



HUMAN
RIGHTS
WATCH

TURNED AWAY

Summary Returns of Unaccompanied Migrant Children
and Adult Asylum Seekers from Italy to Greece



Turned Away

**Summary Returns of Unaccompanied Migrant Children and
Adult Asylum Seekers from Italy to Greece**

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Map of Sample Routes Taken by Migrants and Asylum Seekers



Sample routes taken by migrants and asylum seekers based on testimony collected by Human Rights Watch and other sources. © 2012 Human Rights Watch

Summary

Ahmed S. fled his home in Afghanistan in 2011 fearing for his life, after what he described to us as an attack by the Taliban. Aged 17 years old, he traveled alone overland to Greece, where he made his way to the Greek port city of Patras, a spot favored by migrants seeking to stow away on ferries bound for Italy.

After months of several unsuccessful attempts, Ahmed finally managed to hide underneath a truck which boarded a boat headed for an Italian port. He lay wedged on top of a box between axles for 18 hours while the boat crossed the Adriatic Sea. But rather than finding refuge on arrival, Ahmed was met by police, who promptly arrested him.

“I told them the whole story [of what happened in Afghanistan], showed the scar,” he said, referring to the wound he claims he sustained during the attack by the men in Afghanistan. “There was no translator.... I was pointing, and with some words in English. They talked and I couldn’t understand.”

A hole in the fence surrounding the port at Patras, Greece; migrants use holes like these to enter the port and stow away on ships.
© 2012 Human Rights Watch



Although Ahmed was a minor and despite his desire to apply for asylum, he never had the opportunity to speak with a lawyer or meet with an NGO representative in Italy, and never received information about his rights or the process the Italian authorities were undertaking. Instead, just four hours after his arrival, Italian port officials sent Ahmed back to Greece on the same ship he had come on. Only this time he traveled in a cell in the ship’s machine room, with only bread and butter to eat and no access to a toilet. “I was all alone,” he said.

* * *

Based on interviews with 29 migrants and asylum seekers—men and boys—who had been returned to Greece by Italian border officials, as well as experts and social workers, and government officials, this report documents the journeys and processing of the thousands of migrants and asylum seekers—including unaccompanied migrant children like Ahmed—who stow away on ferries from Greece to Italy every year. The trip itself is inherently dangerous,

coming with risk of loss of limbs or death, while hanging underneath a commercial truck or hiding inside refrigerated containers or fuel tanks.



Trucks of the sort migrants stow away on hoping to reach Italy, loading onto ships at the Patras port. Migrants stow away between the axles, inside fuel tanks, or inside refrigerated containers. © 2012 Human Rights Watch

Under international law, Italy is obligated to determine whether anyone who expresses a fear of return is in need of international refugee protection or would face human rights abuse if removed. International standards also mandate that unaccompanied children be admitted to the territory in order to determine their best interests. In cases where age is disputed, the migrant should be presumed to be a child and admitted to the territory until an age determination process is completed.

However, this report finds that once they arrive at the Adriatic ports in Italy, unaccompanied child migrants and adult asylum seekers undergo inadequate or non-existent screening proceedings that violate national and international law, including by failing to consider age and by failing to provide access to information about their rights.

Many of the migrants interviewed for this report, including unaccompanied children, complained of being confined in poor conditions that included being handcuffed for the duration of the journey without access to adequate food, water, or toilets during their return journey.

Despite clear guidance from the United Nations Committee on the Rights of the Child and the European Union Action Plan on Unaccompanied Minors (2010-2014) on appropriate reception procedures for unaccompanied children, Italian port officials do not always admit children to the territory to determine their best interest. Nor do they consistently give children access to guardians, according to Human Rights Watch research and child protection advocates in Italy. By failing to carry out an age determination procedure, or by not giving those who claim to be children the benefit of the doubt before sending them back to Greece, Italian port officials also may not be giving migrants who could be children the protection they are due under international law.

In addition to screening failures, authorities routinely impede access for migrants to lawyers, NGOs, service providers, interpreters, and other sources of information and protection.

The situation for migrants and asylum seekers in Greece is dire. One of the major gateways into the EU, Greece sharply limits the number of people who can apply for asylum and leaves vulnerable asylum seekers on the streets without food or shelter. Xenophobic violence against migrants and asylum seekers in Greece is a serious problem. While the government has recently taken steps to create specialized police units to address racist violence, the response of the police to date has been wholly inadequate. Migrants, including children and asylum seekers, can spend months in detention centers, sometimes in conditions that European Commissioner for Home Affairs Cecilia Malmström called, in October 2012, “downright awful.”

In a 2011 case, the European Court of Human Rights ruled that the return of an Afghan asylum seeker from Belgium to Greece under an EU agreement (known as the Dublin II

regulation) exposed him to degrading treatment. Since then, Italy assesses whether a Dublin return would expose an individual to violation of their rights. Summary returns of asylum seekers from Italy's Adriatic ports contradict this policy.

Greece is responsible for the appalling conditions that contribute to many unaccompanied children and adult asylum seekers wanting to leave for Italy and elsewhere in the European Union. However, once migrants and asylum seekers reach Italian shores, Italy is responsible for their protection and processing in accordance with international law. This includes during return journeys. According to International Maritime Organization guidelines on stowaways and Council of Europe guidelines on forced returns, Italy is responsible to ensure the safe and humane treatment of people on board ships as part of a returns process.

Human Rights Watch acknowledges that Italy has a clear interest in controlling irregular migration and may lawfully engage in returns in defined circumstances. Border enforcement should not, however, trump Italy's obligations under national and international law to provide protection to unaccompanied children and asylum seekers. Italy should suspend immediately summary returns from its Adriatic ports to Greece.

Italy has a duty to ensure that all migrants who express a fear of return are adequately screened for protection needs and given an opportunity to access the asylum system. Anyone claiming to be a child should be admitted to Italian territory and should also be given access to a proper process to determine the age and best interests of the claimant. NGOs should have free and full access to all migrants detected attempting to enter Italy irregularly, whether children or adults.

Greek and Italian authorities alike should take appropriate measures to ensure adequate conditions on ferries during forced returns to Greece. Greece should also ensure that all operations to identify and detain irregular migrants are conducted in a manner consistent with Greece's international human rights obligations. The use of force during such operations should be strictly limited to what is necessary and proportionate.

Recommendations

To the Government of Italy

- Ensure that all migrants who express a wish to apply for asylum are given access to the territory and a meaningful opportunity to register their asylum claim and present their case.
- Ensure that anyone claiming to be an unaccompanied child is admitted to Italian territory and given access to a proper age determination process, a guardian, and a best interests determination.
- Implement best practices for age determination by provisionally treating those claiming to be under 18 as children until age determination is completed, and establishing a multi-disciplinary approach that does not rely solely on appearance or medical examinations. Where medical testing is used, rely on non-intrusive examinations including non-radiological methods of bone density and dental observations.
- Establish procedures to verify that children traveling with an adult are in fact accompanied by/related to that adult, including separate interviews by qualified personnel as necessary to assess the family link.
- Refrain from returning adult asylum seekers to Greece until such time as it is established that the country is providing meaningful access to asylum procedures, proper adjudication of refugee claims, and reception conditions that comply with EU standards.
- Ensure that all migrants are fully informed, in a language they can understand, of their rights and the procedure for a fair assessment of their status and needs.
- Ensure that all border officials are aware of European guidelines on border controls at Schengen borders that permit identification of individuals who may be in need of protection.

- Ensure that authorized nongovernmental organizations have full and free access to all migrants detected attempting to enter Italy irregularly via ports, on the Adriatic or elsewhere, and adequate time and facilities to provide information and assistance.
- Ensure that all migrants not in need of international protection and not applying for asylum who are returned to Greece are fully informed in a language they can understand of their rights and the procedure.
- Take appropriate measures to ensure adequate conditions on ferries during returns to Greece, including by coordinating with Greek authorities to ensure that all ferries operating between Greece and Italy have written, transparent, and enforceable guidelines on humane and safe treatment of returnees.

To the Government of Greece

Human Rights Watch has made extensive and detailed recommendations for improving Greece's asylum and migration enforcement systems in four other major reports. Most closely relevant to this report, Human Rights Watch recommends that Greece:

- Take appropriate measures to ensure adequate conditions on ferries during returns to Greece, including by coordinating with Italian authorities to ensure that all ferries operating between Greece and Italy have written, transparent, and enforceable guidelines on humane and safe treatment of returnees.
- Ensure that all operations to identify, apprehend, and detain irregular migrants are conducted in a manner consistent with Greece's international human rights obligations. The use of force during such operations should be strictly limited to what is necessary and proportionate. Excessive use of force should be subject to disciplinary sanctions and, as appropriate, criminal prosecution.
- Maintain communication with relevant nongovernmental organizations operating in Greek port cities and keep them informed about returns of migrants from Italian port cities in order for them to be able to inform and assist returnees on rights and procedures.

- Ensure that all individuals returned from Italy are screened to identify unaccompanied children. All returnees should be given a meaningful opportunity to apply for asylum in Greece.
- Inform Italian authorities of every case in which Greek authorities have identified returnees with protection needs, including unaccompanied children, and provide information relevant to identifying the gaps in procedures in Italy that allowed the return.
- Immediately improve detention conditions, and immediately create open reception centers for asylum seekers, families with children, and unaccompanied children. Asylum seekers and children should only be detained as a measure of last resort and only if alternatives to detention cannot be applied effectively.

To the European Union

- Through the European Commission's Directorate General for Justice, assess Italy's compliance with its obligations under regional human rights and European Union law and jurisprudence, including the Dublin II Regulation, and take appropriate measures to remind Italy of these obligations.
- Further reform the Dublin II Regulation to
 - » take into account equitable burden-sharing among member countries that genuinely have common asylum standards and procedures by, for example, consideration of joint EU processing within the EU of specific caseloads.
 - » accord greater weight to the variety of factors that might connect an asylum applicant to a state, rather than the weight currently given to the country of first arrival in assessing the state responsible for examining asylum claims. Such connections go beyond the qualifying family relationships in the Dublin II regulation to include wider family relations (especially for reunification of unaccompanied migrant children with family members other than parents or guardians), community ties, prior residence, language, job skills that might be in demand in one country over another, and the personal preference of the applicant, a legitimate factor to consider.

To the Council of Europe

- The Commissioner for Human Rights should continue to monitor the situation, following his July 2012 visit to Italy and September 2012 report, and press the Italian government to refrain from automatic returns from Adriatic ports to Greece.

To the United Nations

- The Special Rapporteur on the human rights of migrants should ensure that the final report on the human rights of migrants at the borders of the European Union, due in June 2013, reaffirms the October 2012 call on Italy to prohibit the practice of informal summary returns to Greece.
- The High Commissioner for Refugees should continue to work closely with the Italian and Greek authorities to ensure access to asylum for adult and child asylum seekers, and adequate protection measures, including access to age determination and best interests determination, for unaccompanied children.
- The Human Rights Council should question the Italian government about border enforcement practices at Adriatic ports, including automatic returns to Greece, during Italy's second cycle review under the Universal Periodic Review (UPR) in 2014, and the Greek government about measures undertaken to reform its asylum and migrant detention systems during Greece's second cycle review under the UPR in 2016.

To Private Ferry Companies

- Adopt written, transparent, and verifiable guidelines for captains and crew on appropriate accommodation and treatment of all migrants subject to return, consistent with the International Maritime Organization's guidelines on stowaways.
- In order to avoid possible complicity in the abuse of the rights of unaccompanied migrant children, instruct ferry captains to question any request by Italian authorities to carry out summary returns of individuals who appear to be unaccompanied children and seek written certification that these children have been screened in accordance with international standards.

Methodology

This report is based on research in Italy and Greece in late November 2011 and between late June and early September 2012. We interviewed 29 men and boys who had been returned to Greece by Italian border officials under the expedited port procedure, as well as with other migrants who were in Greek port cities and intended to make the crossing. Twenty of those interviewed had been returned in the last six months. All interviews were conducted in Greece, with the exception of one interview with an adult in Italy who had managed to reach Italy and apply for asylum after repeated attempts.

Of the 29 interviewees, 10 were minors when they were returned from Italy to Greece and at the time of the interview; 3 were minors when they were returned from Italy to Greece but adults at the time of the interview. Sixteen interviewees were adults when they were returned from Italy to Greece and at the time of the interview. The youngest person we interviewed was 13 years old (accompanied by his 16-year-old brother); the oldest person we interviewed was 44 years old. Seventeen of those interviewed (the majority) were Afghans, nine were Somali, two were Moroccan, and one was an Iraqi Kurd.

Where noted, we have used a pseudonym followed by an initial to protect the identity of adults upon request. In keeping with Human Rights Watch policy, we use pseudonyms followed by an initial for all children. All interviewees were informed of the purpose of the interview and that their testimony might be used publicly. No incentives were offered or provided to persons interviewed. All interviews were conducted individually or, as with a set of brothers, in a small group. Some were conducted in private while others were conducted in public places. Fourteen out of the 29 interviewees were identified randomly in public spaces (for example a park in Patras) and abandoned buildings near the port of Patras where migrants live; the rest were identified through the assistance of interpreters, fixers, community activists, and NGOs. One interview was interrupted when a police motorcycle patrol approached; the interviewee ran away for fear of being detained.

Human Rights Watch also accessed port facilities and conducted in-depth interviews with border police officials in Bari, Italy and Patras, Greece, as well as the deputy director of the Aliens Division of the Hellenic Police. Our request to meet with the prefect of Bari or a member of his staff received no answer. The office of Prefect Rosetta Lavino Scotto,

director of the Interior Ministry's Central Directorate for Immigration and Asylum Service, responded to our letter of inquiry to say that it was the competence of the Border Police. Human Rights Watch also sent a letter to Prefect Rodolfo Ronconi, director of the Interior Ministry's Central Directorate for Immigration and Border Police, and his response is addressed in this report. We wrote to seven private companies that provide ferry services between Italy and Greece, one of which responded.

We also interviewed, either in person or by telephone, United Nations High Commissioner for Refugees field officers in Greece and Italy, and staff members of various nongovernmental organizations in Italy and Greece, including Rete Iside (Italy), Italian Council of Refugees (Italy), Greek Council of Refugees (Greece), Praksis (Greece), and Doctors without Borders (Greece). Finally, we interviewed two of the lawyers (one Greek, one Italian) who filed a case against Italy and Greece for summary returns before the European Court of Human Rights.

I. Migrants and Asylum Seekers in Greece and Italy

Both Greece and Italy face particular migratory pressures as countries on the European Union's external borders, pressures that are exacerbated by the Dublin II regulation, which generally holds that the country where asylum seekers first set foot is responsible for examining their claims. Both economic migrants and asylum seekers come to Greece and Italy from countries as varied as Afghanistan, Syria, Somalia, Tunisia, Bangladesh, and Iraq.

Since the early 2000s, Greece has become the major gateway for undocumented migrants and asylum seekers from Asia and Africa, in part because its islands are just off the Turkish coast and it shares a land border with Turkey, a major transit route into Europe. The director of Frontex, the European Union external borders agency, said in August 2012 that Greece accounted for 67 percent of all irregular border crossings into the EU.¹

Italy, which accounted for 12 percent of all irregular border crossings, is exposed to boat migration across the Mediterranean, though arrivals by sea have fluctuated over the past decade. In 2012, boat migration to Greece from Turkey in the eastern Aegean appears to be on the rise, including Syrians displaced by the conflict in their country. This may be in part due to increased border controls along the land border.²

Human Rights Watch research suggests that the ultimate goal for many, whether they are economic migrants or asylum seekers, is to transit through Greece and Italy to other countries in the European Union. Hundreds of foreigners congregate in the Greek port cities Patras and Igoumenitsa looking for a chance to stow away on daily ferries bound for the Italian ports of Ancona, Bari, Brindisi, and Venice. As this report documents, many face summary return to Greece if detected upon arrival.

Many migrants wish to travel further north in Europe. Indeed, Human Rights Watch interviews with hundreds of asylum seekers in Greece over the past four years indicate that

¹ Migration News Sheet, "FRONTEX reports that Greece is the country of entry of more than two-thirds of clandestine migration into the EU," September 2012.

² "Syrian arrivals rise in the Aegean," Ekatherimini, September 21, 2012, http://www.ekatherimini.com/4dcgi/_w_articles_wsite1_1_21/09/2012_462560 (accessed September 21, 2012); "Migration: Influx shifts to Greek Islands," IRIN, October 5, 2012, <http://www.irinnews.org/Report/96465/MIGRATION-Influx-shifts-to-Greek-islands> (accessed October 5, 2012).

the vast majority would prefer to travel onward to other EU countries where they believe reception conditions for asylum seekers, refugee recognition rates, and integration prospects are far better than in either Greece or Italy. However, the EU's Dublin II Regulations—which require adult asylum seekers to request asylum in the first EU country they reach and allows for returns to that country if an asylum seeker travels elsewhere in Europe—traps many in the border countries.³

The regulation is slightly different for unaccompanied children: they may not be transferred to the member state they first entered but instead to the country where they first lodged an asylum application.⁴ However, the regulation still does not provide for unaccompanied children to make an asylum application in their country of choice.⁵ The regulation also provides for unaccompanied children to be reunited with family members if it is in their best interests, yet the definition of a family member is restrictive and only applies to parents, guardians, or spouses.⁶

Despite efforts towards harmonized standards and procedures through the Common European Asylum System (CEAS), wide disparities persist in the treatment of asylum seekers in EU countries. The egregious problems with Greece's asylum system (discussed below) have prompted the revision of the Dublin II Regulation, a cornerstone of the CEAS.⁷

The European Court of Human Rights (ECtHR) ruled in January 2011, in the case of *M.S.S. v. Belgium and Greece*, that the return of an Afghan asylum seeker from Belgium to

³ Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Official Journal L 050 , 25/02/2003 P. 0001 – 0010, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML> (accessed October 23, 2008).

⁴ “Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum,” Council Regulation (EC) No. 343/2003, art.6.

⁵ Member states may but are not obliged to bring together family members on humanitarian grounds; member states are also urged to unite, if possible, unaccompanied children with relative(s) unless it is not in the child's best interests. Council Regulation (EC) No. 343/2003, art. 15,(1)(3).

⁶ Council Regulation (EC) No. 343/2003, art. 2(i).

⁷ Council Regulation (EC) No. 343/2003 of February 18, 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. The Regulation applies to all EU countries as well as Norway, Iceland, and Switzerland.

Greece under the Dublin II Regulation exposed him to degrading treatment in Greece.⁸ The Court also found a violation of the right to an effective remedy given the deficiencies in the Greek asylum system and the risk of return to Afghanistan without a serious examination of the merits of the asylum application.⁹

In December 2011, the European Union Court of Justice ruled that member states have an obligation to verify conditions in the receiving country before pursuing Dublin transfers.¹⁰ EU member states are expected to adopt reforms to the Dublin II Regulation that would block such transfers to countries where an asylum seeker risks inhuman or degrading treatment, while leaving the general system intact.¹¹

Human Rights Watch has argued repeatedly that the Dublin II Regulation ignores the legitimate interest of asylum seekers to choose where to apply for asylum and unfairly allocates the burden of processing asylum claims to the states on the EU's external borders.

Italy's Approach to Migration

Every year thousands of migrants, including asylum seekers and unaccompanied children, reach Italian shores. The vast majority cross the central Mediterranean—or Sicilian Channel—from North Africa on perilous journeys organized by smugglers. After a high of 36,000 in 2008, numbers fell sharply in 2009 and 2010 due to Italy's "push-back" policy.¹² Crossings surged once more in 2011, in the midst of chaos and conflict in North Africa, with over 56,000 arrivals by sea from that region throughout the year.¹³

⁸ European Court of Human Rights [Grand Chamber], *M.S.S. v. Belgium and Greece*, application no. 30696/09, judgment of January 21, 2011, Report on Judgments and Decisions 2011, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050> (accessed October 10, 2012), paras. 233 (detention conditions) and 263 (living conditions).

⁹ *Ibid.*, para. 321.

¹⁰ European Union Court of Justice [Grand Chamber], Judgment of the court in joined cases C-411/10 and C-493-10, December 21, 2011, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=0&doclang=EN&mode=req&dir=&cc=first&part=1&cid=4156174> (accessed October 10, 2012).

¹¹ European Parliament, Committee for Civil Liberties, Justice and Home Affairs, "Asylum seekers: no transfers to EU countries unable to cope," press release, September 19, 2012, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20120917IPR51500+0+DOC+XML+Vo//EN> (accessed September 21, 2012).

¹² UNHCR, "All in the same boat: The Challenges of mixed migration," Key Facts and Figures, <http://www.unhcr.org/pages/4a1d406060.html> (accessed October 17, 2012). There were 9,573 recorded arrivals in 2009, and 4,348 in 2010.

¹³ UNHCR, "Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011," Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html> (accessed February 1, 2012). In the same period, a recorded 5,000 reached crossed the Adriatic from Greece (and Turkey).

Italy implemented its notorious “push-back” policy in 2009. In May of that year, in collaboration with Libya, then under the rule of Muammar Gaddafi, Italy began to intercept migrant boats in international waters and force them back to Libya from where they had embarked. In some cases, the Italian Coast Guard physically returned to Libya the migrants they intercepted at sea. In other cases, migrants were interdicted by Italian forces and then transferred onto Libyan vessels for return. This occurred without even a cursory screening to see whether some might be refugees or whether others might be sick or injured, pregnant women, unaccompanied children, or victims of trafficking or other forms of violence against women.¹⁴

In February 2012, the ECtHR ruled against Italy for these practices. The Court found that summary push-backs to Libya amounted to collective expulsions and exposed people to inhuman and degrading treatment in Libya or in their countries of origin if subsequently returned by Libyan authorities.¹⁵ The ECtHR also found a violation of the right to an effective remedy in Italy due to the lack of an opportunity to lodge a complaint with a competent authority against the return to Libya.¹⁶ The Italian government has pledged to respect the ECtHR’s ruling and no push-backs to North Africa have been verified since 2010.

Numerous EU countries suspended all Dublin transfers to Greece following the *M.S.S* ruling. Italy does not appear to have adopted a general policy to suspend such transfers to Greece, but rather adapted its approach to require an examination of any risk of violation of human rights following a Dublin return.¹⁷ Italy’s practice of summary returns of asylum seekers from its Adriatic ports to Greece appears to contradict this policy and the reasoning behind the ECtHR’s rulings in both the *M.S.S* and *Hirsi* cases.

¹⁴ Human Rights Watch, *Pushed Back, Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers*, September 2009, <http://www.hrw.org/reports/2009/09/21/pushed-back-pushed-around-o>.

¹⁵ European Court of Human Rights [Grand Chamber], *Hirsi Jamaa and others v. Italy*, application no. 27765/09, judgment of February 23, 2009, paras. 136-8 and paras. 156-8.

¹⁶ *Ibid.*, paras 204-5.

¹⁷ Email communication from Paola Accardo, representative of the Italian government before the European Court of Human Rights and legal attaché in Italy’s Permanent Mission to the Council of Europe, January 2, 2013.

Abdullah P., a 24-year-old Afghan asylum seeker, looks at the sea from a parking lot in Patras, Greece, where he lives with other migrants hoping to get on a ferry to Italy. Italy returned Abdullah to Greece on August 20, 2012, but he told Human Rights Watch he will try to undertake the journey again and again. © 2012 Eva Cosse/Human Rights Watch.



The practice has attracted international concern. The ECtHR is expected to issue judgment soon in the case of *Sharifi and Others v. Italy and Greece* involving the summary return of 35 people, including 10 children, in 2009.¹⁸ The court will decide whether such returns constituted collective expulsions, and whether they violated those individuals' rights to life and to protection against returns to ill-treatment, as well as their right to an effective remedy against such a return. Since that case was filed, it is likely that thousands more have been returned to Greece from Italian ports, including unaccompanied children and asylum seekers.

The Council of Europe Commissioner for Human Rights Nils Muižnieks, in September 2012, and the UN Special Rapporteur on the rights of migrants François Crépeau, in October 2012, urged Italy to refrain from summary returns to Greece, citing continuing concerns over the grave deficiencies in Greece's asylum system.¹⁹

¹⁸ *Sharifi and Others V Italy and Greece*, application no.16643/09, communicated on June 23, 2009.

¹⁹ Commissioner for Human Rights of the Council of Europe, "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Italy from 3 to 6 July 2012," CommDH(2012)26, September 2012, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2143096&SecMod e=1&DocId=1926434&Usage=2> (accessed October 10, 2012), para. 138; UN Special Rapporteur on the human rights of migrants, end of mission statement "UN Special Rapporteur on the human rights of migrants concludes his third country visit in his regional study on the human rights of migrants at the borders of the European Union: Italy," October 8, 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12640&LangID=E> (accessed October 10, 2012).

A Dangerous Journey

It was really cold. The hunger and the thirst brought us in a difficult situation. And the cold. We were falling asleep because we were tired but we were scared that if we sleep we might die and that's why we tried not to sleep.

Mohammed A., 16-year-old Afghan boy who stowed away in a refrigerated truck with his 13-year-old brother, Patras, June 28, 2012

Adults and children risk injury, adverse health consequences, and even death, at every stage of their journey to Italy: when they attempt to enter ports and vehicles in Greece, during the crossing, and upon disembarkation in Italy.

Adults and children travel between axles underneath trucks, or in refrigerated compartments, risking their lives and their health. In June 2012, two men were found dead and three others in a coma among the 18 people who had hidden under trucks and buses on a Superfast ferry to Ancona.²⁰

Ahmed S., an unaccompanied migrant boy from Afghanistan who was 17 when he was returned from Italy, describes how he hid underneath a truck:

I climbed a fence—a 2.5 meter fence—and fell. I was in a hurry so the coastguard didn't see me, so I jumped quickly and fell, I hurt my back.... I went under the truck, on a box in between the two axles of the wheels. I stayed on the box the whole journey. I didn't want to be seen. I was alone. It was painful for my back the whole time.... I still have pain in my back now.²¹

The humanitarian organization Doctors without Borders told Human Rights Watch that staff in port cities had treated migrants for a variety of injuries sustained while hiding under trucks or jumping fences at the ports, including broken limbs, cuts, and bruises. One man lost a finger to razor wire.²²

²⁰ "Two illegal immigrants dead, 3 in a coma on Ancona ferry," AGI, June 23, 2012.

²¹ Human Rights Watch interview with Ahmed S. (pseudonym), Patras, June 26, 2012.

²² Human Rights Watch interview with Doctors Without Borders staff, Athens, June 25, 2012. The organization ran a program in Patras between May 2008 and August 2009.

However, migrants emphasized that police abuse and generally adverse conditions in Greece mean that they will attempt the journey again and again. Sadaat S., a 16-year-old Afghan, told us he is determined to reach Italy despite the risks:

Many times I try to go, but they [the Greek authorities] catch me. They hurt me. They put me in jail. I try to get inside a truck. I have no money for a smuggler. Some of my friends passed ... in a refrigerated truck with food and meat. They died.²³

Mazdak X., an adult Iraqi Kurd, was returned to Greece in 2010 after he was discovered, along with thirty other people, hiding in a truck transporting tires when it disembarked at an Italian port on the Adriatic (he believed it was either Ancona or Bari). He tried to stow away on a ferry six more times but was always apprehended by port police in Greece. He was finally able to reach Italy and apply for asylum in July 2012, this time having traveled on a migrant boat organized by smugglers.²⁴

²³ Human Rights Watch interview with Sadaat S., Patras, June 28, 2012.

²⁴ Human Rights Watch interview with Mazdak X., Bari, August 1, 2012.

II. Abuses in Greece

Italy's return of adult asylum seekers and unaccompanied children to Greece sends them back to a country without a functioning asylum system or appropriate child protection system. Greece's dysfunctional asylum system denies many asylum seekers access to a meaningful assessment of their protection needs. Unaccompanied migrant children face detention and destitution and, like all migrants, are vulnerable to law enforcement abuse, particularly in and around ports in Greece, as well as degrading conditions of detention and a hostile environment marked by increasing xenophobic violence.

A Broken Asylum System and Abusive Conditions for Migrants

Migrants and asylum seekers in Greece face a hostile environment, characterized by a dysfunctional asylum system, inhuman and degrading conditions of detention, and xenophobic violence.



Ahmed S., an unaccompanied migrant boy from Afghanistan, demonstrates how he runs into the rafters of the abandoned factory where he lives when police come to sweep the area and arrest migrants. © 2012 Kyle Knight/Human Rights Watch

Zamir M., a 17-year-old Afghan who came to Greece when he was 13, said life was so hard in Greece that it might be better in Afghanistan, “even with the Taliban.”²⁵

²⁵ Human Rights Watch interview with Zamir M., Patras, June 26, 2012.

Chronic deficiencies in Greece’s asylum system—extremely limited access to the system, a significant backlog in the processing of applications, the lowest refugee recognition rate in the EU, and very poor reception conditions—are well-documented.²⁶ Despite reforms initiated in 2011, the Greek asylum system remains largely dysfunctional, with a backlog of tens of thousands of cases and the lowest first-instance refugee recognition rate in Europe (less than 1 percent in 2011).²⁷ Some progress has been made at second instance, with recognition rates in 2011 up to 12 percent.²⁸

Ahmed S., an unaccompanied migrant boy from Afghanistan in Patras, Greece. Absent housing or social services, he is forced to live in an abandoned factory with other migrants. © 2012 Kyle Knight/Human Rights Watch



Significant obstacles remain to submitting asylum applications, with the Athens Aliens Police Directorate accepting only 20 applications per week, in violation of the right to seek asylum under refugee law, the EU Charter of Fundamental Rights and the Universal Declaration of Human Rights.²⁹ This means that many would-be asylum seekers remain undocumented—regarded as irregular migrants and without protection—simply because they have not been allowed to access the asylum system.

²⁶ For an overview, see UNHCR, “The situation of refugees in Greece: observations and proposals,” June 2011, <http://www.unhcr.gr/fileadmin> (accessed November 19, 2012).

²⁷ Eurostat, “Asylum in the EU 27 – The number of asylum applicants registered in the EU rose to 301,000 in 2011,” news release, March 23, 2012, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-23032012-AP/EN/3-23032012-AP-EN.PDF (accessed May 17, 2012).

²⁸ “Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (‘the Greek Action Plan’) and border management issues, Progress Report,” March 2012, <http://aditus.org/mt/aditus/Documents/GreekActionPlanProgressReportMarch2012.pdf> (accessed May 22, 2012).

²⁹ Joint Greek NGO report, “Campaign on access to asylum in Attica,” October 2012, http://www.aitima.gr/aitima_files/REPORT_Campaign_on_access_to_asylum_in_Attica_ENG.pdf (accessed November 19, 2012).

International human rights bodies, such as the UNHCR and the Council of Europe, and NGOs, including Human Rights Watch, have documented egregious conditions of detention for migrants and asylum seekers in Greece.³⁰ While the Greek government has taken steps to improve detention conditions, migrants and asylum seekers, including children, continue to be held in substandard facilities that are not designed for longer-term stays in various parts of the country. Serious concerns remain about poor hygiene, lack of adequate medical attention, and failure to provide appropriate accommodations for people with particular vulnerabilities.

Children and adults interviewed about their return from Italy to Greece described being sent directly to substandard detention conditions in Greece. Ali M., an Afghan boy who was 15 years old when he was returned to Igoumenitsa in March 2012, was taken directly to a detention facility outside the port where he was detained with unrelated adults in squalid conditions without adequate food. Despite the fact that detention of migrant children should only take place as a last resort and for the shortest possible period of time, he spent 16 days in detention waiting to be released.³¹ Qadir J., a 22-year-old Afghan returned to Igoumenitsa from Bari also in April 2012, was detained for ten days in Igoumenitsa, in a small police station jail cell with 75 people:

No sleep. We were sitting on our legs.... Every night they bring us bad food. Every morning and every evening they were bringing two or three more people.³²

In October 2012, detainees in holding cells at the Igoumenitsa port protested overcrowding and poor conditions. Eleven detainees were reportedly taken to the

³⁰ See Human Rights Watch reports: *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, September 2011, <http://www.hrw.org/reports/2011/09/21/eu-s-dirty-hands-o>; *No Refuge: Migrants in Greece*, November 2009, <http://www.hrw.org/reports/2009/11/02/no-refugees>; *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008, <http://www.hrw.org/reports/2008/12/22/left-survive>; and *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008, <http://www.hrw.org/reports/2008/11/26/stuck-revolving-door-o>. See also Doctors Without Borders, "Assisting Migrants in Greece's Aegean Islands," Press Release, September 6, 2012, <http://www.doctorswithoutborders.org/news/article.cfm?id=6285&cat=field-news> (accessed November 19, 2012); Apostolis Fotiadis, "Irregular Migrants Face the Boot in Greece," *Inter Press Service*, August 29, 2012, <http://www.ipsnews.net/2012/08/irregular-migrants-face-the-boot-in-greece/> (accessed November 19, 2012).

³¹ Human Rights Watch interview with Ali M., Athens, June 25, 2012.

³² Human Rights Watch interview with Qadir J. (pseudonym), Patras, June 26, 2012. All names of adults are the real names unless otherwise noted.

hospital due to injuries caused from banging their heads against the bars of their cells.³³ At the time of the protest, over 90 people were held in cells with a capacity for 30 detainees.

An asylum seeker from Afghanistan walks through one of the rooms used for shelter in an abandoned factory in Patras, Greece. © 2012 Kyle Knight/Human Rights Watch



Migrants and asylum seekers also face a rising wave of xenophobic violence in Greece. Human Rights Watch documented 51 serious attacks by vigilante groups, primarily in the center of Athens, between August 2009 and May 2012. Most attacks took place at night, on or near town squares. Attackers worked in groups, and were often dressed in dark clothing with their faces obscured by masks or helmets. A network of Greek nongovernmental organizations, coordinated by the UNHCR and the Greek National Commission for Human Rights, recorded 150 racist incidents between October 2011 and October 2012.³⁴ In May 2012, after the fatal stabbing of a Greek man in Patras by three men believed to be Afghan nationals, large and violent anti-immigrant protests took place in front of an abandoned factory occupied by hundreds of migrants.³⁵

³³ “Migrants injured in protest against detention conditions in Igoumenitsa,” Ekatherimini, October 24, 2012, http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_24/10/2012_467276 (accessed October 30, 2012); Katerina Nikoas, “Greece to be fined over migrant detention center conditions,” Digital Journal, <http://www.digitaljournal.com/article/335475> (accessed October 30, 2012).

³⁴ Racist Violence Recording Network, “Presentation of results of pilot phase 1.10.2011-31.12.2011,” press release, March 21, 2012, http://www.nchr.gr/media/deltia_typou/PRESS_21_3_2012.pdf (accessed March 22, 2012); Racist Violence Recording Network, “Findings, 1.1.2012 – 30.9.2012,” October 23, 2012, <http://www.statewatch.org/news/2012/oct/gre-racist-violence-report.pdf> (accessed October 24, 2012).

³⁵ “Three Afghans suspected of killing local near Patra port,” Kathimerini English Edition, May 21, 2012, http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_21/05/2012_443221 (accessed May 22, 2012).

Victims of xenophobic attacks, and in particular undocumented migrants, face many obstacles in reporting crimes and activating a police response to attacks. In December 2012, the government moved to create specialized police units in Athens and Thessaloniki to tackle racist crimes; the training and staffing of these units, as well as the timeline for implementation, remained unclear at this writing. The response of the judiciary is also inadequate. No one has yet been convicted under Greece's 2008 hate crime statute providing for racist motivation to be considered an aggravating circumstance in the commission of a crime.

Since Human Rights Watch began this research, the situation for undocumented migrants and asylum seekers in Greece has become even more precarious. The Greek government launched in early August 2012 a large-scale operation in Athens called "Xenios Zeus" to round-up undocumented migrants. By the end of December 2012, over 65,700 presumed undocumented migrants had been taken to police stations for questioning, while over 4,100 had been arrested for unlawful entry and stay in the country.³⁶ The minister of public order inaugurated the same operation in Patras in early October 2012; at this writing, no figures related to the operation had been published.³⁷

Law Enforcement Abuse of Migrants and Asylum Seekers

Greece is hell.

Mohammed H., 20-year-old Moroccan, Patras, August 29, 2012

Five people interviewed in the course of this research told us they had experienced abuse upon return to Greece from Italy. Two recounted abuse immediately upon return, one the following day in the port area (he had gone to attempt the crossing again), and two others in detention following their return.

³⁶ Greek Police Headquarters, "Evaluation of the operation 'Xenios Zeus' from the day of entry into force (five-month results from August to December 2012)," [Αποτίμηση της επιχείρησης «Ξένιος Ζεύς» από την ημέρα εφαρμογής της (αποτελέσματα πενταμήνου από τον Αύγουστο μέχρι και το Δεκέμβριο 2012)], Press Release, January 6, 2013, http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=23632&Itemid=1027&lang= (accessed January 8, 2013).

³⁷ Ministry of Public Order and Citizen Protection, "Visit of the Minister of Public Order and Citizen Protection in Patras," (Επίσκεψη του Υπουργού Δημόσιας Τάξης και Προστασίας του Πολίτη κ. Νικόλαου Δένδια στην Πάτρα), Press Release, October 2, 2012, http://www.mopocp.gov.gr/index.php?option=ozo_content&perform=view&id=4364&Itemid=555&lang= (accessed October 30, 2012).

16-year-old Mohammed A. from Afghanistan told us he and his 13-year-old brother were abused by the Greek coast guard officers inside the Patras port after their return from Italy in June 2012: “When we got out here, they kept us in the small bus that the coastguards have inside the port. They kept us for two hours and then kicked us and told us to leave.”³⁸

Ahmed S., a 17-year-old Afghan, said a police officer beat him the day after he was returned to Patras in May 2012:

When they catch us they want our SIM [cell phone] cards, and so I hid it deep in my pocket (because my family calls me that way, I can’t lose the card). So he hurt me, every way kicking, punching, all over my body. This happened the day after I came back from Italy. I had gone to the port and tried again [to go to Italy].... [Now,] I have no documents with me. I’m afraid of the police because they will hurt me. They catch us inside the port and if there is no-one there they hurt us, hurt us seriously.³⁹

Abdi W., a 26-year-old Somali, told us he was kicked and slapped by the police in Patras upon return from Italy in June 2010, and then held in a crowded jail cell at the police station for ten days before being released.⁴⁰

Human Rights Watch’s research in Patras suggests that law enforcement abuse of migrants and asylum seekers is a serious problem. In late November/early December 2011, we spoke with 17 migrants, including 10 unaccompanied Afghan migrant children, who told us of abuses by Greek police and coast guard officers on the streets, during sweeps, and in or near the port area during attempts to stow away to Italy.

A 19-year-old Afghan told Human Rights Watch he had been beaten by Greek police officers inside the port five or six days before we spoke in late November 2011:

³⁸ Human Rights Watch interview with Mohammed A. and Hassan A., Patras, June 28, 2012.

³⁹ Human Rights Watch interview with Ahmed S., Patras, June 26, 2012.

⁴⁰ Human Rights Watch interview with Abdi W., Athens, June 24, 2012.

We went to the port with a lot of other people. The police caught me inside [the others ran away]. They kicked me, they beat me with their hands and with sticks, and told me to go away.

He said it was the third time he had been beaten during the month he had been in Patras.⁴¹

Unaccompanied migrant children, instead of being assisted by child protection agencies, can end up sleeping on the streets and may be harassed by the police. An Afghan boy named Azim J., who came to Greece when he was 15 years old, and who was 16 when interviewed, observed that he is “constantly chased by the police [in Patras]. Everywhere we go, the police are there, on the streets in the day, at night ... everywhere.”⁴²

Migrants told us that police sometimes use dogs to detect stowaways in the port: Khalil B., a 27-year-old Sudanese man also told us guards had unleashed a dog—“a very mean dog, big like a cow”—at the port.⁴³ A 16-year-old Afghan boy, Assad H., was discovered hiding in a truck in the Patras port in late September 2011 and bitten by a guard dog on his arm:

One [of the police] twisted my hand behind my back and the other let the chain off the dog and said something to the dog, and he attacked. While the other officer held me. I was crying, the commandos [port police] took me behind the tracks so no one could see me and they left me there. ⁴⁴

⁴¹ Human Rights Watch interview with Nabi Safari, Patras, November 30, 2011.

⁴² Human Rights Watch interview with Azim J., Patras, June 26, 2012.

⁴³ Human Rights Watch interview with Khalil B., Patras, November 30, 2011.

⁴⁴ Human Rights Watch interview with Assad H., Patras, December 1, 2011.

III. Summary Returns from Italy to Greece

Summary returns, including those documented in this report, of unaccompanied children and adult asylum seekers from Adriatic ports in Italy violate Italy's obligations under national and international law. Port police fail to screen adequately for children, asylum seekers, and others in need of protection, and limited access for nongovernmental organizations means migrants do not receive the assistance they need to exercise their rights.

Both national and international law protect asylum seekers and unaccompanied children from summary returns without proper screening. Practices at Italian ports on the Adriatic, however, violate provisions in national law ensuring access to a fair asylum procedure, protection against refoulement (the return of anyone to a place where their life or freedom would be threatened or where they would face the threat of torture or inhuman and degrading treatment), and the prohibition of expulsion of unaccompanied children.

Legal Framework for Italy's Summary Returns to Greece

The Italian government asserts that all returns from Adriatic ports to Greece fall within the scope of a 1999 bilateral readmission agreement between the two countries.⁴⁵ However, many returns appear to be informal, summary returns grounded in domestic Italian law, with fewer safeguards.

The 1999 readmission agreement, which obliges both parties to accept "without formalities" the return of undocumented migrants when authorities can demonstrate they have traveled irregularly from one country to the other, explicitly binds both parties to respect international human rights treaties, and specifically the 1951 Refugee Convention.⁴⁶ The agreement makes no specific reference to the Convention on the Rights of the Child, although both countries

⁴⁵ Letter from Prefect Rodolfo Ronconi, Director, Central Directorate for Immigration and Border Police, Italian Ministry of Interior, to Human Rights Watch, November 20, 2012.

⁴⁶ "Agreement between the government of the Hellenic Republic and the government of the Italian Republic on the Readmission of Persons in an Irregular Situation," Rome, March 20, 1999. 1951 Convention relating to the Status of Refugees and the 1967 Protocol, entered into force on April 22, 1954 October 4, 1967 respectively. Greece ratified the Convention and Protocol on April 5, 1960 and August 7, 1968 respectively. Italy ratified the Convention and Protocol on November 15, 1954 and January 26 1972 respectively.

are parties to the Convention and were so at the time of entering into the agreement.⁴⁷ Likewise, the agreement has no explicit incorporation of their obligations with respect to unaccompanied migrant children, though both countries are of course bound by international law on these points.

The agreement, which entered into effect in 2001, provides for formal readmissions upon request and within a stipulated time-frame for third-country nationals detected entering Italy at unofficial border points along the coastline or detected elsewhere in Italian territory.⁴⁸ The receiving state may refuse readmission if the evidence is insufficient to prove their obligation to readmit the individual.⁴⁹

Human Rights Watch obtained contradictory statistics from the Italian and Greek authorities with respect to readmissions under the formal agreement. According to Greek authorities, Greece accepted the formal readmission of 875 people out of a total of 1,697 requests from Italy in 2011 and the first six months of 2012.⁵⁰ Only 214 migrants were ultimately readmitted in that time-frame; Greek officials could offer no explanation for the discrepancy.⁵¹ The Italian government told Human Rights Watch that 2,334 foreigners were readmitted to Greece in 2011 alone; 1,232 were readmitted to Greece in the first ten months of 2012.⁵² In the same time-frame—2011 and the first ten months of 2012—402 minors and 117 adult asylum seekers coming through Greece were allowed to enter Italian territory.⁵³

Many returns however appear to be carried out on the basis of Italy's Consolidated Immigration Act that allows for the return of irregular migrants from border entry points to their departure point. Article 10 of the Consolidated Immigration Act provides for refusal of entry and return to the country of departure for individuals without necessary travel documents intercepted at border points. When an undocumented migrant travels to Italy on a commercial carrier, such as an airline or a ferry company, that carrier is obligated

⁴⁷ Convention on the Rights of the Child, Adopted by General Assembly resolution 44/25 of November 20, 1989, entered into force September 2, 1990, ratified by Italy September 5, 1991 and Greece May 11, 1993.

⁴⁸ *Ibid.*, article 5.

⁴⁹ *Ibid.*, article 5

⁵⁰ Human Rights Watch interview with Police Brigadier General Nikolaos A. Tsioumaris, Deputy Director of the Aliens Division, Hellenic Police, Athens, July 9, 2012.

⁵¹ *Ibid.*

⁵² Letter from Ronconi, November 20, 2012.

⁵³ *Ibid.*

under Italian law to carry out the return to the country of departure or to the country that provided travel documents to the individual concerned.⁵⁴ Article 10 of the Act specifically prohibits such returns in cases governed by “provisions relating to the granting of political asylum, refugee status, or temporary protection for humanitarian reasons.”⁵⁵ The same article provides for foreigners to be provided “necessary assistance” at the border and for all returns to be recorded.⁵⁶

The Act prohibits the expulsion or return of a foreigner to the risk of persecution on the grounds of race, sex, language, citizenship, religion, political opinion, or personal or social condition.⁵⁷ The Act guarantees all foreigners “located at the Italian borders or on Italian territory ... the fundamental human rights provided for under national laws and applicable international conventions.”⁵⁸ Unaccompanied children may never be expelled except for reasons of public order or security.⁵⁹

In a letter to Human Rights Watch, Prefect Rodolfo Ronconi, director of the Italian Interior Ministry’s Central Directorate for Immigration and Border Police, stated that the “rejection at the border” procedure under Article 10 of the Consolidated Immigration Act is not applicable to returns to Greece because “the concept of a border between Italy and Greece has disappeared.”⁶⁰ Both countries belong to the Schengen Area, a zone of open border travel comprising most EU member states and some neighboring countries.⁶¹ Prefect Ronconi’s letter asserts that the two countries agreed to a procedure whereby irregular migrants can be re-embarked on the same boat with which they arrived, in the custody of the captain for return.⁶² This summary procedure, however, is not laid out in the bilateral agreement, and

⁵⁴ Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero (Dlgs 286/1998) (Consolidated Immigration Act), <http://www.altalex.com/index.php?idnot=836> (accessed September 7, 2012) Consolidated Immigration Act, article 10(3).

⁵⁵ Ibid., article 10 (4).

⁵⁶ Ibid., article 10 (5) and (6).

⁵⁷ Consolidated Immigration Act, article 19.1.

⁵⁸ Ibid., article 2.1

⁵⁹ Ibid., article 19.2 in conjunction with article 13.1.

⁶⁰ Letter from Ronconi, November 20, 2012.

⁶¹ The Schengen Borders Code provides for border police powers at Schengen borders as long as checks do not have border controls as an objective, are based on general police information and experience about threats to public security, and are intended to combat cross-border crime (such as smuggling and trafficking). The Code explicitly requires its application in accordance with obligations of member states with respect to international protection and non-refoulement. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), Preamble, recital 20.

⁶² Letter from Ronconi, November 20, 2012.

this official response fails to account for the apparent discrepancy between the procedures established in the bilateral agreement and the summary procedure.

Procedures at the port of Bari, where Human Rights Watch had access to port facilities and border police officials, resemble more rejection at the border than the formal readmissions stipulated in the bilateral agreement. Border police place irregular migrants in the custody of the commercial ferry's captain for the return journey to Greece within hours of arrival in Italy. Border police officials in Bari provided Human Rights Watch with a copy of the form given to ferry captains in such cases (see Annex I). The form, in Italian and English, includes the names of up to four individuals, the reason for refusal to enter Italian territory, and an order to the ship's captain to "take them immediately on board and take [them] back to the country from which they came" with reference to the Consolidated Immigration Act.⁶³ The captain must give this form to Greek border officials upon handing over the individuals, they said.⁶⁴

Inadequate Safeguards at Adriatic Ports

I tried to ask for asylum but they didn't give me a chance. I wanted to talk but there was no translator and I don't speak Italian.

Youssef L., Moroccan asylum seeker, Patras, August 29, 2012

Safeguards at Italy's Adriatic ports are inadequate. Although the Italian government maintains that port procedures fully respect human rights and ensure that those in need of assistance and international protection are identified, Human Rights Watch found that Italian officials fail to screen adequately for children and to conduct adequate age assessments, or to give asylum seekers the opportunity to lodge claims for international protection.⁶⁵ NGOs within the ports are not given adequate access to incoming migrants in order to provide assistance in securing individuals' rights. These failures violate Italy's international obligations as well as Italian law.

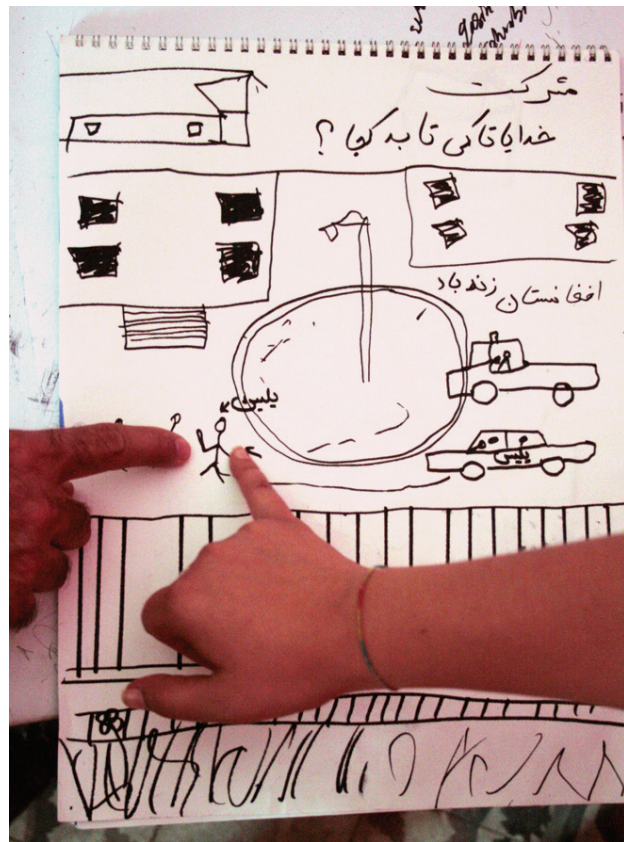
⁶³ Bari Border Police, "Request to take immediately on board and take back to another country non-EU nationals inadmissible into Italian territory," in Annex I. Multiple forms will be used if more than four individuals are returned at the same time. The form refers to Article 8, paragraph 3, of the Law 6.3.1998 No. 40, which due to subsequent amendments corresponds to Article 10, paragraph 3, of the Consolidated Immigration Act.

⁶⁴ Human Rights Watch interview with Piero Ungolo, superintendent, Italian Border Police, Bari, July 31, 2012; Human Rights Watch interview with Joe Nappi, Italian Border Police, Bari, July 31, 2012.

⁶⁵ Letter from Ronconi, November 20, 2012.

The lack of access to specialized service-providers and interpreters, or information about applying for asylum, is a significant obstacle. None of those Human Rights Watch interviewed had had access to any officials who could help them besides border police and none were given information about asylum. Only 7 of the 29 people we interviewed who had undergone this process were assisted by an interpreter at an Italian port.⁶⁶ None of the boys who told Italian border police they were children were given access to a guardian or to legal counsel, as required by the Convention on the Rights of the Child.⁶⁷

Each port city—Ancona, Bari, Brindisi, and Venice—has an NGO with a government contract to provide information and assistance to individuals apprehended upon arrival. These organizations appear to have varying access and scope to perform their jobs. In Bari, where Human Rights Watch conducted interviews with port police and staff at Rete Iside, the association with the contract to provide these services to incoming undocumented migrants, access appears to be severely limited. Rete Iside staff do not have access to the “sterile zone” where ferries disembark and cannot independently observe detection methods or treatment, nor can they know of individuals in need of information unless the border police inform them.⁶⁸



At a local NGO office in Patras, Greece, a migrant explains the drawings made by migrant children that tell the stories of their lives in their country of origin. © 2012 Kyle Knight/Human Rights Watch

⁶⁶ In one other case an interpreter was provided but spoke Pashto while the unaccompanied child spoke Dari and in another case another stowaway provided translation.

⁶⁷ UN Committee on the Rights of the Child, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” General Comment No. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 33 and 36.

⁶⁸ Human Rights Watch interviews with two Rete Iside staff members, Bari, July 30, 2012.

Interviews with Rete Iside staff and Bari border police made it clear that in Bari, the police make their own decisions about who to allow access to the asylum system, with the vast majority of people detected without proper documents being shipped back to Greece. According to the Bari border police, only 12 out of almost 900 people were allowed to remain in Italy for the purposes of applying for asylum in the period between January 2011 and June 2012.⁶⁹

On October 5, 2012, Bari border police discovered 81 people hiding in a truck on a ferry from Igoumenitsa. According to statistics obtained by Rete Iside, there were 61 Iraqis, 12 Syrians, and 6 Afghans. Twelve were allowed to remain on Italian territory; 69 people were sent back later the same day. Those allowed to remain included 6 unaccompanied children, two sets of brothers comprising one child and one adult each, and two adult Iraqis who collaborated with the police investigation to identify the smuggler. Bari border police called Rete Iside to attend to the unaccompanied children and the two sets of brothers, but did not allow the organization's staffer access to any of the other migrants, who were detained on board the ferry until departure bound for Greece.⁷⁰

A recent report by the Greek Forum for Refugees and the German refugee organization ProAsyl found similar problems with access for NGOs in Ancona, Brindisi, and Venice.⁷¹ The Italian Observatory on Racial Discrimination in Venice, a local NGO, reported in March that only 399 out of 1,046 irregular migrants detected in the port in 2010 and the first ten months of 2011 had access to the authorized service provider.⁷² Out of the total arrivals, 892 were summarily returned to Greece.⁷³

A lawyer with the Italian Refugee Council (*Consiglio italiano per i rifugiati*, CIR), which has had the government contract to provide services at the Brindisi port since 2002, told Human Rights Watch that the principal problem there too is that the border police do not systematically call CIR when irregular migrants are detected. He estimated that CIR had

⁶⁹ Human Rights Watch interview with Piero Ungolo, superintendent, Italian Border Police, Bari, July 31, 2012.

⁷⁰ Human Rights Watch telephone interview with Gianpietro Occhiofino, Rete Iside, October 12, 2012.

⁷¹ Proasyl and Greek Council for Refugees, "Human Cargo: Arbitrary Readmissions from the Italian Sea Ports to Greece," July 2012, <http://www.gcr.gr/sites/default/files/humancargo.pdf> (accessed October 10, 2012).

⁷² Mitia Chiarin, "Respingimenti al Porto, Migranti 'diritti violati,'" *La Nuova di Venezia*, March 29, 2012, <http://nuovavenezia.gelocal.it/cronaca/2012/03/29/news/respingimenti-al-porto-migranti-diritti-violati-1.3750059> (accessed June 28, 2012).

⁷³ *Ibid.*

assisted between 30 and 40 people since the beginning of 2012, including cases where CIR was present at discovery and cases in which the police called CIR to provide assistance. He was unable to estimate how many people had been returned without CIR knowing about it; they have not been able to obtain official statistics. The lawyer said that when CIR learns of returns from Brindisi after the fact, police routinely inform them that no returnees had wanted to apply for asylum.⁷⁴

In a July 2012 position paper on asylum in Italy, UNHCR expressed concern that the possible protection needs of undocumented migrants arriving at Adriatic port cities are not systematically identified. UNHCR recommended a “protection-sensitive approach” to border control that ensures that all new arrivals receive adequate information, including about the possibility of applying for asylum.⁷⁵ UNHCR also recommended implementation of European Union guidelines on border controls at Schengen borders, which dictate that:

A third-country national must be considered as an applicant for asylum/international protection if he/she expresses – in any way – fear of suffering serious harm if he/she is returned to his/her country of origin or former habitual residence ... the word “asylum” does not need to be used expressly; the defining element is the expression of fear of what might happen upon return.⁷⁶

Return of Unaccompanied Children

I hadn't eaten in two days. As soon as the truck arrived in Italy I was very hungry so I got out and I took only a few steps and the police caught me....They asked me, I said I was 15. They talked to the Greek authorities and put me on a boat back to Igoumenitsa.

Ali M., unaccompanied Afghan boy who was 15 years old when he was returned from Italy to Greece, Athens, June 25, 2012

⁷⁴ Human Rights Watch telephone interview with Piero Festa, Brindisi, September 27, 2012.

⁷⁵ UNHCR, “UNHCR Recommendations on Important Aspects of Refugee Protection in Italy,” July 2012, <http://www.unhcr.org/500950b29.pdf> (accessed October 10, 2012), p. 3.

⁷⁶ Practical Handbook for Border Guards (Schengen Handbook), article 10, as cited in UNHCR, Recommendations on Important Aspects of Refugee Protection in Italy, July 2012, p. 4.

Italian authorities at Adriatic ports summarily return unaccompanied migrant children to Greece in violation of international standards. Italian and international law explicitly prohibits the summary expulsion or removal of unaccompanied migrant children.⁷⁷ Italian government policy further requires that individuals claiming to be children must be given the “benefit of the doubt” and must be assumed to be children until the conclusion of an age determination process. Yet, instead of granting entrance to the territory pending further assessment, Italian authorities send children back to Greece summarily or following a cursory, incomplete age determination process that fails to meet international standards. Consequently, children are returned without being given the accommodation and protection to which they are entitled.

Unaccompanied migrant children—a particularly vulnerable population—are protected by the Convention on the Rights of the Child, to which Italy is a party. Unaccompanied migrant children must be granted access to the territory in order to determine what next steps are in their best interests.⁷⁸ The Committee on the Rights of the Child has clarified that unaccompanied children must also be granted access to asylum procedures, “irrespective of their age.”⁷⁹ The best interests of the child must be the primary consideration in all actions concerning children, including those undertaken by administrative authorities or police, and including in the immigration context. As the Committee on the Rights of the Child clearly states:

A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.⁸⁰

⁷⁷ Consolidated Immigration Act, article 19.2; UN Committee on the Rights of the Child, General Comment No. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 84 (prohibiting return of a child to country of origin only if it is in the best interests of the child), 26 (prohibiting refoulement of a child to any country “where there are substantial grounds for believing there is a real risk of irreparable harm to the child”), and 19-22 (detailing steps to be taken to determine the best interests of the child, including at para. 20, “allowing the child access to the territory [as] a prerequisite to this initial assessment process”).

⁷⁸ UN Committee on the Rights of the Child, General Comment No. 6, paras. 19-20.

⁷⁹ *Ibid.*, para. 66.

⁸⁰ *Ibid.*, para. 20.

Authorities may, of course, determine that the child has no right to remain in the territory, but he or she must first be admitted in order for this determination to be made; rejection at the border is not acceptable. Where authorities are in doubt as to whether a person is a child, they must first give that person the benefit of the doubt, operating on a presumption of childhood, and second, admit that child to the territory in order to perform a comprehensive age determination.⁸¹

In a letter to Human Rights Watch, Prefect Ronconi of the Central Directorate for Immigration and Border Police stated that all individuals who say they are minors are taken to a healthcare facility for an examination that determines bone age “within minutes.” In cases of doubt, individuals should be admitted to Italian territory and placed in the care of social services.⁸²

However, Human Rights Watch interviewed 10 boys, aged 13 to 17 years old, who said they were returned from Italy to Greece, as well as 3 men who had recently turned 18 and said they had been returned when they were under 18 years of age. Nine of the returns we documented took place during the first six months of 2012. We also interviewed an adult migrant, who claimed he was returned from Italy to Greece with three unaccompanied migrant children, to whom he was not related.⁸³

Other organizations in Greece relate similar findings. Praksis, a Greek NGO assisting migrant children in Patras, documented 19 cases of children, aged 14 to 17 years old, returned from Italy to Greece between August 2011 and July 2012.⁸⁴ A UNHCR official in Greece who requested anonymity estimated that Italy returned an average of two unaccompanied children per month to Patras. The official recalled an 11-year-old who was returned in August 2011 and a group of nine boys returned from Brindisi in November 2011.⁸⁵

In practice, and despite international standards, Italy is not screening adequately for unaccompanied children arriving at Adriatic ports in order to ensure that children are not

⁸¹ Save the Children, UNHCR, UNICEF (Separated Children in Europe Programme), Statement of Good Practice, 4th Revised Edition, D5 and D6 (2009).

⁸² Letter from Ronconi, November 20, 2012.

⁸³ Human Rights Watch interview with Qadir J., Patras, June 26, 2012.

⁸⁴ Human Rights Watch interview with Praksis staff member, Athens, June 25, 2012.

⁸⁵ Human Rights Watch interview with United Nations High Commissioner for Refugees (UNHCR) official, Greece, July 25, 2012.

returned. Worse, Italy is returning even those who volunteer their ages. Ten out of the thirteen boys Human Rights Watch interviewed said they had told Italian officials they were children. Ali M. said, “I told them I was 15, they didn’t listen. They put me in the ticket office and then on the boat.”⁸⁶ When brothers Mohammed A., 16 years old, and Hassan A., 13 years old, were apprehended in June 2012 after traveling to Italy hidden in a refrigerated truck, they told the police their ages. “They said, ‘go to Athens,’” according to Mohammed, and returned them to Greece.⁸⁷



A 14-year-old unaccompanied migrant boy from Afghanistan stands outside the abandoned house in which he lives with 25 other Afghan migrants in Patras, Greece. Like many other migrants, he is trying to stow away on ships to Italy to claim asylum.
© 2012 Human Rights Watch

Other children were not provided the opportunity to establish their age due to the rapidity of the process or the lack of a translator. Both in cases where children volunteered their age and in cases where they were not given an opportunity to establish it, their status as children was ignored, and no complete age determination procedure was conducted. Children’s requests for asylum were also ignored. For instance, Ali M. stated: “When they caught me [in Italy] I said, ‘I want to go to Rome to apply for asylum.’ And they told me, ‘Come with me and we’ll issue a ticket to Rome.’ They lied.”⁸⁸

Best practices indicate that, pending age determination, the person claiming to be a child should provisionally be treated as such and admitted to the territory,⁸⁹ yet, Italy returns these people assuming they

⁸⁶ Human Rights Watch interview with Ali M., Athens, June 25, 2012.

⁸⁷ Human Rights Watch interview with Mohammed A. and Hassan A., Patras, June 28, 2012.

⁸⁸ Human Rights Watch interview with Ali M., Athens, June 25, 2012.

⁸⁹ Save the Children, UNHCR, UNICEF (Separated Children in Europe Programme), Statement of Good Practice, 4th Revised Edition, D5 and D6 (2009).

are adults. According to the UN Committee on the Rights of the Child, age determination should be prioritized immediately after arrival in the country, and the best interests of the child should be a guiding principle in these proceedings; allowing the child access to the territory is a prerequisite for determining the best interest of the child.⁹⁰ Yet, none of the boys interviewed by Human Rights Watch was granted access to the territory in order to prove his age.

Only one boy interviewed by Human Rights Watch said he had any form of age determination procedure, in his case, a wrist x-ray. He was not informed of the results of the examination. Good practices in age determination—a challenging field—are multidisciplinary, involving child psychologists, social workers, and doctors, among others.⁹¹ UNHCR and the Committee on the Rights of the Child have instructed states not to base age determinations solely on the child's physical appearance or on a single medical test, but also to consider psychological maturity and the margin of error of medical exams, and to give the child the benefit of doubt.⁹² Multidisciplinary assessments cannot be conducted in the rapid time frame—often only a few hours— during which the boys are in the Italian ports.

Medical examinations such as bone x-rays to determine age are insufficient by themselves because they are subject to margins of error of up to five years, and because they expose children to radiological testing for no medical reason.⁹³ The Separated Children in Europe Programme, a joint initiative of the UNHCR and Save the Children, advocates the use of non-invasive medical testing, such as physical development assessments and only as part of a multi-disciplinary evaluation when there is serious doubt about a person's age.⁹⁴ A senior border police officer in Bari told Human Rights Watch they conduct a more detailed interview and a wrist x-ray when they doubt the

⁹⁰ Convention on the Rights of the Child, article 8; UN Committee on the Rights of the Child, General Comment No. 6, paras. 20 and 31 (a).

⁹¹ Save the Children, UNHCR, UNICEF (Separated Children in Europe Programme), Statement of Good Practice, 4th Revised Edition, D5 and D6 (2009).

⁹² UNHCR, "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum," February 1997, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3360> (accessed September 1, 2008), section 5.11; General Comment No. 6, para. 31 (i).

⁹³ "Age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side." Royal College of Paediatrics and Child Health, *The Health of Refugee Children: Guidelines for Practitioners* (London: 1999), p. 13. Pediatricians have further argued that it amounts to a violation of medical ethics to expose children to radiation in X-rays for non-medical purposes. *Ibid.*, pp. 13-14.

⁹⁴ Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 9

person is under 18 years old but did not specify the conditions that would trigger that doubt; they do not conduct any other kind of age assessment.⁹⁵

Unaccompanied migrant children are some of the most vulnerable migrants in the world; international law recognizes that vulnerability and obliges states to provide certain care.

Not only should Italy provide these children with access to the territory for an age assessment and best interests determination, they should, for those who prove to be children, refrain from returning them to Greece, and provide them with a guardian and basic needs, including education.⁹⁶

Hassan A., a 13-year-old Afghan boy who was caught on arrival in Italy and summarily returned to Greece, said “when they caught us, I felt a lot of despair and disappointment... I just want to leave [Greece] to have a decent life and a school.”⁹⁷ Yet, in too many instances, Italy ignores its obligations to offer these children protection.

Return of Adult Asylum Seekers

I don't want to stay in Greece.... I cannot take asylum here.... I want to have asylum because I have problem in Afghanistan, I cannot live there. That's why I want to have asylum, in order to live free in Europe.

Mohammed B., Afghan asylum seeker, Patras, August 28, 2012

Summary returns of adult migrants from Adriatic ports back to Greece without giving them the opportunity to lodge asylum claims circumvent national and international obligations. Some asylum seekers may choose not to apply for asylum once in Italy, even if given the chance, because they want to travel to other countries because they believe reception conditions, refugee recognition rates, and integration prospects are better.

The 1951 Refugee Convention, to which Italy is a party, customary international refugee law, and international human rights law require all countries to respect the principle of

⁹⁵ Human Rights Watch interview with Piero Ungolo, superintendent, Italian Border Police, Bari, July 31, 2012.

⁹⁶ UN Committee on the Rights of the Child, General Comment No.6.

⁹⁷ Human Rights Watch group interview with Mohammed A. and Hassan A., Patras, June 28, 2012.

nonrefoulement. This means anyone seeking asylum may not be summarily rejected at the border and may not be deported unless their claim has been fairly determined.

UNHCR's Executive Committee has stated that the principle of nonrefoulement establishes "the need to admit refugees into the territories of States, which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs."⁹⁸

The laws of the European Union and jurisprudence of the European Court of Human Rights (ECtHR) also oblige Italy to grant asylum seekers entrance to the territory and refrain from refoulement. EU directives adopted over the past decade—some of which are currently being revised—aiming to create a Common European Asylum System (CEAS) establish clearly the right of access to procedures, to remain in a member state territory pending examination of an asylum application, and protection against refoulement.⁹⁹

Italy is further under an obligation to refrain from transfers of asylum seekers to other EU countries where they face the risk of cruel, degrading, or inhuman treatment.¹⁰⁰

Human Rights Watch spoke with five adults who said their pleas to apply for asylum in Italy were ignored by Italian border officials. Salem Ahmed, a 42-year-old Somali who has already applied for asylum in Greece, was intercepted in Bari in July 2012. Salem insisted he told Italian authorities he wanted to apply for asylum:

⁹⁸ UNCHR, "A Thematic Compilation of Executive Committee, 6th Edition, June 2011, <http://www.unhcr.org/3d4ab3ff2.html> (accessed October 30, 2012), Conclusion no. 82 (1997), p. 14.

⁹⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ("Reception Directive"); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ("Procedures Directive"); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ("Returns Directive"); Directive 2011/95/EU of 13 December 2011 on standards of qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("Qualifications Directive").

¹⁰⁰ European Court of Human Rights [Grand Chamber], *M.S.S. v. Belgium and Greece*, judgment of 21 January 2011, Report on Judgments and Decisions 2011, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050> (accessed October 10, 2012); European Union Court of Justice [Grand Chamber], Judgment of the court in joined cases C-411/10 and C-493-10, December 21, 2011, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=o&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4156174> (accessed October 10, 2012).

I said we came here in a democratic country and we're looking for freedom....
I told them I'm a refugee; I left my country because it's so difficult.¹⁰¹

He was detained overnight and then sent back to Greece.

Other asylum seekers told us they were not given a chance to discuss their individual situation with border officials. Javet Mohammadi, a 27-year-old Afghan was caught hiding under a truck as it disembarked in Ancona in August 2012. He said he was handcuffed and put directly back on the boat; the police did not ask him any questions or give him any information about his rights. "You cry and no one is asking you why.... No one told me why they sent me back."¹⁰² Qadir J., a 22-year-old Afghan, faced the same experience in Bari, in April 2012: "They just straight away put me on the boat again.... They didn't ask me questions. They didn't inform me about asylum."¹⁰³



Trucks of the sort migrants stow away on hoping to reach Italy, ready to be loaded onto ships at the Patras port. Migrants stow away between the axles, inside fuel tanks, or inside refrigerated containers.
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¹⁰¹ Human Rights Watch interview with Salem Ahmed, Athens, September 5, 2012.

¹⁰² Human Rights Watch interview with Javet Mohammadi, Patras, August 31, 2012.

¹⁰³ Human Rights Watch interview with Qadir J., Patras, June 26, 2012.

Liiban F., a 22-year-old Somali, was also returned to Greece from Bari in April 2012. He told us that the police “never gave us a chance to talk or ask something,” but he nonetheless believed he would be taken to a refugee camp.

They gave me a paper, I don’t know what it was written on the paper, and they told me to put my fingerprint and I put it.... When I put my finger to the paper they gave to me, I thought ... this paper says ‘we caught this person, he’s a refugee and we are going to bring him to the camp’ ... But no camp.... When I saw Patras, my heart broke.¹⁰⁴

This fence marks the new high-security port in Patras, Greece, a coastal town where migrants often attempt to stow away on trucks boarding ferries bound for Italy. © 2012 Kyle Knight/Human Rights Watch



After six days in detention in Patras, Liiban was transferred to Thessaloniki where he was detained for another two weeks before being released.

Two border police officers in Bari separately told Human Rights Watch that asylum seekers can and should be sent back to Greece. One officer explained, “We ask them their purpose in coming to Italy. If they do not provide a satisfactory answer, we send them back to Greece. If they have applied for asylum in Greece, we send them back to Greece.”¹⁰⁵

¹⁰⁴ Human Rights Watch interview with Liiban F., Athens, September 7, 2012.

¹⁰⁵ Human Rights Watch interview with Joe Nappi, Italian Border Police, Bari, July 31, 2012.

Another officer said, “Most of those we detect are stowaways with a Greek order to leave the country; we send them back. They have the right to apply for asylum there.”¹⁰⁶

Border officials in other Italian Adriatic ports appear to operate with the same logic. Khaled S., a 34-year-old Somali, was returned to Greece from what he believes was Venice (“a city four hours from Milan”) in the summer of 2010 after officials ascertained he had already been fingerprinted in Greece and that therefore the Dublin II regulation applied. Khaled said, a woman traveling with her 7-year-old child as well as twelve other adult men were returned with him for the same reason.¹⁰⁷

Detention on Boats during Returns

We are suffering to go there [to Italy] and we arrive there and they send us back. They have to stop doing this.

Mohammed H., 20-year-old Moroccan, Patras, August 29, 2012

Italy appears to be abdicating its responsibility for the humane and safe removal of migrants by failing to monitor the treatment of migrants in the hands of private ferry companies for the journey back to Greece. The ferry companies, like all business enterprises, have an internationally recognized responsibility to respect human rights and avoid complicity in abuses. Yet, conditions on ferries used for migrant returns may fall well short of international standards.

Seventeen of the returned migrants and asylum seekers interviewed by Human Rights Watch described being effectively detained in unacceptable conditions on ferries during the return journey to Greece. Though the other interviewees were either confined or escorted at all times by ferry personnel, they did not express complaints about conditions or treatment.

Although Human Rights Watch was unable to independently verify conditions on ferries for returning migrants, the 17 migrants, including unaccompanied children, complained of being confined in poor conditions with inadequate food, water, and sanitation on board ships during their return journey. Interviewees described being locked in rooms without

¹⁰⁶ Human Rights Watch interview with Piero Ungolo, superintendent, Italian Border Police, Bari, July 31, 2012.

¹⁰⁷ Human Rights Watch interview with Khaled S., Athens, June 25, 2012.

bathrooms or held in machine rooms and parking areas, not being provided food or drink or provided very little, and, in the case of two young brothers, being handcuffed to pipes for the duration of the trip.

In January 2012, 17-year-old Afghan Jamal A. told Human Rights Watch he was locked in a dark machine room for the return trip from Venice to Greece. “There was no toilet, just a bucket, the type that’s a bucket for garbage,” he remembered.¹⁰⁸ 17-year-old Ahmed S., also Afghan, was held in May 2012 in a “small cell with a fence” in the ship’s machine room.¹⁰⁹

International law requires that states not criminalize unaccompanied children for reasons related to their immigration status or illegal entry.¹¹⁰ Yet, some children we interviewed told us that Italian authorities had handed them over to companies on whose ferries they had been treated like criminals.

For instance, Mohammed A., a 16-year-old Afghan boy, and his 13-year-old brother Hassan A., told us they were detained and handcuffed to pipes in a toilet during their return to Greece in June 2012, a trip that lasted approximately 18 hours.¹¹¹ Mohammed B., a 30-year-old Afghan said he was held, along with an unrelated 16-year-old Afghan boy, in a narrow room for the trip from Bari back to Greece, in May 2012:

It was worse than a prison in the boat. It was something narrow like a passage but in the four sides there were high walls.... They didn’t give us water and food for 17 hours.¹¹²

Few of the migrants and asylum seekers interviewed by Human Rights Watch were able to identify the name of the company operating the ferry they stowed away on or the one they were detained on for the return trip to Greece. Nor was Human Rights Watch in a position to confirm, based on the available information, which companies transported the migrants we interviewed.

¹⁰⁸ Human Rights Watch interview with Jamal A., Patras, June 26, 2012.

¹⁰⁹ Human Rights Watch interview with Ahmed S., Patras, June 26, 2012.

¹¹⁰ UN Committee on the Rights of the Child, General Comment No. 6, para. 62.

¹¹¹ Human Rights Watch group interview with Mohammed A. and Hassan A., Patras, June 28, 2012.

¹¹² Human Rights Watch interview with Mohammed B., Patras, August 28, 2012.

Seven companies operate the ferry lines between Patras and Igoumenitsa in Greece, and Ancona, Bari, Brindisi, and Venice in Italy. These are Agoudimos S.A., Endeavour S.A., Ventouris S.A., Anek S.A., Minoan Lines S.A., Blue Star S.A., and Superfast S.A. Human Rights Watch sent all seven companies letters of inquiry in late August 2012; as of this writing, only Minoan Lines S.A. had responded.

According to Minoan Lines S.A.'s letter, ferry companies are legally required to comply—at their own expense—with requests by Italy to return migrants.¹¹³ Minoan Lines S.A. also stated that the company has written procedures for shipmasters on treatment of “irregular migrants,” referring to both stowaways and migrants subjects to return. These procedures, summarized in the letter, require men and women to be separated, for children to be kept with their mothers (if traveling together), for migrants to be allowed out on deck under surveillance, and for their accommodations to be under guard at all times. According to Minoan S.A., all cabins have access to a private bathroom, food is provided three times a day, and migrants are never handcuffed, restrained, or sedated. The company declined to share with us the written procedures, citing security reasons.¹¹⁴ The letter indicates that the company's two ships operating between Ancona-Patras and Ancona-Igoumenitsa had transported back to Greece a total of 325 migrants in 2011 and a total of 76 in the first six months of 2012.¹¹⁵

The governments that transport the migrants aboard ferries have the primary responsibility under international human rights law to ensure that returning migrants' rights are upheld. Council of Europe guidelines on forced return call on states to ensure the safety and dignity of the returnee, limit the use of restraints to what is strictly proportionate, and provide for effective monitoring of returns and redress in case of abuse. The guidelines further remind states that they are responsible for the actions of escorts acting on their instruction.¹¹⁶ The circumstances of the case can dictate whether or not the detention *per se* or the conditions of detention amount to arbitrary confinement or unlawful treatment.

¹¹³ Unsigned letter from Minoan S.A., to Human Rights Watch, September 12, 2012. Minoan S.A. is a holding of Grimaldi Group. The letter described these measures as “fully respectful of human rights and fundamental freedoms.”

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Council of Europe Committee of Ministers, Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons, “Twenty Guidelines on Forced Returns,” May 4, 2005, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM%282005%2940&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864> (accessed October 10, 2012), guidelines 17-20.

In addition, Italy has also signed and ratified the International Convention Relating to Stowaways, adopted in 1957, which Greece has also signed (but not yet ratified); the convention has yet to come into force.¹¹⁷ The International Maritime Organization has however developed guidelines on stowaways that encourage shipmasters to ensure that stowaways are treated humanely, and to take “appropriate measures to ensure the security, general health, welfare and safety of the stowaway, including by providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities.”¹¹⁸ These basic standards should also be applied when stowaways are transported back as returning migrants.

Private ferry companies, for their part, also have a responsibility to respect migrants’ human rights. Consistent with the widely recognized responsibility of all business enterprises to respect human rights, they have a responsibility to ensure humane treatment on board ships and to avoid any complicity in abusive or unlawful conduct. More generally, ferry companies should have adequate policies and procedures in place to prevent and respond to abuses.¹¹⁹

Ultimately, Italy bears the greatest responsibility for the conditions and treatment afforded individuals during these returns. In placing migrants in the care of private companies the Italian government does not absolve itself of its responsibilities to ensure humane treatment, protection from abuse, and an effective remedy in the event of ill-treatment.

¹¹⁷ Italy ratified the Convention on May 24, 1963. Greece has signed but not ratified the Convention.

¹¹⁸ International Maritime Organization, Annex 1, Resolution FAL.11 (37) Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases (Adopted on 9 September 2011), [http://www.imo.org/OurWork/Facilitation/Stowaways/Documents/Resolution%2011\(37\)_Revised%20guidelines%20on%20the%20prevention%20of%20access%20by%20stowaways%20and%20the%20allocation%20of%20responsibilities.pdf](http://www.imo.org/OurWork/Facilitation/Stowaways/Documents/Resolution%2011(37)_Revised%20guidelines%20on%20the%20prevention%20of%20access%20by%20stowaways%20and%20the%20allocation%20of%20responsibilities.pdf) (accessed November 26, 2012).

¹¹⁹ The longstanding concept that businesses have human rights responsibilities, reflected for example in the Universal Declaration of Human Rights in relation to the responsibilities of “every organ of society”, has achieved wide international recognition. In 2008, the UN Human Rights Council endorsed the “Protect, Respect and Remedy” framework, which explicitly recognized a corporate responsibility to respect all human rights, and in 2011 it approved the “Guiding Principles on Business and Human Rights,” which offered guidelines specifying some of the steps businesses should follow in order to implement their responsibilities. As laid out in those documents, businesses should have policies and procedures in place to ensure that human rights are respected and not abused, to avoid complicity in abuses, to undertake adequate due diligence to identify and effectively mitigate human rights problems, and to adequately respond in cases where problems arise. See United Nations Human Rights Council (HRC), Resolution 8/7, “Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” June 18, 2008; and HRC, Resolution A/HRC/17/L.17/Rev.1, “Human rights and transnational corporations and other business enterprises,” June 16, 2011.

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Appendix I: Form Used for Returning Migrants from the Port of Bari



POLIZIA DI STATO
POLIZIA DI FRONTIERA
Marittima ed Aerea - B A R I

Corso De Tullio, 1 (Porto)

Tel. 080 5788411 – Telefax 5788431

Bari, _____

OGGETTO: Richiesta di immediata assunzione in carico e di riconduzione in altro Stato di extracomunitari non ammessi nel Territorio Nazionale.

SUBJECT: Request to take immediately on board and take back to another country non-E.U. nationals inadmissible into Italian territory.

AL COMANDANTE DELLA MOTONAVE

TO THE COMMANDER OF M/V _____

Si comunica che questo Ufficio **non ha ammesso** nel Territorio Nazionale i sottoelencati passeggeri giunti in questo porto in data odierna con codesta nave perché non in regola con le norme che disciplinano l'ingresso di cittadini extracomunitari in Italia:

We inform you that the Border Police of Bari **did not admit** into Italian territory passengers mentioned below, who came here today with the aforesaid vessel, because they did not comply with the rules concerning the entry of non-E.U. nationals in Italy:

1. _____
2. _____
3. _____
4. _____
5. _____

- Documento rubato in bianco:** It belongs to a series of stolen blank documents
- Documento falsificato:** Forged document
- Documento rubato:** Stolen document
- Denunciato a piede libero:** With a report on bail
- Clandestino:** Illegal migrant
- Trovato nel garage:** Hidden into the garage
- Trovato sotto un camion tg.:** Hidden under the truck l.p. No. _____
- Trovato dentro un camion tg.:** Hidden in side the truck l.p. No. _____
- E' sprovvisto di documento di viaggio valido:** Has no valid travel document
- E' segnalato ai fini della non ammissione:** Is a person for whom an alert has been issued for the purposes of refusing entry
La S.V. è invitata, pertanto, ai sensi dell'art. 8 comma 3° della Legge del 6.3.1998 nr. 40 a prenderli immediatamente in carico e ricondurli nello Stato di provenienza.
You are therefore invited, under Art.8, paragraph 3, of the law 6.3.1998 No. 40 to take them immediately on board and take back to the country from which they came.

IL CAPO TURNO DI FRONTIERA
OFFICER RESPONSIBLE AT THE BORDER

Una copia controfirmata dal Comandante della nave interessata dovrà essere acquisita agli atti.

Per ricevuta _____ alle ore _____ del _____

A copy countersigned by the Commander of the above mentioned vessel must be filed by Border Police of Bari

Signature _____ at _____ o'clock, on _____

(after receipt)

TURNED AWAY

Summary Returns of Unaccompanied Migrant Children and Adult Asylum Seekers from Italy to Greece

Every year, thousands, including unaccompanied children and asylum seekers from Afghanistan and other countries, stow away on ferries from Greece to Italy. Italian authorities return many to Greece within hours, without considering whether they are children in need of care or adults in need of protection, a practice that violates Italian and international law. Upon return to Greece, migrants and asylum seekers face degrading conditions of detention, a dysfunctional asylum system, and the risk of police abuse.

Turned Away, based on interviews with migrants and asylum seekers, experts, and government officials, documents the failure of Italian border police at Adriatic ports to screen for those in need of protection. Instead of giving unaccompanied children the benefit of the doubt and admitting them to Italian territory pending further assessment, Italian authorities send children back to Greece summarily or following an inadequate age determination process. Conditions on ferries during returns are often unacceptable, with children and others detained in small quarters without adequate food, water, or access to toilets.

The report calls on Italian authorities to suspend immediately summary returns to Greece from its Adriatic ports; to admit those claiming to be children and grant them a proper age determination process and best interest determination; and to fully screen migrants who express a fear of being returned for protection needs and give them an opportunity to apply for asylum in Italy.



Commercial trucks on ferry between Italy and Greece; Patras port in the background. Migrants desperate to reach Italy stow away between the axles, inside fuel tanks, or inside refrigerated containers of trucks like these.

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