



## Asamblea General

Distr. general  
30 de abril de 2013  
Español  
Original: inglés

### Consejo de Derechos Humanos

#### 23º período de sesiones

Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

### **Informe del Relator Especial sobre los derechos humanos de los migrantes, François Crépeau**

#### **Adición**

#### **Misión a Italia (29 de septiembre a 8 de octubre de 2012)\* \*\***

#### *Resumen*

El Relator Especial sobre los derechos humanos de los migrantes realizó una visita a Italia del 29 de septiembre al 8 de octubre de 2012. Se desplazó a Roma, Florencia, Palermo, Trapani, Bari y Castel Volturno y mantuvo encuentros con funcionarios de la administración italiana, tanto a nivel central como local, organizaciones de la sociedad civil y colectivos de migrantes.

El Relator Especial reconoce que Italia ha desplegado un amplio entramado de leyes y políticas destinadas a gestionar la migración irregular y las fronteras, pero considera que aún queda mucho por hacer a fin de garantizar el pleno respeto a los derechos humanos de los migrantes.

\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó. El apéndice se distribuye tal como se recibió, únicamente en el idioma en que fue presentado.

\*\* Documento presentado con retraso.

## Anexo

[Inglés únicamente]

### Report by the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Italy (29 September–8 October 2012)

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## **I. Introduction**

1. From 29 September to 8 October 2012, the Special Rapporteur on the human rights of migrants, François Crépeau, conducted an official visit to Italy. The visit was undertaken as part of the Special Rapporteur's year-long study on the human rights of migrants at the borders of the European Union (EU). Accordingly, the focus of this report focuses on external border control, and does not provide a comprehensive overview of the broader human rights situation of all migrants in Italy.
2. During his mission, the Special Rapporteur visited Rome, Florence, Palermo, Trapani, Bari and Castel Volturno. He met with representatives of the Ministry of Interior, Ministry of Justice, the Italian Coast Guard, the Civil Protection Agency, the Guardia di Finanza, FRONTEX, and members of the Senate Commission for Human Rights. He also met with regional and local authorities and visited a number of Identification and Expulsion Centres (CIEs), liaised with the United Nations High Commission for Refugees (UNHCR) and the International Organization for Migration (IOM), and met with many migrants, many of whom were in an irregular situation.
3. The Special Rapporteur also consulted with numerous civil society organizations, lawyers, and academics working in the field of migration. He participated in a workshop organized by the Migration and Policy Centre at the European University Institute which brought together Italian and international experts in the field of Italian migration law and EU border management.
4. The Special Rapporteur expresses his sincere appreciation to the Government of Italy, for the support provided throughout the visit. He further thanks IOM and UNHCR for their support and assistance.

## **II. General background on Italy and migration: a brief overview**

5. Since the late 1800s, Italy was one of the leading emigration countries in Europe. Only in the early 1970s did Italy experienced net immigration. Since the 1980s, Italy transformed into one of Europe's most important immigration countries.
6. At the outset of the Italian immigration experience, immigration to Italy was viewed as a temporary phenomenon, a stopgap for persons on their way to other European destinations. Yet the steady rise in numbers of migrants to Italy throughout the 1980s soon made it apparent that Italy was becoming a destination in its own right.
7. Indeed, since 2000, Italy increasingly became a key destination country for irregular migrants from North and sub-Saharan Africa, embarking on perilous voyages across the Mediterranean, often from Libya, on unseaworthy vessels, and without proper crew or equipment. The Special Rapporteur notes that one reason for the arrivals of migrants, particularly from the Southern shore of the Mediterranean, has been Italy's proximity to the North African coastline and its extensive sea borders. Ongoing irregular sea arrivals have remained one of the key challenges of Italian border management.
8. Although data varies, estimates indicate that between 440,000 and 540,000 persons with an irregular migration status may currently be in Italy. The Special Rapporteur notes however, that these statistics reflect only those irregular migrants who come into contact with the Italian authorities and thus may not provide a comprehensive overview.

9. The Special Rapporteur notes that Italy experienced a sharp spike in the number of irregular sea arrivals in 2011, as a result of the Arab Spring. Approximately 60,000 irregular migrants arrived as part of the 2011 influx from North Africa.<sup>1</sup> The Special Rapporteur notes that subsequent research has indicated that this was a *sui generis* event, and that irregular migration to Italy in the subsequent years has returned to the levels prior to the Arab Spring.<sup>2</sup>

10. Mixed migration flows also appear to be increasingly arriving on the eastern coast of Italy by boat across the Adriatic Sea. It appears that many migrants are crossing the Adriatic. Whilst these movements involve an internal EU border, in many cases the persons concerned are third country nationals, who may in fact be in need of international protection, including unaccompanied minors and potential asylum seekers. Migrants reportedly hide themselves in dangerous ways as stowaways on commercial ferries coming from Patras and Igoumenitsa in Greece to Ancona, Bari, Brindisi and Venice in Italy, including underneath cars, in hidden compartments in efforts to remain undetected. Others forms of irregular entry across the Adriatic include via smaller boats arriving along the coast in unofficial ports.

### III. Normative and institutional framework on migration and border management

#### A. International legal framework

11. Italy is party to seven of the nine core international human rights treaties and their protocols. In 2007 it signed the International Convention for the Protection of All Persons from Enforced Disappearance, but has not ratified. It has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On 9 December 2012, Italy ratified the Optional Protocol Convention against Torture, which will enter into force on May 2 1013. Italy has signed but not ratified the Optional Protocol to the Covenant on Economic Social and Cultural Rights.

12. Italy has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; the 1951 Convention on the Status of Refugees and its 1967 Protocol; and the 1954 Convention on the Status of Stateless Persons. It has signed but not ratified the 1961 Convention on the Reduction of Statelessness. It has also ratified the International Labour Organization (ILO) C-97 Migration for Employment Convention (Revised), 1949; the ILO Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975; and the fundamental conventions of the International Labour Organization.<sup>3</sup>

<sup>1</sup> The situation of migrants and asylum seekers fleeing recent events in North Africa, Report of the United Nations High Commissioner for Human Rights, A/HRC/18/54.

<sup>2</sup> The Special Rapporteur takes note of Italy's management of the increased numbers of mixed migration flows to Italy in 2011: By implementing the rules provided for by the Civil Protection Law No. 225 of 1992, a migration "emergency" was declared in February 2011, and extended until the end of 2012. Under this scheme, the Italian Civil Protection Department within the Council of Ministers was empowered to establish an emergency system to assist these migrants, through the issuing of humanitarian temporary residence permits and by hosting people in reception facilities. It is beyond the scope of this report to analyse the effectiveness of the scheme.

<sup>3</sup> International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the

## **B. Regional framework**

13. The EU *acquis* on migration and asylum is applicable to Italy, as an EU member State, and Italy incorporated relevant EU directives into national legislation. Italy became a full member of the Schengen system on 1 April 1998. Furthermore, as an EU member State, Italy has an obligation to respect the EU Charter of fundamental rights when implementing EU law.

14. As a member state of the Council of Europe since 1949, Italy is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and has ratified its Additional Protocols, and the European Social Charter. It has also ratified the European Convention on the Legal Status of Migrant Workers (1995) and the Convention on Action against Trafficking in Human Beings (2010).

## **C. National legal, institutional and policy framework**

### **1. Legal framework**

15. Italy first introduced legislation specifically on immigration in 1986 with the Norms for the placement and treatment of migrants, migrant workers and against illegal immigration. In 1989, the country adopted the Martelli Law, which established provisions for the recognition of asylum seekers, legal procedures for the expulsion of irregular migrants, and time limits governing when non-citizens must depart Italy after being issued a deportation order.

16. In 1998, the first comprehensive legal framework on migration was put in place by the “Turco-Napolitano” Law 40/1998), which introduced mandatory detention for irregular migrants and provided for the establishment of migration detention centres (article 14). The overarching framework on migration was then entrenched in 1998 by the “Consolidated Act of measures governing immigration and norms on the condition of foreign citizens” (Legislative Decree No. 286 of July 25, 1998). This Act, and its subsequent modifications, guaranteed some basic rights for irregular migrants, including health care and education. A major amendment to the Consolidated Act came in 2002 by the so-called Bossi-Fini Law (Law 189/2002) which posited immigration principally as a problem of public order and led to the development of stronger measures to fight irregular migration, by giving more power to removals, longer periods of detention and increased penalties for migrants who failed to comply with the removal orders.

17. This approach was further consolidated by the so-called “Security Package” (Law 92/2008, and Law 94/2009), which aimed to fight “widespread illegality linked to illegal migration and organized crime”. Key aspects of the Security Package included the transformation of irregular immigration into a crime, the criminalization of aiding and abetting irregular migration including the crimes of providing housing or employment to irregular migrants, crimes related to the violation of the prohibition of re-entry, facilitated expulsion, and an extension of the period of detention for irregular immigrants to six months. Furthermore, the status of irregular migrant became an aggravating circumstance for other crimes. Law 129/2011 extended the maximum term of detention in a CIE from 6 to 18 months. It should be noted, however, that this

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Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

provision was declared unconstitutional by the Italian Constitutional Court but still remains law.

18. This legal architecture provides the framework for Italian migration law. Importantly, the law differentiates between “illegal immigration” and “irregular migration”. So called “illegal migrants” are defined as those who entered into Italy without any authorization for entry, whereas irregular migrants are foreigners who entered Italy regularly but who subsequently lose the requisite conditions for stay.<sup>4</sup>

19. Overall, the legislative framework provides that those both illegal and irregular migrants are not authorized to stay in Italy, and must be removed. If migrants do not have the requisite travel documents, Italian immigration law provides for refusal of entry and return to the country of departure for individuals intercepted at border points. If an undocumented migrant travels to Italy on a commercial carrier, that carrier is obligated under Italian law to carry out the return (*respingimento*) to the country of departure or the country that provided travel documents to the individual concerned (Consolidated Immigration Act 1998, article 10(3)). The law does stipulate, however, that foreigners be provided “necessary assistance” at the border, and for all returns to be recorded (articles 10(5) and (6)).

20. The Special Rapporteur also takes note of a number of periodic regularization programmes. During his mission, a law (Legislative Decree 109/2012) was in place which allowed for employers to regularize the status of certain irregular migrant workers, within defined criteria. Whilst a full analysis of this scheme is beyond the scope of the present report, the Special Rapporteur notes key criticisms of the law included the fact that it was geared towards employers, and rendered individual irregular migrant workers unable to access the scheme without the consent of their employer, and the associated high fees, which was a further obstacle to obtaining employer consent.

21. The Italian Constitution further guarantees a number of important rights for all persons in Italy. Firstly, the Constitution guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed (article 2). The Constitution explicitly recognizes general principles of international law, and provides that the legal status of foreigners is regulated by law in conformity with international provisions and treaties. It also recognizes the right to asylum (article 10.3).

22. The Constitution further provides that personal liberty is inviolable and that no one may be detained without an order of the judiciary and in a manner provided for by the law. Only in exceptional circumstances, prescribed by law, can provisional detention be ordered, but such cases must be referred within 48 hours to the judiciary, and any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished (article 13). Moreover, anyone may bring a case before a court of law in order to protect their rights under civil and administrative law, and legal defence is considered an inviolable right at every stage and instance of legal proceedings (article 24).

## 2. National institutions and policies

23. The Ministry of Interior, through its Department for Civil Liberties and Immigration, has the key responsibility for the protection of civil rights, including in respect of immigration, asylum and citizenship. Within the Department, the Central Directorate for immigration and asylum policies is generally responsible for developing migration policies adopted by the Government. Border management falls within the competence of

<sup>4</sup> See <http://www.interno.gov.it/mininterno/export/sites/default/it/temi/immigrazione/sottotema002.html>.

the Central Directorate for Immigration and Border Police (Law No. 189/2002) that is under the Public Security Department of the Ministry of Interior.

24. The Department for Civil Liberties and Immigration is also responsible for the establishment and oversight of the First Aid and Reception Centres, reception centres for asylum seekers (CARA) and the CIEs, both of which are run in collaboration with the relevant local Prefectures and also often in tripartite agreement with private companies (see below detention section).

25. The Central Directorate has the exclusive competence in the area of actions at sea, and gathers and examines information relating to surveillance, and other activities at sea, as well as coordinates interventions (Interministerial decree 14 July 2003). Since July 2004, a specific agreement specifies the key procedures and the different competences and responsibilities in coordinating resources regarding irregular migration at sea. Signatories to the agreement include the Navy, the General Command of the Tax and Customs Police (*Guardia di Finanza*), the General Command of the Carabinieri, the General Command of the Port Authorities (*Guardia Costiera*).

26. The Ministry of Foreign Affairs, through the Office for Migration and Asylum Policies, is responsible for the development of bilateral agreements in migration matters and for translating EU developments in the field of migration into Italian. The Visa Office of the Ministry is also responsible for determining the relevant visa entry regulations. The Ministry also hosted the Interministerial Committee of Human Rights, which was made up of representatives of relevant ministries and has been active in the field of migration policy. It should be noted, however, that Decree 95/2012 abolished all committees including the Human Rights Committee, which the Special Rapporteur regrets.

27. Other institutions that have been active in the field of migrants' rights include the Human Rights Committee of the Chamber of Deputies and the Human Rights Committee of the Senate. In 2006, the Senate Committee established the De Mistura Commission, which examined the situation of the centres for persons awaiting expulsion and concluded that the conditions of detention were unacceptable.<sup>5</sup> In March 2012, the Human Rights Commission of the Senate published another report on the situation of Human Rights in detention, reception centres for migrants and expulsion centres.<sup>6</sup> Furthermore, the Ministry of Labour and Social Policies – General Directorate of Immigration and Integration Policies works on the protection of unaccompanied minors and integration of third country nationals.

28. Another Committee, presided over by Undersecretary of State Prof. Ruperto, was also established to analyse the situation in the detention centres within Italy and make proposals for improvements. At the conclusion of the task, the Ruperto Committee report, which was approved by the Minister of Interior in 2013, contained a number of important proposals.

29. While there is a national ombudsman office, complaints to the ombudsman can only be made by citizens. However, certain regional and provincial ombudsmen may receive complaints from non-citizens. Local authorities, including the prefects' offices, also play an important role, particularly in locales where detention or reception centres are located.

30. The Special Rapporteur notes that Italy has yet to establish a national human rights institution in compliance with the Paris Principles. While he was pleased to learn that the text of a draft law was approved in April 2007 by the Chamber of Deputies, it remains to

<sup>5</sup> See <http://www.poliziadistato.it/articolo/view/964/> (accessed 25 April 2013).

<sup>6</sup> *Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia, Commissione straordinaria per la tutela e la promozione dei diritti umani, Senato della Repubblica, marzo 2012.*



be endorsed by the Senate. The Special Rapporteur hopes that the national human rights institution will be established quickly and properly, and will explicitly have the power to make unannounced spot checks in detention facilities. Moreover it is important that it have a mandate to deal with the human rights of migrants, and that all migrants, regardless of their status, be explicitly empowered to make complaints to the body.

31. The Special Rapporteur is also pleased to learn that Italy ratified the Optional Protocol to the Convention against Torture (OPCAT) in November 2012. One important corollary of the ratification of OPCAT will be the establishment of a national preventive mechanism, with the mandate to conduct unannounced spot checks on detention facilities.

#### **D. Italy and the EU: Influence on national laws, policies and institutions in the sphere of migration management and border control**

32. Since the implementation of the Schengen acquis by Italy in 1998, Italy has become a key point of entry into the EU Schengen area, and its coastline has thus become one of the major external sea borders of the EU.

33. During the 1980s, traditional European immigration countries insisted that the lack of control of Southern European countries, such as Italy, was creating “backdoors” for irregular migration to Europe. In this context, various regional initiatives were established to coordinate entry policies at a supranational level. This coordination provided the basis for the Schengen Agreement of June 1985 and the subsequent Implementation Convention of June 1990. (See A/HRC/23/46 for more details.)

34. In this context, the Special Rapporteur observes the impact of Schengen on irregular migration in Italy. Under the Schengen system, any irregular migrant who is registered in Italy will be returned to Italy even if they move to another country within the EU. In the context of undocumented and irregular migrants, this can create a de facto situation where irregular migrants become stuck in Italy. The Special Rapporteur met with many such migrants, who had established lives for a number of years in another European country, but who, upon being detected as irregular, were returned to Italy where they had no ties or viable prospects. Moreover, for those without documents, often become trapped in Italy, as they are unable to travel to other countries within the EU, or safely return home.

35. The Dublin II regulation creates a similar mechanism, whereby asylum seekers can only apply for asylum in their country of first entry to the EU. This also creates a situation where persons who may in fact have a valid asylum claim avoid lodging that claim in Italy as they believe they will not receive adequate protection or opportunities, as many asylum seekers in Italy do not receive social benefits, and become homeless. Moreover, they often lack family or community ties in Italy which they may have in other EU member States. This includes minors, and the Special Rapporteur met with a number of underage irregular migrants who expressed reluctance to file for asylum in Italy for these reasons. The Special Rapporteur notes that this demonstrates that the impact of the Dublin Rule exacerbates vulnerabilities by creating a situation in which persons with valid asylum claims choose not to lodge their claims but rather continue their journey as undocumented migrants, and are at a high risk of exploitation.

## IV. Border management

36. The Special Rapporteur observed a tendency towards a progressive “externalization” of border control through bilateral agreements, including on readmission but also on rescue at sea and technical cooperation. In this regard, the Special Rapporteur has observed the important influence of the EU, and its increasingly securitized approach to border management, on the development of Italy’s now more security-focused migration policies.

### A. Rescue at sea

37. The Special Rapporteur was pleased to learn that the safety of migrants travelling towards Italy remains the key priority of both the Italian Coast Guard and the *Guarda di Finanza* in migration-related operations at sea. The Special Rapporteur also learnt of the challenges in these Search and Rescue (SAR) operations, which are often carried out under very precarious and dangerous conditions for all involved, including the SAR teams.

38. Nevertheless, in 2011 alone, at least 1,500 persons are estimated to have died while attempting to cross the Mediterranean. Whilst the Special Rapporteur in no way wishes to imply Italian authorities are singlehandedly responsible for these tragedies, the data make apparent the need for ongoing attention to this issue.

39. The Special Rapporteur further notes that, while international law clearly delineates responsibilities for SAR at sea, there appears to be a blurring of these lines, effectively enabling operations that might otherwise be carried out by Italian authorities to be carried out by non-European counterparts, including through the provision of logistical and technical assistance. Whilst such operations appear to prioritize the saving of lives, in effect they may have the result of externalizing the control of the sea border. For example, in Tunisia, the Special Rapporteur met with some Somali women who had sought to reach Italy irregularly on a small boat. Whilst allegedly in Italian territorial waters, the boat began to leak and they issued a distress call. Yet despite being in Italian territorial waters, following negotiations between Italy, Malta and Tunisia, the Tunisian SAR team was called to carry out the SAR operation, and the migrants were returned to Tunisia, where they found themselves in the Choucha camp.

### B. Cooperation with FRONTEX

40. The management of Italy’s external borders has further been supported by the EU border agency FRONTEX. FRONTEX’s work in strengthening Italy’s search and rescue capacity through the provision of air assets and other vessels to be able to more easily carry out rescue operations safely at sea is crucial. In Italy, FRONTEX works with the *Guarda di Finanza* and the Border Police to combat irregular migration, migrant smuggling and migration related crimes. In addition, FRONTEX reportedly plays a key role by contributing experts who assist the Italian authorities in identifying migrants when they reach the reception facilities.

41. FRONTEX has two active operations in Italian territorial waters. Joint Operation Hermes (2011) was established at the request of the Italian Government, and provides surveillance by air to detect migrant flows from Tunisia towards the south of Italy. The Hermes mission is comprised of experts from EU member States, and also included Italian and Maltese aerial and naval support. The role of the estimated 30 experts includes debriefing and interviewing migrants, in order to accumulate data regarding migration flows, and to enable early detection and prevention of possible criminal activities at the EU external borders. The mission also provides assistance in

returning migrants who have been refused permission to remain in the EU to their home country.<sup>7</sup> In the context of Hermes, FRONTEX has also deployed 20 expert personnel to immigrant detention centres in Crotone in Calabria, Caltanissetta and Catania in Sicily, and Bari in Puglia in order to interview migrants to gather data. A second operation, named *Aeneas* (2011), has similar goals, but focuses more on the Eastern shore, in Apulia and Calabria, and on crossings from Greece, Turkey and Egypt.

42. While increased capacity for saving lives is important, the Special Rapporteur remains concerned that FRONTEX prioritizes its security objectives over human rights considerations. Of particular concern is the fact that FRONTEX officers allegedly are conducting interviews with migrants in Italian detention facilities in order to gather information on their journeys. These interviews are conducted without any external supervision, and it is unclear if human rights concerns arise in these interviews, they are dealt with or reported upon.

## C. Bilateral agreements

43. Other significant issues in the context of Italian border management are the bilateral cooperation and readmission agreements negotiated by Italy and its neighbours. The Special Rapporteur notes that these agreements, which are the result of private consultations, are used as a means of bilateral border control, however often without sufficient human rights safeguards. Furthermore, the Special Rapporteur notes the lack of transparency surrounding such agreements: not only are negotiations seemingly conducted with very little external oversight or input, but often the final text is not publicly available, thus contributing to uncertainty regarding the content, interpretation and implementation of these agreements.

### 1. Italy and Libya

44. A Treaty on Friendship, Cooperation and Partnership, signed in August 2008 formalized cooperation with Libya to strengthen its capacity to intercept irregular migrants on Libyan territory or territorial waters, despite Libya's poor record at effectively protecting the human rights of migrants. This agreement, which came into force in February 2009, established a coordination unit for an Italian-Libyan joint patrol. Whilst the number of irregular boat landings in 2009–2010 did decline, the arrangement was harshly criticized, including by the European Court of Human Rights in the *Hirsi* case, which found Italy to be in breach of the European Convention on Human Rights for intercepting and forcibly returning to Libya a group of Somalis and Eritreans, without examining their protection needs (the “push-back” policy).

45. On 17 June 2011, Italy signed a Memorandum of Understanding (MoU) with the then-rebel National Transitional Council, which referred to earlier commitments contained in the former agreements and provided for mutual assistance and co-operation in combating irregular immigration, “including the repatriation of immigrants in an irregular situation.”<sup>8</sup> Furthermore, the rebels agreed to honour several accords signed between Italy and Gadhafi, including the deportation of irregular immigrants without proper status. In effect, this Memorandum created a joint coordination committee whose function was to prepare for the reactivation of Italy-Libya Friendship Agreement as soon as a new Libyan Government assumed office.

<sup>7</sup> See [https://www.dur.ac.uk/ibru/news/boundary\\_news/?itemno=11608&rehref=%2Fibru%2Fnews%2F&re subj=Boundary+news%20Headlines](https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=11608&rehref=%2Fibru%2Fnews%2F&re subj=Boundary+news%20Headlines) (accessed April 2013).

<sup>8</sup> Available at: [https://wcd.coe.int/ViewDoc.jsp?id=1826921#P222\\_51045](https://wcd.coe.int/ViewDoc.jsp?id=1826921#P222_51045).

46. The Special Rapporteur was informed that the original 2008 Treaty on Friendship has been suspended and that the *Hirsi*-defined push-backs have ceased. Yet, on 3 April 2012, Italy entered into a new *Processo Verbale* with Libya to combat unauthorized departures of migrants from Libya.<sup>9</sup> The current agreement establishes that Italy will assist Libyan police forces with training and technical tools to control the border, proposes mechanisms for information sharing on irregular migrants and illegal smuggling networks and proposes construction of a detention centre in Kufra for irregular migrants. Moreover, the agreement stated the urgency of obtaining necessary support from the European Commission for reopening the detention centre. There is also emphasis on bilateral cooperation between Italian and Libyan authorities regarding search and rescue operations, including the provision of logistical and technical support to Libyan coast guards.

47. The Special Rapporteur remains concerned that this new framework for Italian-Libyan cooperation contains very few concrete human rights safeguards, and does not include specific protection safeguards for asylum seekers and refugees. Moreover, although the Italian Government insists it is an official treaty, it has not been entered into any official registry and the text is only available through unofficial means. Furthermore, the Special Rapporteur observes that, whilst increased search and rescue capacity in the Mediterranean is undoubtedly of paramount importance, there appears to be a strong focus in the agreement on strengthening the capacity of the Libyan authorities to intercept migrants hoping to reach Europe, on their territory and in international and Libyan territorial waters. In particular, considering the ongoing difficulties of the Libyan authorities and the reports of human rights abuses against migrants on Libyan territory, the Special Rapporteur notes that any cooperation in the sphere of migration 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.

## 2. Italy and Tunisia and Egypt

48. The Special Rapporteur also remains concerned at recent bilateral readmission agreements negotiated between Italy and Egypt and Tunisia. Pursuant to these agreements, nationals from these countries who have entered Italy irregularly are taken immediately to specific locations for identification by their consulates, which are readily available to carry out identification procedures. Once identified, these migrants are provided with the necessary documentation and returned, often within 48 hours, to their respective countries by prescheduled charter flights. For Tunisians, this identification allegedly takes place at the Palermo airport.

49. The Special Rapporteur notes that the speedy processing of such migrants is indeed in the interest of everyone concerned to avoid lengthy identification or detention procedures. However, during this expedited identification and return, Egyptian and Tunisian nationals are often held in ad hoc or temporary facilities, that are not systematically accessible to non-governmental organizations (NGOs), lawyers or international organizations. Moreover this expedited process does not ensure the proper identification of all potential protection needs, including age assessment, claims for asylum and other vulnerabilities. The Special Rapporteur urges bilateral arrangements fully integrate minimum human rights standards and be accompanied by transparent procedures which focus on the safety, dignity and human rights of migrants.

<sup>9</sup> A copy of the *Processo Verbale* is available at: <http://www.statewatch.org/news/2012/sep/ita-lib-processo-verbale.pdf>.

### 3. Italy and Greece

50. As noted above, irregular arrivals of migrants via Greece are an increasing phenomenon. In this context, there is a 1999 Greece–Italy readmission agreement, which requires both parties to accept the return of undocumented migrants when authorities can demonstrate they have travelled irregularly from one country to the other. In fact, the numbers of returns to Greece under this procedure do not appear to be very high.<sup>10</sup>

51. However, the Special Rapporteur is very concerned by another practice – the unregistered return of irregular migrants who are detected as stowaways arriving by ferry to Italy’s Adriatic ports. These ferries, often originating from Patras and Igoumenitsa in Greece, disembark in the Italian ports of Ancona, Bari, Brindisi and Venice. According to testimonies received by the Special Rapporteur, migrants intercepted on ferries are placed in the custody of the ferry’s captain and are not allowed to disembark from the vessel. They are reportedly detained on board in precarious conditions, with reports indicating that they were tied up or locked in cabins, often for extensive periods including for up to 18 hours or more. They are then sent back to Greece on the same vessel, and subsequently handed over to the Greek authorities, at risk of ill-treatment and degrading conditions of detention.

52. The Special Rapporteur notes that these “push-backs” appear to be taking place without appropriate safeguards or procedures in order to properly identify any special protection needs, such as asylum claims, despite the existence of Italian law that provides for the right to claim asylum and to be provided with relevant information and assistance” (article 11, comma 6 of Legislative Decree 286/98). Moreover, although each port authority has reportedly signed agreements with specific NGOs to assist migrants, these organizations report inconsistent and limited access to affected individuals. In particular, the Special Rapporteur was told that the Border Police does not systematically inform these NGOs about detected irregular arrivals, and some NGOs have reported that they are restricted from access to the “sterile zone” – the area where these persons are held until they are sent back. Access to asylum procedures seems to be dependent on the decision of the Border Police at the ports, who often have limited knowledge of international framework of protection for asylum seekers. Moreover, members of the Praesidium project, which is an initiative of organizations – including IOM, UNHCR, the Red Cross and Save the Children – have also reported limited or no access to persons in the port.

53. Another grave concern appears to be the fact that, through these push-backs, unaccompanied minors are being sent back to Greece. The return of unaccompanied minors is in direct contravention of international<sup>11</sup> and Italian law.<sup>12</sup> The Special Rapporteur met with a number of Afghani unaccompanied minors who confirmed this practice, one of whom reported being pushed back twice on Greek ferries, without being asked about their age, without access to interpretation or NGO advice, or any information about access to asylum procedures.

54. The Special Rapporteur learned from the Italian Authorities that these returns are considered justified due to the 1999 bilateral readmission agreement between Italy and Greece. The application of the readmission agreement in this context, however, appears dubious. The readmission agreement allows for readmission of a Greek national, and not a foreigner, to Greece, and furthermore makes no distinction between adults and minors. Furthermore, it appears that these individuals are returned without any procedure of

<sup>10</sup> HRW reports only 214 migrants were actually readmitted to Greece in 2011 and the first six months of 2012. HRW Open Letter regarding summary returns to Greece. TBC.

<sup>11</sup> United Nations Committee on the Rights of the Child, General Comment No. 6 paras. 19–22, 26.

<sup>12</sup> Consolidated Immigration Act art. 19(2). United Nations Committee on the Rights of the Child, General Comment No. 6 paras. 19–22, 26.

readmission, or requesting permission from Greece, and thus should be considered beyond the scope of the Readmission Agreement. The EU Schengen framework was also mentioned as a key legal justification for such returns, as it was stated that such action is justified within the EU Schengen free movement area. Yet the Special Rapporteur notes that the Schengen Border Code clearly states that it will only operate in respect of fundamental rights and must be applied in accordance with the member States' obligations as regards international protection and non-refoulement (article 20). Moreover, the Code stipulates that border police at internal EU borders should not carry out checks unless there is a threat to public security or of cross-border crime.<sup>13</sup> It is also important to state that, as the readmission agreement predates the Schengen Agreement, it must be interpreted in the context of Schengen, which does not envisage the possibility of such push-backs.

55. 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 extreme xenophobic violence against migrants in Greece and a precarious detention system, Italy should formally prohibit the practice of informal automatic "push-backs" to Greece. Furthermore, formal screening procedures must be implemented, during which any migrant detected by a port authority should have the opportunity to raise protection issues, including claims for asylum. All port authorities should receive formal training about international human rights law, including the right to seek asylum and children's rights, and be made aware of the need for lawyers, civil society organizations and international organizations, including UNHCR and IOM, to have full access to the port and other areas where migrants might be present.

## V. Detention of migrants in an irregular situation

56. The Special Rapporteur visited a number of CIEs where migrants are held, including in Rome (CIE Ponte Galeria), Trapani (CIE Milo), and Bari (CIE Palese).

### A. Detention practices and legislation

57. Those migrants who arrive irregularly are often first sent to in First Assistance and Reception Centres (CSPA). These centres are intended to provide immediate first aid assistance to persons arriving irregularly in Italy. While the Government assured the Special Rapporteur that persons were usually only held for 48 hours in such centres, other reports received by the Special Rapporteur indicate that people are sometimes held for several days or weeks in these locations. Moreover, there is limited access to some of these centres by external monitors, and decisions being made about where persons are sent onto appear to be made with little oversight. The CSPA in Lampedusa, perhaps the most well-known of the CIE, opened in January 2009 with a maximum capacity of 800 persons, is not functioning since it was declared a non-safe area on 16 May 2009. However, Lampedusa now is being used in emergencies, as a temporary identification facility, with migrants reportedly being moved out fairly quickly to other centres in Sicily.

58. CIEs are centres where migrants are sent in order to be fully identified and removed from the territory. In order to be held in the CIEs, which are established by decree of the Minister of Interior, a detention order by a relevant authority is required. Initial detention orders are for a period of 30 days. These can be extended at the request of the Police Commissioner (*Questura*), with a maximum detention period of 18 months (Law 89.2011). Both detention and removal orders must be confirmed within 48 hours, a task

<sup>13</sup> Schengen Border Code art. 21.

which in 2004 (Decree Law n.241/2004) was assigned to a Justice of the Peace (*giudice di pace*). Appeal against the removal or detention order may be presented within 60 days before the Justice of the Peace where the authority ordered the expulsion or detention. Italian law provides that for the validation of the expulsion/detention orders, an appointed defence lawyer has to be present.

59. If, at the expiration of the detention period in a CIE, the expulsion order cannot be executed, the Police Commissioner must release the foreigner and order them to leave the country within seven days. In the event that the individual does not comply and is apprehended by the police, they may be ordered to pay a fine of between 10,000 and 20,000 and can be detained in a new in a CIE and subject to another removal order.

60. According to the law, unaccompanied children cannot be detained and are to be issued with a residence permit (Decreto Legislativo 286/98, article 19.2.a). Other vulnerable categories of migrants, such as victims of trafficking or asylum applicants, cannot be removed.<sup>14</sup> Other provisions further protect minors, and pregnant women and their spouses, or parents of new born babies up to six months old. However, the Special Rapporteur notes that certain practical obstacles, including lack of cooperation of countries of origin of irregular migrants, statelessness, and difficulties in the identification of persons subject to a removal, are other reasons for which these orders are not able to be carried out.

61. CIEs are managed at the local level by the prefectures. Local prefectures have service contracts with a variety of private entities, including private management companies, and non-governmental groups, for the provision of basic needs and services within facilities.

62. The Special Rapporteur observes that whatever terminology is used by Italian authorities, as such centres are closed facilities and involve a deprivation of liberty, they therefore should be considered as detention centres under international law.

## B. Conditions of detention

63. Italian law establishes minimum conditions for detention. Legislative Decree 286/1998, article 14.2, provides that detainees in CIEs must be detained in a way that guarantees the necessary assistance and full respect of their own dignity. Presidential Decree 394/1999, article 21.2, further provides that detention centres should provide detainees essential health services, activities for their socialization and freedom of worship. Furthermore, the Ministry of Interior has developed guidelines which detail all services to be provided and items to be distributed in CIEs.

64. The Special Rapporteur welcomes these overarching principles as they provide the necessary foundation for minimum conditions of detention in accordance with international law. Nevertheless, the lack of applicable nationwide standards appears to leave a large margin of discretion to centre managers. Indeed, from his visits to three different CIEs, he observed varying conditions, with two of the CIEs he visited exhibiting significantly substandard conditions.

65. In all the centres visited, the Special Rapporteur observed a lack of proper activities for detainees. Indeed, in *Ponte de Galeria*, detainees were denied access to books or pens and paper, lacked access to television and news, and were deprived of proper footwear, allegedly in an attempt to avoid self-harm. This lack of activity had a direct bearing on the mental state of detainees, who were often abject and desperate. While CIEs have arrangements with NGOs that come into the centre to provide services, including cultural

<sup>14</sup> Legislative Decree 286/98, art. 19, para. 1.

and religious and educational programmes, these arrangements appear to be developed on an ad hoc basis and are not a permanent fixture of all centres.

66. Moreover, poor facilities, including lack of adequate facilities for exercise, intermittent hot water, poor hygiene, including limitations on soap and laundry, jail-like conditions in which detainees are locked in cells, and lack of privacy, coupled with a lack of a clear framework on how specific requests by detainees are handled by staff, added to detainees' and personnel's frustrations.

67. The Special Rapporteur notes the highly militarized design of the recently constructed CIE Milo. The facility had an almost military feel, with high wired fences, and cell-like conditions. In particular, many detainees interviewed noted that living conditions in Italian jails were better than those in CIEs.

68. Another issue of concern for the Special Rapporteur was the medical care provided in the centres. While each of the centres visited had medical personnel, detainees commented that they did not always receive adequate treatment, with many reporting the same painkiller being handed out for a wide range of ailments. Furthermore, the Special Rapporteur remains concerned at the high levels of prescription of psychotropic medications, prescribed by doctors who are not necessarily experts in mental health. Other indicators of mental health concerns include repeated incidences of self-harm, and self-mutilation.

69. While the Special Rapporteur acknowledges the importance of the cultural mediators who work in the centres, it is important to mention that, in contrast with the Italian Penitentiary Police, who receive specific training to work in closed environments, the staff of CIEs are not prepared and recruited for the purposes of working in such environments, and often have limited experience working with foreigners.

70. The Special Rapporteur is also concerned that there is no general investigative authority to monitor conditions of all places where migrants are held. The lack of a national ombudsman with investigative powers or a national human rights institution is particularly felt in this regard. The Special Rapporteur welcomes the Praesidium project, mandated by Government to access and monitor centres where migrants are held. However, the Praesidium initiative is project-based, and participating organizations reportedly find it difficult to access all temporary or informal centres where migrants are detained. This is particularly true in respect of the temporary centres where the Tunisians and Egyptians are held for quick processing and removal or port zones. Furthermore, the monitoring and evaluation reports of Praesidium are not publicly disclosed, and allegedly the recommendations made have not been consistently implemented. The Special Rapporteur is also concerned at continued reports of journalists and NGOs indicating they experience difficulty accessing these centres, despite a judicial decision in May 2012 repealing a decision which limited journalists' access to the centres, and despite the clear provision under EU law allowing NGOs to visit detention facilities (EU Directive 115/2008, article 16, paragraph 4). Thus, the Special Rapporteur notes that it is necessary to establish a nationwide institutional framework in which NGOs, intergovernmental organizations, journalists and lawyers can freely access and monitor the facilities, and the implementation of recommendations is transparent.

71. The Special Rapporteur was pleased to note that in June 2012 the Ministry of Interior set up a task force to analyse the regulatory, organizational situation in the CIEs tasked with making proposals to improve their functioning and ensuring uniform standards. In February 2013, a Policy Paper for the Management of the CIEs was drawn up in this regard.



### C. Length of detention

72. The maximum period of detention in Italy is 18 months, which conforms to the maximum allowed by the EU Return Directive. Particularly in cases where identification seems highly unlikely or impossible (for example when the authorities of the country of origin refuse to identify a detainee as their citizen), pursuing detention for the maximum period does not serve a useful purpose. However, the decision regarding the length of detention appears to be largely discretionary, depends on the attitude of the local authorities running the detention centre, with practices varying considerably between regions.

73. Thus, the Special Rapporteur learnt that in certain CIEs, such as in Bari-Palese, when identification has not been possible within six months, extension of detention orders is often not requested. In other CIEs, such as in Milo or in Ponte Galleria, the policy seemed to be to keep all detainees up to the maximum time allowed, whatever their circumstances, unless they are deported, seemingly for deterrence purposes. In Milo, the Special Rapporteur met with a detainee who had been sent to their alleged consulate for identification 14 times in the past 15 months, always with a negative result: this practice seems to be uselessly repressive.

74. Importantly, the Ruperto Commission report recently endorsed by the Minister of Interior has proposed that the maximum period of detention be reduced to 12 months.

### D. Access to justice in detention

75. As noted above, the appeal system for expulsion and detention orders is unnecessarily complex, requiring two parallel appeal procedures in the city where the order was made, which often requires the hiring of a local lawyer. This can be very difficult for migrants to navigate, as migrants may not speak the language, have limited access to information in detention facilities, and often have limited access to funds or legal advice. Furthermore, even if both orders were issued in the same city, the bifurcation of the process still requires two separate proceedings. Moreover, contrary to similar proceedings for EU citizens, the judge deciding whether expulsion and detention orders should be extended is a Justice of the Peace without any particular expertise on immigration issues. Moreover, there seem to be limited ability of these lay judges to review the detention orders on the merits: rather, the confirmation of the orders appears to be limited to formal checks, thus resulting in a lack of real judicial control over the order.

76. While the Italian legal system should be commended for the fact that it ensures the right of legal representation, including to irregular migrants, in practice, court-appointed lawyers for migrants appealing their expulsion or detention orders are often not specifically trained in migration and asylum matters. The Special Rapporteur further observes that the current Italian legal aid guarantees do not include extra support for special cases where experts, such as doctors or psychologists, are needed to visit detainees or to write reports. Furthermore, full interpretation is not always granted throughout the whole legal procedure.

77. Although some migrants are able to engage private lawyers, irregular migrants in detention are easy targets for dishonest lawyers who wish to make extra money. The Special Rapporteur thus urges Italian authorities to work together with bar associations to ensure that migrants are able to access proper legal representation.

78. The Special Rapporteur believes that a general normative framework for all CIEs should be established, incorporating some of the better practices observed in the various CIEs, such as those observed in Bari-Palese.

## **E. Asylum seekers**

79. When a migrant who is already detained in a CIE makes an application for asylum, the expulsion order is suspended, pending the evaluation of the asylum claim. The assessment is made by the competent territorial commission, which is composed of two officials of the Ministry of the Interior, a representative of the local authorities and a representative of UNHCR. Despite this safeguard, the Special Rapporteur learned that some migrants detained in the CIEs were expelled to their countries of origin, despite having previously expressed their desire to make an asylum claim, however, prior to the formal registration of that claim. Another concern also relates to those migrants reportedly repatriated while still awaiting a judicial decision on their request to suspend the repatriation procedures following a negative decision on their international protection application made by the competent Territorial Commission.

## **F. Special categories of detainees**

### **1. Prisoners**

80. The Special Rapporteur is very concerned about the high number of ex-prisoners who are transferred from prison to CIEs. For example, at the CIE Ponte Galeria in Rome, a majority of detainees were in fact former prisoners who had served their prison sentences. The ex-prisoners were often unaware that they would be transferred to a CIE at the completion of their sentence, and often had no clear indication of how long they would be held there, with some being held for numerous months. The Special Rapporteur notes that a process of identification should be initiated at the beginning of any prison term, to avoid unnecessary detention in CIEs of prisoners. Indeed, given the large proportion of ex-prisoners being held in CIEs, if prisoners were identified whilst serving their sentences and deported upon completion of their prison term, the number of persons held in CIEs would diminish significantly.

### **2. Stateless persons**

81. The Special Rapporteur encountered numerous detainees in CIEs who in fact did not have citizenship of any country. These stateless persons have little possibility of being identified, yet nevertheless are detained, often for extended periods. Of particular concern to the Special Rapporteur were stateless persons with particular ties to Italy. These cases often involved Roma, who often were born in, or have longstanding ties to Italy, speak Italian, and have no other country of citizenship. Stateless Roma detainees, the Special Rapporteur was told, were often detained for a number of months, and eventually released with an order to leave the country. They of course do not leave, as Italy is the only home they know, but often find themselves detained again. This vicious cycle appears to serve no legitimate legal or policy aim and in practice simply serves to undermine the human rights of the affected persons.

### **3. Minors**

82. Italy has a strong commitment to avoiding the detention of minors in CIEs. However, individuals have been detained as adults based on an age assessment report (usually wrist X-rays) in spite of the fact that they had received copies of their birth

certificate, according to which they are minors. In some cases, minors were released from detention, while, in other cases, they were kept in detention until the consular representation of the country of origin could have provided final confirmation on the age of the person concerned. Moreover, the Special Rapporteur received reports of minors being detained in the first aid and reception centres for extended periods of time. Italy still lacks an adequate nationwide multidisciplinary age determination procedure, a necessary precondition to ensure that children are treated as such and are granted forms of protection tailored to their specific vulnerabilities and needs.

#### **4. Others**

83. The Special Rapporteur also observed that there appeared to be no standard procedures to deal with persons with specific vulnerabilities or special needs in CIEs, including persons with health or psychological problems, victims of torture, victims of trafficking, or lesbian, gay, bisexual, transgender and intersex persons.

### **G. Alternatives to detention**

84. Apart from the case of minors, who are legally exempt from detention and generally placed in special care, the Special Rapporteur notes that Italy appears not to have developed any meaningful alternatives to detention for migrants. Detention should only be considered for migrants who present a danger to themselves or to others, or where there is an established risk that they may abscond from future judicial or administrative proceedings. Non-custodial measures should always be considered before detention.<sup>15</sup>

85. The Special Rapporteur thus urges the Italian authorities to undertake an individual assessment of the necessity of detention in all cases. Such alternatives are particularly important for specific categories of migrants who cannot be properly identified, and stateless persons, especially when born or raised in Italy. Furthermore, the Special Rapporteur notes that other migrants who pose no risk to the community and have ties to the country should be exempt from long periods of detention. Detention is not a suitable solution for such persons, and Italy should seek to develop adequate alternatives, including establishing procedural paths to access residence permits.

## **VI. Cross-cutting concerns**

### **A. Labour exploitation**

86. During the course of his visit, the Special Rapporteur met with numerous irregular migrants working in informal sectors, many of whom were being exploited by unscrupulous employers, who appeared to enjoy total impunity. Employers appear to exploit the fact of the migrants' irregular status by requiring them to undertake strenuous physical labour for long hours, and often paid far below the minimum wages, or not at all.

87. In Castel Volturno, the Special Rapporteur was shocked by the conditions of migrant workers he encountered. The migrants, for the most part men from sub-Saharan Africa with irregular migration status, lived in abhorrent conditions, in overcrowded houses, without proper sanitation. The Special Rapporteur learned that the wages received were often not sufficient to maintain an adequate standard of living, with reports of being paid €20 or less for a full day of difficult manual work. Furthermore, many workers

<sup>15</sup> A/HRC/20/24, which focuses on alternatives to detention.

reported that they were often at the mercy of authorities, in particular the *Carabinieri* that subjected them to cruel treatment including not only physical assault but also racial taunts. Complete impunity appears to surround the situation of these workers, who were being exploited by landlords and employers to benefit the Italian economy, especially in the agricultural sector.

88. In this context, the Special Rapporteur observes the importance of the EU Employers' Sanctions Directive. Although this has been transposed into national law through Legislative Decree 109/2012, Italy must strive to ensure its full implementation, including effectively sanctioning Italian employers who abuse the vulnerability of migrants by paying them low or exploitative wages and forcing them to work in dirty, difficult or dangerous conditions.

## **B. Terminology**

89. The Special Rapporteur is concerned with the terminology and discourse around migration used by certain Government institutions and other counterparts. The term *clandestini* remains widespread, in particular by the media. Such language further legitimates a discourse of exclusion and criminalization of migration, which then entrenches attitudes of discrimination and xenophobia, and creates an environment where the exploitation of irregular migrants is legitimate.

## **VII. Conclusions and recommendations**

90. While Italy has developed a large apparatus of laws and policies directed towards managing irregular migration and border management, much remains to be done in order to ensure the full respect for the human rights of migrants in Italy.

### **A. Normative and institutional framework for the protection of the human rights of migrants**

91. Develop a comprehensive national system of data collection, analysis and dissemination regarding immigration policies and practices, which should be used as a foundation for rights-based policy-making on migration. The data collection should include migrants in detention and deportations.

92. Guarantee the establishment of a national human rights institution in line with the Paris Principles, ensuring that it is both functionally and financially independent of the Government, and vested with the authority to investigate all issues relating to human rights, including those of migrants, regardless of their administrative status.

93. Ensure the establishment of a fully independent national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture, which is mandated to visit all places where migrants may be deprived of their liberty.

94. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

## **B. Border management**

95. Fully respect the human rights of migrants in relation to the implementation of all readmission agreements entered into.
96. Ensure that readmission and cooperation agreements, aimed at, *inter alia*, combatting irregular migration, include safeguards to fully respect the human rights of migrants as well as ensure adequate protection of vulnerable migrants, including asylum seekers and refugees, in particular with regards to the principle of non-refoulement.
97. Establish a comprehensive mechanism for the identification of unaccompanied minors that includes not only medical exams but also a psychosocial and cultural approach, in order to best identify specific protection measures in the best interests of each child.
98. Revoke the declaration (Ordinance of 24/09/2011) of Lampedusa as not being a safe place for the disembarkation of migrants rescued at sea in order to maintain an effective system of search and rescue at sea.
99. Set up information services (providing information on international and national protection mechanisms in all landing points).

## **C. Bilateral agreements**

100. Ensure bilateral agreements are negotiated and published in full transparency, with clear human rights protections integrated at all stages.
101. 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.
102. Prohibit the practice of informal automatic “push-backs” to Greece.
103. Ensure that “quick return” agreements, such as those with Tunisia and Egypt, adequately safeguard the human rights of migrants, and ensure proper and systematic individual screening for protection concerns, as well as guarantee full access by international and civil society organizations, including Praesidium project members.
104. Ensure that all the agreements are negotiated with the principle of transparency, and made publicly available.

## **D. Detention**

105. Ensure that migrants are detained only because they present a danger for themselves or others, or would abscond from future proceedings, always for the shortest time possible, and that non-custodial measures are always considered first as alternatives to detention.
106. Improve enforcement of the regulation with regard to the management of Government centres for irregular migrants, drawing from the best practices observed in the present network of CIEs and in other facilities in Europe and around the world, and in accordance with relevant standards espoused by international human rights law.

107. Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.

108. Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, the right to promptly challenge their detention and to seek asylum.

109. Seek to ensure the early identification of migrant prisoners to avoid further detention in CIEs.

110. Ensure that all migrants deprived of their liberty are able to promptly contact their family, consular services and a lawyer, which should be free of charge.

111. Guarantee the full access by international organizations, including UNHCR and IOM, civil society organizations, doctors, journalists and lawyers to all areas where migrants are held or detained, at all stages of the procedure, including in temporary reception centres.

112. Develop comprehensive human rights training programmes for all staff who work in such centres.

113. Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention centres.

114. Establish a fairer and simpler system for migrant detainees to be able to challenge expulsion and detention orders.

115. Provide explicit training for the Justices of the Peace on international human rights law and international refugee law.

116. Reduce the maximum period of immigration detention for the purposes of identification to 6 months.

## **E. Asylum seekers**

117. Ensure that all detained persons who claim protection concerns are, without delay, adequately informed of their right to seek asylum, have access to registration of asylum claims and can communicate with UNHCR, lawyers and civil society organizations.

118. Ensure that all decision-makers within the Territorial Commissions are adequately trained in asylum and human rights law in order to appropriately determine asylum claims.

119. Ensure that those migrants awaiting a judicial decision on their request to suspend repatriation procedures, following a negative decision made by the competent Territorial Commission, not be repatriated before the aforementioned decision is made.

## **F. Cross-cutting concerns**

120. Provide access to basic services to everyone living in the Italian territory, regardless of their immigration status, in accordance with international human rights standards.

121. Take all necessary measures to execute of the judgment of the European Court of Human Rights in the *Hirsi* case.

122. Fully implement the EU Employers' Sanctions Directive, including through developing comprehensive measures to sanction Italian employers who abuse the vulnerability of migrants by paying them low or exploitative wages.

123. Effectively sanction landlords who exploit migrants by housing them in inappropriate and unsanitary conditions.

124. Use terminology that doesn't reinforce prejudices against migrants and refrain from using charged expressions such as "illegal migrant" or "*clandestini*", as well as take a leadership role in developing a political discourse that stresses the necessary protection of human rights for all, including migrants, whatever their administrative status.

125. Support, both technically and financially, civil society organizations which offer services and support to migrants, regardless of their administrative status, and especially those which help migrants defend their rights.

## **G. Recommendations to the European Union**

126. Ensure that EU frameworks do not contribute to the restriction of human rights protections of migrants in Italy.

127. Ensure that European cooperation frameworks with partner countries do not result in the externalization of border controls, without adequate human rights guarantees being implemented in such partner countries in favour of migrants, with the support of European institutions.

128. Ensure that the cooperation with FRONTEX takes full account of the human rights of migrants, rather than focusing only on security-related aspects.

129. Support, both technically and financially, civil society organizations in Italy which offer services and support to migrants, including those which help migrants defend their rights.

130. Promote the family reunification among unaccompanied minors (both asylum seekers and not) with their relatives regularly resident in other EUMS.

131. Ensure the full implementation of responsibility sharing between EU member States in the management of its external borders, taking into full account the geographical position of Italy that renders its coastlines particularly exposed to migration flows.