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Comunità Papa Giovanni XXIII

associazione internazionale di fedeli di diritto pontificio - www.apg23.org

Ente Ecclesiastico Civilemente Riconosciuto con D.P.R. n. 596/72
C.F. 00310810221 - P.Iva n. 01433850409

Sede legale: Via Mameli, 1 - 47921 Rimini (RN)

Sede amministrativa: Via Valverde, 10/B - 47923 Rimini (RN)

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Rimini (Italy) 25/10/2010

To the attention of:

The President of the United Nations Human Rights Council

The United Nation High Commissioner for Human Rights

The United Nations High Commissioner for Refugees

The United Nations Committee for Human Rights

The European Commission

The Commissioner for Human Rights of the Council of Europe

Re: Violations of human rights by the Italian authorities against migrants

The **Associazione “Comunità Papa Giovanni XXIII”** has been recognized by the Italian Government with D.P.R. No. 596 of July 5, 1972, and by the Pontifical Council for the Laity on October 7, 1998 as an International Association of the Faithful of Pontifical Right. Since 2006, it is in Special Consultative Status with ECOSOC.

The Associazione is present in 25 States worldwide, and, as other associations and international humanitarian agencies have emphasized, it would like to echo the violations of human rights committed by the Italian authorities against migrants, violations that have been claimed as legal.

WHAT HAPPENED

May 2009

In May 2009, 227 persons boarded on three ships were rescued by some Italian patrol boats in the Maltese Search and Rescue Region. The Italian coastguard boarded those migrants, and, according to



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several agreements between the Italian and the Libyan Governments, it gave them up to the Libyan authorities. None of those persons was identified in regard to nationalities, health-status and/or pregnancy of women, or has been considered as person eligible for the international protection.

The United Nations High Commissioner for Refugees (UNHCR) noted that in 2008 “*an estimated 75 percent of sea arrivals in Italy applied for asylum and 50 percent of them were granted some form of protection*” (UNHCR Press Release of May 7, 2009). It expressed its serious concern about the above-mentioned events, considering that the actions promoted by the Italian Government were violating “*the fundamental principle of non refoulement which is enshrined in the 1951 Convention relating to the status of refugees and in EU law as well as in other instruments of international human rights law. [...] UNHCR is endeavouring to provide humanitarian assistance and basic protection to the persons sent back to Libya by Italy. From our initial interviews in detention facilities with some of these persons in recent days, it appears that there are indeed a number who wish to seek international protection and may qualify for such protection. [...] In view of the fact that states maintain responsibility for the consequences of their actions affecting persons under their jurisdiction, we are asking the Italian government to readmit those persons who were sent back by Italy and are identified by UNHCHR as seeking international protection.*” (UNHCR Press Release, May 12, 2009). Moreover, during the meeting between the Italian Ministry of the Interior, Mr. Roberto Maroni, and the Representative of UNHCR in Italy, Mr. Laurens Jolles, it was emphasised that Italy has to be considered responsible of the consequences of the refoulement under the commitments of the international law (adapted by UNHCR-Italy Press Release, May 15, 2009).

November 2009

UNHCR-Libya took note of 80 persons sent back by Italy in November 2009, and confirmed the status of refugee for 40 of them.

January 2010



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In January 2010, the Italian Minister of the Interior, Roberto Maroni, stated that in 2009 the number of migrants that tried to reach the Italian coasts by ships or fishing boats decreased by 74 percent compared with the 2008 estimate.

April 2010

In April 2010, the Council of Europe Anti-Torture Committee (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) noted that *“Italy’s policy of intercepting migrants at sea and obliging them to return in Libya or other non-European countries, violates the principle of non-refoulement. The Committee emphasises that 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.”* (adapted by the 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 from 27 to 31 July 2009).

June 2010

As reported and denounced by several humanitarian agencies and as confirmed by good sources of information, during the last days of June 2010, in Misurata, one of the few Libyan centres in which the UNHCR has been allowed to have access, the government decided to open the deportation-policy for hundreds of asylum seekers, women and children included.

Several humanitarian agencies reported that a hundred of those refugees has been affected by refoulement-policies promoted by the Italian government.

The Council of Europe’s Commissioner for Human Rights sent two letters on the matter, one to the Italian Minister of Foreign Affairs, Mr. Frattini, and one to the Italian Minister of the Interior, Mr.



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Maroni. With them, the Commissioner called upon the Italian and Libyan authorities to define the implications of protecting the human rights of those refugees.

Finally, in June 2010 Amnesty International published the report “Libya of Tomorrow: What Hope for Human Rights?” and the “Amnesty International Report 2010” in which called on the Italian government to respect the principle of non-refoulement, in territorial waters, and in high seas; stop the refoulement-policy of refugees, in particular to Libya, considered an unsafe State; fulfil the international sea-rescue obligations.

Moreover, Amnesty International called for all new treaties and agreements between a member of the European Union and Libya to be respectful of human rights of migrants, refugees, and asylum-seekers.

VIOLATIONS OCCURRED

The events briefly reported above by the Associazione Comunità Papa Giovanni XXIII and yet monitored closely by several international institutions are widely foreseeable, and they are the logical consequence of the collective refoulement policy promoted by the government of Italy in violation of the European Convention of Human Rights, the Geneva Convention of 1951, and other binding instruments of international law.

The refoulement of refugees that has been taking place constantly since the signing of the Italian-Libyan treaties for the Libyan detention-centres is compounded by the fact that the Libyan regime deports displaced persons cyclically and gets rid of them through a forced repatriation to their country of origin.

The human rights’ violations in Libya are so widespread and serious that the implementation of those agreements against irregular migration becomes an unacceptable sequence of criminal acts



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committed by the Italian government, despite the fact that its Constitution, as well as several European and international instruments, requires to fully respect and promote human rights worldwide.

The Geneva Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights **forbid direct or indirect refoulement of asylum-seekers.**

This commitment has to be respected by all the actors that control borders and prevent or fight illegal immigration, even if they act in extraterritorial zones.

A person rescued at sea must be guided to a safe place in conformity with the international sea law, humanitarian law, and refugee' law.

Even with signed agreements with the third-party-States to which refugees are returned back, the State that promotes policies as above-mentioned has to respect all the international obligations, otherwise It is considered to be co-responsible for violations against refouled-persons.

These on-going systematic human rights' violations are absolutely unacceptable, and it is also absolutely unacceptable that these actions are not stopped immediately and once and for all.

In addition, the Associazione would like to recall that **Italy has been reproached several times** by the European Court of Human Rights for violation of Art. 3 of the European Convention on Human Rights. This article recalls that "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*", but Italy promoted policies of refoulement to send migrants back to States where they face a real risk to be subjected to treatment contrary to the above-mentioned article (Saadi v. Italy, 37201/06; Trabelsi v. Italy, 38128/08; Abdelhedi v. Italy, 2638/07; Hamraoui v. Italy, 16201/07 among others).



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Violations of International Law:

1. International Convention on Maritime Search and Rescue (SAR Convention) and International Convention for the Safety of Life at Sea (SOLAS Convention)

The International Convention on Maritime Search and Rescue and the International Convention for the Safety of Life at Sea assure that rescue is guaranteed without depending on circumstances or regarding people's nationality or status. As explained in the IMO-UNHCR Rescue at Sea leaflet¹, "*Guidelines on the Treatment of Persons Rescued at Sea*² [...] contain the following provisions: the government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided (para 2.5); a place of safety is a location where 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 (para 6.12)."

Surely, migrants could not be turned over to the Libyan authorities: first of all, Italian authorities were not sure about their country of origin; secondly, Libya cannot be considered a place of safety for refouled-persons due to the facts that its government did not ratify the Geneva Convention Relating to the Status of Refugees and the some other relevant conventions regarding the promotion and protection of human rights, as recalled by several national and international reports which emphasize the on-going human rights' violations occurred against migrants, refugees, and asylum-seekers.

2. Convention Relating to the Status of Refugees – Geneva Convention of 1951 (art. 33.1)

¹ *Rescue at Sea. A Guide to Principles and Practice as Applied to Migrants and Refugees*, IMO-UNHCR, pag. 6.

² Resolution MSC.167(78) adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments.



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

Surely, migrants could not be given back to the Libyan authorities: first of all, Italian authorities were not sure about their country of origin; secondly, Libya cannot be considered a place of safety for refouled-persons due to the facts that its government did not ratify the Geneva Convention Relating to the Status of Refugees and the other relevant conventions regarding the promotion and protection of human rights, as recalled by several national and international reports which emphasize the on-going human rights’ violations occurred against migrants, refugees, and asylum-seekers.

3. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3.1)

“No State Party shall expel, return (‘refouler’), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

4. International Covenant on Civil and Political Rights (art. 7)

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

As confirmed by the United Nations Human Rights Committee in its General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment (art. 7), *“States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”* (par. 9 of the UNHRC General Comment No. 20 of March 10, 1992). Furthermore, the European Court of Human



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Rights ruled that it was a violation of art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to refole persons to States in which they would face a risk of being subjected to torture or cruel, inhuman or degrading treatment.

5. European Convention for the Protection of Human Rights and Fundamental Freedoms

Art. 3: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*;

Art. 5: *“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty”* save in cases and in accordance with a procedure prescribed by law;

Art. 13: *“Everyone whose rights and freedoms as set forth [in the European Convention] are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*.

6. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto (art. 4)

“Collective expulsion of aliens is prohibited.”

Violations of European Union Law and of Italian Law:

1. Treaty on European Union (art. 6) and Charter of Fundamental Rights of the European Union (arts. 1, 3, 4, 6, 7, 18)

As reported above and as confirmed by the on-going policy of refolement based on the agreements between Libya and Italy, it is evident that the fundamental human rights recognized by European Union Law through art. 6 of the Treaty on European Union are not respected: in fact, the Italian



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government did not allow those migrants refouled in Libya to apply for the international programs of protection. Moreover, it is not established that the Italian counter-party, the Libyan government, respects human dignity (which is against art. 1 of the Charter of Fundamental Rights of the European Union), the integrity of persons (against art. 3), the prohibition of torture and inhuman or degrading treatment or punishment (art. 4), the right to liberty and security (art. 6), the respect for private and family life (art. 7), and the right of asylum (art. 18).

2. Treaty on the Functioning of the European Union (art. 78.1)

Article 78.1 of the Treaty on the Functioning of the European Union recalls that “*the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.*”

3. Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code) (arts. 3.b, 7, 13)

The refoulement-policy promoted by the Italian government violated the above-mentioned articles of the Regulation 562/2006. In fact, Italian authorities did not verify the documents of refouled migrants, did not verify that the refoulement carried human rights’ violations, and did not present a written explained justification of its policy.

4. Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted and Council



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Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status

Council Directive 2004/83/EC of 29 April 2004 fixes several minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Due the fact that the Italian government did not allow migrants to apply for the request of international protection, it violated the above-mentioned Directive.

Moreover, the Italian government violated the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status. In fact, the Italian government did not grant to migrants the access to the procedures for asking international protection, nor the possibility to wait for the decision of the right authority. The Italian government also violated the principle stated in the above-mentioned Decision that binds a State to permit asylum-seekers to overstay at borders in order to apply for the request of international protection.

5. Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulle condizioni dello straniero – Italian Legislative Decree 286/98 (arts. 10, 19)

Art. 10 of the Italian above-mentioned Legislative Decree states that refoulement or deportation policies cannot be enforced against current measures that regulate political asylum, refugee-status and temporary humanitarian protection.

Moreover, art. 19 prohibits deportation and/or refoulement of persons to zones in which human rights are violated or in which its protection is not fully provided.



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**IN CONCLUSION, THE ASSOCIAZIONE COMUNITÀ PAPA GIOVANNI XXIII
ASKS**

THE APPROPRIATE AUTHORITIES:

1. **To reproach Italy for having violated several principles of human rights, international conventions, and European Union conventions** emphasizing the necessity to stop the on-going refoulement policy;
2. **To open an infringement proceeding against Italy** for having violated Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 and the Council Directive 2005/85/EC of 1 December 2005, in particular the violation of the minimum standards for granting refugee status, and for having promoted refoulement policies to Libya without presenting a written explained justification of the above-mentioned policy and without an involvement of appropriate authorities;
3. **To ask Italy to explain the background of the agreements with Libya** related to the control of irregular migration by sea in order to verify if the agreements are in compliance with international law and with the law of European Union.
4. **To promote further missions to Italy to collect useful data** in order to verify if Italy is still violating human rights guaranteed by the law of European Union and by the ratified international conventions.

Rimini, 25th October 2010

Giovanni Ramonda

President of the Associazione Comunità Papa Giovanni XXIII



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