that, because of the inherent lack of transparency of such deals and of their being negotiated with non-state actors who could have been involved in human rights abuses, there is a considerable risk that whatever assistance Italy is providing could be contributing to human rights violations and abuses and rendering the pursuit of accountability for human rights violations and abuses almost impossible.

4.3 RECOMMENDATIONS

Amnesty International recommends that the State party:

- Suspend the implementation of all forms of migration related cooperation under the February 2017 MoU and outside it - including programmes funded by the EU - with Libyan authorities involved in the detention of refugees and migrants, for so long as foreign nationals continue to be unlawfully detained in Libya;
- Publicly clarify all cooperation measures and projects based on the MoU of February 2017 which Italy is pursuing in Libya, including through EU funding, and establish a system to verify the compatibility of such measures and projects with human rights protection in Libya;
- Stop the naval mission in Libyan waters and suspend any other form of support aimed at increasing the capacity of the Libyan Coastguard to intercept refugees and migrants for so long as Libya remains an unsafe place where to disembark people;
- Place conditions on Italy's support for the continuation of the training provided by EUNAVFOR MED to the Libyan Coastguard. To continue to benefit from such training the Libyan Coastguard should be required to accept a number of restrictions to their operations aimed at limiting disembarkations of refugees and migrants in Libya, namely that it should: allow civilian vessels, including boats operated by NGOs, to carry out rescues in Libyan territorial waters; refrain from claiming on scene command during a search and rescue operation; accept to transfer any rescued person onto a EU ship which can disembark those rescued in a safe port; accept the immediate establishment of a mechanism to ensure solid monitoring of their conduct and operations at sea, and of an accountability process in case of breaches of international law rules;
- Suspend Italy's project to assist with the creation of a Libyan MRCC until Libya has stable and reliable institutions which can credibly deliver search and rescue coordination to the standard required by

⁵¹ <http://www.interno.gov.it/it/notizie/minniti-e-i-sindaci-comunita-libiche-i-trafficienti-sono-nemico-comune>

⁵²

http://www.repubblica.it/politica/2017/08/29/news/minniti_sui_migranti_ho_temuto_per_la_tenuta_democratica_paese_174164861/

⁵³ https://www.washingtonpost.com/news/monkey-cage/wp/2017/09/25/italy-claims-its-found-a-solution-to-europes-migrant-problem-heres-why-italys-wrong/?utm_term=.e1700d746a97;

<https://www.nytimes.com/2017/09/25/opinion/migrants-italy-europe.html?mwrsm=Facebook>

⁵⁴ <http://www.middleeasteye.net/news/libyan-militias-being-bribed-stop-migrants-crossing-europe-2107168893>
<https://www.apnews.com/9e808574a4d04eb38fa8c688d110a23d>

the relevant international law and until Libya can be regarded as a safe port of disembarkation for refugees and migrants;

- Ensure that an adequate number of vessels with search and rescue as their primary purpose are deployed along the routes taken by refugees and migrant boats and can disembark those rescued in Italy; and
- Stop any form of cooperation, funding, support or assistance to non-state actors and armed groups who may be involved in human rights abuses.

5. ILL-TREATMENT OF MIGRANTS AND ASYLUM-SEEKERS DURING IDENTIFICATION PROCEDURES

In 2016, Amnesty International received a significant number of reports of ill-treatment and excessive use of force by police to coerce newly arrived refugees and migrants to give their fingerprints.⁵⁵

The majority of asylum-seekers and migrants interviewed by Amnesty International during the course of the year had not refused giving their fingerprints and did not, therefore, report any problems with the relevant procedure. However, Amnesty International also collected numerous and consistent reports of abusive treatment in different Italian towns and cities. The victims were mostly from Sudan and included women and unaccompanied minors. They all said that the abuses had been perpetrated by Italian police, either in hotspots, reception centres or police stations across the country – hence while they were in custody, in the attempt to force them to give their fingerprints.

The individuals who reported their ill-treatment to Amnesty International did so during their quick transit through Italy. This prevented the organization from conducting a more thorough assessment, e.g. through medical examination. Amnesty International was therefore unable to verify all relevant details regarding each case. However, the consistency of these testimonies – collected at different times, in different cities, through the services of different interpreters – is extremely worrying in depicting a pattern of ill-treatment and excessive use of force imposed on refugees and migrants to coerce them to give their fingerprints.

In particular, 24 individuals interviewed by Amnesty International alleged having been subjected to beatings causing severe pain, sometimes lasting for several minutes, with punches, kicks, and batons. In a number of cases, people who spoke to Amnesty International recounted having suffered beatings as well as being subjected to electric shocks by the police by means of electrical batons (also known as stun batons), weapons that inflict significant pain without leaving long-lasting physical traces on the body of the victim. Five interviews collected by Amnesty International coincided in describing the use of beatings and electrical batons in the hotspot of Taranto on the occasion of the arrival of a group of about 300 refugees and migrants on 24 and 25 June 2016. In two cases, people told Amnesty International that police ill-treated them by causing severe pain to the genitals and sexual humiliation.

In addition to these cases, Amnesty International collected numerous other testimonies describing other violations of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment by

⁵⁵ See the full description of the cases and the interviews in “Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights”, Index: EUR 30/5004/2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

police officials. Some individuals recounted having been deprived of basic assistance, including medical care, food and water, as a means of coercing them to give fingerprints. Amnesty International also collected several testimonies indicating that police officials had used threats of violence or extended detention as additional means to coerce refugees and migrants to give their fingerprints. In some cases, the showing of beatings appears to have been used by police as a threat to force others to give their fingerprints.

Threats of violence and indefinite detention, as well as exposing individuals to the sight of violence committed on others, caused considerable psychological suffering. All actions described above, in the circumstances, were likely to generate fear, anguish, humiliation and a sense of inferiority instrumental to breaking the physical or psychological resistance of those unwilling to give their fingerprints.

In dozens of other cases, individuals speaking to Amnesty International reported that the police had used unnecessary or excessive use of force on them, to coerce them to give their fingerprints. This usually consisted in holding them and pushing their hands onto a fingerprinting machine. Amnesty International is aware that on a vast number of occasions when people did not initially cooperate, the police attempted to obtain fingerprints by negotiating with them, including through provision of information with the assistance of an interpreter, and did not need to resort to the use of force. However, in several other cases described to Amnesty International police used force without any demonstrable necessity for it, as they did not appear to have previously engaged in sufficient attempts to obtain the fingerprints by other means. In particular, from dozens of interviews collected by Amnesty International – with individuals who alleged having been subjected to abuses as well as with others – it emerged that provision of information and legal counselling in hotspots and ports of disembarkation was far from sufficient and adequate.

Reports collected by Amnesty International and illustrated in this section are consistent with testimonies the NGO Oxfam referred to in a report published in May 2016.⁵⁶ Furthermore, representatives of grassroots organizations in Genoa and Ventimiglia, cities through which thousands of refugees and migrants attempting to enter into France transited during 2016, have confirmed receiving many similar reports.

All those interviewed had decided not to report abuses to authorities, either for lack of trust or because this may have impeded them from moving on to other European countries.

5.1 THE DUBLIN SYSTEM AND EU PRESSURE TO ACHIEVE 100% FINGERPRINTING

While the majority of people reaching Italy from Libya apply for asylum in Italy, others wish to go to other European countries and seek international protection there. Their ability to have their claim for international protection processed in other countries is limited, however, by the implementation of the Dublin and Eurodac Regulations, which attribute responsibility for processing asylum applications to member states at Europe's external borders. Asylum-seekers can on the basis of these regulations be returned to the first EU country they entered. The efficient functioning of this system is predicated upon the identification of the individual, through registration of their fingerprints, in the first country of entry.

For several years, Italy had limited success in obtaining fingerprints of individuals arriving on its territory and wanting to move to other EU countries. Between 2013 and 2015 tens of thousands of Syrians and Eritreans, in particular, managed to move to other countries without leaving trace of their passage through Italy. Between 2014 and 2015 European governments and institutions put increasing pressure on Italy to introduce more stringent fingerprinting processes.⁵⁷ In 2015, the European Commission opened infringement proceedings against Italy for violation of the Eurodac Regulation⁵⁸, and imposed on Italy the target of 100% fingerprinting rate for arriving refugees and migrants “to be achieved without delay”,

⁵⁶ OXFAM, Hotspot: Rights denied, 19 May 2016,

https://www.oxfamamerica.org/static/media/files/Hotspot_RIGHTS_DENIED__ENG.pdf

⁵⁷ European Commission, A European Agenda on Migration, 13 May 2017; and Progress report on the implementation of the hotspots in Italy, 15 December 2015, <http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528->

⁵⁸ European Commission, Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings, 10 December 2015, http://europa.eu/rapid/press-release_IP-15-6276_en.htm

recommending Italy “to allow the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting.”⁵⁹

According to Italian legislation, law enforcement authorities are entitled to coercively take “hair or saliva” from a person subject to criminal investigation, in ways that guarantee “the respect of the dignity of the person” and following authorization from the Public Prosecutor.⁶⁰ Beyond this, no other coercive action is permitted by Italian laws to obtain samples in order to identify an uncooperative individual.⁶¹ On the contrary, the Italian Constitution clearly states that “any physical or moral violence against people subjected to restrictions of their liberty of whichever nature must be punished”.⁶²

Despite EU pressure, Italy did not amend its legislation regarding the use of force; however, the Italian government promoted changes in practice.⁶³ In March 2016 the EU Commission acknowledged that “Fingerprinting rates reported by the Italian authorities, the IOM and Frontex have almost reached 100% in recent disembarkations in operational hotspots.”⁶⁴

Italian authorities stated that their success in increasing the rate of fingerprinting was due to decreasing arrivals of nationalities traditionally refusing fingerprinting, and to the police’s ability to persuade new arrivals by separating those refusing to be fingerprinted and distributing individuals or small groups among different police stations in different towns.⁶⁵ However, the use of coercive measures is likely to have played its part.

5.2 FAILURES TO CLARIFY THE LIMITS OF THE USE OF FORCE TO OBTAIN FINGERPRINTS AND TO INVESTIGATE ALLEGATIONS OF ILL-TREATMENT AND TORTURE

Already in September 2014 the Ministry of Interior had adopted a circular emphasizing the importance of taking the fingerprints of all new arriving refugees and migrants, explaining that this was necessary due to repeated complaints by other member states. Notably, a flyer attached to the circular, to be distributed to new arrivals, indicated that fingerprints would be collected “even with the use of force, if necessary”.⁶⁶

In 2015 the Ministry of Interior provided additional guidance to police officers involved in fingerprinting activities, explaining that, if and when necessary, the use of force may be considered permissible. The Ministry of Interior did not disclose such guidance; however Amnesty International received confirmation of its existence from two separate police officials, working in hotspots.⁶⁷ All sources consulted by Amnesty International consistently indicated that police had resorted to the use of force in many instances during 2016. However, the legal basis for it remained unclear.

⁵⁹ European Commission, Progress report on the implementation of the hotspots in Italy, 15 December 2015, <http://eur-lex.europa.eu/resource.html?uri=cellar:c2df43cd-a3e8-11e5-b528->

⁶⁰ Italian Code of Criminal Procedure, Art.349.2bis

⁶¹ ASGI, The identification of foreign nationals by the police and the prohibition of the use of force to take fingerprints, 14 December 2014, <http://www.asgi.it/wp-content/uploads/2014/12/IDENTIFICAZIONE.-OBBLIGHI-E-FACOLTA2.pdf>

⁶² Italian Constitution, Art. 13

⁶³ Parliamentary commission of inquiry on reception and identification, Hearing of Frontex Coordinating Officer, Miguel Angelo Nunes Nicolau, 13 January 2016, http://www.camera.it/leg17/1058?idLegislatura=17&tipologia=audiz2&sottotipologia=audizione&anno=2016&mese=01&giorno=13&idCommissione=69&numero=0036&file=indice_stenografico

⁶⁴ European Commission, Italy: State of Play Report, Annex IV to the Communication from the Commission to the European Parliament and the Council: First report on relocation and resettlement, 16 March 2016, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_-_annex_4_en.pdf

⁶⁵ Parliamentary commission of inquiry on reception and identification, Hearing of the Head of Police, 20 January 2016, http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/69/audiz2/audizione/2016/01/20/indice_stenografico.0037.html

⁶⁶ Ministry of Interior, Circular n.27978, 23 September 2014, http://www.meltingpot.org/IMG/pdf/circolare_impronte.pdf

⁶⁷ See pp.16 and 17 of “Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights”, Index: EUR 30/5004/2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

In February 2016, a police union wrote to the Head of Police, noting that there was no legal basis under Italian legislation for the use of force to obtain fingerprints, and requesting clarifications: “In light of the ‘legislative gap’, of the absence of operational guidelines unmistakably based on precise legal provisions, and of an opaque ‘do-it-yourself’ approach characterized by practices that, in our view, are markedly misaligned with current laws and expose personnel to negative consequences including at a judicial level, with the aim of avoiding a protracted excessive exposure of police officers to probable criminal, civil and administrative liability, we consider that a clarification by your police department is urgently required ...”⁶⁸

In the course of 2016, Amnesty International repeatedly informed the Italian Ministry of Interior of the allegations of ill-treatment it was receiving and documenting, and urged the authorities to provide information about the use of force to obtain fingerprints and to investigate all allegations.⁶⁹ Amnesty International is concerned that no action was taken on the organization’s detailed allegations. The publication of the organization’s concerns in the report “Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights” in November 2016 was met with dismissive public reactions by the Head of Police and other representatives of the Ministry of Interior who, however, did not address in any way the substance of the allegations.

In February 2017, Decree Law 13/2017 (known as “Decreto Minniti-Orlando”), introduced a provision according to which the reiterated refusal to provide fingerprints by a refugee or migrant should be regarded as amounting to the risk of absconding. The provision allows the local head of police to order that the foreign national be held in a hotspot for a maximum of 30 days, or a shorter period if the reason for the order ceases.⁷⁰

However, it remains unclear what would be the course of action of the Italian authorities if the refusal to be fingerprinted persisted beyond the 30 days, also in light of the fact that a foreign national who has not been identified cannot be expelled. Amnesty International notes with concern that detention in a hotspot decided by police without judicial supervision could constitute arbitrary detention.

In March 2017 Amnesty International sought further clarifications from the Under-Secretary of State in charge of migration matters at the Ministry of Interior regarding the status of the internal circulars on the use of force to obtain fingerprints in light of the new legislative provision. No response has been provided to date.

5.3 RECOMMENDATIONS

Amnesty International recommends that the State party:

- Promptly and thoroughly investigate allegations of ill-treatment of refugees and migrants, with a view to prosecuting, if there is sufficient admissible evidence, those suspected of criminal responsibility;
- Clarify unequivocally that the use of force is not permissible to obtain fingerprints;
- Clarify the status of hotspots as places of detention for refugees and migrants who refuse to provide fingerprints and the nature of the detention ordered by police in case of reiterated refusal to provide fingerprints;
- Clarify which safeguards are available to prevent ill-treatment in case of refusal to provide fingerprints and in particular whether video cameras are available in all hotspots, for how long video camera tapes are kept, whether independent agencies can witness the forcible taking of fingerprints, and

⁶⁸ UGL, Use of force in the identification and fingerprinting operations of foreign and Italian nationals, Letter to the Head of Police, 10 February 2016,

http://www.uglpoliziadistato.it/index.php?option=com_content&view=article&id=6329&Itemid=133

⁶⁹ Amnesty International wrote to the Head of the Ministry of Interior central directorate of immigration and border police on 23 June 2016; and to the Minister of Interior on 18 July, 13 September and 20 October 2016

⁷⁰ Testo del decreto-legge 17 febbraio 2017, n. 13 (in Gazzetta Ufficiale - Serie generale - n. 40 del 17 febbraio 2017), coordinato con la legge di conversione 13 aprile 2017, n. 46 (in questa stessa Gazzetta Ufficiale - alla pag. 1) recante: «Disposizioni urgenti per l’accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell’immigrazione illegale.», <http://www.gazzettaufficiale.it/eli/id/2017/04/18/17A02767/sg>

whether there are records documenting when people who refuse to provide fingerprints in a hotspot are taken elsewhere by police, for how long and where;

- Clarify whether stun batons are part of police officers' equipment in police stations and what limits and guidance apply to their use; and
- Allocate sufficient resources to ensure that full information about their rights and status is provided to refugees and migrants, individually, and in a language they understand in all hotspots.

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ITALY

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

62ND SESSION, 6 NOVEMBER- 6 DECEMBER 2017

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination of Italy's fifth and sixth periodic reports on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), on 14-15 November 2017.

This briefing aims to provide a description of Amnesty International's main concerns regarding the implementation of the Convention by Italy, based on the organization's most recent research. It focuses in particular on the shortcomings of the new law introducing the crime of torture in the Italian legal system; on violations of the prohibition of *refoulement*; on the *de facto* complicity or participation of Italian authorities in the torture and cruel, inhuman or degrading treatment of refugees and migrants in Libya as a result of its cooperation with Libyan authorities on border control; and on the failure to investigate and remedy allegations of torture and other ill-treatment against asylum-seekers and migrants during identification procedures. As such, the briefing is not an exhaustive account of Amnesty International's concerns regarding torture and other ill-treatment in Italy and in no way does it intend to detract from the seriousness and importance of other violations.