

To The Minister of Interior

The Minister of Foreign Affairs and International Cooperation

The First Vice-President of the European Commission

EU Commissioner for Migration, Home Affairs and Citizenship

EU Commissioner for Justice, Consumers and Gender Equality

Head of Representation of the European Commission in Italy

Permanent Representative of Italy to the EU

President of the European Parliament Committee on Civil Liberties,
Justice and Home Affairs

Commissioner for Human Rights of the Council of Europe

Special Representative on Migration and Refugees of the Council of
Europe

President of the UN Committee on the Rights of the Child

Regional Representative for Southern Europe of UNHCR

President of the Italian Committee for UNICEF

Italian National Authority for Childhood and Adolescence

Prefect of Imperia

Public Prosecutor's Office at the Juvenile Court of Genoa

Mayor of Ventimiglia

Ombudperson for the Rights of the Child of the Liguria Region

Subject: The push-back of unaccompanied and separated children at the French-Italian border in Ventimiglia

The undersigned organizations express strong concern over two alarming phenomena that are taking place on the border between France and Italy. First of all over the alarming number of **push-backs of Unaccompanied and Separated Children**

(UASC) carried out by French authorities on the border with Ventimiglia. We would like to emphasize that this is a violation of international, European and national law.

Second, we would also like to express our concern over the **violations of UASC's rights that are being perpetrated in Italy**, against minors who leave reception centers to attempt to cross the border to France irregularly.

The majority of these minors come from Eritrea, Sudan, Guinea, Mali, Ivory Coast and other countries in Sub-Saharan Africa. They are often fleeing from contexts of widespread violence or of serious violations of children's rights, that are valid grounds for the qualification for international protection.

The minors involved are generally boys between 16 and 17 years old, but we have detected also a large number of girls and some young children, even 12-year-olds, who are often victims of sexual violence and abuse, and are **particularly vulnerable**.

1. The reasons why UASC attempt to enter France irregularly

Most of the minors that we met in Ventimiglia hope to find better reception systems and opportunities for inclusion in France or in other European countries. Many of these minors have told us they escaped the reception centers they had been placed in because, months after their arrival, they still **had not been enrolled in school or in vocational training, had not been given a residence permit, or the chance to apply for international protection. They had not been assigned a guardian, nor any other adult who would take care of them. Some of them reported a failure of reception centers to cover even primary needs, such as food, clothes and adequate living spaces, and inadequate protection from violence and abuse.**

We acknowledge that many reception projects for UASC have achieved high standards, some even excellence, particularly in the SPRAR centers (Protection System for Asylum Seekers and Refugees); however in Italy there are still many situations in which UASC's rights are not adequately protected, and are therefore in violation of the standards established by the d.lgs 142/15, the law 47/17, the directive 2013/33/UE, the UN Convention on the Rights of the Child and the European Convention on Human Rights (ECHR).

The **European Court of Human Rights** has 9 pending applications against Italy, filed throughout 2017 on behalf of UASC placed in seriously inadequate reception centers¹. The appeals litigate the violation, among others, of article 3 (which prohibits inhumane or degrading treatment) and 8 (which guarantees the right to the respect of private and family life) and article 2 of Protocol I (which guarantees the right to education) of the ECHR. The Court has communicated all nine appeals to the Italian Government and has ordered five interim measures in accordance with Rule of Court no. 39. The Court ordered the transfer of the claimants to adequate facilities, ensuring reception standards in line with domestic and international law on the protection of UASC.

If conditions in reception centers do not improve, a large number of minors will continue to leave the facilities, in search for better opportunities elsewhere. It is important to remember that, on 28th of February 2018, 4.307 UASC were registered as “missing”, since they left reception facilities on their own; this figure amounts to 23% of the 18.645 UASC reported to the Directorate General for Immigration of the Ministry of Labor and Social Policy².

It is also important to stress that a significant number of minors that attempt to cross the border to France irregularly would have the **right of reunification with family members that are already residing in France or in other European countries, in accordance with art. 8 of the Dublin III Regulation.**

Many of these youths are **not adequately informed** of their rights. It is relevant to notice that the Italian Government has not yet published the information leaflet for unaccompanied children, based on the model elaborated by the European Commission (which has to be complemented with additional information specifically relevant for Italy), prescribed in art. 4 of Regulation (EU) No. 604/2013.

Second, there is a strong delay in the family reunification procedure. In many cities, minors cannot apply for asylum, therefore they **cannot apply for family reunification until many months after their arrival.** This violates Italian and European norms that establish that police stations are obliged to register applications for international protection within three days of the asylum seeker’s request, which may be extended to ten days in case

¹ Please refer to: Sadio et al. v. Italy (Application n. 3571/17); Darboe and Camara v. Italy (Application n. 5797/17); Dansu et al. v. Italia (Application n. 16030/17); Bacary v. Italy (Application n. 36986/17); M.A. v. Italy (Application n. 70583/17); Jubail v. Italy (Application n. 72234/17); Bodiang v. Italy (Application n. 47523/17); Diakite v. Italy (Application n. 44646/17); Trawalli and others v. Italy (Application n. 47287/17).

² Directorate General for Immigration of the Ministry of Labor and Social Policy, *Monthly Report on unaccompanied and separated children (UASC) in Italy – 28 February 2018*: <http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-febbraio-2018-29032018.pdf>

of a large number of applications (art. 26 of the d.lgs. 25/2008, art. 6 Directive 2013/32/EU). Some police stations forward the request to the Dublin Unit with serious delay, sometimes exceeding the expiration deadline provided by the Dublin Regulation. The consequence is a serious violation of the child's right to family unity. We find it important to acknowledge that these shortcomings have not been noted to take place at the Police Station of Imperia, which files applications for international protection quite rapidly, but in Police Stations in other areas of Italy from which the minors are escaping to Ventimiglia.

Finally, while Italy's Dublin Unit works in an efficient and rights-respecting manner, **competent authorities in countries such as France and Great Britain take a very long time to respond** and often adopt restrictive stances.

When faced with the prospect of having to wait for up to a year to obtain family reunification, the majority of minors decide to try to reunite with their relatives by crossing the borders irregularly.

2. The push-backs of UASC from France to Italy

Under the Dublin Regulation and the case law of the European Court of Justice³, **unaccompanied children that request asylum in France cannot be returned to Italy**, even if they landed on Italian shores and may in some cases have already applied for international protection in Italy. Differently from adults, the criterion by which an asylum application has to be processed in the applicant's "first country of entry" to the EU is not valid for UASC.

If the minor does not express the wish to apply for asylum in France (often because he/she is not informed on his/her rights), and is stopped at the border, French authorities can refuse entry and "push" the child back to Italy. However, French law establishes a series of **guarantees that have to be respected in case a UASC is refused entry to France**: in particular, the child has to be assigned a temporary legal guardian (in French: "administrateur ad hoc") and readmission cannot be carried out until 24 hours after having stopped the child (in French: "jour franc")⁴.

Finally, if a UASC that is not requesting asylum is stopped on French territory, but **outside the border area, he or she cannot be sent back to Italy under any circumstance**. At this point, according to French law, the competent French authorities become responsible for guaranteeing protection, reception and assistance to the child.

³ Ruling MA, BT, DA v. Secretary of State for the Home Department (C-648/11) of the 6th of June 2013.

⁴ Code de l'entrée et du séjour des étrangers et du droit d'asile, artt. L. 213-2 e 221-5.

The undersigned organizations have detected that **the practices carried out by France's border authorities at Ventimiglia are in systematic violation of the abovementioned norms and guarantees.**

The minors who wish to ask for international protection in France and are stopped in the border area are **denied the chance to apply for international protection.** This is in violation of Directive 2013/32/EU and of French asylum law.

All UASC who are stopped at the border are therefore treated as though they do not want to seek asylum and are taken back to Italy. The return takes place **immediately, without appointment of an "administrateur ad hoc"** and without the 24-hour interval prescribed by French law.

Minors that are taken back to Italy almost always attempt to cross the border again, which exposes them to **human traffickers** and to other forms of violence and abuse, and to an increased **risk of losing their lives.** In November 2016, an Eritrean girl was run over by a truck and killed while she was walking through a tunnel, in the attempt to reach France. In June 2017 a Sudanese boy drowned, dragged away by the currents of the Roja river.

UASC who decide to stay in Italy are hosted in a first reception center for adults, "Parco Roja" and then transferred by the Municipality of Ventimiglia to facilities for minors, whereas those who are waiting for a chance to cross the border generally live in makeshift shelters on the banks of the Roja river, with no access to drinkable water and sanitary facilities, **in conditions of extreme neglect.**

Such violations of international law (starting from the Convention on the Rights of the Child) and European and domestic law to the damage of unaccompanied and separated children at Ventimiglia's border have been condemned several times by Italian and French organizations in their published reports⁵.

In January 2018 an appeal was filed at the Court of Nice, in defense of a twelve-year-old UASC. The youth had been stopped at the train station of Menton-Garavan, had been immediately taken back to Italy and forced by the French authorities to take a train for Ventimiglia, without the supervision of an adult and without entrusting him to the Italian authorities.

⁵ Please refer to: Intersos, *Unaccompanied And Separated Children along Italy's northern borders*, 2018 : <https://www.intersos.org/wp-content/uploads/2018/02/UASC-along-Italys-northern-borders.compressed.pdf> ; Amnesty International, *Des controles aux confins du droit : Violations des droits humains à la frontière avec l'Italie*, 2017

With an order dated the **22nd of January 2018⁶**, the **Court of Nice recognized the violations of the abovementioned French laws**. The Prefect of Alpes-Maritimes was ordered to contact Italian authorities, and to provide the child with a laissez-passer within three days that could allow him to return to the border post of Menton-Garavan. The Court also ordered the Prefect to report the child's arrival to the public prosecutor's office for the assignment of a temporary legal guardian, and to the Conseil Départemental (responsible for the reception of UASC) for the assessment of the minor's situation. The child also had to be given all relevant information on the right to asylum in a language he could understand.

Twenty more appeals were subsequently filed at the court of Nice, all of them on behalf of UASC that had been forcibly returned to Italy at the border with Ventimiglia. The **Court's rulings on the 23rd of February confirmed the illegitimacy of the French authorities' conduct.**⁷

After the twenty rulings of the Court of Nice, the French border police partially changed their practice. Not towards the respect of the judicial decisions, though. Instead they **developed the practice of systematically identifying all the minors they apprehend at the border as adults**.

While before UASC were given a document of refusal of entry ("refus d'entrée") in which they were identified as underage, since February the minors in Ventimiglia have been reporting that in the document released by the French officials, the youth's date of birth is different from what he or she declared to the authorities: the police are registering them as adults.

Between the 15th and the 18th of March the undersigned organizations, in collaboration with French organizations and a team of lawyers, have carried out a **monitoring operation among the UASC in Ventimiglia** to detect the patterns of the refusals of entry, paying particular attention to these new dynamics. The following two cases are particularly meaningful.

T., born in Eritrea on the 1st of October 2001, arrived in Italy in June 2017. He was hosted in a center in Milan where he slept in a gym, in an assembled booth. He reports he was not enrolled in school or vocational training. He had trouble finding information about the relocation programme, and was not informed about the possibility of family reunification with his brother, who lives in Sweden.

⁶ Tribunal Administratif de Nice, ordinance no. 1800195 of the 22nd of January 2018: http://www.anafe.org/IMG/pdf/jrta_nice_22_janvier_2018_m_h_anafe_no1800195-2.pdf
⁷ <https://www.lacimade.org/presse/frontiere-franco-italienne-associations-avocat%C2%B7e%C2%B7s-respecter-droit-enfants-etrangers-devant-tribunal-administratif-de-nice/>

As he had been living in conditions of neglect and has not been given crucial information, T. decided to attempt to cross the border to France, in the hope of finding better living conditions. On the 16th of March, he boarded a train to France at Ventimiglia Station with three friends, all UASC. The French police stopped them at the Menton-Garavan station, and took them to the border post at Ponte San Luigi.

Two members of ASGI met the four youths on the bridge Ponte San Luigi, as they were walking to the Italian border post. The boys showed them the documents they received from the French authorities: the dates of birth were different from what they claimed to have declared. T. had taken a photograph of the “refus d’entrée” as it had been originally filled out, which indicated the date of birth the boy had declared, 1/10/2001 (please refer to photograph no. 1, attached). Confronting the picture with the “refus d’entrée” that was issued to the boy, **the date of birth had noticeably been erased and modified to indicate 01/01/2000** (please refer to photograph no. 2, attached).

Once the four boys reached the Italian border post, they had their fingerprints taken by Italian officers. It was then verified that they had been registered as minors in Italy. The Italian officers escorted back the youths to the French police, who finally took charge of them as unaccompanied children.

If it could be proven that French Police Officers are falsifying the date of birth on the document of refusal of entry, it would be a serious offense: **a public official would be falsifying a document to prevent the correct implementation of European and domestic law for the protection of UASC.**

The second case is about **N., born in Eritrea on the 3rd of January 2001**, and arrived in Sicily in the autumn of 2017. The child expressed the wish to reunify with his two brothers in Germany. Some people whom N. trusted warned him that family reunification takes a very long time, so he decided to attempt to reach his brothers on his own, by crossing irregularly to France and then to Germany.

On the 17th of March N. is stopped at Menton-Garavan station and taken to the border post at Ponte San Luigi. Like T., he is given a document of refusal of entry in which he is identified as an adult. Once the Italian authorities take his fingerprints, and see that N. has already been identified as a minor in Italy, they escort him back and re-entrust him to the French police, as they had done with T. the previous day. N. was then brought to Nice, where he was placed in a reception center for minors.

On the 20th of March, N. was once again in Ventimiglia. The child reported that, after having been taken to Nice, he tried to catch a train to reach his brothers in Germany, but was stopped by the police again. According to N.’s report, he was beat up by the French police, and then forced to get on the train to Ventimiglia.

So he **was pushed back to Italy after having already been placed in a reception center under the responsibility of the French authorities, outside the border area.**

The press reports that three **members of the EU Parliament** personally witnessed the falsification of the date of birth on the document of refusal of entry, during a surprise visit to Menton-Garavan's border post on the 31st of March: the border police changed the date of birth of two unaccompanied children to indicate 1/1/2000 rather than 2002, which was the date declared by the children⁸.

3. Recommendations:

In consideration of our findings, we stress the urgent necessity of an intervention aimed to put an end to the serious infringements of international, European and national law that have been taking place on Ventimiglia's border.

We call on:

1. The **Italian Minister of Interior:**

- To carry out the necessary **monitoring operations in reception centers**, particularly those that exhibit a high percentage of UASC departures, and to report these centers to the public prosecutor's office at the Juvenile Court to verify that the standards and services are provided in accordance with applicable law;
- To guarantee adequate **information to UASC regarding their right to family reunification according to the Dublin III Regulation, and to expedite procedures**, in particular ensuring police stations register asylum applications by UASC and send them to the Dublin Unit as swiftly as possible. The number of UASC that attempt to cross the border irregularly will decrease only if procedures become swifter and more efficient.

2. The **Minister of Foreign Affairs: to adopt all necessary measures towards competent French authorities to stop illegal push-backs of UASC.**

In particular, French authorities should be asked to:

⁸ <https://www.politis.fr/articles/2018/04/visite-surprise-delus-a-la-police-aux-frontieres-de-menton-38617/>

- Ensure that border police officers **correctly register the information provided by the minors**, and to assess possible falsifications;
 - Intervene to ensure that UASC intending to apply for asylum in France who are stopped at the border are **allowed to file the asylum application**, in accordance with European and National law;
 - **Guarantee full respect of French law on push-back of non-asylum-seeking UASC, such as the appointment of an “administrateur ad hoc” and the principle of “jour franc”, as well as the prohibition to return UASC who have been apprehended beyond or outside the border areas within the French territory.**
3. The **European Commission: to verify whether Italian and French authorities have violated European law**, in particular articles 6, 7 and 8 of Directive 2013/32/EU, articles 23 and 24 of Directive 2013/33/EU and articles 4, 6 and 8 of EU Regulation no. 604/2013, evaluating whether there are grounds for starting an infringement procedure.

We remain available for clarification, and confide in a rapid intervention to ensure the safeguard of unaccompanied and separated children’s rights, consistently with national, European and international law.

Sincerely,

A.S.G.I. – Association for Juridical Studies on Immigration

INTERSOS

Caritas Diocesana Ventimiglia – Sanremo

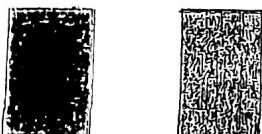
Diaconia Valdese

Terre des Hommes Italia

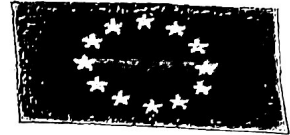
Oxfam Italia

9 April 2018

FRANCE



DDPAF des Alpes-Maritimes
SPAF de MENTON



REFUS D'ENTREE

Le 16/07/18 à 15h20, au point de passage frontalier
devant le(s) soussigné(s)

s'est présenté(e) : CRS 29- 437728

Nom : [REDACTED] Prénom : T [REDACTED]

Né(e) le : 04/06/2000

Sexe : _____

Nationalité : Erythréenne résidant à : SDF Italie

Identifié(e) au moyen de Verbale numéro : _____

délivré à _____ par _____ le _____

muni(e) d'un visa n° _____ de type _____ délivré par : _____

d'une durée de _____ jours pour les raisons suivantes : _____

En provenance de ITALIE, arrivé par : _____

(identifier le moyen de transport utilisé, par exemple le numéro de vol) lequel a été informé qu'une décision de refus d'entrée a été prise à son encontre en vertu des articles L 211-1, L 211-3, L 212-2, L 213-1 et L 213-2 et R 213-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA).

Accompagné(e) des enfants : _____