

## **Report**

**to the Italian Government  
on the visit to Italy  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 27 to 31 July 2009**

The Italian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2010) 15.

Strasbourg, 28 April 2010

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**Copy of the letter transmitting the CPT's report**

Mr Valentino Simonetti  
Minister Plenipotentiary  
President of the Inter-Ministerial  
Committee on Human Rights  
Ministry of Foreign Affairs  
Piazzale della Farnesina 1  
I – 00194 Rome

Strasbourg, 30 November 2009

Dear Minister,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Italy drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Italy from 27 to 31 July 2009. The report was adopted by the CPT at its 70<sup>th</sup> meeting, held from 2 to 5 November 2009.

The various recommendations, comments and requests for information formulated by the CPT are emphasised in **bold**, in paragraphs 7, 8, 9, 18, 22, 47 and 51 of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Italian authorities to provide within **three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Italian authorities to provide, in the above-mentioned response, reactions to the comments formulated in the report as well as replies to the requests for information.

The CPT would ask, in the event of the response being forwarded in Italian, that it be accompanied by an English or French translation. It would also be most helpful if a copy of the response could be provided in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully,

Mauro Palma  
President of the European Committee for the  
Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In accordance with Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Italy from 27 to 31 July 2009. The visit was one which appeared to the Committee "to be required in the circumstances" (see Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Jean-Pierre RESTELLINI, Head of the delegation
- Dajena POLLO
- Xavier RONSIN.

They were supported by the following members of the CPT's Secretariat:

- Caterina BOLOGNESE
- Francesca MONTAGNA

and assisted by

- Catherine PAULET, psychiatrist, Head of the Regional Medico-Psychological Service, Baumettes Prison, Marseilles, France (expert)
- Salim GHOSTINE (interpreter)
- Marta FIORENTINI (interpreter).

### B. Purpose of the visit

3. The main purpose of the visit was to look into the new policy – including the implementation of the policy – of the Italian authorities to intercept, at sea, migrants<sup>1</sup> approaching Italy's Southern Mediterranean maritime border and to send them back to Libya or other non-European States (frequently referred to as the "push-back" policy<sup>2</sup>).

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<sup>1</sup> The term "migrant" in this report shall be understood to encompass irregular migrants (persons who cross an international border without the necessary documents – see also paragraph 76 of the CPT's 19th General Report; CPT/Inf (2009) 27) as well as asylum seekers (persons seeking protection who may wish to be recognised as refugees or to establish a claim for protection on other grounds).

<sup>2</sup> Otherwise referred to by the Italian authorities as the "return" by Italy to a requesting State of migrants intercepted at sea who have purposely avoided that requesting State's checks and controls (see also paragraphs 15 to 17).

In this context, the delegation carrying out the visit sought to examine the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment.

The delegation also examined the treatment afforded to migrants during the time that they were deprived of their liberty by Italian authorities in the course of push-back operations.

### **C. Consultations held by the delegation**

4. During the visit, the delegation held consultations with senior officials of the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Justice, and Ministry of Defence, as well as with senior commanders of the *Carabinieri* Corps, the Tax and Customs Police (*Guardia di Finanza*), the Italian Coast Guard (*Guardia Costiera*) and the Navy (*Marina Militare*).

In addition, meetings were held with the UNHCR Regional Office in Rome, and other organisations active in areas of concern to the CPT, such as the Italian Council for Refugees (CIR) and the Italian Rescue Corps of the Order of Malta (CISOM)<sup>3</sup>. Furthermore, the delegation held interviews with persons who had been intercepted in the course of the operation of 4 July 2009 (see paragraph 24) and who were brought to Italy.

A list of national authorities and organisations met by the CPT's delegation during the visit appears in the Appendix to this report.

### **D. Establishments visited**

5. The delegation interviewed selected migrants at the following establishments:

- Centre for the Reception (CDA) of irregular migrants, Contrada Pian del Lago, Caltanissetta
- "Germoglio" Centre for minors, Caltanissetta
- "Prospettiva" Centre for minors, Catania
- Centre for the Identification and Expulsion (CIE) of irregular migrants, Ponte Galeria, Rome

The delegation also paid a brief visit to the Garibaldi Hospital, in Catania, where four migrants who had been intercepted during the 4 July 2009 operation had been hospitalised.

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<sup>3</sup> CISOM (*Corpo Italiano di Soccorso dell'Ordine di Malta*) has entered into an agreement with the Ministry of the Interior, the Italian Coast Guard and the National Coordinated Emergency Services (*Protezione civile*), under which its medical personnel – present on Coast Guard vessels – provides first aid to persons who are intercepted by the Italian authorities.

**E. Co-operation received**

6. The degree of co-operation received by the delegation was very good at the local level. The delegation had rapid access to the establishments it wished to visit and was able to speak in private with persons it wished to meet.

7. Regrettably, the co-operation received at the central level was, in certain respects, unsatisfactory. The delegation was denied access to some documents and information it had requested, which did not facilitate its task. Other information requested by the delegation prior to and in the course of the visit was not provided in a timely manner and when eventually furnished was, moreover, incomplete.

For instance, information requested pertaining, inter alia, to the logbooks from each push-back operation and the names of personnel responsible for the operations, which the authorities undertook to provide to the delegation, was subsequently refused on grounds of confidentiality. Also, the Italian authorities denied the existence of a list/inventory of objects seized from migrants in the course of a push-back operation, a copy of which the delegation had requested, and yet certain representatives of the Navy had told the delegation that such a list had indeed been compiled.

It is also to be noted that consultations with representatives of the *Guardia di Finanza* and the Navy could only be carried out in the presence of a representative of the Ministry of the Interior.

As regards the information denied on the grounds of confidentiality, the CPT would like to recall that its action and all the elements of its dialogue with the Italian authorities are confidential. The Committee regrets that the Italian authorities did not provide all the information available to them which was necessary for the delegation to carry out its task. **This is clearly in breach of Article 8, paragraph 2, of the Convention, which places an obligation on Parties to provide such information, and with the general principle of co-operation set out in Article 3 of the Convention.**

8. Further, the CPT's delegation learned from the press, and not from the Italian authorities, that during the visit, on 29-30 July 2009, a push-back operation took place (see paragraph 25). **In the Committee's view, when a CPT delegation carries out a visit to a Party to the Convention focussing on a specific issue made known in advance, the State authorities should, in a spirit of co-operation, endeavour to keep the visiting delegation informed of significant events pertaining to that same issue.**

9. **The CPT considers that the shortcomings outlined in paragraphs 7 and 8 above, when taken together, clearly indicate that the Italian authorities have not been engaging with the Committee in a co-operative spirit in relation to the issue addressed during the visit. The Committee expects that, in future, the Italian authorities will provide it with all the information available to them and necessary for the CPT to fulfil its mandate. A continued withholding of such information by the Italian authorities will constitute a failure to co-operate, within the meaning of the Convention.**

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. The push-back operations

#### 1. Introduction

10. The Italian Government began implementing its push-back policy in May 2009. This policy is aimed at stemming the flow of migrants, in particular by returning migrants to the countries from which they departed or transited (mostly to Libya, but also to Algeria). It must be seen in the context of the regional problems of the management of maritime borders in the Mediterranean, which have yet to be resolved collectively.

Between 6 May 2009, when the push-back policy was first implemented, and 31 July 2009, when the CPT's visit ended, seven operations were carried out.

11. From the interviews carried out, and the documentation obtained by the delegation, the CPT notes the following common salient characteristics of the operations that took place between May and the end of July 2009.

The *Guardia di Finanza* and the Navy, under the command of the Central Directorate for Immigration and Borders Police of the Ministry of the Interior, are responsible for coordinating and implementing the push-back phase of the operations.

The *Guardia di Finanza* is in charge when the vessel carrying the migrants is intercepted between 12 and 24 nautical miles from the Italian coast, whereas the Navy intervenes when such interception takes place beyond 24 nautical miles. If the vessel is intercepted in Italy's territorial waters (within 12 nautical miles from the coast) the migrants who are intercepted are brought to land, where they benefit from the legal and procedural safeguards provided under Italian and EU law as regards reception and access to asylum procedures.

The Italian Coast Guard retains primary responsibility for the rescue aspects of such operations.

12. When a vessel believed to transport migrants is sighted<sup>4</sup>, the *Guardia di Finanza* or the Navy, whichever is competent, intercepts the boat and transfers the migrants onto the Italian vessel. The Coast Guard is also dispatched and coordinates rescue operations and first aid provided by medical personnel (from the CISOM Corps) present on its vessels. Should the medical personnel deem it necessary to hospitalise any of the migrants, the Coast Guard ensures the transfer of the persons concerned to Lampedusa.

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<sup>4</sup> On a number of occasions the sighting was made by personnel employed by FRONTEX – European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union, tasked to coordinate the operational co-operation between EU Member States in the field of border security – to patrol EU sea borders.

The remaining migrants – in fact, the vast majority – are returned to Libya or Algeria by the Italian intercepting vessel, or transferred onto a Libyan vessel (if the operation concerns Libya), which returns the migrants to Libya. Several Libyan vessels involved in the push-back operations have been donated by Italy, and observers from the Italian *Guardia di Finanza* are placed on each of these vessels.

The Coast Guard and the medical personnel may also be requested to escort the intercepting vessel in the course of the push-back operation when the state of health of the migrants require it. Further, in the case of unfavourable weather conditions, the Coast Guard may carry out the entire rescue and push-back operation<sup>5</sup>.

13. According to data provided by the Italian authorities, by 30 July 2009 a total of 602 migrants had been pushed back to Libya<sup>6</sup> and 23 to Algeria. The authorities have acknowledged that seven of these migrants were likely to be minors and that, among the persons returned on 1 July, there was a pregnant woman. Since the end of the delegation's visit, push-back operations have continued and children and pregnant women were reportedly among those returned.

The Italian authorities have acknowledged officially that they do not proceed with the formal identification of migrants who are intercepted at sea and pushed back. The CPT has, however, been informed by the UNHCR that among the migrants pushed back there were persons who were registered with the UNHCR and to whom it had previously issued temporary documents. Other migrants, including persons from Somalia and Eritrea, were later interviewed by the UNHCR and found immediately to be seeking and possibly qualifying for international protection<sup>7</sup>. More specifically, between May and July 2009, out of the 632 boat returnees screened by the UNHCR, 97 were found to be seeking international protection<sup>8</sup>.

As regards, more particularly, a push-back operation on 30 August 2009, the UNHCR has stated that Somali migrants on the intercepted boat had expressed their wish to apply for asylum to Italian military officials<sup>9</sup>.

14. Nevertheless, the Italian Government has affirmed that no migrant has ever expressed his/her intention to apply for asylum and that, consequently, there has been no need to identify these persons and establish their nationality.

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<sup>5</sup> Because the hulls of the vessels of the *Guardia di Finanza* are made of fibreglass, given the risk of collision, it is too dangerous for the migrants to be transferred to them if their boat is made of a hard substance and the sea is rough. In such situations, the Coast Guard carries out the operation.

<sup>6</sup> UNHCR have registered over 900 persons pushed back during the same period (see "Refugee protection and international migration: a review of UNHCR's operational role in southern Italy", September 2009). Despite differences in the figures recorded by various observers, this report will refer to the figures provided by the Italian authorities.

<sup>7</sup> In particular, the Eritrean nationals who were returned to Libya on 1 July 2009 requested international protection in the course of interviews held with the UNHCR at the detention centres in which they were placed.

<sup>8</sup> As cited by Human Rights Watch in "Pushed Back, Pushed Around", September 2009, page 57.

<sup>9</sup> See the UNHCR Italy spokesperson's statement of 31 August 2009.



Even if what is affirmed were to correspond to reality, it must be borne in mind that persons surviving a sea voyage are often not in a condition in which they should be expected to declare immediately their wish to apply for asylum (see also paragraph 32, subparagraph 3).

Further, information gathered through interviews held by the delegation would indicate that, even if a migrant were to request protection whilst aboard an Italian vessel, there is no procedure in place capable of referring him/her to a protection mechanism; nor have the competent authorities been instructed on how to identify and screen migrants. It should be noted, in this context, that intercepted migrants do not have access to linguistic or legal assistance on board the intercepting vessels, in order to express their needs.

Indeed, representatives of both the Navy and the Coast Guard with whom the delegation spoke, clearly stated that they are not responsible in any way for the identification of migrants, the provision of information on how to apply for asylum, or the treatment of asylum requests; nor have they been instructed by the Ministry of the Interior in relation to these issues. The information gathered from representatives of the *Guardia di Finanza* also indicated that it did not proceed to individual identification of the migrants, though collective interviews may be carried out.

## **2. Legal basis for the operations, as relied upon by the Italian authorities**

15. The Italian authorities have stated that the return of migrants to the country from which they departed or through which they transited is in conformity with the UN Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>10</sup>. In particular, they are of the view that a State Party's ships may stop and board any vessel without nationality, if it is suspected of illegally transporting or smuggling migrants, and may return to a requesting State those foreigners who left from that country.

16. Italy has also entered into a series of treaties and technical protocols with Libya on the fight against terrorism, organised crime and irregular migration (treaty signed in Rome on 13 December 2000; Protocol of Co-operation, Tripoli, 29 December 2007; "Treaty of Friendship", August 2008; and Supplementary Protocol, 4 February 2009). In particular, under the 2007 Protocol, the Parties agreed jointly to patrol Libyan territorial waters and adjacent international waters by means of vessels of the *Guardia di Finanza* donated to the Libyans, with a mixed Italian and Libyan crew, in order to prevent and stem illegal migration flows. Further, under the 2009 Protocol, the Parties undertook to repatriate illegal migrants from their territory.

17. As regards the co-operation with Algeria on the fight against terrorism, organised crime and irregular migration, the Italian authorities have referred to an Agreement with this country entered into on 22 July 1999, and a separate Agreement to reinforce co-operation between the police forces of the two countries, of 22 July 2009. The latter agreement regulates, inter alia, the readmission of persons to the two countries, and provides that a precondition of repatriation is the identification of the persons concerned.

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<sup>10</sup> As adopted by the UN General Assembly, respectively on 15 November 2000 and 31 May 2001; ratified by Italy by Law No. 146 of 16 March 2006.

### 3. Description of the individual operations

#### Operation of 6 May 2009

18. According to data provided by the Italian authorities, 231 migrants (191 men and 40 women) were aboard three vessels in distress. The information collected from other sources indicates that among the migrants there were unaccompanied minors and four pregnant women. Following the interception of the boats by two Coast Guard vessels and one vessel of the *Guardia di Finanza*, the migrants were transferred onto the three Italian vessels and returned to Libya. The CISOM personnel and a journalist, who was aboard the vessel of the *Guardia di Finanza*, indicated that they were not aware that the migrants would be pushed back to Libya, and that the captains of the Italian vessels only received an order to do so in the course of the operation.

The delegation was unable to interview the migrants pushed back to Libya or, given the authorities' refusal to provide their names, the captains of the Italian vessels involved in the operation. However, reliable information collected by the delegation would indicate that, during the operation, which lasted around 12 hours, the 74 persons on the *Guardia di Finanza* vessel were provided insufficient water and no food or blankets<sup>11</sup>; further, physical violence, in particular with kicks, punches and blows with an oar, was allegedly used against a number of migrants by Libyan police at the harbour in Tripoli, to force them to disembark from the two Coast Guard vessels.

**The CPT recommends that the above-mentioned alleged use of disproportionate force on Italian vessels be the subject of a full investigation; the Committee would like to be informed of the results of that investigation. The CPT further calls upon the Italian authorities to transmit to the Committee a copy of any incident report drawn up, as well as of the vessels' logbooks pertaining to the operation.**

**In addition, it is clearly unacceptable for insufficient water and no food or shelter from the cold to be provided to persons in need.**

#### Operation of 9-10 May 2009

19. According to data provided by the Italian authorities, 163 migrants (141 men and 20 women), of whom two were probably minors, were aboard two vessels in distress. The boats were intercepted by the Navy; a Coast Guard vessel was also dispatched. The migrants were pushed back to Libya.

#### Operation of 14 June 2009

20. According to data provided by the Italian authorities, 23 migrants aboard one boat were intercepted by a *Guardia di Finanza* vessel. A Coast Guard vessel was also dispatched. The migrants were pushed back to Algeria.

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<sup>11</sup> It would appear that *Guardia di Finanza* officials had requested to be supplied with adequate provisions prior to the vessel being deployed, but these had not been provided.

Operation of 18-19 June 2009

21. According to data provided by the Italian authorities, 72 migrants (44 men and 28 women) were aboard a boat in distress which was intercepted by a *Guardia di Finanza* vessel. A Coast Guard vessel was also dispatched. The migrants were pushed back to Libya.

Operation of 1 July 2009

22. According to data provided by the Italian authorities, one boat carrying 82 migrants was intercepted by the Navy. After their transfer to the Navy vessel, the migrants remained on deck for approximately 12 hours. It is reported that, during this time, they were photographed and their personal belongings requisitioned.

During the operation, no food was allegedly provided to the migrants, only water, whereas the Navy states that they did provide food.

The Navy vessel subsequently met up with a Libyan boat, onto which the migrants were transferred. In this context, it is reported that a physical confrontation occurred between a number of migrants who did not want to board the Libyan ship and the Italian Navy personnel, resulting in the injury of some of the migrants.

However, the Italian Authorities have stated that the injuries were sustained when the migrants were transferred to the Italian Navy vessel, as they tried to make their way inside the ship, instead of staying on the deck. Further, the authorities affirm that the force used was proportional to the offence and that the persons concerned were struck only once with a baton; as a consequence, only two persons were hospitalised in Libya, one of whom did not present serious injuries and the other in respect of whom the hospitalisation was a precautionary measure, as the woman concerned was pregnant. It is acknowledged that coercion was also used when the migrants were transferred to the Libyan boat, as five migrants refused to leave the deck of the Navy vessel. However, it is said that no violence occurred, as the migrants were simply carried by military personnel onto the Libyan vessel.

The Committee has, however, been informed by reliable sources that, in the course of this operation, six persons sustained injuries. One person alleged that he was hit on the head and lost a substantial amount of blood, and that the bleeding was contained by the doctor on board. All six persons were hospitalised in Libya due to the serious nature of their injuries.

**The CPT recommends that a full investigation be carried out into the alleged ill-treatment of migrants by Italian service personnel during the push-back operation of 1 July 2009; the Committee would like to be informed of the results of the investigation. The CPT further requests that the Italian authorities transmit to the Committee a copy of any incident report drawn up, as well as of the vessel's logbook pertaining to the operation.**

23. As regards the nationality of the migrants, the CPT has been informed that 76 were Eritrean – six of whom were minors, some of them unaccompanied – and that the remaining six were from Ethiopia, Egypt (two of whom were minors) and Morocco. Among the persons who were pushed back, 32 have claimed that, prior to their departure from Libya, they had been registered with the UNHCR and issued with UNHCR temporary documents.

As regards the personal belongings of the migrants, it is undisputed that they were collected by Italian personnel in the course of the operation; however, the delegation received conflicting information as to whether a list/inventory of the objects concerned was drawn up (see paragraph 7). Navy representatives stated that these items were subsequently handed to the Libyan authorities so that they could be returned to the migrants once in Libya. However, on the basis of the interviews held by the UNHCR and CIR in Libya, it appears that these items were never returned.

In the light of the above, it remains an open question whether, at the time of interception, a number of the migrants held UNHCR identification documents.

#### Operation of 4 July 2009

24. According to data provided by the Italian authorities, one boat carrying 40 migrants (24 men and 16 women) was intercepted by a *Guardia di Finanza* vessel and all the persons were transferred onto the Italian boat. Two Coast Guard vessels were also dispatched for rescue and medical assistance purposes. Further to medical screening, the healthcare personnel decided that seven persons needed additional medical attention; they were brought to Lampedusa and then, by helicopter, to Catania where they were hospitalised. The remaining migrants were returned to Libya. In the course of the visit, the CPT's delegation interviewed the seven persons brought to the mainland, four of whom were minors (two girls and two boys); three of the persons concerned had applied for asylum.

As concerns the interception and subsequent push-back operation, the delegation was not able to obtain much substantial information from the seven persons it interviewed, given their state of partial or complete unconsciousness at the time of interception. However, these interviews confirmed the harsh conditions of the migrants' journey prior to their interception, including the lack of food and water over several days, the extreme weakness of the other passengers and the death of four persons in the course of the journey. Further, from the interviews with certain of the migrants, it emerged that they were unfamiliar with the concept of asylum, that they had been unaware that they could request such protection, and that they were not informed of this possibility until they reached the Italian migrant centres in which they were held.

On the basis of interviews held with CISOM personnel, it appears that at least some of the migrants sent back were not in good health and, more specifically, not in sufficiently good health to face a sea journey to Libya.

#### Operation of 29-30 July 2009

25. According to data provided by the Italian authorities, one boat carrying 14 persons (13 men and 1 woman) was intercepted by the *Guardia di Finanza* off the Italian coast. The migrants, of whom two were presumed to be minors, were pushed back to Libya. The persons on a second boat (intercepted two miles off the Italian coast), were brought to land.

## **B. Legal safeguards benefiting migrants intercepted at sea**

### **1. The *non-refoulement* principle**

26. The prohibition of torture and inhuman or degrading treatment or punishment is a non-derogable, peremptory norm of international law. It entails the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to torture or other forms of ill-treatment. This obligation is also derived from the principle of *non-refoulement*.

27. The principle of *non-refoulement* is enshrined in Article 33 of the 1951 Convention on the Status of Refugees (“the 1951 Convention”), which states:

“No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”

Within Europe, the European Court of Human Rights has, through its case law on Article 3 of the European Convention of Human Rights (“the ECHR”), extended the principle of *non-refoulement* to all persons who may be exposed to a real risk of torture, inhuman or degrading treatment or punishment should they be returned to a particular country<sup>12</sup>.

Accordingly, it is the practice of the CPT to recommend to all Parties to the Convention establishing the Committee that they ensure that migrants have ready access to an asylum procedure (or other residence procedure) which guarantees both confidentiality and an objective and independent analysis of the human rights situation in other countries. That procedure should involve an individual assessment of the risk of ill-treatment in case of expulsion of the person concerned to the country of origin or a third country<sup>13</sup>.

28. The prohibition of *refoulement* to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or “renditions”, and non-admission at the border. This is evident from the wording of Article 33(1) of the 1951 Convention, which refers to expulsion or return (*refoulement*) “in any manner whatsoever”. It follows that interception and push-back operations, as carried out by the Italian authorities, are covered.

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<sup>12</sup> See, in particular, the Court’s decisions in *Soering v. United Kingdom*, 7 July 1989; *Cruz Varas v. Sweden*, 20 March 1991; *Vilvarajah and Others v. United Kingdom*, 30 October 1991; *Chahal v. United Kingdom*, 15 November 1996; *Ahmed v. Austria*, 17 December 1996; *TI v. United Kingdom* (Admissibility), 7 March 2000; see also the more recent cases of *Saadi v. Italy*, 22 February 2008, *Ben Khemais v. Italy*, 24 February 2009, *O. v. Italy*, 24 March 2009 and *Sellem v. Italy*, 5 May 2009.

<sup>13</sup> See also the report on the 2004 visit to Italy (CPT/Inf (2006) 16, paragraph 69).

The principle applies not only in respect of return to the country of origin or, in the case of a stateless person, the country of former habitual residence, but also to any other country to which removal is to be effected or any other country to which the person may subsequently be removed. States are, therefore, also obliged to examine whether a relevant risk would be incurred through chain deportation or indirect *refoulement*<sup>14</sup>.

29. The prohibition of *refoulement* extends to all persons who may be within a State's territory or otherwise subject to its jurisdiction. The European Court of Human Rights has recognised a number of specific situations which may give rise to an extraterritorial application of ECHR obligations and engage a State's responsibility in this respect.

A State's extraterritorial jurisdiction may be based, in particular, on (a) the activities of the State's diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State; (b) the State's effective control of an area outside its national territory; or (c) the State's exercise of authority over persons or property through its agents operating on the territory of another State or in international territory/waters<sup>15</sup>.

Italy's responsibilities under Article 3 of the ECHR, including the principle of *non-refoulement*, are likely, in the CPT's view, to be engaged in the context of the push-back operations. Extraterritorial jurisdiction may, indeed, be established through Italy's exercise of authority or effective control over the migrants pushed back, which included their deprivation of liberty and transfer on Italian vessels<sup>16</sup>.

Moreover, the multilateral and bilateral co-operation treaties to which the Italian authorities refer as the legal basis of the push-back operations (see paragraphs 15 to 17) do not affect, in any way, Italy's obligations under Article 3 of the ECHR. Indeed, Article 19 of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air refers to non-interference by the Protocol with rights under international law, including international humanitarian and human rights law, and mentions specifically the principle of *non-refoulement*<sup>17</sup>.

30. As a result of the principle of *non-refoulement*, States are obliged to screen intercepted migrants with a view to identifying persons in need of protection, assessing those needs and taking appropriate action.

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<sup>14</sup> See *Hussun and Others v. Italy*, declared admissible on 11 May 2006. See also *T.I. v. the United Kingdom* (7 March 2000); although the Court ultimately declared the case to be inadmissible, it found that a State sending an asylum-seeker to a third country pursuant to the Dublin Regulation would also be responsible if there was a real risk that the person would be sent on from that third country to a country where he faced treatment contrary to Article 3.

<sup>15</sup> See *Al-Saadoon and Mufdhi v. United Kingdom*, declared admissible on 30 June 2009, §§ 71, 85; *Banković and Others v. Belgium and Others*, declared inadmissible on 12 December 2001, §§ 67, 69, 73; *Drozđ and Janousek v. France and Spain* (26 June 1992), § 91; *Loizidou v. Turkey, preliminary objections* (23 March 1995), § 62; *X v. Federal Republic of Germany*, Commission decision of 25 September 1965; *X v. the United Kingdom*, Commission decision of 15 December 1977; *WM v. Denmark*, Commission decision of 14 October 1993. See also *Xhavara v. Italy and Albania* (11 January 2001), in which Italy was found to be accountable before the Court for the acts of its warships on the high seas.

<sup>16</sup> This same principle is also enshrined in Article 92 of the United Nations Convention on the Law of the Sea, Article 4 of the Italian Criminal Code and Articles 2, 3, and 4 of the Italian Navigation Code.

<sup>17</sup> See Article 19, paragraph 1: "Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein".

Further, border control operations fall within the framework of the Schengen Border Code<sup>18</sup>, Article 7 of which provides that all persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents.

31. As noted above (see paragraph 14, first subparagraph), the Italian authorities have declared, on a number of occasions, that none of the intercepted and pushed back migrants expressed, in the course of the operations, a desire to request asylum and that, consequently, they were not obliged to perform such a screening.

At the same time, high-ranking Navy and Coast Guard officials involved in the operations have themselves clearly stated that it is neither their role, nor do they have the capacity, to handle any asylum requests that might be made (see paragraph 14, third and fourth subparagraphs).

32. Notwithstanding the above-mentioned position of the Italian authorities, reliable reports have reached the Committee, indicating that, on at least one occasion (i.e. during the operation of 30 August 2009), migrants sought protection but their requests went unheeded (see paragraph 13). Moreover, the UNHCR has confirmed that many of the persons pushed back to Libya whom they were able to interview subsequently were indeed seeking protection.

It should be noted in this connection that, before the push-back operations began, approximately 75% of migrants arriving in Italy by sea requested asylum and around 50% of those persons obtained some form of protection<sup>19</sup>. It is also noteworthy that three of the seven persons brought to Italian soil after the operation of 4 July 2009 requested asylum soon after their arrival.

In any event, the absence of an explicit request for asylum does not necessarily absolve the Italian authorities of their *non-refoulement* obligations under Article 3 of the ECHR. This is particularly the case when the circumstances are such that the persons concerned are not in a position to express such a request. In this regard, a Coast Guard Admiral responsible for a large Search and Rescue area stated to the delegation that persons surviving a sea voyage were clearly not in a condition in which they should be expected to declare their wish to apply for asylum. In particular, such persons were often dehydrated, physically and mentally exhausted and their sole preoccupation at the time of rescue was to be brought to safety.

33. In sum, the procedures in place would not appear to be capable of establishing whether among the migrants there are persons in need of international protection. On the contrary, it would appear that the clear guidelines issued by the Italian authorities are that migrants who are intercepted at sea be pushed back, to the extent possible, provided they have not reached Italy's territorial waters.

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<sup>18</sup> EC Regulation 562/2006 of the European Parliament and of the Council. Articles 3 (b) and 13 of the Regulation recall that border control operations must abide by asylum obligations.

<sup>19</sup> See UNHCR Policy Development and Evaluation Service "Refugee protection and international migration: a review of UNHCR's operational role in southern Italy", September 2009.

## 2. The scope of rescue obligations

34. Rescue operations at sea give rise to specific obligations, under a series of United Nations conventions<sup>20</sup> by which Italy is bound. Apart from being obliged to render assistance to persons in distress, contracting States must “cooperate and coordinate”, to enable shipmasters to “retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety”, regardless of the persons’ nationality or legal status<sup>21</sup>.

It should also be noted that the instrument relied upon by the Italian authorities as the basis for the interception operations, i.e. the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (see paragraph 15), provides for the State Party’s duty to ensure the safety and humane treatment of persons, including smuggled migrants, against whom it takes measures<sup>22</sup>.

35. As regards provision for medical needs, the CPT notes the very difficult position in which medical personnel called upon to provide services during the push-back operations are placed.

Prior to the commencement of the push-backs, medical personnel on board vessels involved in search and rescue operations provided urgent medical assistance at sea to those in need, pending the transfer of all those intercepted to Italian territory, where further medical and other care would be provided.

The Agreement between CISOM and the Ministry of the Interior, the Italian Coast Guard and the National Coordinated Emergency Services (*Protezione civile*) has not been amended since the new policy began. However, it is clear that the role of health-care staff has become more complex and more demanding and, indeed, may place them before a formidable ethical dilemma. Alone on the vessel and in the absence of clear instructions, they must make a medical assessment of the migrants on board which will have great implications for the future of the persons concerned.

Between 6 May and 31 July 2009, there was only one occasion when persons intercepted by the Italian authorities in international waters were assessed as requiring urgent hospital care and were transferred to Italian territory to receive such care (see paragraph 24). All other persons intercepted were transported back either to Libya or Algeria, including persons who, according to health-care professionals aboard the Italian vessels, were scarcely in sufficiently good health to face the sea journey.

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<sup>20</sup> UN Convention on the Law of the Sea (UNCLOS); International Convention for the Safety of Life at Sea (SOLAS, 1974) and the International Convention on Maritime Search and Rescue (SAR, 1979); relevant 2004 amendments to the two latter conventions both entered into force on 1 July 2006.

<sup>21</sup> See Article 98, UNCLOS and SAR Chapter 1.3.2. and Chapter 2.1.10.

<sup>22</sup> In particular, a State Party shall ensure “the safety and humane treatment of the persons on board” a vessel against which it takes measures “in accordance with Article 8 of this Protocol” (Article 9, paragraph 1(a)), and “Each State Party involved in the return of a person who has been the object of conduct set forth in Article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and the dignity of the person” (Article 18, paragraph 5).



36. A place of safety to which rescued persons must be delivered is a location in which rescue operations are considered to terminate, and where the survivors' safety of life is no longer threatened, basic human needs (such as food, shelter and medical needs) can be met, and transportation arrangements can be made for the survivors' next or final destination<sup>23</sup>.

In the CPT's view, the operations carried out by the Italian authorities thus far have not delivered the migrants to a place of safety (see also paragraphs 41 to 47).

### **3. Protection of vulnerable persons**

37. Italian immigration law prohibits the expulsion or return of persons under the age of 18 (unless the child is exercising the right to follow an expelled parent or guardian), as well as that of pregnant women<sup>24</sup>. For the reasons outlined in paragraph 29, such special provisions for the protection of vulnerable persons may also apply in the case of interception by the Italian authorities beyond their territorial boundaries.

Nevertheless, reliable reports received by the CPT, including from the Italian authorities themselves, indicate that both minors and pregnant women were among the persons pushed back (see paragraphs 13, 19 and 23).

It should also be noted that the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (see paragraph 15), provides, in Article 16, for a positive duty to protect and assist the victims of smuggling from danger or harm. Within this category of vulnerable persons, particular reference is made to the special needs of women and children (see Article 16, paragraph 4).

### **4. Safeguards surrounding deprivation of liberty**

38. Prior to the implementation of the push-back policy, the Italian authorities' operations at sea were essentially rescue operations, whereby migrants were brought to Italian territory. Once on Italian territory, such persons would have access to various procedures (involving some form of deprivation of liberty of finite duration).

Since the implementation of the push-back policy, however, the persons intercepted have – with very few exceptions – been forced by the Italian authorities in a direction they did not intend to take. Rescue can no longer be considered the primary aim of the interceptions.

39. Persons being transferred onto Italian vessels or otherwise in the custody of Italian officials, pending delivery, contrary to their wishes, to the authorities of another State, must be considered as deprived of their liberty by the Italian authorities for the duration of their transfer/custody.

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<sup>23</sup> See paragraph 6.12, Guidelines on the Treatment of Persons Rescued at Sea, Maritime Safety Committee Resolution 167(78), May 2004.

<sup>24</sup> See Article 19.2(a) and (d) of the Consolidated Text on immigration (Law 286/98), as amended.

40. Any deprivation of liberty by a public authority should be surrounded by appropriate safeguards against ill-treatment, including access to a lawyer and to a doctor, and the right to have a person of one's choice notified of one's deprivation of liberty as well as to be informed about one's rights in a language one understands.

In the CPT's view, the exceptional circumstances of a deprivation of liberty at sea may justify a certain degree of delay in access to these rights, but not a denial of them<sup>25</sup>. When the deprivation of liberty at sea occurs in the context of what is essentially a rescue operation, the prevailing survival and safety needs will outweigh the need to provide for prompt access to the above-mentioned safeguards.

By contrast, the essentially coercive nature of the interception and push-back operations introduced since May 2009 would warrant a stricter compliance with the requirement of appropriate safeguards. Nevertheless, in the course of these operations, the services of lawyers or interpreters have not been made available, nor have the persons concerned been provided with an opportunity to inform a person of their choice of their situation, or with information on their rights.

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<sup>25</sup> See also the case of *Medvedyev v. France*, 10 July 2008, in which the Court found France in violation of Article 5.1 ECHR for its authorities' failure to ensure the effective enjoyment of procedural safeguards by persons deprived of liberty at sea on suspicion of trafficking in illicit drugs. An appeal against this judgment is pending before the Grand Chamber.

**C. The risk of torture or other forms of ill-treatment of persons returned to Libya, including in the event of their subsequent deportation by Libya to their countries of origin**

41. The prohibition of torture and inhuman or degrading treatment is one of those few human rights which admit of no derogations. This means, inter alia, that Parties to the Convention must take great care that their actions do not expose people to such treatment, wherever it may occur. In this regard, the CPT wishes to draw attention to the following information which raises considerable concerns that migrants, returned to Libya<sup>26</sup>, could be at real risk of being exposed to ill-treatment.

42. The CPT has not itself been in a position to verify, through an on-site visit, conditions of detention and the treatment afforded to persons detained in Libya. However, according to consistent accounts from a variety of sources, overcrowding, absence of beds, poor hygiene, inadequacy of food, lack of health care and sanitation, and rampant skin infections would appear to be commonplace in Libyan detention centres. The UNHCR has recently described the conditions of detention and treatment in such centres as “appalling”<sup>27</sup>. In addition, following its visit to a Libyan detention centre for migrants in Kufra, FRONTEX<sup>28</sup> described the conditions in the centre “as rudimentary and lacking in basic amenities”.

Further, during the transfer to the detention centres, migrants are reportedly crammed into inadequately ventilated vehicles, essentially metal containers, for periods of up to 21 hours, often in extreme temperatures (as they are transported through the desert). During this time they apparently are not allowed to exit the vehicle, are not provided with food and drink and cannot comply with the needs of nature in private or in appropriate facilities. Many migrants are said to have died during these journeys<sup>29</sup>.

43. Reference should also be made to recent reports from non-governmental organisations<sup>30</sup>, containing allegations of beatings, rape and other forms of serious ill-treatment<sup>31</sup>.

Incommunicado detention is another cause for concern. In its Communication of 13 May 2009<sup>32</sup>, the UN Committee Against Torture (UNCAT) stated that the practice of prolonged incommunicado detention is allegedly widespread, putting detainees at risk of torture and ill-treatment.

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<sup>26</sup> This section focusses on the situation in Libya, as opposed to that of other countries to which Italy might return migrants intercepted at sea, as the vast majority of persons intercepted in the course of the operations examined in this report were returned to Libya.

<sup>27</sup> See the statement of the United Nations High Commissioner for Refugees, Mr António Guterres, of 29 September 2009

<sup>28</sup> Frontex-led EU illegal immigration technical mission to Libya, 28 May to 5 June 2007, paragraph 5.3.

<sup>29</sup> See, for example, “Frontiera Sahara. I campi di detenzione nel deserto libico”, article of 2 January 2009, published on the website of “Fortress Europe”.

<sup>30</sup> See, for example, Human Rights Watch Report “Pushed Back, Pushed Around”, and interviews held by reporters of “Fortress Europe” with persons detained at the Misratah detention centre, Libya, in November 2008.

<sup>31</sup> Further, reference may be made to media reports concerning an incident said to have taken place at Ganfuda migrant detention centre in Bengasi, Libya, on 9 August, 2009; the repression of an escape attempt by the Libyan police allegedly left 20 persons dead and 50 wounded.

<sup>32</sup> See document CAT/C/LBY/Q/4.

44. Further, the EU has in the past highlighted that in Libya, the decision to return migrants to their country of origin seems to be taken for groups of nationalities rather than after having examined individual cases in detail<sup>33</sup>.

In other words, collective expulsions are common practice and there is no asylum procedure or legal framework in place to protect persons from being deported to unsafe third countries or countries of origin where there is a risk that they will be persecuted.

45. The Italian Government affirms that the push-back operations do not violate international law, including the principle of *non-refoulement*. It argues that Libya is bound by international conventions under which it must respect human rights, and that it has ratified the 1969 OAU Refugee Convention, under which it must protect all persons who are persecuted and who originate from “areas at risk”. The Government further argues that the UNHCR has an office in Libya which can respond to the protection needs of those persons who are returned.

46. The UNHCR, on the other hand, has recalled that Libya is not a Party to the 1951 Convention on the Status of Refugees and that it does not have asylum legislation or procedures in place<sup>34</sup>; further, it has expressed the view that conditions in Libya do not allow for a protection space for asylum-seekers.

As regards the protection that UNHCR can secure to migrants, the High Commissioner has emphasised that it has a small office in Libya which is not officially recognised (there is no memorandum of understanding); given its limited resources and limited access to the centres where the migrants are held (access which in recent times has been denied), the office does not have the power or the means to fully protect these persons. In other words, the UNHCR cannot in any way replace the State in its role of granting humanitarian protection.

47. In the light of the above, **there would appear to be a real risk, in the Committee’s view, that persons detained in Libya, including migrants, may be subjected to severe ill-treatment and/or be sent to a country where they are at risk of such treatment.**

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<sup>33</sup> Council of European Union 7753/05, 4 April 2005, Technical Mission to Libya on Illegal Immigration, page 13.

<sup>34</sup> See, for example, UNHCR Briefing Notes of 12 May 2009 (<http://www.unhcr.org/4a0966936.html>).

## **D. Conclusion**

48. The CPT recognises that States have the sovereign right to protect their borders and to introduce measures controlling migration within their jurisdiction. Further, Article 5 (1) (f) of the European Convention on Human Rights expressly permits "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition". However, the exercise of this right must be in accordance with a State's other international obligations.

In the CPT's view, Italy's policy, in its present form, of intercepting migrants at sea and obliging them to return to Libya or other non-European countries, violates the principle of *non-refoulement*, which forms part of Italy's obligations under Article 3 of the European Convention on Human Rights.

49. Italy is bound by the principle of *non-refoulement* wherever it exercises its jurisdiction, which includes via its personnel and vessels engaged in border protection or rescue at sea, even when operating outside its territory. Moreover, all persons coming within Italy's jurisdiction should be afforded an appropriate opportunity and facilities to seek international protection.

However, the information available to the CPT indicates that no such opportunity or facilities were afforded to the migrants intercepted at sea by the Italian authorities since May 2009. On the contrary, the persons who were pushed back to Libya in the operations carried out from May to July 2009 were denied the right to obtain an individual assessment of their case and effective access to the refugee protection system.

50. In the light of the information available, Libya cannot be considered a place of safety, nor a safe country in terms of human rights and refugee law; the situation of persons arrested and detained in Libya, including that of migrants – who are also exposed to being deported to other countries by Libya – indicates that the persons pushed back to Libya are at risk of ill-treatment.

Moreover, from the findings of the CPT's delegation, it would appear that the Italian authorities have knowingly pushed back particularly vulnerable persons (see paragraph 37), and perhaps also persons who could attest to their status as refugees (see paragraph 23).

51. The CPT is conscious of the challenges facing European States, in particular those forming Europe's southern borders, by virtue of the influx of migrants in recent years. Nevertheless, it is imperative that the universal recognition of the prohibition of torture and inhuman or degrading treatment, and the collective enforcement of that human right at European level, be upheld. In this context, the CPT considers that all Parties to the Convention must ensure that migrants are provided with appropriate treatment, are given an opportunity to apply for asylum and are not sent back to a country where they may be at risk of ill-treatment.

The so-called push-back policy, as pursued by the Italian authorities and described in this report, does not meet these requirements. **The CPT urges the Italian authorities to substantially review forthwith the current practice of intercepting migrants at sea, so as to ensure that all persons within Italy's jurisdiction – including those intercepted at sea outside Italian territorial waters by Italian-controlled vessels – receive the necessary humanitarian and medical care that their condition requires and that they have effective access to procedures and safeguards capable of guaranteeing respect for the principle of *non-refoulement*.**



**Ministry of Justice**

Nadia PLASTINA	Senior Officer (magistrate), Office for Legislation
Marialetizia TRICOLI	Senior Officer (magistrate), Unit for Detainees and Treatment, Department of Penitentiary Administration
Alessandra BERNARDON	Head of the International Relations Unit, Department of Penitentiary Administration
Graziano PUJIA	Acting Director of the Office for Studies, Research, Legislation and International Relations, Department of Penitentiary Administration

**Ministry of Labour, Health and Social Policies**

Colomba IACONTINO	Executive, acting Director of Unit III (Ufficio Relazioni Internazionali) within the Directorate on Innovation of the Ministry of Labour, Health and Social Policies
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**Ministry of Defence**

Colonel Riccardo PIERMARINI	Ministry of Defence, Legislative Office
Major Sergio MARLETTA	Italian Defence General Staff, Legislative Office
Lt. Commander Andrea VAIARDI	Italian Defence General Staff, Legislative Office

***Marina Militare (Navy Corps)***

Rear-Admiral Roberto CAMERINI	Augusta Naval Base – Patrolling Command
Captain Stefano DELL’AQUILA	Office of the Commander in chief of the Italian Fleet
Commander Ugo CAUSO	Italian Navy general Staff
Commander Jean Paul PIERINI	Office of the Commander in chief of the Italian Fleet

***Guardia Costiera (Coast Guard)***

Admiral Ferdinando LAVAGGI	Head of Maritime Direction of Sicily
Vittorio PAGOTTO	Commander, Operation Office (IMRCC), Rome
Massimo DI MARCO	Commander, Office for International Affairs



***Comando Generale dell'Arma dei Carabinieri*** (Carabinieri Corps)

Major Gianluca TROMBETTI                      Carabinieri General Headquarters, Training Office

Major Luca MENNITTI                              Carabinieri General Headquarters, Operation Office

**Ministry of Finance - *Guardia di Finanza*** (Revenue Guard Corps)

Brigadier General Fabrizio CARRARINI      Head of the Economy and Security Affairs Office,  
General Headquarters

Major Mauro MARZO                              Head of the Criminal Investigation and Public Security  
Section of the Economy and Security Affairs Office,  
General Headquarters

Major Alessandro BUCCI                         Head of the “Illegal immigration” Section of the  
Economy and Security Affairs Office, General  
Headquarters

**B.      Non-governmental and international organisations**

Italian Rescue Corps of the Order of Malta – “CISOM” (*Corpo Italiano di Soccorso dell'Ordine di Malta*)

Italian Council for Refugees (*Consiglio italiano per i rifugiati*)

Regional Office of the United Nations High Commissioner for Refugees, Rome