ASGI submission to the OHCHR call for inputs

The Externalization of Migration and its Impact on the Human Rights of Migrants

The Association for Juridical Studies on Immigration (ASGI) is an Italian network of lawyers, civil society representatives, and academics working on issues related to immigration, asylum, citizenship, statelessness, and antidiscrimination. ASGI conducts a wide range of legal and policy-oriented activities, including strategic litigation before domestic and international courts, legal analysis and monitoring of legislative acts, policy advocacy at both the national and the European Union level, comparative studies on migration governance in Member States and neighbouring countries, legal counselling through its anti-discrimination services and field missions in Italy and abroad. Within this context, ASGI has continuously analysed and assessed the impact on externalization policies on the fundamental rights of migrants. After a brief overview of the legal issues posed by different externalization models implemented in the EU, the present submission will focus on two of those strategies, which have been employed by Italian authorities in recent years.

1. Overview: The Externalization of Migration Management and International Protection Responsibilities and its Human Rights Implications

Externalization strategies employed in the European Union (EU) have generally followed two primary models. The first relates to **policies of non-arrival**, designed to prevent Third Country Nationals (TCNs), including potential asylum seekers, from accessing the EU territory. These measures encompass practices such as maritime interdictions, visa restrictions, the deployment of liaison officers abroad, and the provision of financial and technical support to third-country authorities tasked with controlling migratory flows, such as Libya and Tunisia, as it will be seen below. These strategies raise serious legal concerns under international and European refugee and human rights law. One of the central issues is the difficulty of attributing legal responsibility for human rights violations to EU Member States when inhuman and degrading acts, such as *refoulement*, arbitrary detention, or denial of access to asylum procedures are carried out by non-EU actors—often funded, trained, or otherwise supported by the EU or its members. This fragmentation of responsibility creates accountability gaps that allow fundamental rights obligations to be circumvented in practice.

The second model relates to **policies of non-admission**, whereby individuals who have already reached the territory of EU Member States are transferred to third countries on the basis of legal constructs designed to shift responsibility to states deemed "safe." This notions refers to countries considered generally safe for their own nationals (*safe country of origin*), or presumed to offer sufficient protection to asylum seekers and refugees without exposing them to the risk of *refoulement* (*safe third country* and *first country of asylum*). These concepts are frequently applied within **accelerated border procedures** that rely on the legal fiction of *non-entry*—a mechanism through which individuals physically present at the border or in transit zones are treated as if they have not legally entered the state's territory. Such procedures often lack rigorous individual assessment and procedural safeguards, including the automatic suspensive effect of appeals. This significantly undermines the applicant's ability to effectively present their protection needs and increases the risk of *refoulement* and denial of access to a fair and effective asylum procedure.

2. Externalization in Libya and Tunisia

Italy has played a leading role in the development and promotion of externalization strategies[1], both through bilateral agreements with third countries and active involvement in EU-level negotiations. In terms of **policies of non-arrival**, Italy's cooperation with **Libya** stands out as a central pillar of its strategy to prevent migrants and asylum seekers from reaching its shores. Through funding, training, and operational support to the so-called **Libyan Coast Guard**—provided by both the EU[2] and Italy's national budget[3], and formalized in instruments such as the 2017 Memorandum of Understanding—Italy has effectively delegated maritime interception responsibilities to Libyan authorities, thereby distancing itself from direct involvement while still impeding access to its territory.[4]

A similar approach has been adopted with **Tunisia**, where a long-standing cooperation between Italian and Tunisian authorities - backed by EU financial support[5] and reinforced through the conclusion of a Memorandum of Understanding[6] - has more recently led to increased technical and financial support to the **Tunisian Garde Nationale**[7]. Since 2017, Italy has spent nearly €94 million on equipping and training Tunisian border guards, first through the so-called Migration Fund, then through the Reward Fund for Return Policies.[8] In December 2023, Italy approved the transfer of six patrol vessels to the Tunisian Garde National and the allocation of 9 million for fuel to be used in interception and SAR activities.

These forms of support persist despite well-documented systematic human rights violations committed by both the Libyan Coast Guard and the Tunisian Garde Nationale. These include the excessive use of force and dangerous interception practices that frequently result in shipwrecks and deaths at sea.[9] Migrants intercepted at sea are often returned to detention centres in Libya or Tunisia, where they are exposed to further serious human rights violations, including acts that may amount to crimes against humanity[10], and are systematically subjected to forced transfers and deportations.[11]

An integral component of Italy's externalization model in both Libya and Tunisia is the funding of **Voluntary Humanitarian Return** (VHR) and **Assisted Voluntary Return** (AVR) programs, aimed at redirecting migration flows toward countries of origin, as a counterpart to

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[1] See, in particular, the *Joint Submission to the Universal Periodic Review of Italy*, submitted by ASGI, Spazi Circolari, and the Roma Tre University International Protection of Human Rights Legal Clinic.
[2] For further information on EU funds to Libya, see: 'Beyond borders, beyond boundaries - A Critical Analysis of EU Financial Support for Border Control in Tunisia and Libya', p. 18. Note that ASGI is part of a broader civil society coalition engaged in multiple legal actions challenging the allocation of EU funds to Libyan authorities for migration control purposes. For further info, see here.
[3] For further info on Italian funds to Libya, see here.
[4] For more information regarding push backs by proxy and the efforts to make Italy accountable for them, see the cases of the pushbacks operated by the Vos Triton vessel in June 2021 and by the Asso 29 vessel in July 2018.
[5] For further information on EU funds to Libya, see: 'Beyond borders, beyond boundaries - A Critical Analysis of EU Financial Support for Border Control in Tunisia and Libya', p. 11.
[6] For a critical analysis by the European Parliament, see here.
[7] For further information on cooperation between Italy and Tunisia and the strategic litigation undertaken by ASGI in this respect, see here.
[8] For a detailed breakdown of the funding, see: ASGI, 'Behind the Scenes – Who Funds Expulsions?', in *State Trafficking*, p. 64. For updated data see here.
[9] See, among others: Alarm Phone, "Interrupted at Sea," June 20, 2024.
[10] UN Human Rights Council, "Report of the Independent Fact-Finding Mission on Libya", August 2023.
[11] Fort further info see: "Torture Roads Vol. 1: Mapping human rights violations suffered by people on the move in Tunisia", November 2024.

mobility containment policies. In recent years, Italy has increasingly supported AVR programs implemented by the International Organization for Migration (IOM) in both Libya[12] and Tunisia[13], through partnership agreements concluded with the Directorate General for Italians Abroad and Migration Policies (DGIT) of the Ministry of Foreign Affairs and International Cooperation (MAECI). However, concerns have been raised regarding the voluntariness of these measures, as well as in relation to the lack of proper safeguards to ensure the protection of fundamental rights. As highlighted by both the UN Special Rapporteur on the human rights of migrants[14] and the OHCHR[15], repatriations often occur in conditions that do not allow for free and informed consent, leaving migrants with no viable alternative but to return to unsustainable situations.[16] Evidence obtained through freedom of information requests[17] concerning Italy-funded voluntary return programs confirms that returnees include vulnerable migrants, victims of trafficking and children. Furthermore, IOM does not exhaustively disclose the procedures to assess whether individuals are at risk of ill-treatment upon return to their countries of origin.[18] Despite the OHCHR's recommendations in its 2022 *Nowhere but Back* report[19], Italy has not established adequate **safeguards or monitoring mechanisms** to ensure compliance with these standards. Serious concerns also persist regarding the overall **lack of transparency**, given the limited and inconsistent disclosure of information—especially with respect to the Libyan detention centres from which voluntary returns are organized.[20] As a consequence, these measures risk constituting **disguised expulsions**, in breach of the principle of *non-refoulement* and international obligations relating to the protection of children, victims of trafficking, and survivors of gender-based violence.

In the context of **non-admission policies**, Italy has made extensive use of the **"safe country of origin"** concept to expedite asylum procedures and facilitate returns. It maintains one of the EU's longest national lists of such countries, several of which appear to have been designated based on superficial or overly formalistic assessments rather than a rigorous evaluation of actual safety conditions. **Tunisia** is a particularly concerning example. Despite well-documented human rights and rule of law issues, the official assessment used to justify Tunisia's inclusion presents an incomplete picture. While it briefly acknowledges judicial interference and the marginalization of Black communities, it downplays or omits serious concerns such as public incitement against Sub-Saharan Africans, the continued criminalization of homosexuality despite constitutional challenges, and widespread electoral irregularities. Furthermore, Tunisia lacks adequate procedures for identifying migrants and frequently conducts forced returns to Libya and Algeria, while also hindering the work of international humanitarian actors. These shortcomings, also identified by the Italian judiciary,

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[12] According to data obtained through freedom of information requests, between September 2017 and December 2024, a total of 11,415 individuals were returned from Libya under Italy-funded Voluntary Humanitarian Return programs.
[13] Between March 2022 and February 2024, 1,441 people were repatriated from Tunisia solely under the IOM program *Enhancing Response Mechanisms and Assistance to Vulnerable Migrants in Tunisia*, which was renewed and funded again by Italy in November 2024.
[14] Report of the Special Rapporteur on the Human Rights of Migrants, May 2018.
[15] OHCHR, Nowhere but Back, October 2022.
[16] For further info, see here.
[17] To consult the obtained documents, see here and here.
[18] See IOM leaflet here.
[19] OHCHR, Nowhere but Back, October 2022.
[20] For an analysis of the data and critical issues concerning Italy-funded VHR programs in Libya, see here.

cast serious doubt on Tunisia's classification as a safe country of origin and highlight broader deficiencies in the externalization framework model (ASGI, April 2025).

3. A new form of deflecting responsibility: the extraterritorial processing of asylum claims and return procedures under the Italy-Albania deal

Since the adoption of the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters (hereinafter, the Italy-Albania Protocol or the Protocol), signed on 6 November 2023 and ratified in February 2024, ASGI has actively denounced the significant risks posed by this agreement. The model established by the Protocol is particularly peculiar because it combines policies of non-entry—aimed at preventing migrants from entering Italian territory—with policies of non-admission, involving an accelerated processing of asylum claims based on the safe country of origin concept and return procedures in Albania. Through on-the-ground field investigations and comprehensive legal and policy analyses, ASGI has highlighted how this hybrid approach raises complex legal and human rights concerns that demand close scrutiny.

The Protocol entered into operational force in October 2024, establishing two facilities in the Albanian port city of Shëngjin and the nearby area of Gjadër, designated for the extraterritorial reception, identification, and asylum processing of individuals intercepted on the high seas by Italian naval or coast guard vessels. Since March 2025, the facility in Gjadër has also been used as a detention center for irregular migrants pending return procedures, including those previously held in pre-removal detention centres (CPRs) in Italy.

Although the facilities are located on Albanian territory, they remain under the exclusive jurisdiction of the Italian State. Unlike other third-country arrangements—such as the UK-Rwanda deal—the Protocol does not transfer responsibility to the host country, since the centers are controlled and supervised by Italian personnel and operate in accordance with Italian and European law. Nonetheless, like other externalization models, it effectively restricts asylum seekers' access to a fully effective asylum procedure and the protections they would otherwise enjoy within EU territory. The combination of accelerated procedures based on safe country notions conducted under the legal fiction of non-entry and the fact that migrants are not only legally, but also physically, outside the state territory raises serious legal and conceptual concerns. The hybrid nature of this arrangement raises serious legal and conceptual concerns, as it operates outside the legal framework of the Common European Asylum System (CEAS), which is formally unilaterally applied by Italian authorities in Albania, risking to undermine uniform the asylum standards and fundamental rights protections, given the **de facto discrepancies** between the procedures conducted in Albania and those within the EU (ASGI, March 2025). This raises multiple legal concerns.

First, the transfer of individuals from international waters to Albania under the Italy-Albania contravenes **international law of the sea**, which requires disembarkation in a safe place within a reasonable time.[21] Given the central Mediterranean route, Italian ports like Lampedusa are geographically closer than Albania, where transfers can take up to three

[21] International Maritime Organization (IMO), *Guidelines on the Treatment of Persons Rescued at Sea*, Resolution MSC.167(78), adopted 20 May 2004, paras. 2.5 and 6.3.

days—posing risks of degrading treatment due to inadequate care towards individuals who have already faced a traumatic journey.

Secondly, although the Protocol formally excludes vulnerable asylum seekers from its scope, the screening procedures make this safeguard ineffective. ASGI has documented serious shortcomings in **vulnerability assessments** conducted at sea, where the absence of qualified personnel and adequate conditions undermines accurate identification. This was exemplified in October 2024, when four individuals—among them minors and persons with urgent medical needs—were transferred to Albania and subsequently returned to Italy after their vulnerabilities were eventually recognized (ASGI, February 2025; March 2025).

Thirdly, the **automatic detention** of all individuals, including asylum seekers, raises serious concerns regarding the right to liberty. Applicants face *de facto* detention during transfer without a clear legal basis, followed by potentially prolonged confinement in Gjadër—first during the assessment of their claims and then, for up to 18 months, pending return procedure, without access to an effective evaluation of the necessity and proportionality of these measures, rendering the detention arbitrary.

Fourthly, a critical consequence of the extraterritorial procedure is the **lack of effective legal assistance** for asylum seekers and returnees detained in Albania. Individuals cannot consult a lawyer before their hearing before the administrative body in charge of assessing asylum claims. The situation is further worsened by the fact that asylum interviews and appeals take place with legal counsel participating remotely. Delayed communication of procedural information and the confiscation of mobile phones further undermine the right to defence (ASGI, February 2025; March 2025).

Finally, access to proper **healthcare** access is also uncertain. While urgent medical care is in theory guaranteed, the Protocol lacks clear procedures, and Albania's limited health infrastructure raises doubts about its ability to meet essential needs[22], risking breaching the right to health.

In summary, ASGI finds that relocating asylum and return procedures outside EU territory—even under Italian jurisdiction—undermines procedural guarantees, due process, and access to legal, medical, and psychological assistance, leading to prolonged, automatic, and arbitrary detention.

[22] See, European Commission, Albania 2024 Report.