

## INTRODUCTION

During its second Universal Periodic Review (**UPR**) in October 2014 (the **second UPR**), Italy received 186 recommendations; it accepted 176 and noted 10 of them. 33 of these recommendations addressed the human rights of migrants (the **Recommendations of Concern**). In November 2017, Italy published its mid-term report reviewing the implementation of the recommendations accepted and noted in the UPR second cycle.<sup>1</sup>

LFJL's submission focuses on Italian migration policies affecting the human rights of migrants and analyses Italy's progress in implementing the UPR recommendations made to Italy on this issue. LFJL considers Italy's implementation of the Recommendations of Concern to be inadequate. Italy continues to implement migration policies that violate the principle of *non-refoulement* and arbitrary detention. By doing so, Italy has ignored many of the Recommendations of Concern it accepted. Irregular entry and stay remain a crime in Italy, which results in discrimination against migrants in the access to justice and in their increased vulnerability to labour exploitation.

### I. Migration and Asylum Policies

During its second UPR, Italy accepted recommendations to strengthen the protection of migrants and other vulnerable groups.<sup>2</sup>

In early December 2018, the Italian government adopted Law No. 132 of 1 December 2018, which removed one of the three layers of protection for asylum seekers.<sup>3</sup> Before the law entered into force, the Italian system offered 1) refugee status, 2) subsidiary protection, or 3) humanitarian protection for people seeking asylum.<sup>4</sup> Law No. 132 abolished the status of "humanitarian protection" which was valid for two years and entitled people to a residency permit, thereby enabling them to work.<sup>5</sup>

This is problematic as 25% of migrants who arrived in Italy between 2014 and 2018 were legalised through the status of humanitarian protection.<sup>6</sup> As a result of this law, an estimated 70,000 people are to become irregular in the country by 2020.<sup>7</sup> This law forms part of a larger framework of recent Italian policies aimed at discouraging migrants from seeking asylum on its territory and in turns, weakens the protection of vulnerable groups.

### Cooperation with Libya on Migration: Contributing to Violations of Human Rights of Migrants

In 2014, Italy accepted recommendations to develop policies that enhance the protection of the rights of migrants.<sup>8</sup> In its 2017 mid-term review, Italy provided a comprehensive list of policies and updates which it considers to have contributed to improving the rights of migrants who disembark in Italy.

LFJL argues that Italy's recent migration policies, particularly those adopted as part of its cooperation with Libya, have led to violations the rights of migrants in detention. These policies are focused on stemming the flows of migration to Italy, at the cost of migrants' lives and rights.

### *Memorandum of Understanding with Libya*

In its mid-term report, Italy explains that one of the ways it has "improved" the conditions of migrants was by signing "an agreement with Tripoli" for which the "EU expressed its appreciation."<sup>9</sup> This refers to the 'Memorandum of Understanding (**MoU**) on cooperation in the fields of the fight against illegal

immigration, human trafficking and fuel smuggling and on reinforcing the security of borders' entered into between Italy and Libya in February 2017.<sup>10</sup>

Under the MoU, Libya assumes the responsibility of intercepting migrant boats at sea and of returning them to Libyan shores. Italy has contracted to Libya the return of migrants, incentivising Libya to return them to a place where they are likely to face severe human rights violations. Italy has done this notwithstanding that Libya has not ratified the Convention on the Status of Refugee and has no asylum law.<sup>11</sup> Further, Libya does not have the resources, infrastructure or political will to deal with the immediate and long-term needs of migrants adequately. In 2017 and again in late 2018, the UNHCR<sup>12</sup> and the International Organization for Migration (**IOM**)<sup>13</sup> stated that Libya could not be recognised as a safe third country. As a result, LFJL considers that migrants should not be returned to Libya in the current context.

The MoU revived the previous problematic Friendship Agreement of 2008 between Italy and Libya, in which Italy contracted Libya to aid “in the fight against illegal migration.”<sup>14</sup> This agreement was found to be unlawful by the European Court of Human Rights (**ECtHR**) in 2012<sup>15</sup> and 2015.<sup>16</sup> The ECtHR found Italy in breach of its obligations under international law by pushing back migrants to Libya, where there was a high risk that they would be subjected to torture. Through the MoU, Italy is circumventing this ruling by outsourcing its responsibility to Libya to return migrants.

### *Training of the Libyan Coast Guard*

In its mid-term report, Italy stated it is also committed to “supplying means and training [of] relevant Libyan personnel.”<sup>17</sup> Through the MoU, Italy also agreed to provide training to the Libyan Coast Guard (**LCG**) on intercepting vessels through EUNAVFOR Med (also known as Operation Sophia).<sup>18</sup>

Nonetheless, it has been heavily documented that over the past two years, the LCG has mistreated migrants, asylum seekers and refugees and has committed grave violations of human rights.<sup>19</sup> In one occasion, the LCG reportedly deliberately sunk boats using firearms.<sup>20</sup> Following interception at sea, the LCG almost systematically transfers migrants to the detention centres of Libya’s Directorate for Combatting Illegal Migration (**DCIM**).<sup>21</sup> In the detention centres, migrants face arbitrary and indefinite detention with no judicial oversight and no legal channels to challenge their detention.<sup>22</sup>

Medecins Sans Frontieres (**MSF**) has systematically reported the dire situation in DCIM centres including over-crowdedness, lack of ventilation, natural light and adequate sanitation.<sup>23</sup> Migrants in these centres have reported skin diseases, infections, and acute watery diarrhoea, symptomatic of severe malnourishment and dehydration.<sup>24</sup>

LFJL partners have also reported mistreatment and sexual abuse of women inside the centres. One such example is of a woman who reported being four-month pregnant, despite having been detained for seven months.<sup>25</sup>

In its 2019 report on the human rights situation in Libya, OHCHR recommended that the European Union and Member States of the UN Human Rights Council “urgently reconsider their operational support to the LCG, an entity which endangered the lives of migrants in distress at sea and returned them to arbitrary detention and torture in Libyan centres.”<sup>26</sup>

### ***Support of militias operating in Libya***

In its mid-term report, Italy further argued that the MoU also “envisages a strong action against trafficking in human beings and against smugglers.”<sup>27</sup>

Italy’s support for anti-trafficking efforts in Libya is problematic as it is supporting a larger trend in Libya in which armed groups who used to be traffickers are shifting their activities to take part in anti-trafficking activities.<sup>28</sup>

In Sabratha, a smuggling hotspot, migrant crossings dropped by 50% in the first seven months of 2017 – an 80% decrease in relation to the same period in 2016.<sup>29</sup> This is due to a shift of activities of the Anas al-Dabbashi Brigade, an armed group which used to be preeminent in human-smuggling.<sup>30</sup> In early 2017, the militia signed a deal with the UN-recognised Government of National Accord (GNA).<sup>31</sup> After this deal, a brigade – Battalion 48, was created under the umbrella of the GNA’s Ministry of Defence. Through this deal, the brigade was put in charge of policing the city and became officially in control of detention centres and “anti-smuggling activities” under the umbrella of the state.<sup>32</sup> The extent to which the vetting of those involved in this process, in particular in relation to their implication in human rights violations, remains to be determined. Italy has been accused of being either complicit or directly involved in this deal.<sup>33</sup> Italian authorities have denied this.<sup>34</sup>

Other detention centres have been found to be under the *de facto* control of armed groups. In Zawiya, northwest Libya, the DCIM centre is under the control of the local militia, the Nasr Brigade, and is, in fact, located in the same compound as the brigade’s headquarters.<sup>35</sup>

Non-state actors are increasingly conducting quasi-police activities on behalf of the state whilst continuing to carry out illegal activities. LFJL argues that Italy’s continuous support for Libya is yet another way of legitimising armed groups operating in the country.

### ***Impeding the work of rescue boats in the Mediterranean***

Since the submission of its mid-term report in November 2017, Italy has increasingly hardened its approach and has now closed off its ports to rescue boats, at the risk of letting boats with migrants on board being stranded at sea for days.<sup>36</sup>

Italy has also been actively obstructing the work of rescue boats saving migrants at sea. On 2 July 2017, Italy reportedly drafted a “Code of Conduct for NGOs” (**the Code of Conduct**)<sup>37</sup> to regulate the activities of NGOs involved in rescue operations at sea.<sup>38</sup> The Code of Conduct bans NGO vessels from entering Libyan water; and forbids them from “obstruct [ing] the search and rescue operations by the LCG”.<sup>39</sup>

Italy’s migration policies are severely endangering lives and could be breaching its international obligation of *non-refoulement*.

### ***Endangering lives of unaccompanied migrant children***

In 2014, Italy accepted recommendations to assist and protect unaccompanied children seeking asylum.<sup>40</sup> In its mid-term report, Italy argues that it has “effectively managed the serious inflow of migrants, including unaccompanied minors (UAM)”<sup>41</sup> and that “there have been no repatriation cases concerning minors.”<sup>42</sup> Finally, Italy states it adopted Law No. 47 of 7 April 2017 which makes

*refoulement* and border rejection of UAMs strictly forbidden.<sup>43</sup> However, in June 2018, Italy refused the disembarkation of the humanitarian vessel *Aquarius*, carrying 123 UAMs and 11 babies,<sup>44</sup> in breach of Law No. 47.

Italy's support for Libya as an interception country further fails to comply with its international obligations. In July 2018, the *Open Arms* rescue vessel reportedly found the bodies of a child and a woman at sea after being abandoned by the LCG.<sup>45</sup> *Open Arms* claimed these deaths were a direct consequence of Italy handling responsibility to Libya for rescuing migrants.<sup>46</sup>

Furthermore, inside the Libyan detention centres, there is most often no differentiation in treatment between children and adults.<sup>47</sup> In the Homs detention centre, LFJL partner found 2 UAMs of 11 and 12 years old living in a cell with 19 adults.<sup>48</sup> Likewise, in the Sorman Detention Centre for Women and Children, our partners found 204 women and 26 minors, the youngest 3 days old and only one male guard. When visiting on 18 May 2017, our partner witnessed the guard harassing "what were clearly" minors.<sup>49</sup>

Despite Italy's efforts to guarantee the *non-refoulement* of UAMs, its technical and financial support to Libya contributes to breach such engagement.

## II. Vulnerability of Migrant Workers under Italy's Inadequate Legal Framework

In 2014, Italy noted recommendations to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).<sup>50</sup> This is particularly concerning as Italy's legal framework continues to lack sufficient protection for migrants and victims of human trafficking, forced labour and exploitation, working in Italy.

Migrants arriving in Italy from sub-Saharan Africa and North Africa constitute a source of cheap and exploitable labour for employers.<sup>51</sup> The Italian agriculture industry, particularly in the south of the country where migrants arrive through the Central Mediterranean route, primarily through Libya, has become infamous for its reliance on exploitative and abusive migrant labour.<sup>52</sup> Over the past six years, the number of deaths in Italy's fields has amounted to 1500 people.<sup>53</sup>

The widespread nature of forced or exploitative labour in the Italian agriculture industry is frequently blamed on the system of *caporalato*,<sup>54</sup> which is prevalent throughout the sector. *Caporalato* is a system of labour recruitment and intermediation between worker and employer, through which the farm owner hires a *caporale*, or gangmaster, to recruit and manage the workforce.<sup>55</sup> Most often, workers are exploited by the *caporali* and farm owners alike, through threats, deduction of wages and inhumane living conditions.<sup>56</sup> This practice became a criminal offence in 2011 and is defined in Article 603 bis of the Italian Penal Code as an "illicit intermediation and exploitation in work."<sup>57</sup>

In 2016, Italy adopted the Law No. 199 of 29 October 2016 (the **Caporalato law**) which modified the initial *caporalato* law of 2011. The 2016 *Caporalato* law introduced some positive changes: it broadened the crime to apply to situations which do not require violence, threats or intimidation.<sup>58</sup> It introduced the possibility of sanctioning the employer and not only the intermediary.<sup>59</sup> The law also introduced corporate criminal liability.<sup>60</sup> LFJL commends Italy for this positive measure, but expresses concern that the law is still limited in protecting migrant workers and providing them access to justice.

According to Italy, the *Caporalato* law makes it unnecessary to ratify the ICRMW as it provides "measures aimed at improving the criminal prosecution" of undeclared labour and labour exploitation in agriculture.<sup>61</sup> The law also provides for "victim's compensation."<sup>62</sup> However, although the

*Caporalato* law makes employers liable and introduces corporate criminal liability for the exploitation of workers, it is still flawed in protecting migrants from exploitation efficiently. The law fails to include provisions aiming to prevent such violations and abuse and is only applicable to protect migrants *after* a case of exploitation has been verified to provide remedies when the rights of migrant workers have already been violated.<sup>63</sup>

Moreover, because it requires a violation to occur in the first place, the *Caporalato* law relies on the ability and willingness of the workers to come forward and file a case denouncing their exploiters.<sup>64</sup> This is problematic because the Italian legal framework provides very little incentive for migrants in irregular situations to seek justice. Italian law continues to criminalise irregular migration<sup>65</sup> and relies on the employer to regularise their workers.<sup>66</sup> “Illegal stay” is sanctioned by a fine of up to EUR 10,000 and can lead to deportation.<sup>67</sup> Further, employers often fail to help to regularise their workers in order “to maintain them in a condition of being liable to be blackmailed”.<sup>68</sup> In fact, Amnesty International reported that 47% of interviewed migrant indicated that promises made by their employers to regularise their status were never kept.<sup>69</sup> As a result, migrants who are trafficked, smuggled or enter without a permit are discouraged from reporting abuses to the authorities as they fear being sanctioned and deported.<sup>70</sup>

In the 2018 report on her country visit to Italy, the UN Special Rapporteur on all Contemporary Forms of Slavery highlighted the presence of forced labour in Italy and noted that the *caporalato* system was still strong and operating in “a climate of impunity of criminals and lack of enforcement of the protection of fundamental human rights of migrant workers.”<sup>71</sup>

Due to Italy’s restrictive migration legal framework, the *caporalato* law fails to provide sufficient guarantees to help protect migrants who are victims of trafficking and exploitation and instead facilitates the impunity of the traffickers and *caporali*. Although the law attempts to provide such legal protection, in practice it is difficult to hold the perpetrators of these offences accountable.<sup>72</sup>

As a second argument for not ratifying the ICRMW, Italy also stated that it is “committed to implement the 1<sup>st</sup> National Action Plan (NAP) on Business and Human Rights (BHR).”<sup>73</sup> Italy argues that this NAP contains a specific goal to tackling “the *caporalato* and other forms of exploitation, forced labour, child labour, slavery and irregular work with particular focus on migrants and victims of trafficking”.<sup>74</sup>

While we welcome Italy’s intention to adopt the NAP on BHR, the NAP does not replace the ratification of the ICRMW. The NAP in Italy includes only vague commitments: it fails to clarify a framework or national strategy against trafficking in persons. Logistically, the NAP is problematic because it has no established timelines for implementation and does not specify which government agency is responsible for monitoring that implementation.<sup>75</sup>

Finally, Italy has justified its decision not to ratify the ICRMW by stating that it has ratified the International Labour Organisation (ILO) Conventions No. 143 and 189.<sup>76</sup> LFJL argues that although Italy has ratified these two conventions, it has failed to comply with other ILO instruments to which it is a party, including Article 25 of the ILO Forced Labour Convention, which criminalises forced labour;<sup>77</sup> and the Equal Remuneration Convention (1951) which provides for equal pay for equal work.<sup>78</sup>

## **RECOMMENDATIONS OF ACTION BY THE STATE UNDER REVIEW:**

LFJL calls on the state of Italy to:

- Stop incentivising the return of migrants, particularly children, to Libya, which is not a safe third country;
- Ensure that any cooperation and support provided to Libya is consistent with international human rights, refugee and other relevant international law obligations and does not contribute directly or indirectly to human rights violations, through effective and independent human rights monitoring of the conditions in Libya;
- Ensure full respect of the principle of *non-refoulement* in its migration policies, as required by the Convention on the Status of Refugee, the European Convention on Fundamental Rights and Liberties and the International Convention on Civil and Political Rights, to which Italy is a party;
- Lift restrictions on life-saving work of humanitarian search and rescue organisations;
- Strengthen its legal framework to take better account of migrants and migrant workers in the country, in particular by ratifying the ICRMW.

- <sup>1</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 68, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.
- <sup>2</sup> Ibid, p. 32. Recommendations 145.91 to 145.93 submitted by China, the Russian Federation and Thailand.
- <sup>3</sup> M. Villa, *Italy's New Irregulars*, 2018, ISPI, available at: <https://www.ispionline.it/en/pubblicazione/new-irregulars-italy-21813>.
- <sup>4</sup> Ibid.
- <sup>5</sup> Ibid.
- <sup>6</sup> Ibid.
- <sup>7</sup> Ibid.
- <sup>8</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 68-71, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>. Recommendations 145.159 to 145.178 submitted by Trinidad and Tobago, Ivory Coast, Cuba, Djibouti, Kenya, Japan, South Sudan, Philippines, Qatar, Guatemala, Nicaragua, Holy See, Turkey, Israel, Netherlands, Norway, United States of America, Sudan, Kyrgyzstan.
- <sup>9</sup> Ibid.
- <sup>10</sup> *Memorandum of understanding on Cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic*, 2 February 2017, available at: [https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM\\_translation\\_finalversion.doc.pdf](https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf).
- <sup>11</sup> UNSMIL/OHCHR, *Detained and Dehumanised, Report on Human Rights Abuses Against Migrants*, December 2016, p.1, available at: [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf).
- <sup>12</sup> UNHCR, *UNHCR Position on Returns to Libya (Update II)*, September 2018, p. 21, available at: <https://www.refworld.org/pdfid/5b8d02314.pdf>.
- <sup>13</sup> *Joint UNHCR and IOM statement on addressing migration and refugee movements along the Central Mediterranean route*, 2 February 2017, available at: <https://www.unhcr.org/news/press/2017/2/58931ffb4/jointunhcr-iom-statement-addressing-migration-refugee-movements-along.html>.
- <sup>14</sup> *Treaty of Friendship, Partnership and Cooperation between Libya and Italy* 30 August 2008, original version in Italian, available at: [http://www.istitutospiovi.it/sites/default/files/articolo/Trattato%20di%20Amicizia,%20Partenariato%20e%20Cooperazione%20tra%20la%20Repubblica%20Italiana%20e%20la%20Grande%20Giamahiria%20Araba%20%20Libica%20Popolare%20Socialista/testo\\_trattato\\_it\\_lib.pdf](http://www.istitutospiovi.it/sites/default/files/articolo/Trattato%20di%20Amicizia,%20Partenariato%20e%20Cooperazione%20tra%20la%20Repubblica%20Italiana%20e%20la%20Grande%20Giamahiria%20Araba%20%20Libica%20Popolare%20Socialista/testo_trattato_it_lib.pdf).
- <sup>15</sup> *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, available at: <https://www.refworld.org/cases/ECHR,4f4507942.html>.
- <sup>16</sup> *Khlaifia and Others v. Italy*, Application no. 16483/12, Council of Europe: European Court of Human Rights (Second section), 1 September 2015, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-157277%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-157277%22]}).
- <sup>17</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 68-71, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.
- <sup>18</sup> Amnesty International, *Between the Devil and Deep Blue Sea*, 8 August 2018, p. 9, available at: <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.
- <sup>19</sup> See for example UNSMIL, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, Libya Migration Report, 20 December 2018, p. 18, available at: <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.
- <sup>20</sup> UN Security Council, *Letter Dated 1 June 2017 from the Panel of Experts on Libya*, June 2017, paras 104-105. available at: <http://www.refworld.org/docid/5b641bee4.html>.
- <sup>21</sup> Ibid, p. 4.
- <sup>22</sup> UNHCR, *UNHCR Position on Returns to Libya (Update II)*, September 2018, p. 12, available at: <https://www.refworld.org/pdfid/5b8d02314.pdf>.
- <sup>23</sup> MSF, *Libya: Providing healthcare to detained refugees and migrants*, December 2016, available at: <https://www.msf.org/libya-providing-healthcare-detained-refugees-and-migrants>.
- <sup>24</sup> Ibid.

<sup>25</sup> Information collected after confidential interview with one of LFJL's partners in Tripoli on 24 February 2019. Information refers to the partner's visit to the "Sorman Detention Centre for Women and Children" on 18 May 2017.

<sup>26</sup> OHCHR, 'Human Rights Council holds general debate on technical assistance and capacity building', 21 March 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24387&LangID=E> and UNGA, *Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights, Report of the United Nations High Commissioner for Human Rights*, 4 February 2019, A/HRC/40/46, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=104&su=110](http://ap.ohchr.org/documents/dpage_e.aspx?c=104&su=110).

<sup>27</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 69, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.

<sup>28</sup> Chatham House, *Libya's War Economy Predation, Profiteering and State Weakness*, April 2018, p. 11-12, available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2018-04-12-libyas-wareconomy-eaton-final.pdf>.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> An image of a letter announcing the establishment of Battalion 48, signed by the Ministry of Defence, was published on the newly created Battalion 48 Facebook page on 29 March 2017. The letter appears to be dated 1 February 2017: <https://www.facebook.com/1394267367282743/photos/pcb.1394412743934872/1394412603934886/?type=3&theater>.

<sup>32</sup> Chatham House, *Libya's War Economy Predation, Profiteering and State Weakness*, April 2018, p. 12/ available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2018-04-12-libyas-wareconomy-eaton-final.pdf>.

<sup>33</sup> An Associated Press report included a statement from a member of the Anas al-Dabbashi Brigade who said that the militia had reached a 'verbal' agreement with the Italian government and the GNA. See M. Michael, 'Backed by Italy, Libya enlists militias to stop migrants', Associated Press, 29 August 2017, available at: <https://www.apnews.com/9e808574a4d04eb38fa8c688d110a23d>.

<sup>34</sup> M. Michael, 'Backed by Italy, Libya enlists militias to stop migrants', Associated Press, 29 August 2017, <https://www.apnews.com/9e808574a4d04eb38fa8c688d110a23d>; Associated Press, 'Italian Effort to Stop Migrants Fuels Bloody Battle in Libya', 5 October 2017, available at: <https://www.voanews.com/a/libya-militias-migrants-sabratha/4057716.html>.

<sup>35</sup> Human Rights Watch, *No Escape from Hell- EU Policies Contribute to Abuse of Migrants in Libya*, 21 January 2019, available at: <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrantslibya#>.

<sup>36</sup> UNSMIL/OHCHR, *Detained and Dehumanised, Report on Human Rights Abuses Against Migrants*, December 2016, p.1, available at: [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf). On 18 March 2018, the Italian police seized the Open Arms rescue vessel after it refused to hand over 218 survivors to the LCG, bringing them to Italy instead. The vessel was seized for a month for "criminal activity" until an Italian judge recognised Libya not to be a safe third country for disembarkation.

<sup>37</sup> Euronews, *Italy's code of conduct for NGOs involved in migrant rescue: text*, 3 August 2017, available at: <https://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue>.

<sup>38</sup> LFJL, *Italy stop closing spaces for civil society and endangering lives*, 12 July 2017, available at: <https://www.libyanjustice.org/news/281-italy-stop-closing-spaces-for-civil-society-and-endangering-lives>.

<sup>39</sup> Euronews, *Italy's code of conduct for NGOs involved in migrant rescue: text*, 3 August 2017, available at: <https://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue>.

<sup>40</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p.73-78. Recommendations 145.179 to 145.181 submitted by Denmark, Brazil and Angola.

<sup>41</sup> Ibid, p. 73.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid, p. 74.

<sup>44</sup> A. Giuffrida, "Mediterranean rescue vessel crew keep migrants calm during standoff", The Guardian, 11 June 2018, available at: <https://www.theguardian.com/world/2018/jun/11/mediterranean-rescue-vessel-ms-aquarius-migrants>.



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<sup>45</sup> C. Harris, 'Woman the sole survivor after migrant trio 'abandoned' in Mediterranean', *Euronews*, 18 July 2017,

available at: <https://www.euronews.com/2018/07/18/libyan-coast-guard-deny-the-accusation-they-abandoned-migrants>.

<sup>46</sup> Ibid.

<sup>47</sup> An LFJL partner found evidence of this in various detention centres across Libya.

<sup>48</sup> Information collected after confidential interview with one of LFJL's partners in Tunis on 14 November 2018. Information refers to the partner's visit to the Homs Detention Centre in May 2017.

<sup>49</sup> Information collected after confidential interview with one of LFJL's partners in Tripoli on 24 February 2019. Information refers to the partner's visit to the "Sorman Detention Centre for Women and Children" on 18 May 2017.

<sup>50</sup> Recommendations 145.1 to 145.6 submitted by Egypt, Chile Indonesia, Ghana, Sierra Leone, Uruguay, Peru, Islamic Republic of Iran, Senegal, Turkey and Algeria. (Recommendations are grouped by issue as defined by Italy in its Mid-term Review Following the 2<sup>nd</sup> UPR cycle).

<sup>51</sup> UNGA, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Italy*, 1 April 2014, UN Doc A/HRC/26/38Add., para 6-8, available online at: <https://www.refworld.org/pdfid/539825174.pdf>.

<sup>52</sup> For a full account see: Amnesty International, *Exploited Labour: Migrant Workers in Italy's Agriculture Sector*, 2012, available at: <https://www.amnesty.org/download/Documents/20000/eur300202012en.pdf>; and MSF, *Una Stagione all'Inferno*, 2008, available at: [http://archivio.medicisenzafrontiere.it/allegati/pubblicazioni/rapporti/una\\_stagione\\_all\\_inferno.pdf](http://archivio.medicisenzafrontiere.it/allegati/pubblicazioni/rapporti/una_stagione_all_inferno.pdf).

<sup>53</sup> Antonello Mangano, 'With a death toll of thousands, Italy's agricultural sector resembles a warzone', *Equal Times*, 23 August 2018, available at: <https://www.equaltimes.org/with-a-death-toll-of-thousands?lang=en#XJJsGCL7SUM>.

<sup>54</sup> The UN Special Rapporteur visited various places in Calabria, Foggia and Cerignola in Apulia and Latina in Lazio. See OHCHR, *Country Visit to Italy (3-12 October 2018) - End of Mission Press Statement*, Urmila Bhoola, *Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, November 2018, para 9. For more on labour force in Italy arriving from Libya, see: UNGA, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Italy*, 1 April 2014, UN Doc A/HRC/26/38Add., available online at: <https://www.refworld.org/pdfid/539825174.pdf>.

<sup>55</sup> Andrew Wasley, 'Scandal of the 'tomato slaves' harvesting crop exported to UK', *The Ecologist*, 1 September 2011, available at: <https://theecologist.org/2011/sep/01/scandal-tomato-slaves-harvesting-crop-exported-uk>.

<sup>56</sup> Fabrizio Gatti, 'I was a slave in Puglia' *L'Espresso* (4 September 2006) translated by Wolfgang Achtnr. available at: <http://espresso.repubblica.it/palazzo/2006/09/04/news/i-was-a-slave-in-puglia-1.1319>

<sup>57</sup> According to Article 603-bis of the Italian Penal Code, *Caporalato* is the act of conducting an organised activity of intermediation, recruiting manpower or organising its characterised by exploitation, through violence, threat or intimidation (...). The crime is punished with detention from five to eight years and with a fee ranging from EUR 1,000 to 2,000 for each of the workers recruited.

<sup>58</sup> The crime could originally only be established in the presence of an organised activity of intermediation and by means of violence threat or intimidation. Through the 2016 amendments, the law broadened the *caporalato* sanctions for employers and includes non-organised activities of intermediation. The 2016 law also provides for 'criminal' liability of the employer's company. See more in Cucchiara et al., "The Italian legal framework against labour exploitation. A legal assessment, specifically targeting undocumented migrants" *Associazione per gli Studi Giuridici sull'Immigrazione*, 2017, available at: [https://www.business-humanrights.org/sites/default/files/documents/ASGI\\_HRIC\\_BHRR\\_C May2017\\_REV%2019.7.pdf](https://www.business-humanrights.org/sites/default/files/documents/ASGI_HRIC_BHRR_C May2017_REV%2019.7.pdf).

<sup>59</sup> Cucchiara et al., "The Italian legal framework against labour exploitation. A legal assessment, specifically targeting undocumented migrants" *Associazione per gli Studi Giuridici sull'Immigrazione*, 2017 p. 4, available at: [https://www.business-humanrights.org/sites/default/files/documents/ASGI\\_HRIC\\_BHRR\\_C May2017\\_REV%2019.7.pdf](https://www.business-humanrights.org/sites/default/files/documents/ASGI_HRIC_BHRR_C May2017_REV%2019.7.pdf).

<sup>60</sup> The 2016 amendments to the *caporalato* law include the possibility of placing the business under judicial management as well as mandatory sanctions such as seizure of assets. See more in. OHCHR, *Country Visit to Italy (3-12 October 2018) - End of Mission Press Statement*, Urmila Bhoola, *Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, November 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23708&LangID=E>

<sup>61</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 2, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.

<sup>62</sup> Ibid.

<sup>63</sup> Oxfam, "Human Suffering in Italy's Agricultural Value Chain", 2018, p 19, available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620479/cs-human-suffering-italy-agricultural-value-chain-210618-en.pdf?sequence=4>.

<sup>64</sup> Legge 29 ottobre 2016 No 199 (Law No. 199 of 29 October 2016), available at: <https://www.cisl.it/attachments/article/4229/ALL1TERS9416.pdf>.

<sup>65</sup> Legislative Decree No. 286/1998, Consolidated Immigration Act (1998), available at: <https://www.refworld.org/docid/54a2c23a4.html>.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Borraccetti (ed), *Labour Migration in Europe Volume II, Exploitation and Legal Protection of Migrant*, 2018, p. 77.

<sup>69</sup> Amnesty International, *Exploited Labour - Migrant Workers In Italy's Agricultural Sector*, 2012, p.18, available at: <https://www.amnesty.org/download/Documents/20000/eur300202012en.pdf>.

<sup>70</sup> P. Cavanna, 'Exploitation in the Italian Agri-Food Sector: Stronger Laws, Weak Protection for Migrant Workers', in Marco Borraccetti (ed) *Labour Migration in Europe Volume II, Exploitation and Legal Protection of Migrant*, Palgrave Macmillan, p. 79.

<sup>71</sup> The UN Special Rapporteur visited various places in Calabria, Foggia and Cerignola in Apulia and Latina in Lazio. See OHCHR, *Country Visit to Italy (3-12 October 2018) - End of Mission Press Statement*, Urmila Bhoola, *Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, November 2018, para 9.

<sup>72</sup> The *caporalato* law has been effective in cases taking place after the death of workers. Mohammed Abdullah from Sudan died from a heart attack in 2015 whilst working in an Italian farm near the town of Nardò in Puglia. Three suspects were brought forward by the prosecution in this case: the owner of the farm where Mohammed worked, the owner's husband and Mohamed Elsalih who acted as the intermediary (*caporale*) for the arrival of migrants onto the farm. The *caporale* and the owner of the farm were found liable under the *caporalato* law as set out in article 603-bis of the Penal Code. They were also charged with manslaughter. In this case, the *caporalato* law did not help in the prevention of abuse, but was only applicable after the death of the worker.

<sup>73</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 2, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.

<sup>74</sup> Ibid.

<sup>75</sup> Italian Ministry of Foreign Affairs, *Italian National Action Plan for Business and Human Rights 2016-2021*, 2016, available at: [https://cidu.esteri.it/resource/2016/12/49117\\_f\\_NAPBHRENGFINALEDEC152017.pdf](https://cidu.esteri.it/resource/2016/12/49117_f_NAPBHRENGFINALEDEC152017.pdf).

<sup>76</sup> Italian Ministry of Foreign Affairs, Inter-ministerial Committee for Human Rights, *Italy Mid-term review following the 2<sup>nd</sup> UPR cycle*, November 2017, p. 2, available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IT/ItalyMidTermReview.pdf>.

<sup>77</sup> See: ILO Ratifications of Forced Labour Convention, 1930 (No. 29), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:3121744](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3121744).

<sup>78</sup> ILO, Equal Remuneration Convention, (adopted 29 June 1951, entered in to force 23 May 1973), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100).