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Contribution to the report on externalisation of the UN Special Rapporteur on the Human Rights of Migrants

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This contribution is submitted by Prof. Alice Riccardi and dr. Laura Di Gianfrancesco, respectively Director and 2025 Interim Director of the Roma3 IPHR Legal Clinic. Founded in 2014, the Clinic an educational programme fostering the growth of human rights knowledge while promoting social justice. The Clinic works both as a client-based and as a desk-study pro bono legal clinic. In the former capacity, it focuses on strategic litigation on human rights. Over the years, it has appeared or assisted in proceedings before the Appeals Chamber of the International Criminal Court, the European Court of Human Rights, the UN CEDAW, and the UNSC ISIL (Da'esh) & Al-Qaida Sanctions Committees. Most litigated cases concerned the alleged commission of human rights violations in migratory contexts, in particular in North Africa and the Central Mediterranean. In the latter capacity, the Clinic submitted its comments in the context of the latest cycle of the UN UPR concerning Italy's externalisation policies. Furthermore, it partners with UNHCR on issues of statelessness, and it has been the first clinic in Italy to publish Country of Origin Information (COI) reports for the benefit of Italian tribunals. It particularly reported on the conditions of Libyan detention facilities.

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1. This submission illustrates the Italian model of externalisation, focusing on cooperation with Libya and Tunisia, and its support for IOM's assisted voluntary returns. This allows to offer the Special Rapporteur an (1) example of externalisation measures. Also, it allows to more broadly assist him in addressing the following areas of inquiry: (2) transparency and monitoring; and (7)(a) responsibility of externalising State. We maintain that Italy is responsible for its failure to subject its externalisation policies to a human rights due diligence assessment, and for the maintenance of a policy of disguised expulsions.

The Italian Model of Externalisation

2. Italy has played a leading role in externalisation policies in the Central Mediterranean for almost ten years. It supports a deterrence strategy designed to keep migrants distant. Its "externalisation model" rests on three pillars: pull-backs at sea, detention in transit States, and voluntary returns. The first two pillars are based on cooperation agreements concluded with transit States – Libya¹ and Tunisia² above all – whilst the third rests on partnership agreements concluded with the IOM.³
3. As to Libya, Italy finances the Libyan coastguard (LCG) following the Italy-Libya 2017 MoU. Between 2019 and 2021, Italy allocated more than €20 million, deployed hundreds of Italian personnel and supplied ships, taking part in both bilateral and multilateral operations in Libya.⁴ Italy continues to supply the LCG with ships for coastal patrol, including interceptions at sea, despite incessant reports on LCG's human rights violations during such operations.⁵ According to Articles 2(2)-(3) MoU, Italy has financed with over €200 million⁶ temporary hosting camps and reception centres controlled by the Libyan Interior Ministry since 2017.⁷
4. As to Tunisia, between 2020 and 2025, Italy has allocated a total of €27 million to "support the Tunisia's border control and management of migration flows" through the supply of equipment, ships and maintenance of six ships for coastal patrol.⁸ For the years 2022-2026, Italy has allocated more than €10 million to "better manage movements at borders along the central Mediterranean route" through the training of Tunisian authorities.⁹ Italy has also approved the allocation of €9 million between 2024 and 2025 into fuel supply to the Tunisian coastguards (TCG).¹⁰
5. Italy finances IOM Voluntary Humanitarian Returns (VHR) from Libya through the Africa Fund.¹¹ It has allocated €20 million in 2019; €4,5 million in 2020; and €16 million up until 31 January 2025.¹² Since March 2022, Italy has funded IOM's Voluntary Returns and Reintegration (AVRR) programmes in Tunisia for a total of €6,150 million, ending on 28 February 2025.¹³

State Responsibility for Failing to Subject Cooperation to a HR Due Diligence Framework

6. Italy's described cooperation activities lack appropriate mechanisms for assessing and monitoring their potential impact on migrants' rights and reacting to violations. Addressing UN concerns over the potential human rights impact of the Italy-Libya 2017 MoU absent mitigating measures, the Italian Government deemed it sufficient that human rights obligations were given "specific attention during the negotiations"; thus it generally reaffirmed said obligations in Article 5 MoU and incorporated them in trainings offered to Libyan personnel.¹⁴ Efforts to challenge this deficiency before Italian courts have so far been unsuccessful. In January 2025, the Italian Council of State rejected an appeal concerning the provision of coastal patrol boats to the TCG, ruling that the existing risk of subsequent human rights violations does not affect the legality of the administrative act *per se*, as it pertains to the "execution" phase of the supply agreement.¹⁵ Similarly, when the Administrative Tribunal of Lazio was asked to assess the legality of Italy's financing of IOM's VHR in Libya in the absence of precautionary and monitoring mechanisms, it found cases inadmissible due to the absence of IOM as an indispensable third-party to the proceedings.¹⁶ The Tribunal also held that, in any event, the periodic reports provided by IOM, admittedly generic, were sufficient for monitoring purposes.¹⁷
7. Contrariwise, the duty to protect human rights requires destination States intending to cooperate with third States or international organisations on migration management to subject such

cooperation to a human rights due diligence framework. A robust due diligence framework should comprise: (i) a prior and specific human rights impact assessment; (ii) adequate mechanisms for periodic monitoring; and (iii) effective redress mechanisms, including the suspension of support in cases where human rights violations arise from the actions of the partner State or organisation. Such framework constitutes an *indispensable* procedural safeguard to prevent human rights violations by third parties which destination States have the capacity to influence through their financial support. This is confirmed by the positions expressed by several UN Special Rapporteurs in their exchanges with Italy¹⁸ and the EU¹⁹ upon the signature of cooperation agreements with Libya and Tunisia, and by the Committee against Torture in its Concluding observations on the 5th and 6th periodic reports of Italy.²⁰ At the European level, the same has been affirmed by the CoE Commissioner for Human Rights²¹ and more recently by the EU Ombudsman.²²

8. Consequently, destination States may be held independently responsible for failing to meet their duty to protect human rights if they enter into cooperation agreements and provide financial, logistical, or technical support without conditioning such cooperation on the partner's respect for human rights. As this is an obligation of conduct aimed at the prevention of human rights violations, such failure constitutes a breach of the duty to protect regardless of whether a human rights violation actually occurs as a result. Unlike in cases of accessory responsibility, determining the responsibility of the destination State in this case does not require a determination of the wrongful conduct by the cooperating third State or organisation, thereby excluding the invocation of any indispensable third-party rule in judicial proceedings (see above para. 6).

State Responsibility for Maintaining a System of Disguised Expulsions Through AVRR/VHR Programmes

9. IOM's AVRR/VHR programmes promise to support migrants who voluntarily decide to return to their countries of origin, and assist them during their reintegration process.²³ The UN has generally doubted the voluntariness of such returns,²⁴ particularly with respect to returns conducted from Libya and Tunisia, for returnees would have no alternatives but to accept to return in order to be liberated from the human rights violations suffered in both countries. In Libya, VHR often appears to migrants as the only real alternative available to escape their intolerable living conditions, especially when held in detention.²⁵ Migrants interviewed by OHCHR from January 2021 to June 2022 reported they were forced to consent to VHR and were not informed about other migratory pathways. Returnees testified they faced economic and social challenges:²⁶ *inter alia*, reintegration assistance provided by IOM often did not materialise or was largely insufficient.²⁷ In Tunisia, the overall context puts pressure on migrants to consent to AVRR. First, emergency measures particularly discriminatory against sub-Saharan migrants were recently taken,²⁸ including arbitrary arrests conducted by the police.²⁹ Furthermore, migrants are illegally deported to desert areas bordering Libya and Algeria.³⁰ The Tunisian situation, too, casts doubt on the voluntariness of consent to return.
10. Along migratory routes, migrants suffer innumerable human rights violations (e.g. torture, slavery, gender violence, trafficking etc.). These violations are usually looked at independently. However, they have a cumulative effect: they allow States to manage migration through a strategic distribution of vulnerability, with the ultimate aim of forcing migrants back to their countries of origin. Said human rights violations make the lives of migrants intolerable and force them to accept return. Such cumulative effect is well-captured by the prohibition of disguised expulsion, that is a measure of indirect *refoulement* which States commit by intentionally creating conditions of life so intolerable that migrants are left with no real alternatives but to accept return. Practice suggests that the prohibition of disguised expulsion has crystallised into a rule of customary international law, being endorsed by international and domestic courts and tribunals,³¹ UN bodies,³² and relevant literature.³³ Furthermore, it has been recognised by the UN International Law Commission in its Draft on the Expulsion of aliens.³⁴

11. In the context of externalisation, the prohibition of disguised expulsions synthesises all other relevant human rights prohibitions and allows to sanction States' decisions to create and perpetuate a policy of forced expulsions. A State is responsible for a disguised expulsion also when it supports or tolerates acts or omissions committed by others intended to provoke the return.³⁵ This includes thus not only transit States or organisations materially carrying out the returns, but also destination States which, irrespective of their accessory responsibility for underlying human rights violations, can be held individually responsible if they knowingly finance policies, programmes and actions intended to result in disguised expulsions from transit States.

¹ Italian Government, [MoU Italy-Libya](#), 2 February 2017, arts. 2(2)-(3).

² Italian Parliament, [Law Decree no.53/2019, converted into Law no.77/2019](#); The National News, [Italy and Tunisia sign three agreements in push to curb migration to Europe](#), 17 April 2024; Reuters, [Italy signs deal to take migrants workers from Tunisia](#), 20 October 2023.

³ Italian MFA, [Partnership Agreement between the Italian Ministry of Foreign Affairs and International Cooperation and IOM](#), 4 August 2017.

⁴ Italian Parliament, [La partecipazione italiana alle missioni in Libia](#), 10 May 2019; Italian Parliament, [Autorizzazione e proroga missioni internazionali 2020/2021](#), 5 July 2021.

⁵ Altraeconomia, [L'Italia cede alla Libia altre 14 navi veloci per intercettare le persone. Il ruolo di Invitalia](#), 24 October 2022; Mediterranean Saving Humans, [Il violento intervento della motovedetta libica finisce in tragedia](#), 1 November 2023; Nigrizia, [Libia: sono italiane le motovedette che sparano ai migranti. Il ricorso al Tar delle associazioni](#), 4 March 2024; Editoriale Domani, [Il governo Meloni regala sei motovedette alla Tunisia per bloccare i migranti. Il ricorso al Tar delle associazioni](#), 17 April 2024.

⁶ Italian Parliament, [Law no. 232/16](#), Africa Fund, art. 1(621).

⁷ Euro-Med Human Rights Monitor, [Italy-Libya Memorandum of Understanding: An affront to the fundamental human rights of migrants, refugees, and asylum seekers](#), 13 May 2023.

⁸ Italian MFA, [Support to Tunisia's border control and management of migrations flows](#), Intesa Tecnica, 9 December 2020; Italian Ministry of Interior, [Intesa Tecnica tra il Ministero dell'Interno e il Comando Generale della Guardia di Finanza](#), 12 December 2023.

⁹ Italian MFA, [Enhancing capacities to better manage movements at borders along the central Mediterranean route](#), Intesa Tecnica, 6 December 2022.

¹⁰ Italian Police, [Processo verbale per un sostegno finanziario per il pagamento del carburante delle unità navali, impegnate nella lotta all'immigrazione clandestina](#), 3 January 2024.

¹¹ Italian MFA, [Decreto Ministeriale 4115/0423](#), 12 February 2018, arts. 3-4.

¹² Italian MFA, [Decreto Ministeriale 4110/48](#), 4 September 2017, para. 1; Italian MFA, [Decreto Ministeriale 4100/32](#), 31 May 2019, on file with the submitting entity; Italian MFA, [Decreto di Liquidazione 4100/17](#), 4 June 2020, on file with the submitting entity; Italian MFA, [Decreto di Liquidazione 4100/26](#), 7 July 2021; Italian MFA, [Decreto di Liquidazione 4100/18](#), 22 June 2022; Italian MFA, [Decreto di Liquidazione 4100/18](#), 6 June 2023.

¹³ Italian MFA, [Decreto di Liquidazione 4100/24](#), 26 June 2023.

¹⁴ Italian Permanent Representative to International Organisations, [Letter of 7 February 2018](#), p. 5; CAT, [Information received from Italy on follow-up to the concluding observations](#), UN Doc CAT/C/ITA/CO/5-6/Add.1, 17 January 2019, paras. 7-9.

¹⁵ Italian Council of State, [Judgment No 00332/2025](#), 16 January 2025, paras. 15.1, 15.3.

¹⁶ Administrative Tribunal of Lazio, [Judgment No 03892/2025](#), 21 February 2025, paras. 7-8; Administrative Tribunal of Lazio, [Judgment No 08144/2025](#), 28 April 2025, paras. 32-38.

¹⁷ Administrative Tribunal of Lazio, [Judgment No 08144/2025](#), 28 April 2025, paras. 43-47.

¹⁸ Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [Information received concerning the possible return of migrants, under the partnership framework under discussion between your Excellency's Government and the Government of the State of Libya, in violation of the principle of non-refoulement](#), 2 February 2017, pp. 3, 5; Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences, [Information received concerning the enslavement and auctioning of enslaved African migrants in markets in Libya, which increasingly expose them to trafficking and forced labour, following the signature of the](#)

[Memorandum of Understanding \(MoU\) between Italy and the Libyan Government of National Accord in February 2017](#), 28 November 2017, pp. 2, 7.

¹⁹ Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls, [Information received concerning the Strategic and Comprehensive Partnership Framework between the Government of Tunisia and the European Union, whose future implementation of modalities could give rise to possible violation of the principle of non-refoulement and the human rights of migrants, including children](#), 17 August 2023, p. 5.

²⁰ CAT, [Concluding observations on the combined fifth and sixth periodic reports of Italy](#), UN Doc CAT/C/ITA/CO/5-6, 18 December 2017, paras. 22-23.

²¹ CoE Commissioner for Human Rights, [European states' migration cooperation with Tunisia should be subject to clear human rights safeguards](#), press statement, 17 July 2023.

²² EU Ombudsman, [Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding](#), OI/2/2024/MHZ, 21 October 2024, paras. 27-36.

²³ IOM, [Glossary on Migration](#), International Migration Law Series, No. 25, 2011, p. 11.

²⁴ UN Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants](#), UN Doc A/HRC/38/41, 4 May 2018, para. 30; OHCHR, [Nowhere but back: Assisted return, reintegration and the human rights protection of migrants in Libya](#), November 2022.

²⁵ The Big Wall, [L'esternalizzazione dei rimpatri della Libia in un imbuto umanitario](#), 9 February 2024.

²⁶ OHCHR, [Nowhere but back: Assisted return, reintegration and the human rights protection of migrants in Libya](#), November 2022, pp. 14-17, 26-28.

²⁷ Lillo Montalto Montella and Sara Creta, [Paying for migrants to go back home: how the EU's Voluntary Return scheme is failing the desperate](#), Euronews, 19 June 2020.

²⁸ Africanews, [Tunisian group accuses authorities of mass expulsions of migrants from sub-Saharan Africa](#), 9 January 2024.

²⁹ Statewatch, [Arbitrary arrests and hate campaigns against sub-Saharan migrants in Tunisia](#), 22 February 2023.

³⁰ ASGI, [È legittimo finanziare i rimpatri "volontari" dalla Tunisia?](#), 28 February 2024.

³¹ Iran-US Claims Tribunal, [International Technical Products Corporation and ITP Export Corporation](#), Partial Award No 186, Case No 302, Award No 186-302-3, 19 August 1985, pp. 13-14; Iran-US Claims Tribunal, [Alfred LW Short v. Iran](#), Final Award No 312, Case No 11135, Award No 312-11135-3, 14 July 1987, para. 30; Eritrea Ethiopia Claims Commission, [Partial Award, Civilians Claims, Ethiopia Claim 5](#), 17 December 2004, para. 127; Court of Appeal (England and Wales), [R v. Secretary of State for Social Security, Ex parte B and Joint Council for the Welfare of Immigrants](#), QBCOF 96/0462/D, QBCOF 96/0461 and 0462/D, 21 June 1996; ECtHR, [Akkad v. Turkey](#), App No 1557/19, Judgment of 21 June 2022, paras. 91 ff.; ECtHR, [N.A. v. Finland](#), App No 25244/18, Judgment of 14 November 2019, para. 57; ECtHR, [M.S. v. Belgium](#), App No 50012/08, Judgment of 31 January 2012, paras. 121 ff.; ECtHR, [M.S.S. v. Belgium and Greece](#), App No 30696/09, Judgment of 21 January 2011; High Court of Justice of Israel, [Esther Segai Gersagher et al. v. Knesset et al.](#), HCJ 2293/17, Judgment of 23 April 2020, paras. 20-21; Supreme Court of Israel, [Eitan – Israeli Immigration Policy Center et al. v. Israeli Government et al.](#), HCJ 8425/13, HCJ 7385/13, Judgment of 22 September 2014, paras. 107 ff.; High Court of the Hong Kong Special Administrative Region, [M.A. v. Director of Immigration; GA v. Director of Immigration; PA v. Director of Immigration; FI v. Director of Immigration; JA v. Director of Immigration](#), HCAL 10/2010 and HCAL 73/2010 and HCAL 75/2010 and HCAL 81/2010 and HCAL 83/2010, Judgment of 6 January 2011, paras. 23 ff.

³² UN Human Rights Council, [Visit to the Niger: Report of the Special Rapporteur on the human rights of migrants](#), UN Doc A/HRC/41/38/Add.1, 16 May 2019, para. 50; UN Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants](#), UN Doc A/HRC/38/41, 4 May 2018, para. 18; CAT, [General Comment No. 4 \(2017\) on the implementation of article 3 of the Convention in the context of article 22](#), UN Doc CAT/C/GC/4, 9 February 2018, para. 14; Human Rights Committee, [Warda Osman Jasin v. Denmark](#), Individual opinion of Committee members Yuval Shany and Konstantine Vardzelashvili (concurring), UN Doc CCPR/C/114/D/2360/2014, 25 September 2015, paras. 2-3; UNHCR, [UNHCR monitoring visit to Manus Island, Papua New Guinea](#), 26 November 2013, paras. 113 ff.

³³ Giorgio Gaja, *Expulsion of Aliens: Some Old and New Issues in International Law*, in *Cursos Euromediterráneos Bancaja de Derecho Internacional*, vol. 3, 1999; Guy S. Goodwin-Gill, *International Law and the Movement of Persons between States*, Oxford, 1978; Alice Riccardi, *Migrazioni e povertà alla prova del divieto di condurre espulsioni mascherate*, in Massimo Starita (eds), *Povertà e diritto internazionale*, Editoriale Scientifica, 2025.

³⁴ ILC, [Report on the work of the sixty-sixth session](#), UN Doc A/69/10, 2014, art. 10.

³⁵ ILC, [Report on the work of the sixty-sixth session](#), UN Doc A/69/10, 2014, art. 10(2).