

Italy: UN Special Rapporteur on the human rights of migrants concludes his third country visit in his regional study on the human rights of migrants at the borders of the European Union: Italy

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Following an invitation by the Government, I conducted a visit to Italy from 30 September to 8 October 2012. During my 9-day visit, I visited Rome (CIE Ponte Galeria), Florence, Palermo, Trapani (CIE Milo), Bari (CIE Palese) and Castel Volturno. I met with Government representatives, civil society and international organisations, as well as many migrants themselves, including many who were in an irregular situation.

I would like to express my appreciation for the support and cooperation the Government provided in planning and coordinating the visit. I would also like to sincerely thank the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) for their support and assistance.

This mission to Italy forms part of my year-long study on the human rights of migrants at the borders of the European Union (EU). I have already visited the many key EU institutions working on migration in Brussels and Vienna, as well as carried out visits to Tunisia and Turkey in June 2012. Later this year I will visit Greece. Drawing on these experiences, I will develop a thematic study which will be presented to the Human Rights Council in June 2013. The study will analyse EU migration management in the context of border management, not only in light of the programmes and policies of the individual States visited, but also considering the overarching EU migration policy framework, focusing on their impact on the human rights of migrants.

Italy's coast is one of the major external sea borders of the EU. Although Italy did witness a high peak in the number of sea arrivals in 2011, data indicates these high numbers were an isolated occurrence related to the events of the Arab Spring. Nevertheless, ongoing irregular sea arrivals from North Africa and from Greece remain one of the key challenges of Italian border management. Moreover, being the guardian of an EU external border, many migrants are returned to Italy by other EU member States, under the Schengen/Dublin mechanisms which provide for returns to the first point of entry to the Union.

With regard to migrants arriving by sea, given the treacherous nature of these journeys, I have been impressed by the commitment of the Italian Coast Guard and the Guardia di Finanza to saving lives at sea through search and rescue operations. I am pleased to learn that the safety of those migrants travelling towards Italy remains their key priority in migration related operations at sea.

During my mission, I have also learned how the management of Italy's external borders has been harmonised and strengthened through the Schengen process and is further supported by the EU border agency FRONTEX. FRONTEX's work in strengthening Italy's search and rescue capacity is important. I am encouraged by recent positive steps such as the appointment of a Fundamental Rights Officer within FRONTEX. Nevertheless I am aware that the key focus of FRONTEX remains information and intelligence gathering. In Italy FRONTEX thus works predominantly with the Guardia di Finanza and the Border Police to combat irregular migration, migrant smuggling and other migration related crimes. I remain concerned that these security objectives still appear to overshadow human rights considerations. For example, I have learned that FRONTEX officers conduct interviews with migrants in Italian detention facilities in order to gather information on their journeys. However these interviews are conducted without any external supervision. It is thus essential that effective human rights standards be integrated into all departments and agencies related to border management.

Another matter of paramount importance are the bilateral cooperation agreements negotiated between Italy and its neighbours on the question of migration. Although the EU has negotiated a number of EU wide readmission agreements, the absence of a clear regional framework for such agreements, including a lack of minimum human rights standards, has led to the creation of a number of bilateral readmission agreements between Italy and its neighbours which often do not appear to have human

rights at their core.

Of particular concern is the Italy-Libya bilateral cooperation on migration. The 2008 agreement formalised cooperation to strengthen Libya's capacity to intercept irregular migrants on Libyan territory or territorial waters, even though Libya's record at effectively protecting the human rights of migrants was poor and reports of human rights abuses of migrants in Libya were frequent. In line with the decision of the European Court of Human Rights pronounced in the Hirsi case that such "push-backs" by Italian authorities towards Libya were not acceptable, the agreement is currently suspended and the Hirsi-defined push-backs appear to have ceased. However, Italy-Libya migration cooperation was recently reinforced through a 2012 *processo verbale*. This new political framework however, contains very little concrete information on strengthening Libya's normative framework and institutional capacities regarding the human rights of migrants.

Moreover, I have learnt of increased bilateral cooperation between Italian and Libyan authorities regarding search and rescue operations, including the provision of logistical and technical support to Libyan coast guards. Whilst increased search and rescue capacity in the Mediterranean is undoubtedly of paramount importance, I have observed that there appears to be a strong focus on strengthening the capacities of the Libyan authorities to intercept migrants hoping to reach Europe, on both their territory and in their territorial waters, and return them to Libya. In this context, I warn EU member states against a progressive "externalisation" of border control. In particular, considering the on-going difficulties of the Libyan authorities and the reports of human rights abuses against migrants on Libyan territory, this migration cooperation with Libya should not lead to any migrant being returned to Libyan shores against their will, either by Italian coast guards or Guardia di Finanza, or by Libyan coast guards with the technical or logistical support of their Italian counterparts.

I am also concerned by the bilateral readmission agreements recently negotiated between Italy and both Egypt and Tunisia. Pursuant to these two agreements, I have learned that nationals from these countries who irregularly enter Italy are processed very quickly. Once identified by their consulates, who are readily available, these migrants are provided with the appropriate documentation and returned, often within 48 hours, to their respective countries by prescheduled charter flights which depart biweekly. A speedy processing of such migrants, is indeed in the interest of everyone concerned to avoid lengthy identification or detention procedures. However, I have learned that Egyptian and Tunisian nationals are often held in ad hoc or temporary facilities, or in airport detention facilities that are not systematically accessible. In light of the short time frame, this raises concerns regarding the proper identification of all potential protection needs, including age assessment, claims for asylum and other vulnerabilities. Institutionalised transparent procedures at the national level should be established to ensure that this cooperation always be embedded in a human rights framework and have the safety, dignity and human rights of migrants as its central preoccupation.

In relation to the Greek border, Italian authorities confirmed that they are preventing irregular migrants from disembarking from vessels arriving from Greece, thus forcing them to return to Greece. I met with Afghan migrants of minor age who had passed through Greece and experienced these push backs. This has been justified as a case of implementation of the 1999 Greece-Italy readmission agreement, and described as a normal practice between Schengen States. Furthermore, it appears that no formal screening procedure is conducted, during which time migrants could have the opportunity to raise protection issues including claims for asylum. In light of the decision of *M.S.S. v Greece*, in which the European Court of Human Rights held that Greece was not a safe country of return for asylum seekers, and given the testimony I heard from migrants who transited through Greece regarding extreme xenophobic violence against migrants, Italy should formally prohibit the practice of informal automatic "push-backs" to Greece. All port authorities need to receive formal training about the human rights implications of these actions, and be made aware of the need for lawyers, civil society organisations and international organisations, including UNHCR and IOM, to have full access to the port and airport areas where such migrants might be present.

Aside from these activities directly at the border crossings, I remain concerned about the various centres that have been established for migrants identified at the border and elsewhere on the territory, such as First Contact Centres (*centri di primo soccorso e accoglienza*) and Centres for Identification and Expulsion (*centri di identificazione ed espulsione - CIE*). Whatever the terminology used by Italian authorities, such centres are closed facilities which should therefore be considered as detention centres in international law.

The conditions of detention in CIEs vary considerably, with two of the CIEs visited exhibiting significantly substandard conditions. Lack of proper activities, arbitrariness of decision making, insufficient medical care, lack of access to lawyers and NGOs, and poor facilities add to detainees' frustrations. Overall, a nation-wide comprehensive regulatory framework must be strengthened, taking advantage of the best practices observed in the present network of CIEs and in other facilities in Europe and around the world, and in accordance with international human rights law.

In particular, the application of a maximum period of detention of 18 months, although provided for under the EU Return Directive, is excessive in order to identify someone. I also remain concerned at the high number of ex-prisoners who are transferred from prison to CIEs. A process of identification should be initiated at the beginning of any prison term, to avoid unnecessary detention in CIEs at the end of their sentence. In a similar vein, Italian authorities should also develop a series of

alternatives to detention for migrants who pose no risk to the community and have ties to the country. Two categories of persons with whom I met in the CIEs should in particular be offered such alternatives, with procedural paths to access residence permits: stateless persons (especially when born or raised in Italy) and migrants who have been living in Italy for some time (sometimes for decades) in Italy, where they have established a professional and family life.

In this context, I acknowledge the recent Italian amnesty law providing for a regularisation of status of certain undocumented migrants who are working and meet particular criteria, which requires the collaboration of their employer. An important complement to this amnesty law must be implementation of the EU Employers' Sanctions Directive which would sanction Italian employers who abuse the vulnerability of migrants by paying them low wages (if at all) and forcing them to work in dirty, difficult or dangerous conditions. I have met with numerous irregular migrants who are being exploited by unscrupulous employers who, at present, seem to enjoy total impunity.

Also, the appeal system for expulsion and detention orders seems unnecessarily complex, requiring two separate parallel appeal procedures. Moreover, contrary to similar proceedings for EU citizens, the judge deciding the expulsion and detention of non-EU migrants is a lay judge (*giudici di pace*) without any particular expertise on immigration issues. A less convoluted and fairer system should be developed, that integrates human rights considerations at each procedural step, given the importance of the consequences of these migration related decisions.

I am also concerned that there is no general authority with investigative powers to monitor the activities of all places where migrants are held. I note the Praesidium Project is a positive step, as it provides a framework for access to some centres for a coalition of organisations including the IOM, UNHCR, the Red Cross and Save the Children. Yet, these organisations are still not given full and continuous access to all centers, most notably the temporary centers where the Tunisians and Egyptians are held for quick processing and removal. Furthermore, the monitoring and evaluation reports of Praesidium are not public documents, and allegedly the recommendations made have not been consistently implemented. Moreover, other organisations find it difficult to access the centres at will. Thus, it is necessary to move beyond the project-based Praesidium initiative and establish a nation-wide institutional framework in which NGOs, international organisations, journalists and lawyers can freely access and monitor the facilities, and the implementation of recommendations is transparent and easily monitored.

I am pleased to learn that the creation of a national human rights commission and the ratification of OP-CAT, which would lead to the establishment of a National Preventive Mechanism, are being discussed in Parliament. I hope that these bodies will be quickly and properly established, and will have the investigative powers they need to operate effectively, including the power to make unannounced spot checks in detention facilities.

Finally, I observe that Italy lacks up-to-date, accurate, detailed, disaggregated and public and accessible data on migration. In cooperation with the EU and other EU member States, Italy should develop a comprehensive national system of data collection, analysis and dissemination regarding immigration policies and practices, as it is vital for the future development of migration policies and programs in line with human rights standards.

Preliminary Recommendations to the Italian government:

- Ensure that migration cooperation with Libya does not lead to any migrant being returned to Libyan shores against their will, either by Italian authorities, or by Libyan authorities with the technical or logistical support of their Italian counterparts.
- Prohibit the practice of informal automatic “push-backs” to Greece.
- Guarantee the full access by international organisations, including UNHCR and IOM, civil society organisations and lawyers to all areas where migrants are held or detained to identify protection concerns
- Develop a nation-wide regulatory framework, with respect for human rights at its core, for the organisation and management of all migrant detention centres.
- Develop a simpler and fairer appeal system for expulsion and detention orders that integrates human rights considerations at each procedural step.
- Develop a speedier identification system, including commencing the identification of foreign inmates whilst in prison, in order to make sure that detention of migrants for identification purposes is limited to the shortest time possible, with a maximum of 6 months.