Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of SM & Others) v Secretary of State for the Home Department (Dublin Regulation – Italy) [2018] UKUT 429 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 21, 23 and 24 May 2018	

Before

MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE CRAIG
UPPER TRIBUNAL JUDGE CANAVAN

Between

THE QUEEN ON THE APPLICATION OF

(1) S M
(2) S O M
(3) R K
(ANONYMITY DIRECTION MADE)

Applicants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For SM: Mr G. Ó Ceallaigh, instructed by Duncan Lewis Solicitors
For SOM: Ms V. Laughton, instructed by Wilsons Solicitors
For RK: Mr D. Chirico, instructed by Wilsons Solicitors
For the Respondent: Mr A. Payne and Mr J. Anderson, instructed by the Government Legal Department

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the cases involve protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the applicants are granted anonymity. No report

of these proceedings shall directly or indirectly identify them or any member of their families. This direction applies both to the applicants and to the respondent.

(1) *Subject to paragraph (2) below, on the evidence before the Upper Tribunal, no judge of the First-tier Tribunal, properly directed, could find there is a real risk of an asylum seeker or Beneficiary of International Protection (BIP) suffering Article 3 ill-treatment if returned to Italy pursuant to the Dublin Regulation, by reason only of the situation that the person concerned may be reasonably likely to experience in Italy, as a "Dublin returnee". The evidence does not rebut the general presumption that Italy will comply with its international obligations in such cases.*

(2) *However, the evidence before the Upper Tribunal is markedly different from that previously considered by the High Court in "Dublin" cases concerning Italy, such that it cannot, without more, be said a human rights claim based on Article 3 is bound to fail, if the claim is made by a 'particularly vulnerable person' (as described in paragraph (3) below).*

(3) *The categories of "vulnerable persons" identified in the Reception Directive are a starting point for assessing whether a person has a particular vulnerability for the purposes of this paragraph. The extent of a person's particular vulnerability must be sufficiently severe to show a potential breach of Article 3. It is difficult to specify when a particular vulnerability might require additional safeguarding to protect a person's rights under Article 3. The assessment will depend on the facts of each case. However, a person who makes general assertions about mental health problems without independent evidence or who has been diagnosed with a mild mental health condition or has a minor disability may have sufficient resilience to cope with the procedures on return to Italy, even if it entails the possibility of facing a difficult temporary period of homelessness or basic conditions in first-line reception facilities. There will be cases where a person's particular vulnerability is sufficiently serious that the risk of even a temporary period of homelessness or housing in the basic conditions of first-line reception might cross the relevant threshold. Such cases are likely to include those with significant mental or physical health problems or disabilities. Other people may have inherent characteristics that render them particularly vulnerable e.g. unaccompanied children or the elderly.*

(4) *In the case of a 'particularly vulnerable person', the following considerations apply:*

    (i) *A failure by the respondent to consider whether to exercise discretion under article 17(2) of the Dublin Regulation is likely to render the certification decision unlawful;*

    (ii) *If the respondent considers whether to exercise such discretion but decides not to do so, the return and reception of the person concerned will need to be well-planned. Although the Italian authorities would not want to leave a particularly vulnerable asylum seeker or BIP without support, the evidence indicates that there is no general process, similar to that which exists for families with children, to ensure that particularly vulnerable persons will not be at real risk of Article 3 treatment, while waiting for suitable support and accommodation, of which there is an acute shortage. In order to protect the rights of such a person in accordance with the respondent's duties under the European Convention, the respondent would need to seek an assurance from*

the Italian authorities that suitable support and accommodation will be in place, before effecting a transfer.

(iii) *It follows that a failure to obtain such an assurance prior to the transfer of a particularly vulnerable person is likely to give rise to a human rights claim that is not necessarily 'bound to fail' before the First-tier Tribunal.*

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Note: underlined headings are bookmarked in the electronic version

GLOSSARY

AIDA	Asylum Information Database
AMIF	Asylum, Migration and Integration Fund
ANCI	National Association of Italian Municipalities *Associazione Nationale Comuni Italiani*
ASGI	Association for Juridical Studies on Immigration *Associazione per gli Studi Giuridici sull'Immigrazione*
CARA	Centre for the Reception of Asylum Seekers *Centro di accoglienza per richiedenti asilo*
CAS	Emergency Accommodation Centre *Centro di accoglienza straordinaria*
CDA	Accommodation Centre for Migrants *Centro di accoglienza*
CNDA	National Commission for the Right of Asylum *Commissione nazionale per il diritto di asilo*
CPSA	First Aid and Reception Centre *Centro di primo soccorso e accoglienza*
CTRPI	Territorial Commission for the Recognition of International Protection *Commissione territoriale per il reconoscimento della protezione internazionale*
MEDU	Doctors for Human Rights *Medici per i diritti umani*
MSF	Doctors without Borders *Medecins Sans Frontieres*
SPRAR	System of Protection for Asylum Seekers and Refugees *Sistema di protezione per richiedenti asilo e rifugiati*
SRC	Swiss Refugee Council

INTRODUCTION

1. This is the judgment of the Tribunal, primarily written by Upper Tribunal Judge Canavan, but to which the other two members have contributed. The applicants each seek judicial review of the decisions of the respondent to certify their human rights claims as clearly unfounded. Pursuant to Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the respondent certified the applicants' claims on the basis that each of them is to be returned to Italy. Part 2 applies, inter alia, to Italy since that State is listed in paragraph 2. Paragraph 5(4) requires the respondent to certify such a claim unless satisfied that the claim is not clearly unfounded.

2. Each of the applicants contends that he or she has a well-founded fear of persecution or other serious ill-treatment, if returned to their respective country of nationality.

LEGAL FRAMEWORK

3. The respondent contends that since the applicants travelled to Italy from their home countries, before making their way to the United Kingdom, Italy is the EU state that is responsible for determining the applicants' claims to international protection. The respondent, accordingly, intends to return the applicants to Italy by means of the process contained in Council Regulation 604/2103 ("the Dublin Regulation").

4. Article 3 of the Dublin Regulation provides as follows:

> "1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zone. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter 3 indicate is responsible.
>
> 2. … Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible."

5. Unless some other Member State can be so designated, if the criterion of Article 3(2) is satisfied, it is common ground that the United Kingdom would need to determine the applicants' international protection claims. Even if that were not so, Article 17(1) provides for a residual discretion in this regard.

6. Both Article 4 of the Charter of Fundamental Rights and Article 3 of the European Convention of Human Rights proscribe subjecting a person to torture or inhuman and degrading treatment or punishment.

7. SOM and RK are asylum seekers. They submit that the evidence concerning the position of asylum seekers in Italy is such that their claims should not have been certified by the respondent as clearly unfounded.

8. Unlike SOM and RK, SM engaged with the Italian asylum system whilst he was in that country. He was given a residence permit. He is, accordingly, a Beneficiary of International Protection (BIP). The significance of this status will be addressed later. It is, however, necessary at this point to observe that, as a BIP, SM falls outside the Dublin III regime and is being returned pursuant to an agreement between the Italian authorities and the British authorities to re-admit individuals that Italy has recognised to be in need of international protection. Nothing material turns on this difference, so far as the judicial review applications are concerned.

9. Each of the applicants' human rights claims, which were certified under Part 2 of Schedule 3 to the 2004 Act, involve the contention that, if returned to Italy as asylum seekers or BIPs, they face a real risk of treatment contrary to Article 3 of the ECHR. Each of the applicants submits that the state of the evidence is such that, if they had been allowed to bring their appeals before the First-tier Tribunal (which they would have been, but for certification), there was a realistic prospect that a First-tier Tribunal Judge might have allowed their appeals (ZT (Kosovo) v SSHD [2009] UKHL 6).

10. The applicants do not suggest that, if they were returned to Italy, the authorities there would physically ill-treat them. Rather, the applicants contend, in essence, that those authorities would not make sufficient provision for their accommodation and welfare, with the result that they would face a real risk of being homeless and destitute.

11. Ordinarily, a person advancing this type of Article 3 claim would need to meet a very high threshold: N v United Kingdom (2008) 47 EHRR 885.

12. Insofar as asylum seekers are concerned, the very high threshold described in N does not apply. The judgment of Laws LJ in GS (India) v SSHD [2015] EWCA Civ 40 explains why:

> "54. In *MSS v Belgium and Greece 53* EHRR 28 the applicant was an Afghani asylum seeker whom the Belgian authorities desired to return to Greece under the Dublin Convention. He had been detained for a week in Greece before arriving in Belgium. At length he was returned from Belgium to Greece where he claimed asylum. There was much evidence before the Strasbourg court of the extremely deleterious conditions in which asylum seekers in Greece might be detained or had to live. The court concluded as follows:
>
> > "249. The court has already reiterated the general principles found in the case law on article 3 of the Convention and applicable in the instant case. It also considers it necessary to point out that article 3 cannot be interpreted as obliging the high contracting parties to provide everyone within their jurisdiction with a home. Nor does article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.

250. The court is of the opinion, however, that what is at issue in the instant case cannot be considered in those terms. {The] obligation to provide accommodation and decent material conditions to impoverished asylum seekers has now entered into positive law and the Greek authorities are bound to comply with their own legislation, which transposes Community law, namely Directive 2003/9 laying down minimum standards for the reception of asylum seekers in the member states ('the Reception Directive"). What the applicant holds against the Greek authorities in this case is that, because of their deliberate actions or omissions, it has been impossible in practice for him to avail himself of their rights and provide for his essential needs.

251. The court attaches considerable importance to the applicant's status as any asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. It notes the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the EU Reception Directive.

252. That said, the court must determine whether a situation of extreme material poverty can raise an issue under article 3.

253. The court reiterates that it has not excluded 'The possibility that the responsibility of the state may be engaged [under article 3] in respect of treatment where an applicant, who was wholly dependent on state support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity'.

254. It observes that the situation in which the applicant has found himself is particularly serious. He allegedly spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that was the ever-present fear of being attacked and robbed and the total lack of any likelihood of his situation improving. It was to escape from that situation of insecurity and of material and psychological want that he tried several times to leave Greece …"

…

263. In the light of the above and in view of the obligations incumbent on the Greek authorities under the European Reception Directive, the court considers that the Greek authorities have not had due regard to the applicant's vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of article 3 of the Convention."

…

57. There appears to be a fork in the road, on the court's own reckoning, between the approach in *N v United Kingdom 47* EHRR 885 on the one hand and the *MSS case 53* EHRR 28 on the other. It is on the face of it difficult to find any governing principle, applied across the learning, which provides a rationale

for departures from the article paradigm. There are, however, certain strands of reasoning. In the *MSS case* it is to be noted that Greece (unlike Belgium) was not impugned for breach of article 3 on account of anything that would happen to the applicant in a third country to which Greece proposed to remove him, but by reason of his plight in Greece itself. One may compare *R (Limbuela) v Secretary of State for the Home Department* [2006] 1 AC 396, in which the House of Lords was concerned with the dire straits to which certain asylum seekers in this country were reduced for want of access to public funds, and held that there was a violation of article 3. In the *MSS* case a critical factor was the existence of legal duties owed by Greece under its own law implementing EU obligations: paras 250 and 263 which I have cited; and it is clear that the court attached particular importance to the fact that the applicant was an asylum seeker.

…

59. This in the *MSS* … the court looked for particular features which might bring the case within article 3, and found them – in Greece's legal duties and the applicant's status as an asylum seeker …"

13. At [250] of MSS the ECtHR made reference to the Reception Directive (2003/9/EC), as bearing upon the Article 3 ECHR position of asylum seekers in Greece. The significance of the Reception Directive in the context of "Dublin certifications" was examined in detail by Sales LJ in R (HK Iraq) & Others v SSHD [2017] EWCA Civ 1871:

"41. … counsel for the appellants accept that their circumstances do not meet the usual stringent test laid down in *N v United Kingdom* (2008) 47 EHRR 885, GC, and discussed by this court in *GS (India) v Secretary of State for the Home Department* [2015] EWCA Civ 40; [2015] 1 WLR 3312 in relation to return to a country which will not meet their medical needs with treatment to the same standard as is available in the UK. However, they contend that asylum seekers are in an especially vulnerable category of person and that the case-law shows that a higher standard of appropriate medical or other care may be required under Article 3 in the state to which they are returned than under the usual *N v United Kingdom* approach.

42. In that regard they pointed to Article 13(2) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ("the Reception Directive"). I note that there is a recast version of this Directive, 2013/33/EU, promulgated in 2013 – see *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, [40]. We were not taken to this but I do not understand that there is any material difference between them in this respect. Article 13(2) of the Reception Directive provides:

> "Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence."

43. This suggests that a Member State has a heightened set of obligations in relation to treatment of asylum seekers which is capable of informing the standard of care required for the purposes of Article 3 of the ECHR if an asylum seeker is returned there. However, counsel also explained that it is not part of the appellants' case that the standard of treatment laid down in Article 13(2) is simply to be regarded as establishing the relevant test for violation of Article 3 of the ECHR.

44. In my view, there is force in the appellants' contention that the test under Article 3 for proper treatment of an asylum seeker in relation to medical needs they may have, including in relation to any mental illness they have, involves a heightened set of obligations on the receiving state, beyond those laid down in *N v United Kingdom.*

45. In the *MSS* judgment at paras. [250]-[254] the ECtHR referred to the obligations on Member States under the Reception Directive and to an international consensus on the need for special protection of asylum seekers as a particularly underprivileged and vulnerable population group ([251]). Its focus in that case was on whether a situation of extreme material poverty could raise an issue under Article 3 ([252]) in relation to an asylum-seeker who was left to live on the streets for months, "unable to cater for his most basic needs: food, hygiene and a place to live" ([254]). But I do not think that the reasoning in the case in relation to Article 3 is necessarily restricted to these matters.

46. Although counsel for the appellants did not refer to it, it is noteworthy that Chapter IV of the Reception Directive sets out "Provisions for Persons with Special Needs", and Article 17(1) in that Chapter states this general principle:

> "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care [i.e. including Article 13(2)]."

47. The corresponding Article 21 in the recast Directive expands this list to include "victims of human trafficking, persons with serious illnesses, persons with mental disorders …": the provision is set out in *NA (Sudan)* at [44]. In my view, these provisions are capable of informing the application of Article 3 of the ECHR in terms of helping to identify the categories of asylum-seekers who may be regarded as having special vulnerabilities which potentially heighten the standards of treatment to be expected in respect of them in the state to which they are returned.

48. In the *Tarakhel* judgment at paras. [94] and [118] the ECtHR re-affirmed previous case-law to the effect that the assessment of the minimum level of severity at which Article 3 is engaged is relative, and "depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim." At para. [118] the Court reiterated the need referred to in *MSS* at para. [251] for special protection of asylum-seekers as a particularly under-privileged and vulnerable group, and at para. [119] stated:

> "This requirement of 'special protection' of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents … Accordingly, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not 'create … for them a situation of stress and anxiety, with particularly traumatic consequences' … Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention."

49. Counsel for the appellants submitted that this reasoning also extends to cover asylum seekers who suffer from a mental illness who, like children, may also have heightened needs and increased vulnerability. In my view, even though we were not shown a judgment which has gone this far, there is force in this submission as well. If it could be shown that there was a significant risk that an asylum seeker with a recognised mental illness would be subjected to such poor living conditions in the state to which he was to be returned that he would suffer a marked deterioration in that illness or that he would receive no treatment in that state to

cope with its effects, I consider that it is well arguable that the principles for application of Article 3 laid down in *MSS* and *Tarakhel* would be engaged.

50. Laws LJ at paras. [54]-[63] in his judgment in *GS (India)* highlighted the different approach to Article 3 standards in relation to asylum-seekers pursuant to the *MSS* and *Tarakhel* judgments, as contrasted with the usual position under *N v United Kingdom*. Underhill and Sullivan LJJ agreed with this part of his judgment: see [105] and [116], respectively. That the discussion took place in the context of a comparison of *N v United Kingdom*, a case concerning standards of health-care which would be encountered in the state to which the individual was returned, and the *MSS* and *Tarakhel* judgments suggests that the members of the court contemplated that poor standards of health-care which would be received by an asylum seeker in the state of return could in principle, in an appropriate case, give rise to an issue under Article 3 on application of the heightened standard of care for asylum-seekers referred to in those judgments.

51. The same point can be made still more strongly with reference to the judgment of Underhill LJ (with which McFarlane and Simon LJJ agreed) in *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060. That case concerned the return of asylum seekers to Italy under the Dublin Regulation arrangements. Underhill LJ again referred to the guidance in the *MSS* and *Tarkhel* judgments in relation to the treatment of asylum seekers. As he put it at [159] in relation to NA's case:

> "The essential issue for the judge was … simply whether there was a serious risk that if she were returned NA would not be accommodated in a SPRAR [a special type of reception centre]: this subsumes the question whether she would receive proper healthcare, and specifically psychiatric care, since it is not argued that even if she were in a SPRAR her needs would not be attended to".

The judge at first instance had found that there was no real risk that NA would not be placed in a SPRAR in Italy and hence no real risk she would suffer ill-treatment in violation of Article 3, and this court upheld that assessment. Nonetheless, in his formulation of the issue I think it is clear that Underhill LJ considered that it was at least arguable that NA would have been able to complain of a violation of Article 3 if the evidence showed that her need for psychiatric care would not be accommodated in Italy. "

14. The United Kingdom has not adopted the recast Reception Directive (2013/33/EU). Italy has done so. Both Directives, however, make provision for healthcare; the needs of vulnerable persons; the desirability of preserving family unity; and the schooling and education of minors.

15. As is plain from the judgment of Sales LJ in HK (Iraq), the significance of the Reception Directive, for our purposes, is that it helps to explain why the very high threshold of N v UK need not be met by asylum seekers and BIPs in cases of this kind. But HK (Iraq) also makes it plain (at paragraph 43) that the Reception Directive is not to be treated as a verbal extension of Article 3 of the ECHR.

16. In the present cases, the respondent sought to rely on the ECtHR's judgment in AS v Switzerland 920170 65 EHRR 12, in support of the proposition that Laws LJ had, in fact, been wrong in GS (India) to find that a "fork in the road" had occurred with MSS, pursuant to the Dublin Regulation. The applicant, AS, suffered from severe post-traumatic stress disorder, for which he was receiving treatment in Switzerland. He relied on Tarakhel v Switzerland (2015) 60 EHRR

17.

18. 28, in which the Court held that specific assurances were required from the Italian authorities that family members would not be separated, if returned to Italy in order for their asylum claims to be dealt with.

19. The ECtHR refused to extend Tarakhel to include persons in the same position as AS. Furthermore, having noted the very high threshold in N v United Kingdom and D v United Kingdom (1997) 24 EHRR CD 145, the Court held as follows:

> "37. In the Court's view, the applicant's case cannot be distinguished from those cited in [32] and [33] above. It does not disclose very exceptional circumstances, such as in *D v United Kingdom*, where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support. Accordingly, the Court finds the implementation of the decision to remove the applicant to Italy would not give rise to a violation of art. 3 of the Convention".

20. We do not consider that AS enables us to depart from the approach of the Court of Appeal in GS (India) and subsequent cases. Even if that approach were not binding on us (which we consider it is), it is still high authority, from which the Tribunal might deviate only if the Strasbourg jurisprudence consistently pointed in a different direction. As matters stand, it does not.

21. Our conclusion on this issue means it is unnecessary to examine the effect on the D and N line of cases of the ECtHR judgment in Paposhvili v Belgium [2017] Imm AR 867.

22. Two crucial points need, however, to be made clear. First, even though the very high threshold set by D and N need not be met, the applicants are still faced with the fact that the threshold for finding Article 3 harm is in any event high. Conditions that are unpleasant and even harsh are by no means necessarily ones that amount to inhuman or degrading treatment.

23. Secondly, those seeking to show that their return from one EU State to another may entail a violation of Article 3 start at a significant disadvantage, in evidential terms. This is because they have an evidential presumption to displace.

24. The way in which a real risk of Article 3 violation is proved, in cases of this kind, is described by the Supreme Court in EM (Eritrea) v SSHD [2014] UKSC 12:

> "63. Where, therefore, it can be shown that the conditions in which an asylum seeker will be required to live if returned under Dublin II are such that there is a real risk that he will be subjected to inhuman or degrading treatment, his removal to that state is forbidden. When one is in the realm of positive obligations (which is what is involved in the claim that the state has not ensured that satisfactory living conditions are available to the asylum seeker) the evidence is more likely to partake of systemic failings but the search for such failings is by way of a route to establish that there is a real risk of article 3 breach, rather than a hurdle to be surmounted.

> 64. There is, however, what Sales J described in *R (Elayathamby) v Secretary of State for the Home Department* [2011] EWHC 2182 (Admin), at para 42(i) as "a significant evidential presumption" that listed states will comply with their Convention obligations in relation to asylum procedures and reception conditions for asylum seekers within their territory. It is against the backdrop of that presumption that any claim that there is a real risk of breach of article 3 rights falls to be addressed.
>
> ….
>
> 68. …. I consider that a more open-ended approach to the question of the risk of breach of article 3 is required. Although one starts with a significant evidential presumption that listed states will comply with their international obligations, a claim that such a risk is present is not to be halted in limine solely because it does not constitute a systemic or systematic breach of the rights of refugees or asylum seekers. Moreover, practical realities lie at the heart of the inquiry; evidence of what happens on the ground must be capable of rebutting the presumption if it shows sufficiently clearly that there is a real risk of article 3 ill treatment if there is an enforced return."

25. We need now to describe how the Article 3 legal/evidential issues operate in the present proceedings, insofar as those proceedings involve a challenge to the respondent's decisions under paragraph 5(4) of Schedule 3 to the 2004 Act to certify the applicants' claims as clearly unfounded.

26. The applicants submit that:

> "When reviewing a "clearly unfounded" certificate on public law grounds, the reviewing Tribunal or Court must take a claimant's case at its reasonable highest, proceeding on the basis that any legitimate conflicts in evidence or disputes about the evidence may be resolved in favour of the claimant." (skeleton argument paragraph 60).

27. In certification cases under section 94 of the 2002 Act, taking a case at its "reasonable highest" will often involve an acceptance that an individual's account of his or her experiences in a foreign country is reasonably likely to be true. Only if the account of those experiences is so problematic as to be incapable of belief by any rational judicial fact-finder will the position be otherwise. By the same token, we have approached the evidence of the individual applicants on the basis that what those individuals say they have experienced outside the United Kingdom is reasonably likely to represent the truth. In the case of the witnesses, we have no reason to doubt the truth of what they have seen and heard.

28. None of this is, however, determinative. In cases of the present kind, the task of the Court or Tribunal is to analyse a wide range of evidential material, emanating from different sources, including organisations of varying reputation and status, as well as the accounts of individuals, in order to arrive at a holistic conclusion of whether the "significant evidential presumption" that an EU State will comply with its obligations under Article 3 ECHR has been displaced.

29. We agree with Mr Payne that this evidential presumption is integral to the analysis of the evidence.

30. The approach mandated by EM (Eritrea) is also crucial to the "certification" question. Laing J articulated this point at paragraphs 165 and 166 of her judgment in Tabrizagh and others v SSHD [2014] EWHC 1914:

> "165. The question in these cases is whether any of the Claimants might arguably satisfy the FTT that return to Italy would expose him to an article 3 risk. There are two generic issues here: whether
>
> i) the argument, by those Claimants who are, or might be, asylum seekers on their return, that the evidential presumption is displaced, is bound to fail before the FTT; and
>
> ii) the argument by those Claimants who are, or would on any view, very shortly after their return home, become BIPs, or receive humanitarian protection, that they are at real risk of article 3 ill treatment is bound to fail before the FTT.
>
> *(a) Asylum claimants: the evidential presumption*
>
> 166. Mr Knafler QC accepted that the approach of Kenneth Parker J, as described by Lord Kerr in EM, is the correct approach. Could the FTT, applying the approach to the relevant evidence, arguably find that the evidential presumption of compliance has been displaced? I consider that it could not. I have already summarised the evidence at some length, so I can give my reasons briefly. I agree that the presumption is, as Mr Payne put it for the Secretary of State, not a hurdle; but it is a very important part of the inquiry when the allegation is that there is a generalised risk of article 3 ill treatment in Italy which arises regardless of the returnee's profile."

31. Laing J then went on to give her reasons. She observed that the UNHCR, "while making robust and objective criticisms, has not painted a picture which begins to meet the relevant test" (paragraph 167). In this regard, she had already noted at paragraph 87 that the UNHCR report did not call for any Member State to suspend Dublin returns to Italy. By contrast, the applicants in the cases before her had relied upon a report known as the Braunschweig Report, which painted "a gloomier picture of reception conditions for asylum seekers". Nevertheless, Laing J held that "If and to the extent that [the Report] differs from the UNHCR reports, the FTT would be bound to prefer those" (paragraph 89).

32. Laing J returned to the Braunschweig Report at paragraph 169, which also merits setting out in full because it bears directly on the submission on behalf of the present applicants that we have set out at above (paragraph 24):

> "169. The issue is not, contrary to the submission of Mr Knafler QC, whether the SRC [Swiss Refugee Council] and Braunschweig reports are "capable of belief" such that, if they are, the evidential presumption is displaced. There are two questions. First, what weight could the FTT rationally give those reports, if and to the extent that they differ from the UNHCR's 'pre-eminent and possibly decisive' assessment? The answer to that question is "Very little". Second, could the FTT find that (where they do not differ from the UNHCR report) they show 'omissions on a widespread and substantial scale' or 'substantial operational problems' sufficient to displace the significant evidential presumption of compliance? That is, substantial operational problems with the whole asylum acquis, not just operational problems with some aspects of it. The answer to that question is, 'No'".

33. Beginning at paragraph 170 of her judgment, Laing J undertook a similar exercise in respect of BIPs.

34. We have dwelt on Tabrizagh at some length because it demonstrates how the certification issue must be resolved in cases of this kind. In particular, it shows the evidential presumption in action, by reference to the various strands of evidential material, including the views of UNHCR, which carry significant weight. We shall have more to say about this later.

35. Mr Chirico criticised paragraph 169 on the basis that Laing J was wrong to hold that a report that departed from the UNHCR's assessment could not have weight. There are two points to make about this. First, paragraph 169 is on any view correct, as regards the questions there posed. Those questions were the right ones for a reviewing court or tribunal to ask, in a certification case of this kind; not whether the reports themselves were "capable of belief".

36. Secondly, we do not read paragraph 169 as saying that no report, regardless of what it said, could ever have weight. In giving her answers to her self-posed questions, Laing J was merely saying that these particular reports could rationally be given only little weight. Her reasons are to be found at paragraph s 89 et seq.

37. Important though the evidential presumption is, it does not absolve the respondent or the Tribunal from the task of assessing the evidence before him or it. In this regard, we note that in R (Ibrahimi) v SSHD [2016] EWHC 2049 (Admin), Green J, (as he then was), summarising the position regarding returns to Hungary, criticised the respondent for relying "simply on sweeping generalisations about presumptions" when what "was required when the decisions were taken given that even the UNHCR was beginning to express serious concerns about Hungary was a detailed analysis of the actual facts" (paragraph 178). With that in mind, it is necessary to embark on our task.

THE EVIDENCE

Introduction to the evidence

The scope of the assessment

38. The Upper Tribunal has considered a large volume of evidence in the context of these judicial review proceedings. In NA (Sudan) v SSHD [2016] EWCA Civ 1060, Underhill LJ observed that the process of considering how a fact-finding tribunal might approach the evidence was an "inherently awkward exercise". He noted that the judicial review procedure is less well-adapted to deciding disputed issues of primary fact and suggested that the issues raised in that case "would be peculiarly suitable for the employment of a version of the 'country guidance' procedure of the Upper Tribunal." [242].

39. The Upper Tribunal has original jurisdiction to decide judicial review claims specified in the Lord Chief Justice's Consolidated Direction dated 21 August 2013 (amended 17 October 2014). Most cases involving removal under the Dublin Regulation come before the Upper Tribunal by way of challenges to the certification of human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002. Few cases involving removal under the

Dublin Regulation pass through the statutory appeal procedure to the Upper Tribunal. As such, the Upper Tribunal has little opportunity to consider evidence relating to the consequences of removal to European countries under the Dublin Regulation in a fact-finding appeal.

40. The Upper Tribunal has expertise in assessing large volumes of evidence relating to the situation in proposed countries of removal in statutory appeals involving protection and human rights claims. The Upper Tribunal periodically issues 'country guidance' decisions where a detailed assessment of the conditions in a country might identify broad risk categories. The First-tier Tribunal and the Upper Tribunal are required to follow a 'country guidance' case, insofar as the case they are deciding involves the same or similar evidence (Practice Direction 12).

41. In judicial review proceedings the assessment normally takes place with reference to the evidence before the Secretary of State at the date of the decision. However, in several judicial review cases involving removals under the Dublin Regulation a large body of evidence has been considered at the date of the hearing.

42. In NA (Sudan) Underhill LJ noted that the appeal proceeded on the basis that the first instance courts "were entitled, if not indeed obliged, to judge the issue on the basis of the evidence before them rather than on the basis of the evidence before the respondent" [35]. This flexible approach is consistent with the need for anxious scrutiny of protection and human rights claims and the higher intensity of review required in such cases. This case proceeds on the same basis.

43. The assessment of whether a human rights claim is 'clearly unfounded' requires the Upper Tribunal to consider what weight might be placed on the evidence in a First-tier Tribunal appeal. In order to assess whether a claim could on any legitimate view succeed, the Upper Tribunal considers the individual facts of a claim in the context of the background or expert evidence relating to the conditions in the proposed country of removal. In cases involving removal under the Dublin Regulation, the question of whether the removal of an applicant would be unlawful under section 6 of the Human Rights Act 1998 is assessed through the lens of a slightly different legal and evidential framework, but the underlying process of evaluating the potential merits of a human rights claim remains the same.

44. This is not a 'country guidance' decision, but having devoted similar time and resources to this case, our detailed consideration of the most up to date evidence relating to Dublin returns to Italy is likely to be of assistance in deciding similar cases.

Summary of the evidence

45. The European and domestic courts have considered the situation in Italy on several occasions in recent years. The courts recognised the pressures on the Italian asylum system and acknowledged evidence of shortcomings. The courts consistently concluded that the evidence did not disclose deficiencies or serious operational problems of such a nature as to displace the evidential presumption

that an EU Member State will not violate Article 3 of the European Convention. The only exception was the narrow category of cases involving families with children identified by the European Court of Human Rights in Tarakhel. In JA v Netherlands [2015] ECHR 1124 the Strasbourg court was satisfied that a general assurance given by the Italian authorities in June 2015 regarding provision of appropriate accommodation for families with children was sufficient to address any concerns. The findings made in those cases form part of the background to our assessment.

46. It is trite to say that the conditions in a country do not remain static and are subject to ever - changing social, political and economic forces. The introduction of national and European policies seeking to respond to recent flows of migrants entering Europe by various (often perilous) routes affect the numbers of asylum seekers entering or remaining in a country and thereby the pressures placed on its asylum system. The evidence makes clear that Italy has received a particularly high level of asylum claims in recent years, due to its geographical position in Europe.

47. It is appropriate for the courts to periodically review the conditions in a country as and when new evidence is put forward. Our assessment focuses on the situation since Lewis J considered a tranche of evidence in MS & NA v SSHD [2015] EWHC 1095 in April 2015. We are conscious of the fact that political changes were taking place in Italy at the time of our hearing the present cases, which might, in time, alter the picture. However, we can only base our assessment on the evidence that was placed before the Tribunal.

48. That evidence is broad in scope. Evidence from the UNHCR and the Asylum Information Database (AIDA) is acknowledged to be reliable and should be given weight. Other reliable evidence comes from the Italian government, including agencies who run aspects of the asylum system e.g. SPRAR and Caritas. The evidence also includes reports from an Italian Parliamentary Committee, the Council of Europe and various UN bodies. Then there are reports from credible non-governmental humanitarian organisations operating in Italy, such as Medecins Sans Frontieres (MSF). Other evidence comes from Italian organisations with relevant experience such as MEDU (Doctors for Human Rights) and the Association for Juridical Studies on Immigration (ASGI), which we are told is similar to the Immigration Law Practitioners' Association (ILPA) in the UK. A schedule of the evidence considered by the Upper Tribunal is annexed to this decision.

49. The applicants produced several statements from witnesses working for a range of different organisations in Italy. None of the witnesses purports to give evidence as an expert; they make their statements as witnesses of fact. The respondent also relies on a witness statement from the Asylum Liaison Officer for the Third Country Unit based in Rome. In principle, we see no reason why such evidence should not be given weight if a witness has relevant experience and the statement is sufficiently well prepared to understand the source and the reliability of the information the witness provides. The fact that some of the witnesses work in NGOs, and may give evidence relating to a local sphere of knowledge, does not necessarily detract from the weight to be given to it. NGOs and humanitarian organisations are likely to have experience assisting those

who do not have a place in the reception system and might sometimes be in a better position than the government to identify potential problems. Even if a witness cannot speak to the national situation, their evidence might be relevant to a specific issue. Such evidence forms part of a holistic assessment. More weight may be placed on some reports than others. If we have any concerns about the reliability or limitations of some aspects of the evidence we will explain why during our assessment.

Comments on the 'Fact-finding Mission Report'

50. The last basic strand of evidence requires separate comment. The respondent produced a report entitled "Third Country National/Dublin Returns to Italy" ("the Fact-finding Mission Report"). The report was filed on 16 March 2018 but is undated.

51. At an initial case management hearing in October 2017, the Upper Tribunal was told that Home Office officials had recently been on a fact-finding mission to Italy and were in the process of preparing a report. After discussion with counsel it was agreed that a period of two months was likely to be a realistic timescale to complete and file the report of the fact-finding mission. Having suggested this timetable, the respondent failed to comply with that deadline and with both subsequent self-imposed deadlines and directions made by the Upper Tribunal. The delay had two effects. Firstly, it made it difficult for the applicants to prepare their case. Secondly, a general stay in other judicial review claims involving removal to Italy meant that resolution of those claims has been delayed.

52. A document entitled "Respondent's Report of Italian Fact Finding Mission" was eventually filed on 12 February 2018. The document consisted of a summary of notes of meetings with various agencies and organisations in Italy including UNHCR, Caritas, SPRAR and the Red Cross as well as with officials at the Ministry of the Interior and at Rome and Milan airports. At a case management hearing on 13 February 2018 the Tribunal noted the reasons given for the delay in filing the evidence, which were explained in a statement prepared by Matthew Shaw of the Government Legal Department dated 09 February 2018 (a combination of delays in obtaining instructions, illness, pressure of work and a key staff member being absent due to a family bereavement). The Upper Tribunal observed that the report was not in the usual format of other reports described as a 'fact-finding mission report' and did not disclose any of the underlying materials upon which the report was based: see CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059. Further directions were made for the respondent to disclose the source documents including any correspondence relating to the fact-finding mission and the notes of the interviews. There was no evidence to suggest that the summaries of the interviews had been checked and approved by the interviewees.

53. Despite having filed a document purporting to be the 'fact-finding mission report' the respondent informed the Upper Tribunal at a case management hearing on 08 March 2018 that the document was not the final version of the report. Directions were made for a witness statement to be prepared by the Home Office official responsible for finalising the report. The final version was

filed on 16 March 2018 (nearly three months after the original deadline). The report was filed with the witness statement of a senior civil servant at the Home Office, Daniel Hobbs, who is the Head of the Asylum and Family Policy Unit. Mr Hobbs explained that, in light of the Tribunal's observations at the case management hearing on 13 February 2018, there was "some confusion as to precisely what needed to be filed." Following the hearing the Home Office Country Policy Information Team (CPIT) was consulted. The team was "tasked to produce a report which incorporated the findings from the October 2017 visit, together with any additional information from the public domain on conditions in Italy that they could identify relating to the period of the visit (and post visit)." However, the statement went on to suggest that the report filed on 12 February 2018 was an 'interim report' and that the respondent should have made clear that the report was an interim version and that he intended to do further work on the report with a view to assisting the Tribunal.

54. We note that in previous judicial review claims the respondent produced evidence by way of a statement from the Asylum Liaison Officer for the Third Country Unit based in Rome. As far as we are aware, this is the first time that the respondent has conducted a fact-finding mission in a European country to prepare a report for consideration by the courts. When fact-finding missions have taken place in the past, they usually explored the situation in refugee-producing countries. To the extent that this was a novel use of the practice, we accept that the Third Country Unit at the Home Office may not have the same experience in preparing such reports as the Home Office Country Policy Information Team. However, reference to a 'fact-finding mission report' is a term of art that is commonly used to describe a certain type of report prepared by the Home Office. Having been told that the respondent intended to prepare a report of the fact-finding mission, it was reasonable to expect it to be of a certain quality.

55. The applicants carried out a detailed analysis of the final report, comparing it to what was said in the 'interim report' and an earlier report prepared by the Home Office on 05 October 2017 entitled "Country information - Italy: Returns". The applicants argue that the evidence shows that the final report is biased and 'cherry-picked' information to support a particular narrative. The Upper Tribunal was referred to a heavily redacted letter dated 21 September 2017 from Daniel Hobbs to an official in the Italian authorities (described in his statement as his "Italian counterpart"). The applicants rely on the following passage to argue that the visit had one intended purpose:

> "Further, as raised informally with your officials, you may wish to note the UK is facing increasing litigation in respect of third country returns to Italy. We are disappointed that we are facing litigation in this area, given Italy's clear compliance with the EU asylum acquis for asylum seekers and those with protection in Italy. However, we now have to submit evidence to the UK courts imminently and are in the process of gathering evidence. I would be grateful for views on any support you may be able to provide. For example, a visit from Home Office officials to Italy may provide us with the necessary evidence to present to the courts. Such a visit could include visits to reception centres near Rome and Milan, a visit to any other facilities relevant to the return procedure, and a conversation with Italian officials on the process for returnees. I hope you will agree on the importance of ensuring we robustly defend any challenge that the Italian systems are insufficient. I would be

> grateful if you could confirm if a UK visit during the week of 9 October would be possible."

56. The applicants argue that a comparison with the "interim report" and the "Notes of Meetings" included in the final "Fact-finding Mission Report", which were checked by some but not all of those interviewed, indicated that the 'interim report' omitted information that was subsequently amended by interviewees when they were asked to comment on the summary of the meeting. The most important was the meeting with UNHCR. The 'interim report' omitted several important comments made by UNHCR, which included the following recommendation:

> "At no stage did the UNHCR suggest to us that the United Kingdom should not be returning persons to Italy of any category *[, recommending, in any case, a proactive and flexible use of the discretionary clauses, in particular article 17(2) of the Dublin III regulation in a flexible manner in order to ensure maximum protection of the asylum-seeker and full respect for his/her human rights, in particular as regards vulnerable applicants and applicants with relatives in the United Kingdom.*]" [section amended by UNHCR]

57. The applicants argue that the summary of background reports is selective and does not reflect the full picture. It contrasts with the more comprehensive analysis of the evidence contained in the Country Information report prepared in October 2017. The applicants assert that the source notes were incomplete and difficult to understand and that there are other inaccuracies in the report that point to poor methodology and preparation.

58. We do not consider it necessary to make detailed findings on the points made by the applicants because it was notable that Mr Payne did not seek to defend the report from these criticisms. He referred directly to the "Notes of Meetings". These are not source materials, but the Home Office summary of the meetings. In so far as the summaries of the meetings with UNHCR, Caritas and the Red Cross are said to have been approved by those organisations, we are satisfied that we can place weight on the information contained in the notes. In view of the other criticisms of the report, we must view the summary of the meetings that have not been approved with some caution. In so far as the final version of the 'Fact-finding Mission Report' quotes from existing background reports, we have considered the reports directly to put the evidence in context.

Overview of the situation in Italy

59. The evidence contains statistics relating to the operation of the Italian asylum system. Although some reference needs to be made to those figures, we echo the note of caution sounded by Lewis J in MS & NA, who concluded that it was not possible to derive an accurate picture from statistical analysis because key figures were missing. The numbers entering Italy by sea routes do not necessarily reflect the numbers who claim asylum. Many migrants see Italy as a transit country on a route to countries in northern Europe. A proportion may pass through Italy without encountering the authorities. Many of those stopped and fingerprinted by the authorities in Italy may not claim asylum, or if they do, might still attempt onward travel.

60. The UNHCR "Recommendations on Important Aspects of Refugee Protection in Italy" made in 2012 and 2013 were considered in previous cases. In the July 2013 report UNHCR says that most asylum seekers arrive in Italy by sea. Since 2008 the number of arrivals by sea, while fluctuating over time, averaged 25,000 people a year. There was a sharp increase in numbers in 2011, with 63,000 people arriving in Italy by sea. This decreased by 80% in 2012 when only 13,267 people arrived by sea. The total number of international protection claims made in Italy in 2012 was 17,352.

61. Figures provided by UNHCR in the "Italy: Sea arrivals dashboard" document ("the UNHCR dashboard") record the statistics for yearly sea arrivals. 170,100 arrivals were recorded in 2014. 153,842 arrivals were recorded in 2015. A report published in December 2015 by AIDA (see paragraph 62 below) stated that the Ministry of the Interior reported that 61,545 applications for international protection had been made in the period from 01 January 2015 to 10 October 2015. The final figure for claims made in 2015 is not stated.

62. The "Report on International Protection in Italy 2017" ("the Caritas report") was prepared by a group of Italian NGOs in collaboration with UNHCR. The report says that 181,436 migrants landed in Italy by sea in 2016, which represented an 18% increase from the previous year. The UNHCR dashboard records that there were 123,600 applications for international protection in 2016 suggesting a massive rise in the number of applications in 2016.

63. The UNHCR dashboard states that the first half of 2017 showed a 20% increase in arrivals from the same period in 2016. However, arrival numbers decreased in the second half of the year. By December 2017, the lowest number of monthly sea arrivals was recorded, with 2,327 people registered at disembarkation sites. The overall number of sea arrivals reduced by 34% in 2017 to 119,369.

64. The official statistics from the Department of Civil Liberties and Immigration are recorded in the AIDA report for 2017 ("the AIDA report"). 130,119 applications for international protection were made in 2017. 145,906 claims were pending at the end of 2017. The refugee recognition rate was 8.4%, while 33.4% of applicants were given other forms of subsidiary and humanitarian protection. The rejection rate was 58.2%. Despite the drop in numbers arriving by sea in the second half of 2017, the overall number of applications for international protection increased in 2017. To put these figures in some context, publicly available Home Office statistics state that the UK received 26,350 applications for international protection (from main applicants) in 2017.

65. Several weekly emails from the Foreign and Commonwealth Office (FCO) in Rome include a report described as: "Italy: Migration update". The nature and purpose of the document are unclear, but in so far as the figures are said to come from the Italian Ministry of the Interior we find that they are likely to be reliable. The most recent migration update is attached to an email dated 15 May 2018. The number of sea arrivals recorded by that date was 10,660. The arrival rate is said to be 76% lower than the same period in 2017. The number of international protection claims made in the first three months of 2018 was 19,953.

66. The evidence indicates that several factors are likely to underpin the reduction in numbers arriving in Italy by sea since the middle of 2017, but other developments indicate that different policies may lead to additional pressures on the Italian asylum system.

67. The AIDA report states that 2017 was characterised by a "media, political and judicial crackdown" on NGOs saving lives at sea, and by the implementation of cooperation agreements with African countries, notably Libya. Following a European Commission plan, the Italian Government adopted a Code of Conduct for NGOs engaged in search and rescue activity in the Central Mediterranean at the end of July 2017. In the Europe Monthly Report for August 2017 UNHCR reports that on 10 August 2017 Libya announced that foreign vessels would be prohibited from operating in its search and rescue zone without authorisation. The combination of these measures discouraged NGOs from conducting search and rescue operations and some NGOs announced the suspension of their operations. The same UNHCR report for August 2017 indicates that there was an increase in numbers of sea arrivals on the Western Mediterranean route to Spain.

68. The AIDA report says that a letter to the Italian and Libyan governments dated 28 November 2017 from the UN Special Rapporteur on trafficking in persons expressed serious concern about critical aspects of the Memorandum of Understanding (MoU) signed by the Italian government with Libya. The Special Rapporteur observed that Italian cooperation in the creation of Libyan reception centres for migrants under the exclusive control of the Libyan authorities was *de facto* preventing asylum seekers from accessing international protection. The Special Rapporteur also observed that the MoU aimed to stop migratory movements towards Europe and to externalise borders without taking into account the violations of human rights and abuses suffered by migrants in Libya. Concern was also expressed about the destination of Italian funds to support the Libyan authorities in border control activities, declaring concerns about the interception of migrants at sea and their unlawful return to Libya.

69. These measures have reduced the numbers of migrants making the perilous crossing from Libya to Italy. In effect, it is a 'push back' policy to Libya. In ZMM (Article 15(c)) Libya CG [2017] UKUT 00263, the Upper Tribunal found that the violence in Libya had reached such a high level that there were substantial grounds for believing that a person returning to that country would, solely on account of their presence there, face a real risk of a threat to their life or person. The AIDA report says that ASGI is seeking to challenge the lawfulness of aspects of the policy in the Italian courts, but at the time of this hearing, there appears to be no evidence of an outcome to the proceedings.

70. The twin purpose of the 'push back' policy to Libya is likely to be to prevent the large numbers of deaths associated with the sea crossing from Libya as well as to reduce the numbers of migrants coming to Italy. However, the consequence is that many migrants are being forced to return to a country where there are substantial grounds for believing that they will face a real risk of serious harm. Other evidence suggests that the policy is creating alternative pressures on the Western Mediterranean route to Spain.

71. Although concerns have been expressed about the lawfulness of the policy in international law, other evidence shows that the Italian government is willing to receive refugees through legal resettlement programmes. Caritas reports that the Italian authorities signed a protocol in the spring of 2016 to enable safe legal entry for 500 refugees from Ethiopian refugee camps. Caritas was also involved in a programme to resettle Syrian families from Jordan.

72. The AIDA report contains evidence of other 'push back' policies operating on the northern borders of Italy. The effect of border policies put in place by other European countries bordering Italy is to reduce the flow of migrants travelling onwards from Italy. It is reasonable to infer that the operation of these policies is likely to increase the numbers of migrants remaining in Italy although it is difficult to draw any conclusions as to how many people are involved and whether they subsequently enter the Italian asylum system.

73. The AIDA report states that many migrants attempting to cross the borders with France, Austria and Switzerland have been rejected at the border. As many as 50,000 people were reported to have been arrested by the French authorities at the border in 2017, of whom 97% were "pushed back to Italy". According to a Senate report, from January to mid-October 2017, this included approximately 8,000 people with authorisation to stay in Italy and 15,000 undocumented people.

74. The evidence relating to what happens at the border between Austria and Italy is mixed. AIDA reports that since the end of February 2017 readmission measures have been initiated against people arriving in Italy from Austria via train. Controls have reportedly been based on racial profiling, intercepting mostly Afghan and Pakistani nationals. On some trains, those apprehended without documentation are sent to the *Questura* of Bolzano, but others are held at the police station and then returned to Austria by train. Some of the migrants who were returned to Italy said that the Austrian police carried out checks and then ordered them to return to Italy.

75. Similar evidence is found in an earlier report of a fact-finding mission to Italy by the Special Representative of the Secretary General on migration and refugees for the Council of Europe. The report is dated 02 March 2017, but the fact-finding mission took place in October 2016. The Special Representative notes that migrants travel north towards France, Switzerland and Austria. The procedures at all three borders have been tightened. Since improvement in the fingerprint rate of new arrivals in Italy, those who succeed in crossing the border are liable to be returned under the Dublin Regulation. Italy concluded a bi-lateral agreement with Switzerland, which enables the Swiss authorities to return people to Italy under a simplified procedure. In practice, all those who cross the Swiss border are returned within around 24 hours. The agreement does not prohibit the return of children. At the time of the Special Representative's visit, around 70-100 refugees and migrants a day were being returned to Italy via the border crossing at Como-Ponte Chiasso under the simplified procedure, many for the second or third time.

76. The Special Representative notes that the Italian authorities are equally entitled to return any migrants or refugees first registered in another EU country. In practice, few returns take place in that direction, which contributes to the "bottleneck in Italy". The Special Representative says that it is important that the negotiations on the reform of the Dublin Regulation result in a workable solution to increase burden sharing among participating states.

77. The Special Representative observed that the number of asylum applications in Italy was increasing but noted that a significant proportion of those arriving in Italy by sea intended to make their way northwards to other European countries. Some were adults who had not lodged asylum applications and others were unaccompanied children and asylum seekers who had left reception facilities in the hope of reuniting with friends and family more quickly by bypassing the formal system. There is no formal provision of accommodation for this group of people, who are reliant on *ad hoc* arrangements for food and shelter on their journeys. He said that there were large communities of migrants in transit in the big cities and at the border towns.

78. The relocation programme, provided for in the European Agenda on Migration, was designed to alleviate the pressure on the Greek and Italian asylum systems given the disproportionate numbers of migrants arriving in those countries. The Caritas report states that the policy is a failure. Compared to the 160,000 relocations planned by September 2017, when the programme came to an end, there had only been 29,134 relocations of which only 9,078 were from Italy. Information contained in the migration update in the FCO email dated 15 May 2018 indicates that the European Commission's figure for relocations from Italy since September 2015 was 12,690. The number of relocations is low compared to the high levels of applications for international protection made in Italy during the same period. The evidence indicates that the relocation programme is unlikely to have alleviated much pressure from the Italian asylum system.

79. The Special Representative of the Secretary General on migration and refugees for the Council of Europe says that the system of relocation "currently takes too long". This creates further pressure on the Italian reception system and undermines confidence in the scheme thereby encouraging people to seek entry to other countries by unlawful means. The staff at the Red Cross shelter in Rome, which hosts mainly Eritreans seeking to access relocation, informed the Special Representative that access to relocation was relatively quick in the early part of 2016. An asylum seeker might wait 3-4 days for an appointment at the police station and would be transferred to a relocation reception centre within 7-10 days. The waiting period lengthened significantly from July 2016. Now residents at the shelter stayed for two months before even beginning the process.

80. The evidence contained in the MSF "Out of Sight" report dated February 2018 ("the MSF report") is consistent with this picture. The report is a follow up to an earlier report in March 2016, which considered social marginalisation and monitored the conditions in unofficial settlements. The report notes that after the peaks of 2016 there was an overall decrease in the number of landings, predominantly because of containment measures implemented following the

agreement between Italy and Libya. The full implementation of the 'hotspot approach' resulted in the forced registration of almost all migrants arriving in Italy. This contained secondary movements towards countries further north. The report notes that the increase in numbers, and slow turnover in the reception system due to delays in deciding applications, put pressure on the reception system. Other factors putting pressure on the reception system include the increasing number of asylum seekers being sent back to Italy under the Dublin Regulation. Another issue is the failure of the relocation procedure decided by the European Council in September 2015.

81. The AIDA report states that the Dublin Unit did not provide statistics on the operation of the Dublin system in 2017, despite being asked to do so. According to Eurostat statistics for 2016, Italy received 64,844 incoming requests, by far the largest number compared to any other country. The number of incoming transfers implemented in 2016 was 4,061. Although the statistics for 2017 were not available, organisations providing legal assistance in Rome reported an increase in Dublin returnees. The Caritas report states that the number of Dublin requests made in 2016 exceeded 141,000, of which, 45.8% concerned Italy, which is the "main gateway to Europe". Over 4,000 transfers came mainly from Switzerland, Germany and Austria. We note that these figures do not appear to include transfers made under bi-lateral agreements with bordering countries. The numbers reported to be 'pushed back' from France and Switzerland under bi-lateral agreements far exceed the official statistics for Dublin transfers. For this reason, it seems likely that a large proportion of those returns are not made under the Dublin Regulation procedure.

82. The evidence discloses a picture of increasing pressures on the Italian asylum system. The exceptionally high numbers arriving by sea in 2016 and the early part of 2017 reduced from the middle of 2017 as a result of agreements made by Italy with North African countries. Despite the reduction in arrivals by sea, the applications for international protection in 2017 increased by over 6,000 from the previous year. Because of its position as a "gateway to Europe", Italy already had by far the highest number of take back requests under the Dublin Regulation. Previously, many migrants might have passed through Italy without being registered on EURODAC. The fingerprinting of migrants in 'hotspots' is likely to lead to an increase in transfer requests under the Dublin Regulation. Tighter controls on the northern borders with France, Switzerland and Austria appear to be resulting in large numbers of migrants being returned to Italy under the Dublin Regulation, bi-lateral agreements or simply being 'pushed back' into Italy. The evidence indicates that the reduction in the number of arrivals in the south of the country is likely to be counteracted by containment policies operating on the northern borders. Given the small proportion of people transferred under the relocation programme, the scheme is unlikely to have alleviated the pressures on the Italian asylum system.

Overview of the asylum procedure

83. The AIDA report provides a useful summary of the Italian asylum procedure.

Initial registration ('fotosegnalamento')

84. There is no formal time frame for making an asylum claim. Applicants are expected to present their case as soon as possible, and as a rule, within eight days of their arrival in Italy. An asylum claim can be made at the border police office or at a provincial police station (*Questura*), where the person will be fingerprinted and a photograph will be taken. This initial registration stage is called '*fotosegnalamento*'. If an asylum claim is made at the border, the police invite the asylum seeker to go to the *Questura* for formal registration.

Formal registration ('verbalizzazione' and C3 form)

85. The formal registration of an asylum claim takes place at the relevant *Questura*. The police at the *Questura* will ask questions relating to the Dublin Regulation during the formal registration stage and then contact the Dublin Unit of the Ministry of the Interior, which then verifies whether Italy is the Member State responsible for the examination of the asylum claim.

86. The '*Modello C3*' form must be completed to formally register the claim. The form includes basic information regarding the applicant's personal history, the journey he or she has taken to Italy and their reasons for fleeing from their country of origin. The asylum seeker signs the C3 form. The police send the registration form and the documents concerning the asylum application to the Territorial Commissions or Sub-commissions for International Protection (CTRPI - *Commissioni territoriali per il riconoscimento della protezione internazionale*), which are located throughout the country.

Interview and decision by the Territorial Commission (CTRPI)

87. The Territorial Commissions are the only authorities competent to carry out a substantive asylum interview. The *Questura* will notify the asylum seeker of the date of the interview with the Territorial Commission. Managers of reception centres used to be able to notify an applicant of the interview date. However, a circular from the National Commission for the Right of Asylum (CNDA - *Commissione nazionale per il diritto di asilo*) dated 10 August 2017 (CNDA Circular No.6300) now requires the *Questura* to notify interview dates. The CNDA coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection. These bodies belong to the Department of Civil Liberties and Immigration of the Italian Ministry of the Interior. They make independent decisions on asylum applications and do not follow instructions from the Ministry of the Interior.

88. According to the 'Procedure Decree' (LD 25/2008), the CTRPI should interview the applicant within 30 days after having received the application and should decide the application within three working days thereafter. When the CTRPI is unable to take a decision in this time limit and needs to "acquire new elements", the examination procedure is concluded within six months of the lodging of the application. The CTRPI may extend the time limit for a period not exceeding a further nine months when (i) there are complex issues of fact and/or law involved; (ii) a large number of asylum applications are made simultaneously; or (iii) the delay can clearly be attributed to the failure of the applicant to comply with his or her obligation to cooperate. The time limit may

be extended for a further three months in certain circumstances. The asylum procedure might last for a maximum period of 18 months.

89. The 'Procedure Decree' allows for an accelerated procedure in certain categories of cases. The procedure applies where (i) the application is likely to be well-founded; (ii) the applicant is vulnerable, in particular, an unaccompanied child or a person in need of special procedural guarantees; (iii) when the application is made by an applicant placed in an administrative detention centre (CPR - *Centri di permanenza per il rimpatro*); and (iv) if the applicant comes from one of the countries identified by the CNDA that provides for no personal interview when there are sufficient grounds to grant subsidiary protection status. The competent CTRPI must inform the applicant that they have three days from the date of the communication to ask for a personal interview. In the absence of such a request, the CTRPI will take a decision. The AIDA report states that, in practice, the prioritised procedure is applied to those held in CPR and rarely to the other categories of cases.

90. It is not necessary for us to consider the evidence relating to the onward appeal procedure because the way the case has been put focuses on the initial procedures for registering a protection claim, and in the case of Beneficiaries of International Protection (those who have been granted protection status) (BIPs), what happens after a person has been granted protection status.

Suspension of the procedure

91. If an applicant leaves the reception centre without justification or absconds from detention without having been interviewed, the CTRPI is empowered to suspend the examination of the asylum application (LD 142/2015). The applicant can ask, only once, for the procedure to be reopened within 12 months of the suspended decision. After this deadline the CTRPI declares an end to the procedure. Any application made after a declaration has been made to end the procedure is submitted for preliminary examination as a "subsequent application". During the preliminary examination the reasons for moving away from the centre are considered. From 01 January 2017 to 29 December 2017 the Territorial Commissions issued 4,292 suspension decisions.

Access to reception and accommodation

92. As we have already stated, Italy is a signatory to the 'recast' Reception Directive (2013/33/EU). Article 17(2) states that Member States shall "ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health." The MSF report states that Italian legislation (LD 142/2015) ("the Reception and Procedure Decree") envisages that a person gains access to the reception system as soon as they apply for asylum. However, AIDA reports that in practice access to the system is postponed until the asylum seeker has formalised their application by completing the C3 form. We consider the evidence relating to the delays in accessing support and accommodation in more detail below.

Reception and accommodation

93. The AIDA report summarises the structure of the reception system in Italy. The 'Reception and Procedures Decree' (LD 142/2015) envisages a phased reception system. The Decree came into force on 15 September 2015 and is intended to implement the 'recast' Reception Directive (2013/33/EU) and the 'recast' Procedures Directive (2013/32/EU).

94. The reception system is divided into emergency facilities (CPSA / Hotspots), temporary facilities run by the Prefecture (CAS), government first-line reception (former CARA or CDA) and government second-line reception facilities (SPRAR). Within these broad categories there are various types of accommodation and reception facilities. The system envisages temporary accommodation in first-line reception facilities while a claim is registered before transfer to second-line reception facilities.

95. The decentralised nature of the Italian asylum and reception system means that figures relating to the capacity of the reception system vary and are subject to changes over time. The AIDA report for 2017 states that there are no comprehensive statistics on the capacity and occupancy of the entire reception system, given the different types of accommodation facilities existing in Italy. The AIDA report dated December 2015 outlined data from the Ministry of the Interior from October 2015. At that time there were reported to be 7,290 people in emergency and first-line reception places (CPSA, CDA and CARA), 70,918 in CAS and 21,914 in SPRAR.

96. The Special Representative of the Secretary General on migration and refugees noted the following figures at the time of his visit in October 2016. He said that at that time there were around 162,000 reception places in Italy. About 10,000 were in first-line reception facilities (CARA or CDA), 26,000 were in second-line reception facilities (SPRAR) and the remaining 126,000 were in extraordinary reception facilities (CAS). He observed that because it may take years for an asylum application to be processed and for an asylum seeker to leave the reception system, places were not being freed up for new arrivals. As a result, the number of people in reception continued to grow.

97. The Caritas report states that there were around 188,000 migrants in various reception facilities at the end of 2016. As at 15 July 2017 there were 205,000 migrants in reception facilities. The extraordinary reception centres (CAS) were used most with 158,607 people accommodated. The SPRAR system had 31,313 admissions. The first-line reception centres accommodated 15,000 people. In the period from 2014 to 2016 the number of applicants in extraordinary reception centres increased by 286.5%, while the SPRAR "registered an increase of around 50%". The base line figure for the 50% increase is unknown. As we will see, the figures vary as to exactly how many SPRAR places are likely to be available. We will consider the evidence relating to the capacity of the second-line reception system in more detail below.

98. Other figures show that a proportion of people leave the reception system for different reasons. The Caritas report says that 12,171 people left reception facilities in 2016. 41.3% left for "socio-economic integration" and 29.5% left

reception facilities voluntarily before the end of their allotted time. It is unclear whether these figures relate to the whole reception system including emergency and extraordinary reception facilities or to SPRAR, which is the only type of accommodation with an 'allotted time'. Nevertheless, it is broadly consistent with other evidence, which indicates that a proportion of people do not want to stay in Italy and may attempt to continue their journey to other countries further north.

Emergency facilities – CPSA / Hotspots

99. The first aid and reception centres (CPSA – *Centro di Primo soccorso e accoglienza*) are designed to provide initial first aid and reception to those arriving by sea. The AIDA report states that, during 2017, in addition to the existing hotspots in Lampedusa, Pozzallo, Taranto and Trapani, another hotspot was set up in Messina. In March 2018, the hotspots in Lampedusa and Taranto were closed temporarily. The AIDA report states that the hotspot in Lampedusa was closed due to an arson incident and a visit by several organisations, which highlighted "degrading conditions of detention". The hotspot in Taranto was closed after the National Anti-Corruption Authority detected "procurement irregularities".

100. There is no legal framework for the operations carried out in the CPSA. According to the Standard Operating Procedures a person should stay in the centre for the shortest possible period of time. The Special Representative of the Secretary General on migration and refugees says that, in principle, no one should spend more than 72 hours in a hotspot. The AIDA report says that, in practice, people are accommodated for days or weeks. The centres constantly face emergency situations as a result of the number of arrivals. Reception conditions are reported to be poor.

Temporary reception facilities – CAS

101. The AIDA report states that CAS (*Centri di accoglienza straordinaria*) facilities were designed as an emergency measure to provide temporary accommodation when there was no availability in the main reception system. Elsewhere in the evidence they are described as 'extraordinary reception centres'. The AIDA report goes on to say that the law (LD 142/2015) provides for CAS to be identified and activated by the relevant Prefecture in cooperation with the Ministry of the Interior. Activation is reserved for emergency situations involving substantial arrivals, but in practice, applies when places in ordinary reception centres are not sufficient to meet reception demand. CAS facilities are designed for the first accommodation phase, but as an exceptional measure, provide second-line reception for the time "strictly necessary" until the transfer of asylum seekers to a SPRAR project. As in the first-line reception centres, only essential services are guaranteed.

102. The AIDA report states that the CAS system has expanded to the point of being absorbed into the ordinary reception system. The number of CAS in Italy reached 9,150 by the end of August 2017. Figures from the Chamber of Deputies showed on 01 December 2017 that CAS hosted 151,239 people, which was 81% of the capacity of the whole reception system. The AIDA report goes on to say that "insufficient expansion of the SPRAR has been at the origin of

the creation of a permanent state of emergency and of the proliferation of temporary structures where asylum seekers can spend all of the asylum procedure." The "chronic emergency" has forced improvisation and encouraged bodies to enter the accommodation network, which lack the necessary skills. AIDA outlines concerns about the CAS system raised by a variety of NGOs working in the sector. AIDA observes that the quality of reception facilities depends very much on the agreements by the managing bodies with the Prefecture and on the professionalism of the bodies involved. There were some notable cases, such as the CAS in Trieste, where the reception conditions were equal to those of SPRAR.

103. The Special Representative of the Secretary General on migration and refugees says that because of the intended temporary nature of CAS facilities the focus is on emergency accommodation and not long-term integration. However, many asylum-seekers stay in a CAS throughout the determination of their asylum applications. He observes that CAS facilities have become "an important feature of the Italian reception system" because of the shortage of places in the SPRAR network. The Special Representative recognises that the Italian authorities made a huge effort to increase their reception capacity in recent years, largely by making more places available in CAS. All those who arrive by sea are accommodated even if this pushes facilities beyond their official capacity. But the numbers involved have had an impact on the nature of the accommodation and services provided, as well as the conditions in reception facilities. He says that this raises potential issues under Articles 3 and 8 of the European Convention on Human Rights.

104. The Swiss Refugee Council Report ("the SRC report") entitled "Reception conditions in Italy" (August 2016) set out the findings of a fact-finding mission to Rome and Milan in February and March 2016. The SRC report gave details of those interviewed during the fact-finding mission, including ASGI, Caritas, MEDU, Lucia Iuzzolini at SPRAR, UNHCR, officials at the Ministry of the Interior and the police as well as representatives of the Italian Red Cross and staff at GUS. The SRC report states that there is no publicly available list of centres. Their funding and mandates are not transparent. CAS are run by various institutions including municipalities, private organisations and NGOs. Management often lacks experience in dealing with asylum seekers. Many centres are in remote locations, are operating above capacity and are unsuitable. There are reports of poor hygiene standards. Due to the dramatic increase in the number of centres and the constant changes to management, staff are often unqualified and/or overworked.

105. A UN Human Rights Committee sixth periodic report on Italy dated 01 May 2017 acknowledges the efforts made by Italy to receive and host "exceptional numbers of persons fleeing armed conflict or persecution" but expresses concerns about insufficient numbers of places in first-line and second-line reception centres and the "substandard living conditions" in several reception centres. The report does not provide any detail, but the concerns are expressed by a credible international body and are broadly consistent with the other evidence relating to the capacity of the reception system and the conditions in some extraordinary and first-line reception centres.

106. Francesca Grisot's evidence is consistent with this overall picture. Ms Grisot says that she has worked with asylum seekers and BIPs in Venice since 2006. From 2013-2015 she worked on two European funded projects assisting people being transferred under the Dublin Regulation (known as "*dublinati di rientro*"). She currently works as the head of planning, service organisation and staff training for the opening of new reception centres within the EDECO Cooperative. The EDECO Cooperative manages the largest CAS centres in Veneto as well as various smaller CAS and the Padua SPRAR, with more than 11,000 cases being managed. Given her position working for a cooperative which runs reception facilities in the Veneto region we are satisfied that Ms Grisot gives reliable evidence regarding the reception facilities in her region.

107. Ms Grisot refers to the relevant legislative decree and notes that the intention was for CAS facilities to be provided as a temporary measure prior to transfer to other reception facilities. In fact, she says that CAS have become centres for long-term stay, sometimes for an even longer period than the second-line reception period of six months provided by SPRAR. In the summer of 2017 the CAS in Cona housed 1,470 people compared with 942 planned places. The CAS in Bagnoli housed 1,050 people compared with 850 planned places. The average stay was more than one year. She says that in many cases asylum seekers obtained humanitarian protection after three years in a CAS. Once a positive ruling has been recorded and a person can apply for an electronic permit and a request is sent to the Prefecture of Venice or Padua for the person to enter a SPRAR. Reception measures cease when the person is issued with an electronic permit. She states that the possibility of inclusion in SPRAR after being discharged from CAS is minimal. The waiting list is on average 4-5 months long with no accommodation provided between the extraordinary reception centre and ordinary reception services in SPRAR.

108. Ms Grisot describes the accommodation in the CAS facilities in her region as of a "minimum standard, sometimes in dormitories of 100 people in tensile structures, bathrooms in containers and with a two-week rotating menu of simple, repetitive food". At the CAS in Cona asylum seekers were originally housed in the mud in tents belonging to the civil protection corps. EDECO Cooperative invested one million Euros in the former military camp, which now has "tensile structures containing a sea of bunk beds". Privacy is minimal. Asylum seekers hang blankets and sheets by their beds in an attempt to create some privacy. Each tensile structure can hold up to 76 people. The emergency concept of the accommodation does not provide furniture for storing personal items or any possibility of personalising the space. Ms Grisot says that she has visited the camp in Cona and can confirm that it is overcrowded and does not comply with the regulations for residential conditions. She also noted that there were people housed at the CAS with "significant physical or mental health problems", but she provides no further detail as to the numbers or their circumstances. In Ms Grisot's opinion it is "a wholly inappropriate reception structure for asylum seekers with additional vulnerabilities" and such accommodation is inappropriate to house asylum seekers for an extended period.

109. The Home Office interviewed a representative from Caritas during the fact-finding mission in October 2017. The Home Office summary of the meeting

states that Caritas is the biggest NGO in Italy dealing with reception services and protection of asylum seekers and BIPs. Around 28,000-30,000 asylum seekers are supported by Caritas. The representative from Caritas says that the largest reception provision is the emergency system provided by CAS, which is implemented by the local Prefectures. Caritas says that the CAS system is "very mixed and a little confused" due to the numbers of organisations involved in providing services. The Ministry of the Interior provides the funding, but expects a solution to be delivered at a local level by the Prefecture.

110. The UNHCR representative in Rome who was interviewed by the Home Office during the fact-finding mission said that reception facilities are not standardised. There are thousands of units in a wide range of accommodation e.g. in hotels, former barracks and former schools run by NGOs under contracts which are funded by the Ministry of the Interior with agreement from local Prefectures.

First-line reception facilities – Regional Hubs (former CARA / CDA)

111. The AIDA report states that the government first-line reception facilities are collective centres previously known as Centres for the Reception of Asylum Seekers (CARA – *Centro di accoglienza per richiedenti asilo*) or Accommodation Centres for Migrants (CDA – *Centro di accoglienza*). The 'Reception and Procedures Decree' (LD 142/2015) provides for first-reception centres to be managed by a range of public and private bodies following public tender.

112. Information from the Chamber of Deputies dated 24 November 2017 indicated that there were 15 first-line reception centres in seven regions of Italy. At that date the first-line reception centres hosted 10,738 asylum seekers. The AIDA report goes on to say that the situation at some of these centres is critical due to overcrowding. The centre in Bari is designed to accommodate a maximum of 1,216 people, but hosted 1,233. The centre in Gorizia had a maximum capacity of 138, but hosted 663 asylum seekers.

113. The AIDA report says that the purpose of first-reception centres is to offer initial support to asylum seekers so that medical tests can be carried out and their needs and vulnerabilities can be identified. The purpose is to identify a suitable onward placement. The law does not specify a maximum length of stay in these centres. The AIDA report says that the mechanism for the reception phases is bypassed through the ambiguous wording of the law, which says that applicants should stay in first-reception facilities for the time "strictly necessary" before transfer into SPRAR structures.

114. The collective reception centres are usually large structures in isolated areas away from urban centres, which makes it difficult to contact the "external world". Government centres are often overcrowded. The quality of accommodation services is not equivalent to the SPRAR centres or other smaller reception facilities. AIDA reports that regular concerns have been raised about the variable standards of reception centres. The material conditions vary from one centre to another depending on the size, the number of asylum seekers hosted and the level and quality of the services provided by

the organisation managing each centre. The report goes on to give examples of concerns raised about the conditions in several first-line reception centres.

115. The Special Representative of the Secretary General on migration and refugees notes that CARA and CDA are first-line reception facilities established by the Ministry of the Interior. It is intended that asylum seekers spend a few weeks or months there to complete the administrative formalities of lodging an asylum claim while awaiting a place in a second-line reception facility. However, lack of places in second-line reception facilities means that in practice asylum seekers spend between 6-18 months in first reception and often only leave once protection status has been granted or the application has been refused. The Special Representative says that the conditions in the first reception centres he visited were reasonable. The main problem was the delay in accessing the asylum procedures and the length of the procedures themselves, which prevents a turnover of residents.

Second-line reception facilities – SPRAR

116. The second-line reception is the System of Protection for Asylum Seekers and Refugees (SPRAR – *Sistema di protezione per richiedenti asilo e rifugiati*).

117. An undated document from the *Servizio Centrale* (Central Service) of the SPRAR explains that SPRAR consists of a network of local authorities, which set up and run reception projects for "people who are forced to migrate". It draws upon the National Fund for asylum policies and services managed by the Ministry of the Interior and is "included in State Budget legislation". SPRAR is co-ordinated by the *Servizio Centrale*, which is an organisation set up by the Ministry of the Interior with operational aspects entrusted to the National Association of Italian Municipalities (ANCI - *Associazione Nazionale Comuni Italiani*). The document goes on to outline the role played by the *Servizio Centrale* and the main objectives of the SPRAR:

> "The Central Service has the task of coordinating the System for the Protection of Asylum Seekers and Refugees (SPRAR) in Italy providing information, consultancy, technical assistance and training to local authorities and operators of the SPRAR network, as well as for monitoring the presence of refugees and asylum seekers in Italy. At a local level local authorities, with the valued support of the third sector, guarantee an "integrated reception" that goes well beyond the mere provision of board and lodging, but includes orientation measures, legal and social assistance as well as the development of personalized programmes for the social-economic integration of individuals.
>
> SPRAR's **MAIN OBJECTIVE** is to take responsibility for those individuals accepted into the scheme and to provide them with personalised programmes to help them (re)aquire self autonomy, and to take part in and integrate effectively into Italian society, in terms of finding employment and housing, of access to local services, or social life and of child education.
>
> …..
>
> Local authorities and bodies, in partnership with the third sector, set up and operate reception projects in their areas, applying SPRAR guidelines and standards while taking local factors and conditions into account. Local authorities can, depending on the type, capability and level of competence of local actors as well as on the resources (professional, organizational or economic) available to them, choose the type of

> reception facilities they can offer and the sort of persons they can best take responsibility for. For this reason projects can be aimed at individual adults and two parent families (the so-called "ordinary category"), or at single parent families, unaccompanied minors seeking asylum, victims of torture and those persons in need of constant care or with physical or psychological problems (classified as "vulnerable categories"). Special projects are provided for those people whose vulnerability results from problems of mental health. In any case, all those being cared for under the scheme are accepted on a temporary basis, and this is fundamental given that the ultimate objective is to give them self-autonomy and integrate them in society. Facilities offered by SPRAR – which tend to be either apartments or small to medium sized accommodation centres, have a social-educational nature and must never be considered as part of the health service facilities. …"

118. The AIDA report says that this is a publicly funded network of local authorities and NGOs, which accommodates asylum seekers and BIPs. The SPRAR are small reception centres where assistance and integration services are provided. In contrast to the large-scale buildings of extraordinary and first-line reception facilities SPRAR has over 876 smaller decentralised projects (as of February 2018). SPRAR may accommodate destitute asylum seekers who have formalised their applications. Applicants who are already in the territory may apply to enter SPRAR centres directly.

119. The AIDA report states that conditions in the SPRAR system differ considerably from those in the first reception centres. In bigger SPRAR facilities rooms might accommodate up to four people, while in flats, rooms might accommodate 2-3 people. On average SPRAR facilities host about nine people. A common space for recreational activities should be guaranteed. SPRAR projects have adequate hygiene facilities for the number of asylum seekers hosted. In the case of projects that host people with special needs, such as unaccompanied children, the services are widened. The quality of SPRAR services differs depending on the service provider, but minimum standards should be guaranteed in all centres.

120. The AIDA report states that the SPRAR reception capacity has grown exponentially in the last seven years: from 3,979 financed places in 2011 to 9,356 places in 2012-2013. There were 20,965 financed places for the period 2014-2016. An additional 4,077 places were activated in July 2016 and another "969 seats" related to the new 2017-2019 projects have been activated since February 2017. As of February 2018, SPRAR ran 876 reception projects, with a total of 35,869 funded places. The source of this figure is attributed to SPRAR. The AIDA report observes that, despite the considerable growth in SPRAR, capacity is insufficient to meet accommodation needs. SPRAR places cover less than 20% of the reception demand in Italy.

121. The Special Representative of the Secretary General on migration and refugees explains that SPRAR facilities are the second-line reception facilities where asylum-seekers should be transferred once they have made an asylum application. The SPRAR budget includes a mandatory percentage for integration activities. SPRAR facilities are an example of best practice. The goal should be the continued growth of the network. At the date of his visit in October 2016 the Special Representative recorded that there were 26,000 people in SPRAR facilities. He noted that there was resistance from local populations to

opening SPRAR facilities in their areas and concerns from municipalities regarding funding. As a result, there are insufficient SPRAR facilities.

122. The Caritas report notes that the ordinary reception system is still undersized for the number of refugees. The ANCI and the Ministry of the Interior were taking steps to promote the SPRAR system to the regions with encouraging results. Although the objective of a single system was still "a long way off", work was being done to reach this goal. There had been a significant increase in the number of SPRAR places from 26,000 to 30,000 in "absolute terms". The source of the figures for SPRAR places provided in the translation of the Caritas report is unclear.

123. A report of a Parliamentary Committee inquiry into the reception conditions of migrants dated 20 December 2017 ("the Parliamentary Committee report") says that there was a gap between the theory of the 'Reception and Procedures Decree' (LD 142/2015) and the reality of the present reception system. The report says that the continued accommodation of migrants in extraordinary centres could no longer be tolerated. There has been a "massive and pathological" use of temporary facilities (CAS). The report refers to statistics from the Department of Civil Liberties and Immigration, which recorded that 24,573 SPRAR places had been "taken up" as of 18 November 2017. The report also refers to data from the SPRAR *Servizio Centrale* dated 30 November 2017, which shows that although funding was provided for 31,270 places, only 661 local authorities have signed up to SPRAR offering a total of 24,972 places. This led to a shortfall of 6,302 funded places that had not been taken up by local authorities despite legal and administrative measures designed to give municipalities incentives to support the SPRAR network.

124. The figures from the undated document from the *Servizio Centrale* state that the SPRAR network comprised of 771 projects including 604 standard projects, 117 projects for unaccompanied minors and 50 projects for people with "mental vulnerability or disability". The number of people 'accepted' in SPRAR was 26,480 standard beneficiaries, 2,332 unaccompanied minors and 632 places for people with "mental vulnerability or disability". Unhelpfully, the document is undated. However, it is reasonable to infer that the figures are likely to relate to a period after the official figures for November 2017 considered in the Parliamentary Committee report given the increase in the number of local authorities involved in SPRAR from 661 to 666 at the date of this document. It is also reasonable to infer that the figures are likely to relate to a period after November 2017, but before February 2018, when a senior official in the SPRAR office in Rome confirmed to Ms Leo that 734 places were available in SPRAR for people with mental health issues and physical disabilities, given that only 632 places were available when this document was prepared (see more detailed consideration of the provisions for vulnerable persons below). The evidence indicates that the actual capacity of the SPRAR system sometime in the period between November 2017 and February 2018 was likely to be around 29,000 places, which would appear to be broadly consistent with the observations made by the Parliamentary Committee about the gap between funded places and actual places provided by local municipalities.

125. In contrast to previous cases, both those representing the applicants and the respondent have had direct contact with senior officials in the SPRAR network. The Home Office note of the meeting with a SPRAR official in October 2017 has not been approved by SPRAR. Given the criticisms of the way in which the Fact-finding Mission Report was prepared, we approach the note of the meeting with some caution. The official is not named, but is said to be a senior manager at the SPRAR Management and Legal Support Office (*Ufficio Supporto Gestionale e Legale*) in Rome.

126. It is unclear whether the person interviewed by Home Office officials during the fact-finding mission is the same person interviewed by Ms Leo (the applicants' agent) on 26 February 2018. Ms Leo conducted an interview with Lucia Iuzzolini. Ms Leo's statement describes Ms Iuzzolini as the Head of Legal Office, SPRAR Management and Legal Support Office. If Home Office officials interviewed Ms Iuzzolini during the fact-finding mission it is likely that Ms Leo's statement would have mentioned the fact, but it does not. However, the statement of Rachel Davis, the Asylum Liaison Officer for the UK Third Country Unit based in Rome, shows that she had email contact with Ms Iuzzolini in early May 2018 to clarify a specific point relating to services for vulnerable people with mental health issues.

127. The unapproved notes of the Home Office meeting with the senior SPRAR official in Rome say that when a migrant arrives in Italy the first step is to meet the applicant and establish whether he or she has claimed asylum or intends to do so. Identity checks are carried out and the person is assessed for vulnerability, disability and special needs. Most migrants arrived by sea. It is unclear who the SPRAR official says is responsible for carrying out an initial assessment. It seems unlikely that SPRAR officials would carry out initial checks in hotspots in the manner described. The official says that the second stage would be to make a referral to SPRAR. Again, it is unclear what body would make the initial assessment and referral. The SPRAR official says that there are not enough places in SPRAR due to the recent mass influx of migrants. Where a place in a SPRAR is not available, asylum seekers will remain in the CAS system or accommodation will be sourced from local authorities or NGOs. The official says that there were 35,869 SPRAR places at that time (October 2017). This figure is broadly consistent with the number of funded places mentioned in the AIDA report, but neither piece of evidence clarifies the source of the information.

128. We find that the information contained in the interview notes and the report of Ms Leo's interview with Ms Iuzzolini is reliable. Although previous 'expert' reports prepared by Ms Leo in other cases were said to have the "flavour of advocacy", she does not seek to give evidence in this case. Her statement is confined to outlining the methodology of the interviews she was asked to undertake by the applicants' representatives. The methodology is clear. The questions she was asked to put to SPRAR and Caritas are set out in full. A copy of Ms Leo's contemporaneous notes in Italian are provided as well as an English translation. Ms Leo then prepared a short report summarising the main points drawn from the interview, which was approved by Ms Iuzzolini. Ms Leo's notes of some follow up questions have also been approved.

129. Ms Iuzzolini is a senior official in SPRAR and is therefore in a good position to provide reliable information about the SPRAR system. Much of her evidence relates to access to the system and provisions for vulnerable people, which we set out below. In terms of general information about SPRAR, she says that an applicant cannot apply directly to SPRAR. There must be an official referral. Self-referral is possible, but the person must go to the responsible local body in order for that body to make the official referral. She says that it was "totally impossible" to give waiting times for a SPRAR place. It depends on the availability of places. The focus is to find a SPRAR place close to the referring authority to ensure continuity. If that is not possible SPRAR may look for another centre, but it depends on the availability of places. When asked if additional SPRAR places could be created if the demand is greater than the available places, Ms Iuzzolini said that additional places could not be created from outside the system. It was possible to increase the number of places immediately after the 'North Africa emergency', but this ended with the 2015-2016 invitation to tender. In subsequent SPRAR invitations to tender there was no mention of funding for additional places.

130. The Home Office note of the meeting with a UNHCR official in Rome in October 2017 says that Italy had received approximately 100,000 asylum seekers by October 2017. There were not enough SPRAR resources because of the high influx of migrants. UNHCR is reported to have said that the situation in Italy was not the same as in Greece.

131. UNHCR says that reception centres have been given new guidelines (dated 03 July 2017) by the Ministry of the Interior, which are intended to improve reception services, including the provision of social and psychological support. The new guidelines set out how provisions should be delivered at a local level. The Italian government has been consulting with the UNHCR on a project to standardise monitoring methods. The expectation is that guidelines for reception centres will be standardised by 2018 to prevent variations in the quality of services. The Ministry of the Interior is investing more in external monitoring and auditing. Currently, reception facilities are not standardised. UNHCR noted that there are thousands of units in a wide range of accommodation including hotels, former barracks and former schools. UNHCR conducted a programme of visits to reception facilities to check conditions. Between July 2015 and December 2016 UNHCR made 115 visits to places that accommodate asylum seekers. Some facilities were good, others revealed some weaknesses and in some cases the facilities had "serious flaws". As result of support from UNHCR, the situation has improved in terms of oversight and monitoring.

132. UNHCR says that there are still shortcomings and issues of capacity in the local and national system for reception services, especially for vulnerable cases. However, the Ministry of the Interior had taken significant steps to set up an administrative and legal framework, which aims to guarantee minimum standards to asylum seekers.

133. Ilaria Sommaruga and Anna Brambilla prepared a joint statement, which summarises their knowledge and experiences of the asylum and reception system in the Milan area. Both women work at the office of a community centre

called CSD Diaconia Valdese in Milan. Ms Brambilla says that she is a lawyer who specialises in immigration law. She is also a board member of ASGI and is responsible for ASGI training. Ms Sommaruga does not appear to be a qualified lawyer but outlines her experience working in immigration law. She describes her position at CSD Diaconia Valdese as "national legal counsel". The role of the CSD Diaconia Valdese is not explained, but it is reasonable to infer from what is said in their report that it is a community organisation which offers advice and support to asylum seekers and refugees. To this extent, the witnesses can describe their experiences of the system within the context of their role assisting asylum seekers and refugees in the Milan area. The evidence concentrates on their knowledge of Dublin returns to the Milan area, which we consider in more detail below. For the purpose of this section, we note what they say about the guidelines for reception centres published in July 2017.

134. It is clear from their report that CSD Diaconia Valdese has contact with the local authorities and reception services in the Milan area. They say that the new tender specifications adopted by the Prefectures tend to harmonise the reception conditions downwards (this is consistent with other evidence relating to the tendering process). They note what UNHCR says about the guidelines published in July 2017. They say that their local CAS and SPRAR centres have not received the new guidelines yet. It is unclear whether Ms Sommaruga or Ms Brambilla contacted the local reception centres to find out whether the guidelines had been sent to them or whether they are simply unaware of the guidelines being implemented. They point out that there is a difference between publishing guidelines and whether they are implemented in practice. Ms Sommaruga and Ms Brambilla observed that the monitoring mentioned by UNHCR took place in 2015 and 2016, but there had been a large increase in people claiming asylum and seeking access to the reception system since then.

135. Due to the decentralised nature of the SPRAR network, it is difficult to establish the actual number of places in the system. The evidence shows that there has been a massive expansion in SPRAR facilities since 2011, but it is hard to ascertain whether some of the figures translate into reality. For example, the Parliamentary Committee report makes clear that there is a difference between funded places and the places taken up by the municipalities. The Special Representative points out the reluctance of some local communities and municipalities to develop SPRAR facilities. Although the Caritas report makes clear that the government is trying to provide incentives to municipalities to take up funded SPRAR places, the evidence indicates that there is likely to be a shortfall between the number of funded places in theory and the actual capacity on the ground. The Parliamentary Committee report noted that the official figures from November 2017 indicated that only 24,573 SPRAR places had been "taken up" although there was funding, at that time, for 31,270 places.

136. In light of that evidence, it seems unlikely that the upper figure of 35,000 SPRAR places reflects the actual number of places currently available. The figure mentioned by the SPRAR official in October 2017 appears to conflict with the official statistics from the Department of Civil Liberties and Immigration, which indicated that only 24,573 places had been taken up as of 18 November 2017. There might have been plans to increase the number of funded places, but there is little evidence to indicate that the number of actual places is as much as

35,000. The number of places in the system might well have increased above 24,573 SPRAR places in the last six months given the continuing efforts to expand the SPRAR system. The extent of any increase is unclear from the evidence currently before us although the undated document providing figures of just over 29,000 places might be closer to the actual number of places actually available within the system.

137. A range of different organisations, including UNHCR, clearly and consistently state that there are not enough SPRAR places to cope with the demand. The evidence shows that the SPRAR network forms a small proportion of the reception system. According to the legal framework, SPRAR should be the norm for reception of asylum seekers, but the reality is that the vast majority of asylum seekers spend their time, often many months or years, housed in basic and, in some cases, intensely unsatisfactory conditions in extraordinary reception centres (CAS). The emergency situation prompted by the arrival of such large numbers of people required a massive expansion of CAS facilities. The situation continues. As a result basic emergency accommodation has become the norm for reception in Italy despite the continuing efforts of the Italian government to expand the SPRAR system.

Other sources of support and accommodation

138. When interviewed by the Home Office during the fact-finding mission, UNHCR noted an impressive level of charitable activity in Italy.

139. The Caritas report states that the Italian Church has played a significant role in the reception system. In 2016 almost 25,000 places were available. This figure included reception places in SPRAR and in extraordinary reception centres, so it is unclear how many additional places are made available through the Church and charitable action. The Caritas report goes on to say that other innovative projects have seen families and parishes welcome migrants to their regions.

140. The AIDA report says that there is a network of private accommodation that does not form part of the national reception system. The Catholic Church and voluntary associations provide some accommodation. However, it is difficult to ascertain the number of places available in these forms of accommodation. The report outlines some statistics relating to refugees hosted in families, but the numbers indicate that relatively few of the refugees and asylum seekers present in Italy are likely to be accommodated in this way. We find that this form of accommodation and reception provides some, albeit modest support for the main reception system. As we shall see when we come to look at the work of the Baobab Experience in Rome, religious charity has its counterpart in the secular sphere.

Vulnerable persons

141. Recital 11 of the 'recast' Reception Directive (2013/33/EU) confirms that standards of reception should suffice to ensure applicants a dignified standard of living. Recital 14 states that it should be a primary concern for national authorities to ensure that reception is specifically designed to meet any special reception needs. Article 17 requires a Member State to ensure that material

reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Article 21 states:

> "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive."

142. Article 22 of the 'recast' Reception Directive makes clear that to implement Article 21 effectively Member States shall assess whether an applicant has special reception needs. The assessment must take place within "a reasonable period of time" after the application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that the support provided to applicants takes into account their special reception needs throughout the asylum procedure. Only vulnerable persons outlined in Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with the 'recast' Reception Directive.

143. The 'recast' Reception Directive is said to have been incorporated into Italian law through the 'Reception and Procedures Decree' (LD 142/2015). The AIDA report states that the 'Procedure Decree' (LD/25/2008) defines vulnerable persons. The list contains the same categories of vulnerable people identified in Article 21 of the 'recast' Reception Directive. The AIDA report goes on to say that there is no legally defined procedure for identifying vulnerable people although the Ministry of Health has published guidelines on the assistance, rehabilitation and treatment of Beneficiaries of International Protection (BIPs) and victims of torture (set out in more detail below).

144. The AIDA report says that identification of victims of torture may occur at any stage of the asylum procedure by lawyers, competent authorities or professional staff working in reception centres and specialised NGOs. The Territorial Commission can also request a medical examination. Vulnerable applicants should be admitted to the prioritised procedure. If the applicant is deemed vulnerable, the Territorial Commission should schedule the applicant's interview "in the first available seat". In practice, when the police have cause to believe that they are dealing with a vulnerable case, they inform the Territorial Commission, which should prioritise the case over other asylum seekers in the regular procedure. However, an earlier section of the AIDA report relating to the accelerated procedure, states that the prioritised procedure is rarely applied to asylum seekers who are victims of torture and extreme violence because they are not identified at an early stage by the police. The report says that torture survivors are usually recognised at a later stage of the process by NGOs who provide legal or social assistance or during the personal interview with the Territorial Commission.

145. We observe that it may be easier for the police who register the early stages of an asylum claim to identify obvious vulnerabilities such as a person's age or a

physical disability, but other vulnerabilities arising from a person's history, which might affect their physical or mental health, might not be so easy to identify in the absence of more detail about the underlying circumstances of the claim or a professional health assessment. To this extent, the information contained in AIDA report is not inconsistent. The police might identify and refer people with obvious vulnerabilities, but may be slow to identify vulnerabilities arising from past torture or persecution during the early stages of a claim.

146. In another section relating to the special reception needs of vulnerable groups, the AIDA report says that the 'Reception and Procedures Decree' (LD 142/2015) requires applicants to undergo a health check when they enter first reception centres to assess their health condition and special reception needs. The Decree provides for special services for vulnerable people with special needs in first-line reception centres and SPRAR facilities. Where possible, vulnerable adults are placed with other adult family members already present in reception centres. The manager of reception centres shall inform the Prefecture of the presence of vulnerable applicants in order to activate procedural safeguards during the personal interview. The Decree also states that the Minister of the Interior shall issue guidelines for the implementation of services, including those designed for people with special needs. The AIDA report goes on to say that the assessment of special needs is conducted when an asylum seeker is placed in a reception centre. The assessment is not carried out systematically and may depend upon the existence and the quality of services provided by the reception centre, the availability of funds and the managers of the centres.

147. The MEDU report dated 16 September 2014, which was considered by Lewis J in MS & NA contained official figures from the SPRAR annual reports for 2010-2013, which indicated that 500 places were made available for vulnerable persons in the context of 3,000 SPRAR places available at the time: i.e. 16% of SPRAR places. These figures pre-dated the massive increase in migrants arriving by sea from 2014 onwards and the subsequent expansion of SPRAR.

148. The evidence before the Tribunal from officials in the SPRAR office in Rome indicates that the number of places allocated for vulnerable people include around 80-100 places for families with children, around 3,488 places for unaccompanied minors and 734 places for people with mental health issues and other disabilities. The total number of places allocated for vulnerable people in SPRAR represents around 12% of the upper estimate of SPRAR places (35,000) or around 17% of the lower figure identified in the Parliamentary Committee report (24,573). The proportion of places suitable for individuals with mental health issues or disabilities only represents around 2-3% of potential SPRAR places. In the context of the figure indicating that 205,000 people were accommodated in the reception system by July 2017, the 734 places allocated for vulnerable people with mental health issues or disabilities represents about 0.36% of the overall capacity of the reception system.

149. AIDA reports that in 2017 the Ministry of the Interior asked SPRAR to guarantee 70 places for vulnerable Dublin returnees. Unlike other references to circulars and letters in the report, an exact reference to the source of this information is not included in the footnotes. The evidence is limited to a bare

statement. There is no evidence to suggest that the request was actioned, in fact, evidence from the SPRAR office in Rome suggests that no specific places are allocated for Dublin returnees.

150. Ms Leo's interview with Ms Iuzzolini, the Head of Legal Office at the SPRAR Management and Legal Support Office in Rome, provides reliable information about the number of places likely to be available for vulnerable people in the SPRAR network. Following the decision in *Tarakhel,* SPRAR created a pool of around 80-100 places for families. These are not permanent places, but priority places allocated according to availability. There is a dedicated email with the Dublin Unit. Returnees are usually reported to SPRAR about one week before transfer, but occasionally a family might be referred to SPRAR after they have arrived in Italy. About seven in ten people who are scheduled to return to a SPRAR centre do not arrive. She cannot say with any certainty why this happens, but she thinks it is that people never leave the "destination countries". Given that the interview concerned Dublin returnees, we read this to mean the countries from which the person is being transferred. An additional reason may, of course, be that many Dublin returnees prefer to live in the migrant community, rather than in a SPRAR.

151. In contrast to the information contained in the AIDA report, Ms Iuzzolini, who was interviewed in February 2018, says that no specific places are reserved in SPRAR for individual Dublin returnees. The priority pool of places is only reserved for families. Other returnees will be processed through the standard procedure. Waiting times are the same as for any other person applying to enter SPRAR. Ms Iuzzolini says that SPRAR does not operate a waiting list. People can wait days or longer for place in SPRAR. Waiting times vary considerably and depend on many factors. She emphasised that SPRARs are not emergency accommodation centres and as a result places will not necessarily be allocated immediately.

152. Ms Iuzzolini notes that Article 17 of the 'Reception and Procedures Decree' (LD 142/2015) outlines a list of vulnerable persons. However, SPRAR has identified only two types of vulnerable people for whom it provides special reception facilities (i) unaccompanied children; and (ii) people with mental health issues or physical disabilities. We note that in addition to those two categories it is clear that the third category of vulnerable cases SPRAR also caters for is families with children.

153. Ms Iuzzolini says that there are 734 places currently allocated for people with psychological problems and physical disabilities. A place must be requested on a specific form. 'Form F' is available on the *Servizio Centrale* website and should be supported by a medical diagnosis. Reports need not be translated into Italian, although elsewhere in the evidence airport officials suggest that it is helpful if reports are translated. There is no definition of "psychological problems" for the purpose of allocating these places. No minimum level of severity is required to access these places. An applicant must be able to live independently and present with no "psychiatric problems" because SPRAR staff are not trained to deal with people who have "psychiatric problems".

154. On the face of the evidence produced by Ms Leo, it is unclear what the difference is between those deemed to have "psychological problems" and those with "psychiatric problems". Ms Iuzzolini clarified the issue in email correspondence with Rachel Davis, the Asylum Liaison Officer for the Third Country Unit based in Rome, at the beginning of May 2018. Ms Iuzzolini confirms that SPRAR can provide reception places for people with serious vulnerabilities, but people with acute or chronic problems that may require hospitalisation will not be accommodated in SPRAR.

155. Ms Iuzzolini told Ms Leo that the assessment of vulnerability must be made by the official or organisation which makes the referral to SPRAR. The more detailed the report is about a person's vulnerabilities and needs, the more likely it is that SPRAR will be able to find an appropriate place. It was not possible to give an average waiting time for a place. If a person has not been found a place they can be "reported again later". Places are usually allocated by the *Servizio Centrale*. Local authorities retain the right to assign a proportion of places subject to the approval of the *Servizio Centrale*.

156. Ms Iuzzolini was asked whether SPRAR encounters many vulnerable cases. She confirms that there has been a recent increase in the number of vulnerable cases referred to the *Servizio Centrale*, but no figures are given. Ms Iuzzolini's evidence is consistent with the information obtained during the Home Office fact-finding mission. A Red Cross official in Rome confirmed that the vulnerability of migrants is becoming a priority for the Red Cross. That official also said that there were now "significant numbers" of migrants landing with special needs compared to a few years ago.

157. In contrast, the unapproved summary of the Home Office meeting with a SPRAR official in Rome states that special needs or vulnerable cases are not frequent, but will be dealt with carefully on the information that has been made available to SPRAR. The starting point is that vulnerable cases should not be without support. The unapproved notes of the meeting with the SPRAR official also state:

> "36. The delegation was told that it is the Dublin Unit that has responsibility for Dublin cases and that the system is flexible so that where spaces within the SPRAR which were allocated to Dublin returnees were not available other places are needed they are made available (sic). The Dublin Unit also stated that vulnerable cases sent back from another member state go into a SPRAR."

158. We place little weight on the information provided in the summary of this meeting. The notes are unapproved and clearly include observations made by the Home Office official who drafted the notes. It is difficult to tell what information was given by the SPRAR official and what aspects are the views of the Home Office official. It is unclear whether the information contained in the paragraph quoted above came from the Italian Dublin Unit or the SPRAR official. Given that the notes purport to summarise information obtained during a meeting with SPRAR the reference to the Dublin Unit is particularly unclear. The reference to places being allocated in SPRAR for Dublin returnees is broadly consistent with the vague reference made in the AIDA report to the Ministry of the Interior asking for 70 places to be guaranteed for vulnerable Dublin returnees, but neither piece of evidence is particularly clear.

159. The clearest and most up to date evidence is the evidence of Ms Iuzzolini, who confirms that no specific spaces are identified for individual Dublin returnees. Her evidence is broadly consistent with information contained in the unapproved notes of the Home Office meeting with an unidentified official at the Ministry of the Interior, who is also recorded as having said that there are no reserved places for Dublin returnees. The official from the Ministry of the Interior is recorded to have said that the system is "adequate and flexible". If the border police are informed of special needs or vulnerabilities then it "is dealt with", but there is no elaboration as to the exact procedure.

160. The UNHCR approved the notes of the meeting with Home Office officials in Rome. We note that UNHCR expresses concern about vulnerable people on more than one occasion during the meeting. UNHCR says that there are still shortcomings and issues relating to capacity in the local and national reception services, "especially for vulnerable cases", whilst recognising that steps had been taken to improve the legal framework.

161. Although UNHCR is concerned about the capacity of the reception system to deal with vulnerable cases, it falls short of recommending that vulnerable people should not be returned to Italy. However, that is not to say that UNCHR makes no recommendations. The recommendation that was notably omitted from the initial version of the Fact-finding Mission Report was for the UK to make "proactive and flexible use of the discretionary clauses" to ensure maximum protection for asylum seekers and to ensure full respect for human rights. In particular, UNHCR urged for the discretionary clauses to be considered in cases involving vulnerable applicants and those with relatives in the UK. We note that UNHCR made a similar recommendation in a report entitled "Desperate Journeys" (August 2017):

> "More solidarity is needed within the EU to ensure protection and assistance to those arriving in Europe, including through the speeding up, and extension of the relocation scheme, as well as efficient and speedy family reunion and implementation of the humanitarian and discretionary clauses under Dublin."

162. The evidence shows that enormous pressures have been put on the Italian asylum system in recent years. Although the Italian authorities have sought to expand and develop the system, there is still an acute lack of capacity in the SPRAR system, which only includes a small proportion of places suitable for vulnerable people and a tiny proportion of places for those with mental health issues or physical disabilities. Given the particularly high numbers of people who have claimed asylum in Italy in the last 2-3 years, and the evidence indicating an increase in people with special needs, it is reasonable to infer from the figures that there is likely to be a significant number of vulnerable people with special needs accommodated in emergency reception facilities. Having regard to the combination of the basic nature of many of those facilities and the vulnerabilities of the individuals, this state of affairs may be incompatible with Article 3.

163. Francesca Grisot says that she is aware of people with "significant physical or mental health problems" being accommodated in the emergency reception

facilities her organisation runs in the Veneto region. Elisa Morellini, who is the Legal Affairs Coordinator for an organisation that supports asylum seekers and refugees in the Milan area says that, in her experience, many people in the CAS centres suffer from post-traumatic stress disorder and chronic mental illness, but are not guaranteed immediate access to SPRAR or to specialist psychiatric treatment. While their evidence is general in nature, it is broadly consistent with the wider picture, which indicates that there is likely to be an acute shortage of suitable SPRAR places available for vulnerable people in the context of the particularly high number of asylum claims made in recent years.

164. It is in the context of this evidence that UNHCR urges Member States to be proactive in applying the humanitarian and discretionary clauses. The Dublin Regulation is not confined to the primary mechanisms for establishing the Member State responsible for an asylum claim. The recitals set out the principle of solidarity towards Member States "facing particular pressures on their asylum systems". Solidarity is said to be a "pivotal element" in the Common European Asylum System, which goes "hand in hand with mutual trust". The humanitarian and discretionary clauses are built-in safeguards to ensure sufficient flexibility in the Dublin system. UNHCR does not recommend a halt on returns, but clearly has serious concerns as to whether the Italian asylum system has the capacity to deal with significant numbers of vulnerable people.

165. The Special Representative of the Secretary General on migration and refugees also notes the "enormous challenges" faced by Italy because of "the sheer number of people". He urges Member States of the Council of Europe to show solidarity "to ensure a fairer distribution of asylum seekers across the continent and alleviate the burden currently shouldered by Italy."

Transfers under the Dublin Regulation

Overview of the procedures

166. We begin by noting that returns to Italy under the Dublin Regulation are of a qualitatively different nature to the way in which the Italian authorities might deal with the large number of arrivals of asylum seekers who enter the country by sea or those arriving overland. Removal under the Dublin Regulation is a government to government transfer.

167. In cases where Italy expressly accepts a take back request made under the Dublin Regulation, the Italian authorities will normally indicate the airport nearest to the appropriate *Questura*. If the relevant airport is not indicated, return is likely to take place to major airports such as Rome or Milan. It is not disputed that the Italian authorities ask the UK authorities to inform them of any special needs at least 10 days in advance of the transfer. This procedure is consistent with Articles 31 and 32 of the Dublin Regulation, which make provision for exchange of relevant information and health data before a transfer is carried out.

168. Dublin returnees might fall into one of four categories (i) people who have not made an international protection claim in Italy; (ii) people who have made an international protection claim in Italy; (iii) people whose international

protection claim has been refused; and (iv) people who have been granted protection status in Italy (BIPs).

169. AIDA reports that Dublin returnees may face different situations depending on whether they have applied for asylum in Italy before moving to another European country. Where the person did not apply for asylum during his or her initial transit or stay in Italy before moving on to another European country, he or she can lodge an application under the regular procedure. If the person previously applied for asylum there may be different scenarios:

    (i) The Territorial Commission may have taken a positive decision and issued a permit to stay.
    (ii) The Territorial Commission may have refused the application. If the applicant has been notified of the decision but has not lodged an appeal, he or she may be issued with an expulsion order and be placed in a CPR (pre-removal centre). If not, he or she can lodge an appeal when notified of the decision.
    (iii) The Territorial Commission has not taken a decision and the procedure continues.
    (iv) The person has not presented for a personal interview and will be issued a negative decision, but may ask the Territorial Commission for a new interview.

170. The evidence relating to the procedures on arrival in Italy before the court in MS & NA, included statements dated 06 March 2015 and 30 March 2015, from the then Asylum and Immigration Liaison Officer in Italy, Carl Dangerfield. At that time, Mr Dangerfield confirmed that, in his experience, Dublin returnees would be identified and medically assessed at the airport. An individual who had not previously claimed asylum would be entitled to first-line reception accommodation (CARA) until his or her asylum claim was decided, at which point the person would be entitled to a place in SPRAR. People with medical needs would be medically assessed on arrival at the airport and at the reception centre. Individuals who had previously applied for asylum and had been refused status would be subject to removal and were likely to be held in an immigration removal centre where healthcare facilities were available. BIPs were entitled to accommodation in SPRAR. In his experience, returnees with refugee status were usually accommodated "in some form, usually in a SPRAR". Individuals whose refugee permit had expired would be invited to renew the permit. Entitlements to accommodation would be the same as for an individual with an existing permit.

171. Mr Dangerfield went on to outline his understanding of the procedure when vulnerable people were returned with a medical escort or where the Italian authorities have been notified that the person has serious medical needs. On arrival the person would be identified by the police. Once the police have carried out ID checks, the individual would be passed to 'reception services', which will usually be a non-governmental body selected to provide immigration reception services at a particular airport. Medical staff provided by reception services would carry out a medical assessment. The reception service would arrange a transfer to hospital or arrange a transfer to an appropriate accommodation centre. The individual would be reassessed on arrival at the

accommodation centre. Medical care is provided to asylum seekers and BIPs. Reception services, SPRAR and the local government authority "will endeavour" to arrange for individuals to be placed in centres with facilities that provide for their specific needs.

172. The AIDA report says that the staff of the Italian Dublin Unit increased significantly in 2017 and benefited from the support of EASO (European Asylum Support Office) personnel, but this support mainly related to outgoing requests, family reunification and cases involving children. As a result, outgoing requests are issued within the deadlines set by the Dublin Regulation. The AIDA report provides scant information about the administration of incoming requests. We note that when UNHCR met with Home Office officials in October 2017 it noted that the Dublin Unit's work is affected by "capacity challenges".

173. Rachel Davis, the current Asylum Liaison Officer for the Third Country Unit based in Rome, met with Simona Spinelli, the Head of the Italian Dublin Unit, on 11 May 2018. The information she obtained from Ms Spinelli was approved in an email exchange dated 14 May 2018. Ms Spinelli confirms that the Dublin Unit is not responsible for arranging reception for individuals returned to Italy under the Dublin Regulation. The Dublin Unit will contact the relevant Prefecture and provide a copy of the arrival notice, including any information about vulnerabilities and any health notices. Because there is no backlog of cases from the United Kingdom, the Dublin Unit can manage those cases better. They will notify the relevant Prefecture of arrivals in advance. The Prefecture of Varese will be notified of those arriving at Milan Malpensa Airport. The Prefecture of Milan will be notified of those arriving at Milan Linate Airport. The only exception is the procedure for return of families under the Dublin Regulation. In family cases, the Dublin Unit will contact SPRAR directly to arrange accommodation. Ms Spinelli's evidence about the procedure for making reception arrangements in the case of Dublin family returns is consistent with Ms Iuzzolini's evidence about direct contact between the Dublin Unit and SPRAR in that limited category of cases.

174. We have already outlined the somewhat conflicting evidence as to whether places are reserved in the reception system for vulnerable Dublin returnees. We conclude that the more reliable and up to date evidence from Ms Iuzzolini, which is supported by the evidence from the unidentified official at the Ministry of the Interior, is that there are no reserved places. The only places identified in the SPRAR network for Dublin returnees are the places for families with children.

175. The information confirmed by Ms Spinelli is broadly consistent with the relevant legal and procedural framework we have outlined above save for some qualifications. The decentralised nature of the Italian asylum system apportions responsibility for considering asylum claims to the relevant Prefecture. If a person has been fingerprinted or has already registered a claim, they will be required to return to the relevant *Questura*. To this extent, not all asylum seekers returned to Rome and Milan will necessarily be referred to the nearest Prefecture as stated by Ms Spinelli. Her statement is likely to be correct in relation to those who have not been fingerprinted or have not registered an

asylum claim in Italy. In such cases the relevant Prefecture in Milan will be responsible for registering the claim. The relevant Prefecture will depend on the facts of each case. The Dublin Unit has made clear that it is not responsible for arranging accommodation. The only exception is the special procedure for families with children when the Dublin Unit will liaise directly with SPRAR. In other cases, the Dublin Unit will notify the relevant Prefecture of the Dublin returnee's arrival. The relevant *Questura* and local Territorial Commission would then be responsible for the claim. The local Prefecture is responsible for extraordinary reception facilities in its area, but is not responsible for government first-line or second-line reception facilities. The evidence from SPRAR indicates that a referral would need to be made by the relevant body for a place in the local SPRAR network.

176. Mr Dangerfield's evidence in early 2015 was that non-governmental 'reception services' are available at the airports to assist asylum seekers who are returned to Italy. The Fact-finding Mission Report cites a UNHCR report entitled "Left in Limbo: UNHCR study on the implementation of the Dublin III Regulation" (August 2017). NGOs are contracted to provide "information and advice" at certain airports. The list obtained from the UNHCR report states that Milan Malpensa, Venice, Ancona, Bari, Brindisi, Bologna and Rome Fiumicino airports are said to have advice services. We consider the evidence relating to those services in more detail below.

Issues relating to registration and access to reception

177. We have already set out the legal procedure for the registration and consideration of asylum claims in Italy. The applicants do not dispute that Italy has an adequate legal and procedural framework in place, but argue that the way in which the system works in practice indicates that there are operational failings of a systemic nature that are likely to give rise to a breach of Article 3 rights for some or all returnees to Italy depending on the facts of individual cases.

178. It is argued that one of the widespread operational problems are barriers and delays to the formal registration of asylum claims. The applicants argue that without the C3 form an applicant cannot apply to access the reception system and may be at real risk of a period of homelessness and destitution. The problem has been highlighted by UNHCR in the past and has been considered by the courts in previous cases.

179. The Special Representative of the Secretary General on migration and refugees observes that areas which host a high number of asylum seekers are finding it difficult to cope with demand. In those areas, asylum seekers may have to wait several months for the initial appointment to formally register an application and obtain the C3 form. He says that the difficulties in accessing the asylum procedure, when coupled with inadequate reception conditions, raise potential issues under Article 3 of the ECHR.

180. AIDA says that "severe obstacles" to access the asylum procedure continue to be reported. *Questura* in Naples, Rome, Bari and Foggia were reported to have set specific days for seeking asylum and have limited the number of people

allowed to seek asylum on a given day, while others imposed barriers on specific nationalities being able to claim asylum. In Rome and Bari nationals of certain counties without a valid passport were prevented from applying for asylum. *Questura* in Milan, Rome, Naples, Pordenone and Ventimiglia were reported to have denied access to asylum to people who did not have a registered residential address (*residenza*), contrary to the law. There were also reports of obstacles to the formal registration of applications (*verbalizzazione*). Several *Questura*, including Milan and Potenza refused to complete the lodging of applications for applicants they deemed not to need international protection.

181. The AIDA report states that Article 5(1) of the 'Reception and Procedures Decree' (LD 142/2015) makes clear that an applicant need only make a declaration of his or her place of residence in order to register an asylum application. Article 4(4) states that access to the reception system and the issue of a residence permit are not subject to additional requirements except those expressly set out in the Decree. The AIDA report asserts that these two provisions make clear that the failure to provide a registered residential address should not be a barrier to accessing international protection. Nevertheless, during 2016 and 2017 a number of *Questura* still denied access to the procedure for "lack of domicile".

182. The MSF report states that there is a chronic shortage of reception places due to the increasing number of asylum applications and the low level of turnover in the centres due to delays in assessing the claims. This observation is consistent with the findings made by the Special Representative of the Secretary General on migration and refugees when he visited Italy in October 2016. MSF reports that, despite the increase in Territorial Commissions in recent years, the time elapsing between first applying for asylum and being notified of the result averages 307 days.

183. The AIDA report states that the time limits for processing asylum applications set out in the 'Reception and Procedures Decree' (LD 142/2015) are not complied with in practice. The "competent determining authorities", which we read to mean the Territorial Commissions do not receive the application until after the formal registration has taken place, and even then, the first instance procedure usually lasts several months and the delays between different Territorial Commissions vary. For example, the procedure in Rome is generally longer and takes from 6-12 months. AIDA reports that, according to the President of the CNDA, the average processing time in the period 2014-2016 was 260 days from the lodging of the application until a decision.

Rome

184. The evidence contained in a previous report prepared by Loredana Leo for the ASGI in March 2015 (supported by the Open Society Foundations) entitled "The Dublin System and Italy: A relationship on the Edge" outlined, among other issues, the outcome of her research relating to the procedures for Dublin returns to Rome. The report provides an insight into the services provided at Rome Fiumicino airport at the time. The advice and assistance service was managed by Badia Grande co-operative until January 2015, but at the date of the report, an NGO called *Gruppo Umana Solidarietà* (GUS) managed the service.

185. The SRC report says that around half of all asylum seekers returned to Italy under the Dublin Regulation are returned from Switzerland. The SRC report notes that the NGO at Fiumicino airport offered advice to asylum seekers transferred to Italy under the Dublin Regulation and referred people to reception services. This was only possible if the Prefecture of Rome was already responsible for the asylum procedure or was responsible because the person had not previously applied for asylum. At the date of the SCR fact-finding mission in March 2016 the SRC understood that Dublin returnees whose asylum applications were the responsibility of the Rome *Questura* would usually be placed in CAS accommodation. The NGO at the airport had a list of accommodation centres that they would work through to try to find a place. If a suitable place could not be found the NGO had to contact the Prefecture. If a different Prefecture was responsible for the claim, the person would be given a train ticket to travel to the relevant region. In those cases, the NGO at the airport would not organise accommodation in the region responsible for the claim.

186. The SRC report says that the FER projects funded by the European Refugee Fund, which were designed to provide shelter to Dublin returnees, expired in the summer of 2015 without, at that stage, a follow-on project having been established. According to GUS, new projects were planned from August 2016, which were set to last 24 months. It is unclear whether those projects were put in place as planned. There does not appear to be any current evidence to show that specific projects are in place for the temporary accommodation of Dublin returnees of the kind noted by UNHCR in the recommendations made in 2013.

187. The SRC report says that the NGO in Rome airport has changed almost every year in recent years due to the way in which contracts are awarded. The report notes that GUS was replaced by a new organisation called ITC shortly before the fact-finding mission. ITC is said to offer "translation and interpreting services.".

188. The SRC description of ITC is consistent with a printout from the ITC website, which describes the organisation as an "association of interpreters, translators and cultural/language mediators", which provides "translation and interpreting services". Ms Leo contacted ITC to arrange an interview to discuss reception services. In an email dated 06 February 2018, the ITC office in Rome says that ITC "only manages language and cultural services at Fiumicino Airport, having won a competition to provide language services issued by Rome Prefecture. In order to obtain the information you seek, you should contact Rome Prefecture directly." At first blush this evidence appears to indicate that ITC may have a more limited role than previous NGO services provided at the airport. However, we note that elsewhere in the evidence the reference to 'cultural mediators' is used to describe services where asylum seekers are given advice about registering a claim at the relevant *Questura* and may also be contracted by the local Prefecture to provide advice and assistance with accommodation. The exact role ITC plays at Rome airport is simply unclear. The fact that the organisation referred Ms Leo to the local Prefecture is only likely to reflect the responsibility that the Prefecture plays in providing reception services.

189. The Home Office fact-finding mission met with an official of the Border Police at Fiumicino airport in Rome in October 2017. The notes of the meeting have not been approved by the officer. No information is provided about the officer, their rank, their level of experience or how long they have worked at the airport in Rome. For these reasons we are circumspect about the evidence.

190. The officer is reported to have said that they deal with about 25-30 Dublin Regulation returns a day compared to around four returns a day in 2006. The officer confirmed that the NGO contracted to give assistance at the airport is called "ITC". The notes of the meeting state that the Home Office official spoke with two "cultural mediators" who worked for ITC, but it is not clear what information came from the police officer or the cultural mediators. The notes also contain observations made by the Home Office official.

191. The Home Office official is reported to have been told that Dublin cases "usually go into the SPRAR structure" and that there is "an emphasis on flexibility in rectifying problems arising with applicants or returnees. Special needs or vulnerable cases usually go to SPRARs." If special needs have not been notified before arrival, the cultural mediators will identify special needs and "will inform the Border Police who liaise with SPRARs to assign [a place]". The delegation is reported to have been told (by whom is unclear) that applicants are currently placed in a SPRAR within hours. The team prefers to receive arrivals between 08.00-14.00 to facilitate a same day placement. In cases where a person suffers from an acute psychiatric condition, there will be an immediate referral to health services. If the Rome *Questura* is responsible for the case the person will be taken directly to the *Questura*. If a different *Questura* is responsible for the case, the cultural mediation team will give the person a train ticket and will explain how to get on the train and where they should report.

192. In non-Dublin cases (BIPs) there is a different process. When the Border Police have completed their procedures, the person "can leave and approach the authorities for assistance." If a BIP has special needs, "the preference is to contact the Department of Civil Liberties to check whether they have suitable accommodation." It is unclear whether this is intended to be a reference to the SPRAR *Servizio Centrale*. An example was given of a family with two children who had severe mental health issues, where a request was made for exceptional support. The delegation is reported to have been told that in such cases "a flexible solution *will* be found because one *must* be found…".

193. The evidence regarding the Rome Border Police, contained in the Fact Finding Mission Report is of poor quality. It is not clear who provided the information and how qualified they were to comment. The exact role of the Border Police and the extent of the services provided by ITC is not made clear from the summary of the meeting. It is not clear who makes the assessment of vulnerability or referral for accommodation.

194. In contrast, the evidence contained in the SRC report is well-sourced and much clearer albeit less recent. Consistent with other evidence before us, it makes clear that the responsibility for arranging accommodation in the reception system falls to the *Questura* in the local Prefecture responsible for the asylum

claim. In the past, the NGO at Fiumicino airport was contracted to assist with reception services, but only in cases that could be referred to the local Prefecture in Rome. In cases where a person made a previous application elsewhere in Italy, the NGO was not responsible for arranging reception services and could only provide limited advice and assistance to enable the returnee to travel to the relevant *Questura*, which could be some distance away depending on the circumstances of the case. The most up to date evidence indicates that ITC is the current NGO providing services at Rome Fiumicino airport, but contrary to the position outlined by Mr Dangerfield in the past, and the evidence relating to services provided by GUS until around August 2016, the role of ITC now appears to be largely confined to interpreting and translation services.

195. Further evidence of the possible lack of advice and reception information for Dublin returnees at Rome Fiumicino airport comes from a statement prepared by an NGO called the Baobab Experience based in Rome. The organisation states that it formed through direct voluntary action of a group of ordinary Italians and European humanitarian aid activists. The organisation was formed at the beginning of 2016 in response to the large numbers of "transitory migrants" in the local area. It states that over 70,000 people have passed through its camps, which the organisation set up from public donations. The organisation provides medical care, food, a bed for the night and some legal assistance. The Baobab Experience states that it assisted around 900 people between September 2017 and April 2018. Of those, 71 people were returned to Italy under the Dublin Regulation. The organisation claims that none of them received advice or assistance from the border police at Fiumicino airport. They were not given information on how to apply or resume their applications for asylum. Under 10% of Dublin returnees they assisted had a residence permit. 99% arrived at Fiumicino airport and a few at Milan airport.

196. In the experience of the Baobab Experience, many returnees arriving at Fiumicino airport say that they were given no advice or information about reception arrangements there. Some were asked to go to the *Questura* in another Prefecture but were often not told how or when to do so. Some had to renew the procedure through the *Questura* in Rome and were forced to queue in front of the Rome *Questura*, often for several days, because they had been denied access several times and there was no certainty that they would be able to "begin the procedure". The organisation gave specific details of 23 cases of Dublin returnees interviewed in the period between March 2017 and March 2018 who were all said to have been given little or no advice at the airport and who had to turn to the Baobab Experience for assistance.

197. It should become apparent from the summary of the evidence relating to Fiumicino airport that the exact nature of the current procedure for processing Dublin arrivals is unclear. The Border Police should have advance information about the return of a person from the UK under the Dublin Regulation, including any information about special needs or health issues. The Border Police are likely to identify those returnees on arrival, but thereafter it is somewhat unclear as to how a person might be referred to reception services.

198. The evidence from Ms Iuzzolini at SPRAR indicates that the only category of cases where there is direct contact between the Dublin Unit and SPRAR is in cases involving families with children. Otherwise, individual cases must go through the usual procedure of referral through the Prefecture responsible for the asylum claim. In the recent past, the NGO contracted to provide advice and assistance was responsible for referral to reception services if the Rome Prefecture was responsible for the asylum claim. This would include cases where (i) a person has already made an asylum claim in the Rome Prefecture and would need to apply to reopen the claim; (ii) a person who had never made an asylum claim in Italy; and possibly (iii) BIPs who have not completed their allocated allowance in SPRAR reception services. However, the evidence indicates that the services currently offered by ITC at Fiumicino airport might be limited to interpreting and translation. The apparent reduction in the level of advice and information services since ITC took over the service at Fiumicino airport corresponds with the difficulties reported by the Baobab Experience in the period from March 2017 to March 2018, when a number of Dublin returnees reported that they were given little or no advice or assistance after initial checks were made at the airport.

199. Ms Iuzzolini confirmed that SPRAR does not have an office at Fiumicino airport. Contrary to the assertions made in the notes of the meeting with the police there, Ms Iuzzolini's evidence suggests that referrals are not routinely made to SPRAR from the airport. She says that referrals are "sometimes" received from the airport. Referral to SPRAR can only be done by the relevant local body or social services. The SPRAR system is not sensitive to emergencies and places cannot be allocated immediately. It is difficult to ascertain any meaningful information from the Home Office Fact-finding Mission Report, which does not make clear how an individual Dublin returnee might be referred into the SPRAR network from Rome Fiumicino airport. A person may be referred directly to the local *Questura*. The airport NGO is, in theory, supposed to give advice and assistance in helping returnees identify and travel to the relevant *Questura*. However, if the Rome *Questura* is not responsible for a claim, the current evidence suggests that an advice and assistance service might not be offered by ITC, which, as we have noted, is primarily an interpreting and translation service.

200. The SRC report sets out information obtained from GUS, the former NGO provider at Fiumicino airport. A representative from GUS explained to the SRC delegation that the NGO had not seen a single case where a person or family was sent directly to a SPRAR centre from the airport. SPRAR is run by the Ministry of the Interior and not the Prefecture. The CAS manager would be responsible for transferring a case to SPRAR. It is unclear what level of experience the GUS representative had, but the evidence is broadly consistent with the way in which the reception and accommodation system is structured, which places responsibility on the local Prefecture for providing accommodation and for making referrals into the SPRAR system.

201. As an NGO contracted by the local Prefecture, it would be consistent with the other evidence that the only referral the 'advice and cultural mediation' service could make would be to the local CAS. If the Prefecture of Rome is not the responsible Prefecture, the evidence shows that the NGO would make no

referral, but would give advice and perhaps a train ticket for the person to travel to the relevant *Questura*, which might be some distance away. The only category of cases where the Dublin Unit might have made a direct referral to SPRAR is families with children.

202. We note that the Fact-finding Mission Report also claims that Caritas provides services at airports. Manuela De Marco, from the Caritas Immigration Office in Rome provided further information when interviewed by Ms Leo on 21 March 2018. She confirms that Caritas only provides support at ports when people land by sea. Although Caritas has provided some emergency *ad hoc* humanitarian aid at the borders, and did do some work at Pratica di Mare Airport during a recent evacuation of refugees from Libya, in general, the organisation does not provide advice or reception services at airports.

203. Ms De Marco says that most people arriving by sea eventually get placed. Greater problems are faced by people who arrive in Italy by land. Access to the reception system is much harder in big cities like Rome or Milan. The position of Dublin returnees depends on the place of return. According to information she had received, there had been major problems in Bari. Ms Leo's notes do not go into any detail as to the nature of the problems.

204. The SRC fact-finding mission report from 2016 states that proof of a registered residential address is no longer a prerequisite to apply for asylum in Rome but is demanded at a later stage.

205. AIDA says that in 2017 ASGI reported limited access to the asylum procedure at the *Questura* in Rome. In some cases, access for certain nationalities was prevented due to a large number of people from the same region present in the *Questura* on the same day. In addition to a reported practice of allowing only around 20 asylum applications a day based on nationality, the *Questura* in Rome has also asked applicants to produce a national passport in order "to be admitted". Such a requirement would restrict access to the procedure given that large numbers of people arrive in Italy by irregular means and are not likely to have valid passports. However, the extent of the restriction is unclear. We would expect the evidence to say if the restriction was so severe that it prevented the registration of large numbers of claims, but it does not. We therefore consider that the *Questura* in Rome will, in practice, be the one to which most Dublin returnees, who have not previously claimed asylum in Italy, will go to register their claims.

Milan

206. The ASGI report prepared by Ms Leo in March 2015 said that, at that time, the advice service at Malpensa airport was managed by the Sociale Integra co-operative. The SRC fact-finding mission in early 2016 interviewed a number of local officials and NGOs operating in the Milan area. The report says that there are still shortcomings in gaining access to the asylum procedure. In Milan, a *dichiarazione di ospitalità* (declaration of hospitality) is required to claim asylum. The SRC report goes on to confirm that the relevant Prefecture for arrivals at Malpensa airport is Varese. The advice service at Malpensa is run by "Cooperativa Integra". It is unclear whether this is the same co-operative

mentioned in the ASGI report. The SRC report concluded that people who were transferred to Rome, Milan or Bologna have access to the "responsible NGO". However, the NGOs can only support people whose asylum procedure is ongoing or who have not applied for asylum in Italy. People whose asylum request is linked to another *Questura* will normally be given a train ticket so that they can travel to the responsible region, but this did not always seem to work in practice.

207. The AIDA report outlines information sourced from Diaconia Valdese in January 2018. From January to October 2017 an average of 90 Dublin returnees arrived every month at Milan Malpensa airport totalling 702 transfers of which 80% were assigned to the Prefecture of Varese in Lombardia. The source of the statistics provided by Diaconia Valdese is unclear.

208. Again, we approach the summary of the Home Office fact-finding mission meeting with the Border Police at Milan Malpensa airport with caution. The notes have not been approved by the person who was interviewed. The delegation is said to have been told that the Border Police were facing "enormous difficulties" because of the recent increase in applicants. They do their best to identify returnees with special needs, but often they are returned to Italy at short notice and with insufficient information. Ideally the Border Police would like to have three days' notice of the arrival of a person with special needs. It is preferable that a person arrives with a medical escort and that any documents are translated into Italian.

209. The notes from the fact-finding mission state that the contractor which provides the 'advice and cultural mediation' service at Malpensa airport is called "ONLUS". This conflicts with the recent evidence given by Ms Sommoruga and Ms Brambilla, who confirmed that the NGO responsible for the service is the Ballafon co-operative. Reference to the word 'onlus' elsewhere in the evidence indicates that it is likely to be a generic Italian word used to describe an NGO or non-profit organisation. In other words, there is no discrepancy in the evidence and it is just another example of an inaccuracy in the Fact-finding Mission Report. The notes of the meeting state that the airport NGO is responsible for providing tickets to the relevant *Questura*. The *Questura* in Varese is about 40km from the airport.

210. The Border Police told the Home Office delegation that they would attempt to find a place in the SPRAR network for returnees with special needs, but this is difficult to do when there is no advanced information. The lack of advanced information is not said to be a problem in relation to returns from the UK.

211. The joint statement prepared by Ilaria Sommaruga and Anna Brambilla of CSD - Diaconia Valdese outlines their experience and knowledge of the situation in the Milan area. We accept that they are likely to have knowledge of the procedures and practices in so far as they have had experience of them while assisting their clients. Specifically, they say that the organisation was involved in a pilot project dedicated to Dublin returnees from July 2017. The aim of the project was to support integration into the reception system and to provide legal assistance. The organisation developed a network of contacts with Italian, Swiss and German churches. Upon referral, the Diaconia Valdese community

centre in Milan (run in collaboration with Oxfam Italia) contacts the relevant governmental and non-governmental offices such as the Dublin Unit, SPRAR *Servizio Centrale*, the local Prefecture and *Questura* and *ASGI.* In cases of extreme vulnerability temporary shelter might be found in Turin but it is financed by "the association or private entity who initially reported the case". It is unclear whether this means that the church organisations or other NGOs are forced to step in to provide emergency accommodation when the authorities are unable to do so.

212. On behalf of Diaconia Valdese, Ms Sommaruga and Ms Brambilla say that they are aware of the procedure at Malpensa airport since October 2017 because a direct channel of communication was opened between them and the information desk run by the Ballafon co-operative on behalf of the Prefecture of Valdese as well as with the Prefecture itself. In October 2017, they also met with "the operators" in the transit area of Malpensa airport (it is unclear whether this included the Border Police as well as staff from the Ballafon co-operative). If there is a referral, the community centre can inform the "Ballafon operators" several days in advance about incoming applicants reported to them. However, due to the high number of arrivals in the Province of Varese, it is not always possible to find the best solution, even for the small proportion of arrivals reported to Diaconia Valdese.

213. Ms Sommaruga and Ms Brambilla say that the procedure is for the Border Police to carry out identity and background checks on the Dublin returnee before referring them to the "asylum seekers and refugees" information desk for the Prefecture of Varese, which is next to the Border Police office in Malpensa airport. The joint statement says that there is only a small number of staff at the information desk managed by Ballafon co-operative. Except for a couple of cases, the people who landed at Malpensa whom they followed told Diaconia Valdese that there was no interpreter or cultural mediator. In general, information was not translated. The Prefecture of Valdese is responsible for cases where a person has not previously made an asylum claim in Italy. The Prefecture of Milan is responsible for people arriving at Milan Linate airport. This is consistent with the information provided by the Head of the Dublin Unit, Ms Spinelli.

214. The joint statement states that the information desk should "take care" of accommodation, but often the Dublin Unit does not send through the list of people who are about to arrive at the airport until a few hours before they land. Varese is a relatively small province with a high quota of returns under the Dublin Regulation due to the location of Malpensa airport. This means that there are limited places in the reception system. In the experience of Ms Sommaruga and Ms Brambilla, asylum seekers are not accommodated immediately after arrival. After accessing the first appointment in the Varese *Questura*, the waiting time for the *verbalizzazione* is variable. In the Province of Varese asylum seekers can only access accommodation after they attend the second appointment. This information is broadly consistent with the evidence relating to the formal asylum procedures outlined above.

215. Their experience of referrals to SPRAR is also consistent with the other evidence. They say that the Ballafon staff do not refer Dublin returnees to

SPRAR. The Dublin Unit notifies the police and the Prefecture about the arrival of returnees. The Dublin Unit only contacts SPRAR in cases involving families. Vulnerable individuals are not referred to SPRAR either by the Dublin Unit, the police or by Ballafon. They are given a written invitation to present themselves at the local *Questura*, normally within three days of arrival in Italy. Contrary to what is stated in the Home Office Fact-finding Mission Report, in their experience the Border Police at Malpensa airport do not make telephone calls to CAS or SPRAR centres in the region to try to find a place for Dublin returnees with special needs. This information is consistent with Ms Iuzzolini's evidence that SPRAR only receives occasional referrals directly from the airport.

216. The joint statement says that there are only two operators employed by Ballafon. The office is open Monday to Friday from 8.30am to 5.30pm. Meals and a ticket to the relevant *Questura* are provided. The people they have worked with told them that no interpreters were booked to assist them. In a few cases the Border Police attempted to translate information, but only into English. The joint statement says that Ballafon operations should assist the person into the reception system once they have informed the Border Police of their intention to claim asylum. The joint statement quotes the words of a Ballafon operator who they spoke to on 27 February 2018, who told them: "referrals are not made by us because the asylum seekers transferred should have already been referred by the Dublin Unit." In their experience the Dublin Unit did not refer individual returnees to SPRAR; it only referred families. Even if information has been sent to the Dublin Unit in advance of a person's arrival, the Border Police often do not receive the information until shortly before they arrive or on arrival. In their experience, even with advanced notice, little is done to prepare for a returnee's arrival.

217. The joint statement goes on to say that Diaconia Valdese tries to fill the gap in the provisions that should be provided by the Italian authorities where possible. They are only able to assist in a few cases. Most Dublin returnees are provided with little information and advice and are told to leave the airport and report to the Varese *Questura* within three days. Although legislation confirms that a person has a right to accommodation as soon as they have "manifested" an asylum claim (LD 142/2015), the systematic practice is to provide access to the reception system after the formal *verbalizzazione*, which leaves asylum seekers without accommodation for weeks or months.

218. Ms Sommaruga and Ms Brambilla say that it might be possible to access emergency shelters for homeless people during the winter months in Milan. The CASC (*Centro Aiuto Stazione Centrale*) co-ordinates shelters for Italian and foreign people who are destitute. Subject to capacity, it might be possible for an asylum seeker to access an emergency night shelter, but only during the winter months. However, access to the Milan CASC is still dependent upon the asylum seeker having obtained a receipt (*cedolino*) following a first appointment at the Milan *Questura*.

219. It seems clear that the Diaconia Valdese in Milan has established a channel of communication and co-operation with the staff at the Ballafon co-operative at Milan Malpensa airport as well as a network of communication with local government and non-governmental organisations. The focus of their work

appears to be on Malpensa airport. Although they make general assertions about Dublin returnees not being provided with advice and assistance at Milan Linate airport, their evidence, in relation to that airport, is far less detailed. There is no reference to whether an 'advice and cultural mediation service', similar to the Ballafon co-operative, operates at Linate airport on behalf of the Prefecture of Milan. However, we note that Milan Linate airport is not mentioned in the list of airports outlined in the Fact-finding Mission Report, which are said to have NGO advice services.

220. The joint statement goes on to outline several cases encountered by Diaconia Valdese where Dublin returnees faced periods of homelessness because of difficulties registering a claim and accessing reception and accommodation. The number of examples is quite small, and may not reflect the experience of most Dublin returnees, but they are at least consistent with some of the broader procedural problems identified by Ms Sommaruga and Ms Brambilla in the Milan area.

221. The final point from their joint statement worthy of mention is their response to the summary of the notes of the meeting with UNHCR in the Fact-finding Mission Report. The note of the meeting states:

> "In respect of Dublin Regulation transfer cases to Italy with vulnerabilities or disabilities decision are made on a case by case basis, with capacity in reception centres determining where returnees are sent. If a particular case has already been notified or reported to a particular location, i.e. prior to their departure from Italy to the State now making the transfer back to Italy, then usually access to that facility is provided on return. That is generally easier in Rome, Bologna or Milan."

222. In so far as Ms Sommaruga and Ms Brambilla read this to suggest that places might be found from across the national reception system for vulnerable Dublin returnees, they disagree that this is the case. In their experience, people are not transferred to another area of Italy to access available places elsewhere. Ms Sommaruga and Ms Brambilla can only speak from their personal experience. However, their evidence is broadly consistent with the decentralised and regional nature of the asylum and reception system in Italy.

223. Consistent with other evidence relating to the decentralised nature of the reception system, Ms Iuzzolini's evidence suggests that SPRAR tends to focus the search for places in the same or a nearby area to the responsible authority. We note that the evidence from SPRAR does not go into sufficient detail to ascertain whether places might be found for vulnerable people from across the national SPRAR network. The fact that there is a central office indicates some possibility of a wider search for suitable places, but there is little evidence to indicate regular 'cross-pollination' of resources and reception places between the different Prefectures.

Venice

224. Prior to her current role working for the EDECO Co-operative in the Veneto region, Francesca Grisot says that she worked on two projects funded by the European Fund for Asylum Seekers and Beneficiaries of International Protection from 2013-2015. The projects were set up for a limited period to assist

Dublin returnees arriving at Marco Polo airport in Venice. As far as she was aware, no similar projects have been in place since 2015. It is unclear whether these projects took the same role as the "advice and cultural mediation" services provided by the local Prefecture at other airports or provided a separation service. Her statement does not contain much detail about the exact work of the projects or her role. She describes her role as "an interpreter and worker".

225. During this time she says that she came "into direct contact with the reports sent by the Ministry, and with the users arriving at the airport." In her opinion it was clear that there was little management of the cases by the Dublin Unit. Vulnerable cases might be allocated to a generic project without the necessary resources. She gives an example of a project managed by *Consiglio Italiano per i Rifugiati Onlus* called "*Locanda Dublino*".

226. Ms Grisot outlines an example of an Iranian woman with 'psychiatric vulnerability' who was removed to Venice following a suicide attempt and several episodes of self-harming (including cutting the words "No Italy" on her stomach). When she arrived in Italy in early October 2013 there were places available in the *Locanda Dublino* project. The project did not have a doctor or psychiatrist as part of the team and had no particular agreement with mental health services. She says that the project staff were unprepared to manage such a vulnerable case. They only had two mediators, a coordinator and an administrative clerk to manage around 50 users of the project. The asylum seeker was reported to the emergency medical team, but did not receive regular support. She was found a place in an ordinary SPRAR project in Venice in December 2013, which did not have services for vulnerable people. Ms Grisot provides other examples of vulnerable people she assisted in her role as an interpreter at the airport in Venice during that time. While she can describe her knowledge of what happened to them, there is little detail to understand the full background to the cases. Despite the limitations we have pointed out, Ms Grisot's evidence is broadly consistent with other evidence, which shows that the Italian asylum system lacks capacity to provide specialised support for vulnerable asylum seekers due to the high numbers of asylum claims made in recent years.

227. The final piece of evidence relating to the procedures on arrival in Venice, relates to the provision of 'advice and cultural mediation' services at the airport. Ms Grisot was not aware of any project at the airport at the current time. She tried to contact an official at the Prefecture who previously managed the reception procedures for people transferred under the Dublin Regulation, but the official had been transferred. None of her colleagues could tell her what procedures are in place for the reception of Dublin returnees. As far as she is aware, there are still no places reserved for vulnerable persons in the SPRAR projects in the Veneto region.

228. Ms Davis, the Asylum Liaison Officer for the Third Country Unit based in Rome, provided up to date information on the services offered at the airport in Venice. She exhibits an email from Emanuela Milan, who she describes as the "Head of Immigration Services in the Prefecture of Venice". Ms Milan confirms that there is a reception service at the ports (at the Terminal in Fusina,

Malcontenta and the Border Police post in Marghera) and at the airport (Marco Polo airport, Tessera). The service provides interpreting and mediation services, coordination with the Prefecture and the SPRAR Central Service for the handling of cases reported by the Dublin Unit. It also provides information leaflets in several languages. The service is normally provided from Monday to Sunday from 12.00 to 19.00hrs, unless there are "exceptional needs" for a "service extension." The activation of what appears to be an out of hours reception service is at the request of the Border Police or the Prefecture, with an obligation to provide personnel within one hour of the request.

Bari, Brindisi and Lecce

229. Erminia Rizzi has produced a statement outlining her knowledge of the situation in Bari and the surrounding areas. She works as a "legal operator" in immigration and asylum law at a non-governmental organisation called *Associazione Gruppo Lavoro Rifugiati onlus – Bari* (GLR). She says that GLR promotes and protects the rights of migrants, particularly asylum seekers and BIPs. The organisation works closely with other government and non-governmental organisations in the area. GLR is a member of the Territorial Council for Immigration established by the local Government Office in Bari. She is not a qualified lawyer, but she says that the role of legal operator is to provide legal information and to assist asylum seekers in the asylum procedure. She has 20 years' experience working in the area and is therefore likely to be familiar with the situation in Bari.

230. Ms Rizzi assists Dublin returnees when they come to her office for advice or assistance in registering or re-activating asylum claims. Part of her role is to attend the Bari *Questura* with clients and to help them to access accommodation. In theory, asylum seekers should be able to access the reception system at an early stage, but in practice this is often not the case because of lack of capacity in the reception system. She assists about 20 people a week. In January 2018 she had six new clients who were Dublin returnees, one in February, none in March and three by the date she prepared the statement in April 2018.

231. Ms Rizzi says that asylum seekers that have not yet registered an asylum claim must go to the *Questura* in Bari to complete the *fotosegnalamento*. Two months previously the waiting time for an initial appointment for the *fotosegnalmento* was around 4-5 months, but at the date she prepared her statement, this had been reduced to around one month. Although the waiting time had improved, she was doubtful as to whether the authorities would be able to keep up this standard. In her experience, the waiting time between the *fotosegnalamento* and the *verbalizzazione* is around 6-8 months or even up to a year. She says that during that time those asylum seekers who were not rescued at sea, who went to the *Questura* independently, are mostly left homeless or have to rely on emergency shelters which only provide accommodation at night.

232. She says that there is one CARA centre in Bari and at least six CAS. The reception accommodation is full of those who arrive by sea, who keep arriving, so the reception centres are always full. Ms Rizzi says that there is an NGO approved by the Prefecture at Bari airport which might be able to organise

accommodation for Dublin returnees for one or two nights in a hotel. The funding is only for one or two days and then the person has to move on, which in most cases, means that people are left on the street.

233. As far as Ms Rizzi is aware, the waiting times at the *Questura* in Lecce are less than in Bari and it takes around two months to complete the formal asylum application. There is no CARA in Lecce, but many CAS and SPRAR projects.

234. Contrary to the list of airports said to have NGO advice services outlined in the Fact-finding Mission report (sourced from UNHCR), Ms Rizzi says that there is no airport NGO service at Brindisi airport to assist Dublin returnees with advice or accommodation.

235. The AIDA report states that the *Questura* in Bari and Foggia only allow people to make asylum applications twice a week. In early 2018 ASGI recorded specific obstacles to the procedure for Iraqi nationals in Bari, who were only allowed to make an asylum application if they produced a passport to certify their identity.

236. The evidence that arose from Ms Leo's interview with Manuela De Marco of Caritas is broadly consistent with the picture described by Ms Rizzi. The representative from Caritas said that everyone arriving by sea is eventually found a place, but the biggest problem is for those who come to Italy by land or internal frontiers. Ms De Marco understood that there were major problems in Bari for Dublin returnees and for BIPs although no detail is provided beyond this general statement.

Naples

237. We were not referred to any evidence relating to the procedures at the airport in Naples but the AIDA report states that there are delays in the initial *fotosegnalamento* process at the *Questura* in Naples. During 2017 the *Questura* only allowed asylum applications on Monday morning for a limited number of applicants. In September 2017, ASGI urged the *Questura* not to prevent access to asylum seekers and their lawyers. Although there was no response to the letter, the *Questura* introduced an online appointment procedure in January 2018. However, the appointment procedure is only available once a week and allows around 40-45 people to apply. The places are gone within a few minutes. In a later section of the report, AIDA reports that the average waiting period for completion of the C3 form was six months, but following the introduction of the online procedure in January 2018 the average waiting period is now only ten days.

Living conditions

238. The evidence shows that a significant number of migrants, who are not in the reception system, live in difficult conditions. It is difficult to ascertain the background and situation of those migrants. The figures could include (i) asylum seekers awaiting reception; (ii) BIPs who have fallen outside the reception system due to lack of capacity in SPRAR or difficulties integrating after a period in SPRAR; (iii) failed asylum seekers who have no right to remain

in Italy; (iv) transitory migrants; (v) migrants who are seasonal workers and (vi) some Italian citizens.

239. The evidence is consistent in saying that those who arrive by sea are usually found some form of initial accommodation, normally in CAS or first-line accommodation centres. In respect of other asylum applicants, the AIDA report states that, in practice, people can only access reception accommodation after formal registration of their asylum claim. Since the *verbalizzazione* can take place some months after the *fotosegnalamento*, asylum seekers can face obstacles to finding temporary accommodation. Those who lack economic resources resort to friends, emergency facilities or must sleep on the streets. The AIDA report refers to a figure of 10,000 people reported to be excluded from the reception system in Italy. The source of this figure is the MSF report, which we consider in more detail below. The AIDA report says that the full extent of the phenomenon is not known because there are no statistics on the number of asylum seekers who have no immediate access to reception accommodation immediately after the *fotosegnalamento*. The waiting times between the *fotosegnalamento* and the *verbalizzazione* differ between *Questura*.

240. MSF is involved in supporting migrants in unofficial settlements in Italy. The MSF report is a follow up to research conducted in 2016 and is said to be the result of constant monitoring activities carried out during 2016 and 2017 by way of repeated field visits in collaboration with an extensive network of local associations. The report states that, due to administrative barriers, and despite the law, migrants and refugees in informal settlements, regardless of their legal status, have diminishing opportunities to access medical treatment. MSF also notes that Italian citizens are among those living in informal settlements, whom it describes are just as marginalised.

241. MSF estimates that there are at least 10,000 people excluded from the reception system, including asylum seekers and BIPs, who had limited or no access to basic needs and medical care. The distribution of the informal settlements is fragmented and widespread throughout the country. The respondent sought to argue that the source of the repeated figure of 10,000 people excluded from the reception system was unclear. However, the first reference to the figure in the report is footnoted. The MSF report says that the number refers to the sites monitored in the survey and is not a census of the total number of asylum seekers and refugees living in informal settlements throughout Italy. Later in the report, MSF provides a detailed list of informal settlements, including the location, the nature of the settlement and the estimated minimum and maximum number of residence in the settlement, as well as some information about the conditions. The footnote says that the figures were last updated on 30 September 2017. From those figures we can ascertain that the estimated number of people living in the settlements identified by MSF range from 7,000 to 11,000 people. The figure of 10,000 people is, therefore, a reasonable estimate.

242. We have already considered aspects of the MSF report, which outline difficulties in accessing the reception system. The report says that in the last two years, the numbers of asylum applicants and BIPs living in occupied buildings has increased. Most people have never entered the institutional reception system or have been expelled from it. Occupations are self-managed by the

migrants and refugees, who are mostly from the same country of origin. Other occupations are managed by housing movements and might include a mix of nationalities as well as Italian citizens. Many occupations that began outside the law have been legalised. The law (no. 80/2014 and no. 48/2017) imposes limitations on access to healthcare because people living in occupied buildings cannot demonstrate a formal residence to register with the National Health services.

243. MSF outlines several cases of forced evictions, which push people into increasingly peripheral situations. We note that UNHCR criticised the eviction of around 300 Eritrean and Ethiopian refugees from an occupied building in Rome on 24 August 2017. UNHCR referred to "big refugee squats" in Rome, housing around 3,000 people, and urged Rome City Council to find urgent solutions for those who were evicted.

244. The MSF report goes on to describe the situations in different regions of Italy, including the concerns it has at the borders with France, Switzerland and Austria. It is not necessary for us to outline that evidence in this decision, because it is unlikely to affect returns from the UK to Italy, which will be to airports in the main cities.

245. The report describes the activities of the Baobab Experience in Rome. This organisation set up an informal camp in Rome in April 2017 to support migrants in transit. The report chimes with the observations of the Special Representative for the Secretary General on migration and refugees, who says that large numbers of people seek to travel through Italy to other European countries further north, many of whom stop in informal settlements while in transit. However, he also found that due to the increased restrictions on the northern borders, the nature of the Red Cross shelter in Rome he visited had changed. Most residents were Eritreans, who were waiting to register for relocation. Even though migrants in transit are a problem, now the vast majority of people arriving in Italy are being fingerprinted, even if they managed to cross the northern borders, in all likelihood they will be returned to Italy under the Dublin Regulation. He says that the "saturation of the reception system has had significant implications". The lack of integration support in Italy means that refugees often find themselves in dire circumstances in informal settlements. He visited one settlement in Rome housing around 1,200 people, the majority of whom had some form of protection status. They were living in a dilapidated building in the most rudimentary conditions.

246. The MSF report says that the number of people who have been returned to Italy under the Dublin Regulation and who are being helped in camps in Rome is increasing and there is a rising number of refugees who have left reception centres at the end of their allocated time. The evidence from MSF is limited to this general observation. It is difficult to ascertain quite how many '*Dublinati*' or BIPs are living in the marginalised conditions described by MSF in the report. MSF says that the chronic lack of places, and the absence of alternative housing solutions, are resulting in the multiplication of unofficial settlements in disused buildings far from city centres, where invisibility is accompanied by deplorable living conditions and where men, women and children cannot access their most basic needs.

247. The report describes unofficial settlements in Tor Cervara in Rome, where hundreds of migrants live in abandoned buildings, disused factories and warehouses, without water, electricity and gas, often in rat-infested buildings, surrounded by illegal landfill sites. In November 2017, MSF began an operation with a mobile medical unit. During the first six weeks of activity up to the end of 2017, MSF conducted 194 consultations in four settlements. Many of the people treated were asylum seekers or BIPs, although Italian citizens were also found in one of the sites visited. The medical issues included respiratory, dermatological, musculoskeletal and gastrointestinal problems, which were linked to the deeply unhealthy and insanitary living conditions. The incidence of mental health related problems is also said to be marked among the people living in informal settlements. These are said to result from traumatic experiences in their countries of origin and during transit, with secondary traumatisation due to their current living conditions and marginalisation from society.

248. In Rome, more than 100 occupations of buildings have been recorded, involving those who, in the United Kingdom, would be described as squatters. At least 600 asylum seekers and BIPs live in settlements linked to movements for the right to housing (about 20% of the total number of occupants). In the last five years these settlements have mitigated the lack of places in the reception system for asylum seekers and refugees. MSF says that they also represent the only alternative to what MSF describes as shameful conditions of the unofficial settlements. MSF describes one occupation where activities in the building include a legal assistance desk, Italian courses for migrants, carpentry and screen printing workshops and theatre courses in collaboration with schools in the neighbourhood.

249. MSF describes similar conditions in other areas of its work in Italy. The fact that an international humanitarian organisation such as MSF is operating in Italy is an indication of the scale of the problem.

Access to healthcare

250. During its meeting with Home Office officials, UNHCR noted that the Italian government has taken significant steps to establish an administrative and legal framework that aims to guarantee minimum standards to asylum seekers. This included the adoption, in March 2017, of "guidelines for the assistance rehabilitation of refugee's mental disorders and survivors of torture (sic)". The exact reference for the guidelines is not provided in the Fact Finding Mission Report, but it seems likely that they are the same guidelines referred to in the AIDA report, which were published by the Ministry of Health on 22 March 2017. The "Guidelines for the planning of assistance and rehabilitation as well as for treatment of psychological disorders of refugees and beneficiaries of international protection, victims of torture, rape or other serious forms of psychological, physical or sexual violence"[1] are intended to implement Article

[1] *Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale* – 22 March 2017.

27 of the 'Qualification Decree' (LD 251/2007 amended by LD 18/2014). The AIDA report says that the guidelines seem to be applied in Rome and Parma. An operating protocol is about to be signed in Trieste and Brescia.

251. The full extent of the implementation of the guidelines at a national level is somewhat unclear. The evidence does not include the content of the guidelines. Rachel Davis seeks to exhibit an extract from the Ministry of Health guidelines with her witness statement. In fact, what she exhibits is an extract from a SPRAR report dated January 2018 entitled "Protection of the Health of Migrants". The translated extract from the SPRAR report is limited to describing the purpose of the Ministry of Health guidelines. It suggests that the guidelines are not mandatory but advisory.

> "3.2.2. ….The publication aims to ensure healthcare in line with the need to protect the rights of holders and applicants for international protection and of holders of humanitarian protection in particularly vulnerable conditions, through paths suitable for the identification, taking charge, certification and treatment of victims of violence and torture, in continuity between the reception system for refugees and the system of social and health care. The target group is refugees, those seeking protection and persons under humanitarian protection, as it was not possible to consider only refugees as initially foreseen. Therefore, the guidelines are applicable to anyone who has experienced intentional violence, torture, rape, etc. including *those under the Dublin regulation*, those applying for protection, and *those denied entry*.
>
> Based on EU directives, which had to be transposed into Italian law, these are not guidelines but recommendations. They represent, in fact, an orientation for the various regions in the activation of a certain number of services in their territory in order to take charge of the mental symptoms from which some victims of torture and other intentional violence may suffer.
>
> The current distribution of migrants on the national territory makes it even more necessary and current to publish and disseminate the Guidelines in order to effectively harmonize the paths for the identification, taking charge and treatment of migrants in particularly vulnerable conditions, both in the initial reception and in the SPRAR system.
>
> The guidelines are also a reference document for ASLs, as they provide guidance with respect to a minimum standard that each ASL should implement, in order to use multidisciplinary pathways for symptom treatment conducted, first, in order to stabilize and subsequently rehabilitate. (sic)"

252. The AIDA report goes on to say that there is a right to medical assistance as soon as an asylum application is registered. However, very often access to this fundamental service is "hindered and severely delayed", depending on whether a tax code is assigned when the relevant *Questura* formalises the asylum application. Delays in access to healthcare reflect the delays in completing the *verbalizzazione*, which might be several months in certain regions. Pending enrollment, asylum seekers only have access to basic treatments provided for irregular migrants and to emergency care. They might also benefit from preventive public health programmes.

253. Asylum seekers must register with the offices of the relevant health board (ASL - *Aziende Sanitarie Locali*) where they have a registered address. Once registered, a person will be issued with a healthcare card (*tessera sanitaria*), which entitles the asylum seeker to a general doctor, special medical assistance, midwifery and gynaecological services, free hospitalisation in public hospitals and some

private subsidised services. The right to medical assistance should not expire in the process of renewing a residence permit, but in practice, asylum seekers with an expired residence permit have no guaranteed access to non-urgent treatment for a significant length of time due to bureaucratic delays in the renewal procedure.

254. The AIDA report says that there is a lack of information and training on international protection issues among "medical operators". One of the main obstacles to accessing health services is the language barrier. Medical operators usually speak Italian and there are no cultural mediators or interpreters to assist. As a result, asylum seekers and refugees often do not consult their general doctor and only go to a hospital when their medical condition worsens.

255. The AIDA report goes on to say that asylum seekers benefit from free health services following a "self-declaration of destitution submitted to the competent ASL". Asylum seekers are treated under the same rules as unemployed Italian citizens, but the practice differs throughout the country. The exemption from contributions to health costs only relates to the first two months after registration of an asylum application, when an asylum seeker is not permitted to work. During the two-month period, asylum seekers are allocated the same exemption code issued to unemployed people. After the two-month period, in some regions such as Lazio, Veneto and Toscana, asylum seekers are no longer exempted because they are not considered to be unemployed. In other regions, such as Piemonte and Lombardia, the exemption is extended until the asylum seeker finds a job. To maintain the exemption an asylum seeker needs to attest that they are unemployed to the relevant job centre (*centri per l'impiego*).

256. The MSF report says that residential registration continues to be the biggest administrative barrier to registering for the National Health Service for asylum seekers and BIPs. Residential registration is revoked with immediate effect on leaving reception centres. Declaring residence at occupied premises is prohibited by law (LD 80/2014). The result is growing recourse to the Temporarily Present Foreigner (STP) regime, which was originally set up for undocumented migrants. Increasingly, the most common way to access the National Health Service is via hospital emergency departments. Asylum seekers are using the STP code after filing the asylum claim (*verbalizzazione*). This mainly happens to people hosted in first-line reception centres and extraordinary reception centres. More and more primary healthcare services for migrants without a residence permit are delegated to private humanitarian organisations. In general, those organisations will not issue an STP code.

257. MSF says that translators and cultural mediators, with rare exceptions, are not employed in the National Health Service, either in administrative or medical services. The lack of translation services is particularly serious in direct access services, such as primary healthcare services, first aid, women's clinics, mental health centres and addictions centres. MSF states that there are "very serious critical issues" concerning mental health services where there are "significant shortcomings in the skills of ethno-psychiatry" and a lack of continuity of care for people with psychiatric disorders.

258. Anita Carriero is the project coordinator of the MEDU mobile clinic in Rome. In a letter to the applicants' solicitors dated 20 April 2018 she says that the MEDU team saw 871 patients in three different precarious settlements in Rome during 2017. She confirmed that MEDU continued to detect Dublin returnees among the homeless people they treat in Rome. Consistent with other evidence, she says that migrants applying for asylum at the Rome *Questura* were having to wait several months for *verbalizzazione*, during which time they did not have access to reception facilities or to medical and social aid because the asylum application was not formalised. Some BIPs faced problems renewing their residence permits, mostly due to difficulties in registering a residential address. The Rome *Questura* requires a registered residential address to renew the permit, which is difficult for migrants living in a precarious settlement to provide. The lack of registered address also prevents access to social and health services because a person needs a registered residential address before they can be issued with a *tessera sanitaria*, which they need to access the National Health Service (apart from emergency services).

Beneficiaries of International Protection (BIPs)

259. The Supreme Court in EM (Eritrea) (see paragraph 22 above) considered whether there was any justification to treat BIPs differently from asylum seekers. Lord Kerr made the following findings:

> "78. It seems to me that the relevant matter is not whether Dublin II treats refugees and asylum seekers differently or the same, but that it relates to anyone who has applied for asylum in the country from which he might be transferred, whether or not he has previously been recognised as a refugee in the country to which it is proposed he be transferred. This reflects the nature of Dublin II as a chiefly procedural instrument. 'Refugee' is defined, but referred to only once, obliquely, in article 7:
>
> > "Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire."
>
> 79. An applicant or asylum seeker is defined in article 2(d) of Dublin II as "a third country national who has made an application for asylum in respect of which a final decision has not yet been taken". A third country national is defined in para (a) of the same article as "anyone who is not a citizen of the Union within the meaning of article 17(1) of the Treaty establishing the European Community". The appellants meet these criteria and all are subject, therefore, to the provisions of Dublin II. Whether their respective positions as asylum seekers who have previously been granted refugee status and asylum seekers who have not been granted that status will make it more or less likely that they will be at risk of violation of their article 3 rights if returned to a listed country will depend on an examination of the particular circumstances of their individual cases. One can anticipate an argument that those who have refugee status in Italy are less likely to suffer such a violation because they can assert their rights under the Qualification Directive but whether such an argument would prevail must depend on the evaluation of the evidence which is presented on that issue."

260. The legal status of BIPs might give rise to a different evidential matrix in terms of the assessment of risk under Article 3. Laing J emphasised the point in Tabrizagh:

> "172. It is clear that the ECtHR does regard asylum claimants and BIPs differently, if, as in the case of Italy, BIPs are entitled to work and are on a par with Italian citizens. BIPs are not vulnerable to the same degree as asylum claimants, and are owed different obligations under the relevant Directive. …"

261. In NA (Sudan) the Court of Appeal noted that BIPs might be in a better legal position, but emphasised that refugees might have special needs and that it is necessary to consider the circumstances on the ground.:

> "109. …..The special needs of refugees do not necessarily disappear at the moment that they are granted asylum, and those who were peculiarly vulnerable before the grant of asylum may remain peculiarly vulnerable thereafter. Access to integration facilities of the kind required by article 25 of the Qualification Directive, including a limited period of free accommodation, may – depending on the circumstances of the case – be essential if they are to avoid falling into circumstances sufficiently degrading to constitute a breach of article 3. I must emphasise that I am referring only to the question of principle – that is, whether it is open to a BIP to advance an "*MSS*-type" claim at all. I am not saying that the actual situations of asylum-seekers and BIPs are identical. On the contrary, it is clear that they are not, which is the point being made by the ECtHR at para. 179 of its judgment in *Hassan* (para. 80 above). On the whole, because of the more extensive rights enjoyed by BIPs it may be reasonable to regard them as being at lesser risk of suffering inhumane or degrading treatment than asylum-seekers; but that may not always be so, and it is necessary to look at the actual circumstances on the ground in each case."

Assistance on return

262. The AIDA report says that it is a legal requirement for those who intend to lodge an asylum application, or foreigners who intend to stay in Italy for over three months, to be informed of the provisions of immigration and asylum law by the NGO services provided at the borders.

263. The unapproved notes of the Home Office meeting with a Caritas official state that if a BIP with special needs arrives at the airport, then the Border Police can call Caritas for assistance. The Home Office delegation was given an example of a diocese near Fiumicino airport which provided an apartment to receive returnees. Caritas was reported to want to extend this approach more widely. However, we are unable to give this rather vague and limited assertion much weight. We have already noted the inaccurate assertion made in the Fact Finding Mission Report about Caritas providing support at airports. The suggestion that BIPs with special needs might be provided with support by Caritas on a routine basis contradicts the other evidence.

264. The more reliable evidence obtained by Ms Leo from her interview with Ms De Marco of Caritas indicates that such interventions by Caritas are the exception rather than the norm. She provided only two examples of cases where Caritas was asked to take "extraordinary and exceptional action" funded by Caritas itself to assist vulnerable returnees. The requests were *ad hoc* and did not form part of the government reception system.

265. The SRC report says that BIPs are viewed as people with a valid residence permit. As such, they can enter Italy and travel freely throughout the country. However, this also means that they receive no assistance at the airport. Some

BIPs might be able to obtain information from the airport NGO if they can gain access to the office. The NGOs at the airports are in the non-Schengen zone. This means that returnees from other European countries, who generally arrive in the Schengen zone, cannot reach the NGOs for advice without a police escort.

266. The evidence suggests that the advice services offered by NGOs at the airport are confined to asylum seekers rather than those who have already been granted protection status. BIPs might receive some advice if they are able to access the relevant NGO office, but the service offered will be limited to advice.

Renewal of permits

267. The AIDA report says that international protection permits (for refugee and subsidiary protection status) are granted for a period of five years. Humanitarian protection permits are granted for two years. The main problem faced in issuing permits is the lack of a registered residential address. A residence permit is renewed by sending the appropriate form through the post. There is a long wait, often several months, before a person can obtain a new permit. The residence permit for subsidiary protection can be renewed after verifying that the conditions are still satisfied. The application is sent back to the relevant Territorial Commission. A criminal record check will be carried out. The permit might not be renewed if the person has committed a serious crime.

268. The letter from Anita Carriero of MEDU dated 20 April 2018 states that there are problems for some BIPs in renewing expired permits. This is in part because of a lack of information about the procedure for renewal, but mostly due to the difficulties in obtaining a registered residential address. The Rome *Questura* requires a registered residential address in Rome to renew a residence permit. This is difficult for those migrants who live in precarious settlements.

269. The MSF report is consistent in saying that an increasing number of migrants do not manage to renew their residence permits because they do not have a document confirming a registered residential address. It is necessary to show a valid residency permit to obtain residence registration. The police in Rome require proof of residence for the renewal of a residency permit, which generates a situation in which migrants bounce between the Town Hall and the Police Headquarters without being able to obtain either document.

270. The SRC report says that a person's residence permit (*permesso di soggiorno*) is often taken away from them when they arrive in another European country. The person will need to reapply for a permit when they return to Italy. If a person loses the residence permit, the loss must be declared. If a person applies to extend the residence permit it should be issued within 60 days, but delays are possible. Some *Questura* demand proof of a registered residential address (*residenza*) to renew the permit, which is distinct from a current place of residence (*domicilio*) that is not necessarily a permanent address. Although the Ministry of the Interior sent a circular to all *Questura* making it clear that proof of a registered residential address is not required to renew a permit, some *Questura*, such as Rome and Bologna, have not changed their practice. Because a residence permit is required to apply for a *residenza,* the administrative process

is often difficult and prolonged. Some people have considerable problems renewing their residence permit. Although it is possible to give the address of an NGO as a *residenza*, the NGO must vouch for the person and regularly check that they are still in the region, making the process more complex and time-consuming.

271. The SRC report goes on to say that the administrative barriers to extending the residence permit also mean that the process can be time-consuming and expensive. In Rome, it takes eight to nine months on average. This is problematic for people who need to extend their permit at the Rome *Questura*, who do not live in Rome e.g. agricultural workers. They do not have a place to stay while extending their permit. In an interview with MEDU in February 2016, the organisation reported that they had talked to several people who were sleeping on the street at the railway station who had come to Rome to extend their residence permits. Many people do not have enough money for the fees for extending a permit and for other official documents.

Accommodation & integration

272. The AIDA report states that BIPs face a "severe lack of protection concerning accommodation". The law provides for accommodation for asylum seekers during the asylum procedure, but does not contain express rules for the accommodation of BIPs (LD 142/2015). Some offices cease reception provisions in government centres or in emergency reception centres immediately after recognition of status. BIPs accommodated in SPRAR, or those who can obtain a place in SPRAR after being notified of protection status, can benefit from an additional period of accommodation.

273. According to the SPRAR guidelines, as amended by the Ministry of the Interior Decree of 10 August 2016, BIPS accommodated in SPRAR keep their right to accommodation for an additional six-month period after being notified of protection status. If they move to a SPRAR after being notified of protection status, they can be accommodated for six months after entry into the SPRAR. A further extension can be authorised by the Ministry of the Interior for a period of six months or more "based on duly motivated health problems or specific integration targets". We infer from this that it is a discretionary power to extend the time spent in SPRAR in compelling or compassionate circumstances. However, the AIDA report goes on to note that SPRAR represents only a small part of the accommodation system. In practice, BIPs notified of protection status in a CAS are disadvantaged compared to those who obtain a place in SPRAR. A person could be allowed to stay in a reception centre a few months, a few days or just a day, depending on the discretion of the responsible Prefecture. Divergent practices have been reported across the regions. This means that BIPs might experience destitution and homelessness. To offer some prospects to BIPs the Ministry of the Interior issued a circular on 05 May 2016 stating that SPRAR should give priority to the admission of BIPs rather than asylum seekers. Given the limited number of places in SPRAR, the measure is unlikely to solve the problem for BIPs.

274. Ms Iuzzolini's evidence makes it difficult to assess how long a BIP might have to wait for a place in SPRAR, if one becomes available at all. She says that it is

impossible to giving waiting times for SPRAR. It depends on the availability of places. BIPs can only be accepted in SPRAR accommodation. If a BIP cannot obtain a place in SPRAR, it is unlikely that he or she will find government-provided accommodation elsewhere. There must still be an official referral into SPRAR. A BIP can self-certify his or her status and does not need to present a residence permit. If the BIP has already been in SPRAR, there will be records. A person can ask to be readmitted to SPRAR and can complete the procedure. Once a person has received services in SPRAR it is unlikely that they will be readmitted, but each application is considered on a case by case basis. The rule is that once someone has received the allocated period of SPRAR services, no further service will be provided.

275. BIPs are entitled to equal treatment with Italian citizens in relation to healthcare and social security. We have already dealt with access to healthcare. The AIDA report says that the provision of social welfare is not conditional on residence in a specific region, but in some cases is subject to a minimum residence requirement in the country. Income support (*Reddito di inclusione*) is subject to a condition that a person has continuous residence for at least two years. In practice, this can give rise to serious obstacles for BIPs. Some social welfare provisions are conditional upon civil registration. Asylum seekers in reception facilities must be registered. However, when the accommodation is revoked, or the person is asked to leave the reception centre, the BIP will be deleted from the registry after notification from the manager of the centre.

276. The AIDA report says that SPRAR has standardised integration programmes. Asylum seekers and BIPs accommodated in SPRAR are generally supported by way of individualised projects including vocational training and internships. Vocational training and other integration programmes can be provided by means of national public funds or the Asylum, Migration and Integration Fund (AMIF). The Ministry of the Interior can finance specific NGO projects relating to integration and social inclusion. The projects financed under AMIF are limited in terms of the period of activity and the number of beneficiaries. Municipalities can also finance vocational training, internships and specific employment bursaries (*borse lavoro*). The fund is available to Italians and foreigners. However, asylum seekers accommodated in government reception centres have limited opportunities to attend such training.

277. The Special Representative of the Secretary General on migration and refugees made the following observations about the integration of BIPs following his fact-finding mission in October 2016.

> "Recognised refugees are entitled to reception for a short period following recognition of their refugee status. However, the saturation of the reception system has had significant implications. As noted above, asylum-seekers are supposed to transition to a SPRAR facility early on in the asylum process. There they should receive a number of services to help them develop the necessary skills and knowledge to integrate into Italian society once they leave the reception system. In practice, the shortage of SPRAR places means that many spend their entire time in CAS, where these services are lacking. While EU funds are available to support integration activities more generally, in practice, they are linked to activities involving SPRAR beneficiaries because these people are easier to identify. Informal integration projects exist in some places. However, they are very much ad hoc and on a relatively small scale, and Government funding is not available. As a consequence, once their entitlement to

> reception ends, those who have not gone through the SPRAR system have not acquired the competences needed to integrate successfully. There is very little general welfare support in Italy; so refugees are left to make their own way. Unable to speak the language and with no prospect of finding a job, they often find themselves in dire circumstances in informal settlements.
>
> We visited one such settlement – the Palazzo Selam – in Rome. There, around 1,200 Eritrean, Sudanese, Somali and Ethiopian nationals, the majority of whom have some form of protection status, live in a dilapidated building in the most rudimentary conditions. The building is at full occupancy. Members of the four national groups newly arrived in Rome who have nowhere else to stay are forced to sleep in atrocious conditions in the basement of the Palazzo Selam, which was never intended for human occupation. The anger of the residents – who feel abandoned by the authorities – is manifest. Many of the residents do not speak Italian and are unable to access local services; few have legitimate employment. Some have been living there since the establishment opened in 2006.
>
> There is a need for a comprehensive approach to integration which is not linked exclusively to the SPRAR network. I understand from my interlocutors that there is a draft National Integration Plan, but the document has not been made public."

278. The Parliamentary Committee report says that, despite the undoubted progress that has been made in developing the reception, protection and integration system for asylum seekers and refugees in the last 15 years, the system is still far from operating effectively. The significant growth in migration means that more reception capacity is needed as well as "an overhaul and improvement of reception measures, which fail too often because they do not lead to the true integration of the people in the centres, despite the application of considerable public resources." The Parliamentary Committee report goes on to say that reception is not designed to promote and support integration, but only to provide emergency help and primary reception. The report states:

> "The problem of effective management of discharge form the reception system must also be faced. We are increasingly seeing cases of holders of international protection being discharged from the reception network with a multi-year residence permit but who, because there is no structured system providing them with access to employment policies and services, slide into social marginalization, particularly in the big cities where they frequently take over empty buildings in order to resolve chronic homelessness. Furthermore, the real numbers of applications for international protection and the forecasts we can currently make tell us that even though secondary reception may be increased and improved, its ability to cope with the rising numbers of applicants and holders of international protection will remain very limited."

279. UNHCR has highlighted problems relating to the integration of BIPs for some time. The recommendations made in July 2012 expressed concern about shortcomings in Italian legislation and practice that might hinder refugees from becoming self-reliant. Existing integration policies did not take into account the initial disadvantage of refugees in the labour market compared to Italian nationals. Measures offering support to refugees to access the labour market needed to be "rolled out". Refugees granted some form of international protection may no longer benefit from assistance offered to asylum seekers and therefore struggle to access housing. The low capacity of the SPRAR system at the time limited its capacity to assist refugees to secure adequate housing. As a result, there was a risk that destitute refugees might become homeless.

280. The recommendations made in July 2013 said that UNHCR published a document entitled "*Italia paese di protezione?*", which outlined "persisting gaps in the asylum system in Italy, in particular on asylum-seeker and refugee reception and integration..". The report does not appear to be included in the evidence. The July 2013 recommendations acknowledged that there had been significant improvements, but a number of gaps remained, resulting in a situation in which "a significant number of beneficiaries of international protection lead deprived and marginalized lives." At that time, Dublin returnees who had registered an asylum claim generally had access to transit accommodation centres on return to Italy available in Milan (35 places), Rome (150 places), Venice (40) and Bari (20). We have not seen any current evidence to suggest that temporary accommodation centres of a similar kind are reserved for Dublin returnees. Even then, BIPs granted protection in Italy before their departure did not have access to those centres when returned under the Dublin Regulation.

281. The notes of the Home Office meeting with UNHCR in October 2017 say that UNHCR noted that Italy is facing economic challenges and that there are inequalities in Italian society. Integration of migrants is a general problem. However, there is no discrimination in law and BIPs are treated like Italian citizens.

282. We have already outlined a press release issued on 24 August 2017 in which UNHCR called for an urgent solution to be found for evicted refugees in Rome and for a national commitment to integration. UNHCR says that refugee integration is a structural problem throughout Italy and called on the government to approve the National Integration Plan and for the competent authorities to implement the plan in "a spirit of true collaboration". UNHCR is prepared to provide active co-operation to support the Italian authorities.

283. The AIDA report says that the Ministry of the Interior published the National Integration Plan for BIPs in September 2017. The plan says that, pending the SPRAR system becoming the only second-line reception system, CAS must adjust their services to offer similar services to those offered in the SPRAR system, such as language training and work services to offer better opportunities for integration. However, in the same section of the report AIDA points out that the Ministry of the Interior adopted tender specifications as recently as March 2017 for the supply of goods and services relating to CPSA, first-line reception centres, CAS and CPR, which only foresaw a "basic level of services". The AIDA report concludes that this indicates that the National Integration Plan is far from being implemented in practice.

284. The National Integration Plan makes clear that it represents a first step towards building a well-coordinated system for integration in Italy, while identifying the most urgent priorities. It is intended to show a "clear policy direction", which will be developed further in future. In order to develop the work represented in the plan, a National Integration Council (*Tavolo Integrazione*) will be established to coordinate the implementation as well as the monitoring and evaluation of the interventions proposed. The plan suggests interim measures for first-line reception centres to provide first steps towards integration, but clearly envisages a continued expansion of the SPRAR system as the standard

model. The plan acknowledges that integration is a complex process, which should start from the first reception stage. Integration requires the engagement and awareness of the host population and must therefore be based in local communities. Specific attention will be given to vulnerable people such as refugee women, victims of trafficking and unaccompanied minors. We find that the plan represents an important first step in developing coordinated policies regarding integration of BIPs, but at the date of the hearing, there is no evidence to show that the aspirations outlined in the plan are being implemented in practice.

285. The only other point that might be useful to note from the National Integration Plan concerns the figures relating to BIPs. The plan says that there were 65,765 holders of a residence permit for international protection (including refugees and grants of subsidiary protection). By 31 August 2017 the number of BIPs had increased to 74,853.

The Tribunal's observations on the evidence

286. We make the following observations on the evidence.

287. The legal and administrative framework for the consideration of protection claims and the reception of asylum seekers in Italy continues to develop and improve. The 'Reception and Procedures Decree' (LD 142/2015) came into force on 15 September 2015 and is intended to transpose the 'recast' Reception Directive (2013/33/EU) and the 'recast' Procedures Directive (2013/32/EU) into Italian law. The Italian government has developed several sets of guidelines with the intention of improving reception services and health services for victims of torture and has taken an initial step towards developing a National Integration Plan.

288. Despite these positive developments, the shortcomings and capacity issues identified in earlier cases continue to be apparent but must be considered in the context of the massive increase in asylum applications made in Italy since 2015.

289. Large numbers of migrants continued to arrive in Italy by sea during 2014 (170,100), 2015 (153,842) and 2016 (181,436). The number of arrivals in the early part of 2017 indicated a 20% increase from the same period in 2016. The number of arrivals by sea began to drop sharply in the second half of 2017 as a result of a series of measures, including a co-operation agreement with the Libyan authorities, which is in effect a 'push back' policy. Despite the marked reduction of arrivals by sea, the number of asylum applications made in Italy in 2017 (130,119) still exceeded 2016 (123,600). This is likely to be due to the tighter controls we have described.

290. Other policies continue to put pressure on the Italian asylum system. The increase in fingerprinting of arrivals by sea in 'hotspots' has led to a high number of incoming 'take back' requests under the Dublin Regulation. In 2016 Italy received 64,844 requests although only 4,061 transfers were recorded. Tighter controls on the northern borders with France, Switzerland and Austria appear to be resulting in large numbers of migrants being returned under the Dublin Regulation, bi-lateral agreements or simply being 'pushed back' to Italy.

291. The fact of the marked reduction in arrivals from outside the EU means that the evidence as a whole, much of which involves the position before the downturn, needs to be assessed in that light. The AIDA and MSF evidence does, however, engage with the position following the reduction. The UNHCR, speaking in 2017, does not consider the situation in Italy to be comparable with that in Greece

292. An EU relocation programme was set up as part of the European Agenda on Migration with the intention of alleviating the pressure on the Italian and Greek asylum systems. The programme fell far short of the planned target of 160,000 relocations. When the programme came to an end in September 2017 only 12,690 people had been relocated from Italy. In the context of the large number of asylum applications made in Italy in the same period, it is unlikely that the scheme alleviated any pressure on the Italian asylum system.

293. The Italian government continues to make significant efforts to increase the capacity of the reception and accommodation system in response to the large number of arrivals. There are no comprehensive statistics on the capacity of the reception system. The decentralised nature of the system means that the quality of reception conditions might vary from region to region.

294. The reception system does not function in the way intended by the legislation. First-line reception facilities are intended to accommodate asylum seekers for a short period during the initial registration of a claim before being transferred to second-line reception facilities (SPRAR), which should represent the norm for reception of asylum seekers. In reality, the vast majority of asylum seekers spend their time, often many months or years, housed in basic (or very basic) conditions in extraordinary reception centres (CAS). The emergency situation prompted by the arrival of such large numbers of people required a massive expansion of CAS facilities. In July 2017, 205,000 migrants were accommodated in the reception system, of whom 158,607 were accommodated in CAS. Basic emergency accommodation has become the norm for reception in Italy, despite the continuing efforts of the Italian government to expand the capacity of the SPRAR network. Although CAS facilities are, in many cases, far from ideal, there is no evidence from those well-placed to opine, that the facilities risk Article 3 violations in respect of those who do not have particular vulnerabilities.

295. The SPRAR network provides a higher level of support and accommodation. The evidence clearly and consistently states that there are not enough SPRAR places to cope with the demand. The SPRAR network forms a small part of the reception system. There is no clear evidence showing the actual capacity of the system, but it is likely to be around 30,000 places. Funding is available for more places, but further work needs to be done to encourage local authorities to take up the funding to increase the number of SPRAR facilities.

296. The SPRAR network provides places for 'ordinary' cases as well as facilities that are suitable for 'vulnerable persons' including families with children (around 80-100 places), unaccompanied minors (3,488 places) and people with mental health issues and physical disabilities (734 places). The SPRAR reception

capacity has grown exponentially since 2011; although the evidence is inconsistent, it may have increased from 9,356 places to 35,869 places. Even so, there is still an acute lack of capacity in the SPRAR network, which only includes a small proportion of places suitable for vulnerable people and a tiny proportion of places suitable for people with mental health issues or physical disabilities. It is reasonable to infer that a significant number of those who may be vulnerable and/or have special needs are likely to be accommodated in emergency reception facilities, given the high numbers of asylum seekers housed in such facilities and the evidence indicating an increasing number of people with special needs.

297. UNHCR has not recommended a halt on returns to Italy but does recommend a "proactive and flexible use of the discretionary clauses, in particular article 17(2) of the Dublin III regulation in a flexible manner in order to ensure maximum protection of the asylum-seeker and full respect for his/her human rights, in particular as regards vulnerable applicants and applicants with relatives in the United Kingdom." The UNHCR view is to be given very significant weight.

298. Removal under the Dublin Regulation is a government to government transfer. As we noted in paragraph 164 above, these transfers are of a qualitatively different nature to the way in which the Italian authorities might deal with the large number of arrivals of asylum seekers who enter the country by sea or those arriving overland. That is of significance, when assessing the evidence overall. It means that caution must be employed when looking at the evidence about migrants in general in Italy.

299. The Italian authorities normally indicate the relevant airport for return and ask to be informed of any special needs at least 10 days in advance of the transfer. The procedure on return may depend on the circumstances of the individual case. A person who has previously claimed asylum in Italy will be required to return to the relevant *Questura* where the claim is registered. If the relevant *Questura* is in the Prefecture where the airport is situated, a Dublin returnee might be able to access advice services at the airport, which may be able to assist in arranging accommodation. However, the nature and extent of those services may vary depending on the airport. If the asylum claim is not registered in the Prefecture where the airport is situated, assistance is limited to providing advice and a train ticket to the relevant *Questura*, which might be some distance from the airport. If a person has not claimed asylum the relevant *Questura* will be in the Prefecture where the airport is situated.

300. The Italian Dublin Unit is not responsible for arranging accommodation. The only exception is a special procedure for families with children where the Dublin Unit will liaise directly with the SPRAR *Servizio Centrale*. The Dublin Unit will notify the relevant Prefecture of the Dublin returnee's arrival. The relevant *Questura* and the local Territorial Commission would then be responsible for the claim.

301. Delays and obstacles to registering an asylum claim continue to be reported. The extent of the problem appears to vary from region to region. A possible consequence of such delay is that a person might be left without

accommodation until formal registration of the claim (*verbalizzazione*). Delays in formal registration of a claim might also affect access to healthcare, although emergency healthcare would still be available.

302. The evidence indicates that a significant number of migrants live in marginalised conditions outside the main reception system. It is difficult to ascertain the backgrounds of people living in these informal settlements and occupied buildings; but it would appear that a significant number may be transitory migrants who have chosen not to access the reception system in Italy.

303. In law, Beneficiaries of International Protection have similar rights to Italian citizens. They are entitled to work and have access to healthcare. In practice, the evidence suggests that BIPs may only receive limited assistance from advice services at the airport and may face obstacles and delays in renewing a residence permit. A BIP may have an entitlement to enter the SPRAR network for a period of six months, but access to accommodation will depend on availability. SPRAR is unable to provide an indication of waiting times. A BIP is unlikely to receive assistance with integration unless admitted to a SPRAR.

GENERAL CONCLUSIONS

A. 'Ordinary cases' (not exhibiting particular vulnerabilities or disabilities)

304. The evidence before the Upper Tribunal shows that the system in Italy for dealing with migrants continues to be under intense pressure. Many of the concerns about the functioning of the Italian asylum system highlighted in previous Higher Court cases continue to be raised by international organisations and NGOs working on the ground in Italy. In previous cases, the courts considered evidence showing high numbers of arrivals in Italy, delays in registering asylum claims and accessing accommodation, the nature of the accommodation and the limited capacity of SPRAR. The courts also considered evidence about integration of BIPs. Despite the difficulties faced by the Italian authorities due to pressure of numbers, the courts have consistently found that the evidence did not show sufficiently widespread and substantial operational problems to give rise to a general risk of Article 3 ill-treatment, sufficient to rebut the presumption that Italy will comply with its international obligations.

305. We accept that the Italian asylum system is under more intense pressure than when the High Court last comprehensively reviewed the position. It is however, still the case that the UNHCR is not recommending that third country signatories to the Dublin Regulation should suspend removals to Italy. In the context of the Dublin Regulation, the recommendations made by UNHCR have been given considerable weight. In EM (Eritrea) the Supreme Court acknowledged the "unique and unrivalled expertise of UNHCR". As in this case, the UNHCR recommendations on Italy in July 2012 and July 2013 were more muted and did "not partake of the "pre-eminent and possibly decisive" quality of the reports on Greece". The Supreme Court emphasised that the recommendations on Italy contained useful information that the courts should consider carefully and went on to say:

> "74. …Assumptions should not be made about any lack of recommendations concerning general suspension of returns under Dublin II to Italy but it is of obvious significance that UNHCR did not make any such proposal. The UNHCR material should form part of the overall examination of the particular circumstances of each of the appellant's cases, no more and no less."

306. We conclude that despite the increasing pressures on the Italian asylum system, the fact that UNHCR has not recommended a general halt on returns to Italy under the Dublin Regulation is significant and is a matter that a First-tier Tribunal judge would be bound to give weight.

307. We acknowledge that asylum seekers in general are a "particularly underprivileged and vulnerable population group". However, the Reception Directive makes a distinction between what could be termed 'ordinary' asylum seekers and certain categories of people deemed to be 'vulnerable persons', who have certain characteristics which indicate that they are particularly vulnerable.

308. In an 'ordinary case' of an asylum seeker who is not particularly vulnerable we conclude that the evidence is not sufficiently consistent or cogent to show a general risk of Article 3 ill-treatment sufficient to rebut the presumption of compliance.

309. An 'ordinary' asylum seeker would be returned to Italy with advance notice to the Italian authorities. Any other information that might be relevant to that person, including health information, will also be sent. The Italian Dublin Unit will notify the relevant Prefecture of the person's arrival. In most cases the person will be returned to one of the main airports, where NGO advice services are available, albeit the evidence shows that the level of service might vary from one airport to another. Some NGO advice services will assist an asylum applicant to find accommodation; but the core function is to refer the applicant to the relevant *Questura* to register or resume an asylum claim. The fact that some services may not be as comprehensive as others is insufficient reason to rebut the presumption that the Italian authorities will comply with their obligations.

310. We do not accept that anything turns on the fact that an 'ordinary' asylum seeker might be required to make a journey from the airport to the relevant *Questura* where the asylum claim should be registered or resumed. Leaving aside 'vulnerable persons' (see below), it cannot seriously be contended that a person who has been able to travel to Italy and who then chooses to travel to the United Kingdom is likely to face inhuman or degrading treatment by reason of having to make such a journey to the *Questura*.

311. We accept the evidence continues to show that delays occur in registering asylum claims in some *Questura* and recognise that formal registration by way of *verbalizzazione* (C3 form) usually is a necessary step to access the reception system. The problem was identified by UNHCR in 2012 and 2013 and has been considered by the courts on previous occasions. The evidence does not indicate that the periods of delay in registering an asylum claim and accessing the reception system have increased to such a significant extent that an 'ordinary' asylum seeker would face long periods of homelessness of the kind that would engage the threshold required to show a breach of Article 3. In NA (Sudan) the

court accepted that long-term homelessness in conditions of the kind described in MSS may constitute inhumane and degrading treatment but short-term homelessness need not [160]. We recognise that it is not ideal for anyone to be temporarily homeless while waiting to register an asylum claim, but the evidence shows that interim services provided by NGOs, church and civil society groups are available in the main cities, which can help to ameliorate the worst effects of being left without reception services for a temporary period.

312. As we have noted, although the MSF report says that Dublin returnees are amongst those being helped in camps in Rome, we do not know how many of these there are and therefore the evidence does not provide a sufficient case for concluding that this might be a realistic possibility for someone who is returned from the United Kingdom under the Dublin Regulation. In particular, the MSF report says that most of those living in occupied buildings have never accessed the institutional reception system or have been expelled from it in the absence of proper social inclusion i.e. BIPs.

313. The evidence shows that the Italian authorities have taken steps to increase the capacity of the reception system in order to respond to the large numbers of asylum seekers entering Italy. The efforts to rapidly increase the capacity of the SPRAR system have been overtaken by the year on year increase in the number of asylum claims (until the recent drop in arrivals). As a result, there has been a massive increase in the use of basic emergency accommodation (CAS). Despite improvements to the legal framework, basic emergency accommodation has become the norm for the reception of asylum seekers in Italy. Although there are reports of poor conditions in certain CAS and first-line reception centres, there is no authoritative finding by an NGO or other body to suggest that the general conditions in CAS and first-line reception centres fall below Article 3 standards for 'ordinary' asylum seekers without particular vulnerabilities.

314. SPRAR reception services are described as "a clear example of best practice". It is not suggested that the conditions in SPRAR would breach Article 3.

315. The evidence on access to healthcare likewise does not disclose anything that could lead to the conclusion that Dublin returnees face a real risk of inhuman or degrading treatment, as a result of being unable to get urgent medical assistance. Problems arise from time to time as a result of lack of interpreters and cultural mediators; but that may be said of other countries, including the United Kingdom. The ability to access health care may be more difficult for those in unofficial accommodation. Even here, however, there is no evidence to show that someone who urgently requires medical assistance would be at real risk of serious harm because he or she will not be able to access urgent treatment.

316. In conclusion, we find that the evidence is not such as would entitle a First-tier Tribunal, properly directed, to find that there is a real risk of an 'ordinary' asylum seeker suffering Article 3 ill-treatment if returned to Italy pursuant to the Dublin Regulation. The evidence does not rebut the general presumption that Italy will comply with its international obligations in such cases.

B. Vulnerable persons (including asylum seekers and BIPs)

317. As a general matter, we find that the threshold for Article 3 ill-treatment *may* be met in cases involving demonstrably vulnerable asylum seekers and BIPs. We shall explain why.

318. In Tarakhel, the ECtHR reiterated the general principles formulated in Soering v UK [1989] 11 EHRR 439. To fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity. The assessment of the minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim.

319. In previous cases, the courts have found that there would be no breach of Article 3 even if particularly vulnerable asylum seekers and BIPs were returned to Italy. However, in respect of this category of people, we have considered significant new evidence which, in our assessment, alters the picture.

320. The first significant difference between this case and previous cases is the nature and extent of the evidence produced by the parties. In the earlier cases, the courts considered evidence from a small number of lawyers and NGOs working in Italy and from the British Asylum and Immigration Liaison Officer in Rome. In the present case, the respondent conducted a Fact-finding Mission to Italy where a number of Italian officials, including officials at the Ministry of the Interior, the Border Police and at SPRAR were interviewed. The respondent also met with relevant organisations such as UNHCR, Caritas and the Red Cross. The fact that a number of justifiable criticisms have been levelled at the resulting 'Fact-finding Mission Report' goes to the weight that can be attributed to certain aspects of that evidence. Where the summary of the meeting has been approved by the interviewee, weight can be placed on the evidence, but a First-tier judge would be bound to approach other aspects of the evidence with some caution if the summary has not been approved. In turn, the applicants have also compiled a large amount of evidence from lawyers and civil society groups working in Italy. Some of the evidence compiled by the applicants comes from witnesses whose evidence is bound to be given weight. For example, the applicants also contacted senior officials in SPRAR and the Italian Dublin Unit in Rome.

321. The second significant difference is the position taken by UNHCR. In previous cases, the fact that UNHCR did not make an unequivocal recommendation to halt returns to Italy of the kind made in relation to Greece was a significant matter. The UNHCR's concerns about the shortcomings in the Italian asylum system due to high numbers of claims were taken into account. Ultimately, they were found not to be sufficient, taken with other evidence, to show a real risk of Article 3 ill-treatment such that it would rebut the presumption that Italy would comply with its international obligations.

322. The up to date information from UNHCR is of a somewhat different nature to the general recommendations made in public documents in 2012 and 2013. In the present case, Home Office officials met with a UNHCR representative in Rome. The evidence shows that UNHCR conducts significant operations in

Italy. It monitors the conditions in reception centres and provides advice and assistance to the Italian government on matters within its remit. We are satisfied that the "unique and unrivalled expertise" of UNHCR officials working in Italy would have to be given significant weight by a properly directed First-tier Tribunal judge. A First-tier Tribunal judge would be bound to give weight to the fact that UNHCR still does not make a recommendation to halt returns to Italy but would also have to give weight to its other recommendations.

323. UNHCR expressed particular concerns about vulnerable persons and made a direct recommendation to British government officials to use the discretionary clause contained in Article 17(2) of the Dublin Regulation in a "proactive and flexible" way in cases involving vulnerable people and those who have family members in the UK.

324. We have considered the evidence relating to the treatment of vulnerable persons in some detail above. Although we recognise that UNHCR did not go as far as to recommend that even vulnerable people should not be returned to Italy, the recommendation must be considered in the context of the clear and consistent evidence showing an acute lack of capacity in the SPRAR system and the recent evidence from a senior official at SPRAR, which indicates that only a small proportion of places is likely to be suitable for people with significant physical and mental vulnerabilities.

323. The recommendation made by UNHCR is underpinned by concerns about the capacity of the Italian asylum system to adequately safeguard particularly vulnerable people returned under the Dublin Regulation. This is borne out by the evidence before us. We are concerned that the evidence from a senior official at SPRAR indicates that other categories of vulnerable people (other than families with children) follow the same standard procedure as 'ordinary cases'. The requirement to travel to the relevant *Questura*, the risk of delay and the associated possibility of a temporary period of homelessness or accommodation in basic facilities such as a CAS does not reach the relevant threshold in such 'ordinary cases'. But, depending on the nature and extent of a person's vulnerability, those same obstacles and conditions might reach the Article 3 threshold in cases involving people who demonstrate particular vulnerabilities.

324. The categories of "vulnerable persons" identified in the Reception Directive should be a starting point. However, the extent of a person's particular vulnerability must be of sufficient severity to show a potential breach of Article 3. It is difficult to identify in what circumstances a particular vulnerability might cross the Article 3 threshold. The individual circumstances of each case must be considered carefully. A person who makes general assertions about mental health problems without independent evidence or who has been diagnosed with mild depression or mild Post Traumatic Stress Disorder (PTSD) may well still have sufficient resilience to cope with the procedures on a Dublin return to Italy, even if this entails the possibility of facing a difficult temporary period of homelessness or basic conditions in first-line reception facilities. Similarly, a person with a relatively minor physical disability, such as loss of

sight in one eye or some restriction in movement, is likely to be able to face the possible challenges, without crossing the Article 3 threshold.

325. However, there will be cases where a person's particular vulnerability is sufficiently serious that the risk of even a temporary period of homelessness or housing in the basic conditions of a CAS might cross the threshold, for the "certification" purposes with which we are concerned. Such cases are likely to include those with significant mental or physical health problems or disabilities. Other people may have inherent characteristics that render them vulnerable e.g. unaccompanied children or the elderly. In such cases, the only appropriate accommodation is likely to be the supportive accommodation in SPRAR. It is difficult to specify when a particular vulnerability might require that level of safeguarding in order to protect their rights under Article 3. The necessary level of support will depend on the circumstances of each case.

326. We are concerned that there is no procedure for such particularly vulnerable people to be referred directly to SPRAR by the Italian Dublin Unit. The evidence indicates that the Border Police sometimes make direct referrals to SPRAR, but Ms Iuzzolini made clear that there is no special procedure for vulnerable people to be referred to SPRAR except through the normal procedure used for 'ordinary cases', whereby a person will be referred by the relevant authority e.g. the responsible *Questura* or Prefecture. The only exception is in cases involving returns of families with children, where a special procedure has been put in place for the Italian Dublin Unit to refer families directly to SPRAR following the ECtHR decision in Tarakhel.

327. Despite the fact that both parties spoke to senior officials in SPRAR and other government departments, no clear evidence has emerged as to how long it might take to find a suitable place in SPRAR for a particularly vulnerable person. The evidence clearly and consistently states that there are not enough places to meet the demand. Neither Ms Iuzzolini nor the SPRAR official interviewed by the Home Office could give any indication of the likely waiting time for a place to be found in SPRAR. Ms Iuzzolini said SPRAR does not operate a waiting list. Waiting times vary considerably. People might wait "days or longer" for a place in SPRAR.

328. BIPs who can demonstrate significant mental or physical health problems or disabilities, as described above, are likely to be in the same position in terms of access to SPRAR. For these reasons, we conclude that there is no basis upon which to distinguish between demonstrably vulnerable asylum seekers and BIPs.

329. The Court of Appeal in NA (Sudan) rejected the contention that the decision in Tarakhel extended to requiring specific assurances in cases involving other categories of vulnerable persons. The clear focus of the decision was on the particular vulnerability of families with children [112-120]. The Court of Appeal made clear that it was highly desirable that the ECtHR and domestic tribunals adopt a consistent approach, provided that the approach "is founded on good evidence and .. that decision-makers recognise that the facts of a particular case, or evidence of significant changes in the situation in Italy, may require a departure from it." [110].

330. In this case, we conclude that there is significant new evidence before us to justify a departure from previous cases in relation to particularly vulnerable asylum seekers and BIPs. We come to the following conclusions in relation to this category of cases:

(i) The UNHCR recommendation to use the discretionary clause in a "proactive and flexible" manner was made directly to the respondent and should be given consideration by the respondent. The recommendation reflects general concerns, supported by the evidence produced in this case, about the capacity of the Italian asylum system to provide adequate safeguards for particularly vulnerable people. Failure to consider whether to exercise discretion in cases involving demonstrably vulnerable individuals is likely to render a decision unlawful.

(ii) If, in such a case, the respondent decides not to exercise discretion, the return and reception of a particularly vulnerable asylum seeker or BIP would need to be well-planned. We have no doubt that the Italian authorities would not want to leave a vulnerable asylum seeker or BIP without support, but the evidence indicates that there is no process, similar to those for families with children, to ensure that particularly vulnerable asylum seekers will be safeguarded while waiting for suitable support and accommodation, of which there is an acute shortage. In order fully to protect the rights of a particularly vulnerable person in accordance with the respondent's duties under the ECHR, the respondent would need to seek an assurance from the Italian authorities that support and accommodation is in place before effecting a transfer.

(iii) It follows that a failure to obtain an assurance prior to the transfer of a particularly vulnerable asylum seeker or BIP is likely to give rise to a human rights claim that is not necessarily 'bound to fail' before the First-tier Tribunal.

C. Beneficiaries of International Protection

331. We have already examined the position of BIPs who are identified as vulnerable. On the position of BIPs in general, Laing J held:

> "175. It is clear that the ECtHR has decided, in more than one of the admissibility decisions, that a BIP, who, once he has status, and can work, and is on a par with Italian citizens, cannot rely on article 3 to resist return to Italy. Any attempt, based on Limbuela [[2005] UKHL 66] to persuade the FTT that the approach of the ECtHR to such cases is wrong (as a matter of domestic law) and should not be followed by the FTT, is bound to fail".

332. So far as the case law of the ECtHR is concerned, that remains the position, so far as we are aware. The present applicants submit, however, that the evidence regarding BIPs shows that there are problems on a number of fronts.

333. Although a BIP has access to SPRAR accommodation for 6 months or possibly longer, following notification of protection status, someone who is not resident in a SPRAR at the time of notification may in practice be unable to access SPRAR accommodation. Again, however, the evidence is, in our view, insufficiently clear to enable a hypothetical First-tier Tribunal to conclude that the evidential presumption has been overcome. There is evidence from SPRAR itself that a BIP who has not previously received SPRAR accommodation can be given it, on return, for 6 months.

334. In the case of BIPs, the issue of integration looms large. Mr Chirico accepted that the Reception Directive did not amount to an extension of the text of Article 3. He submitted, however, that Italy's failure to provide BIPs with language training and other integrative facilities led to the real risk of homelessness and destitution. It was therefore wrong to equate BIPs with native Italian citizens whatever the law might say.

335. Although we are conscious that past progress and good intentions are not to be equated with the position on the ground, where a judicial organ of an EU State is deciding whether another EU State is permitting Article 3 violations to occur on its territory, evidence of past progress and present intentions are nevertheless of some relevance. We therefore take account of what the Italian Parliamentary Committee has said on the integration issue and of the National Integration Plan.

336. We are, in any event, unimpressed by the submission that being unable to speak Italian puts BIPs at such a disadvantage, compared with Italian speakers, as to raise Article 3 issues. So far as concerns access to both employment opportunities and social security, compelling evidence would be needed that significant numbers of BIPs are suffering really serious harm in this regard. Such evidence as there is falls far short.

337. It is in our view highly significant that the UNHCR has since 2012 had express regard to issues of integration. As can be seen from our analysis, UNHCR has highlighted problems in this area in its 2012 recommendations and again in 2013, whilst acknowledging "significant improvements". Again, if UNHCR had harboured concerns that equate to those articulated by the applicants, they would have said so.

338. There is also the following point. An assertion that Article 3 will be violated following a Dublin III return necessarily becomes more difficult to make good, the longer the passage of time following that return. If there is not shown to be a real risk of breach whilst a returnee is in CAS or SPRAR accommodation, awaiting the judgment of the Italian authorities on his or her asylum claim, then what may or may not happen thereafter belongs in the realm of speculation. This seems to us to be the position with much of the evidence relating to integration.

339. In conclusion, the Tribunal finds that, having regard to the evidence as a whole, a hypothetical First-tier Tribunal could not, on the basis of that evidence,

rationally conclude that a BIP would be at real risk of Article 3 treatment, if returned to Italy pursuant to Dublin III.

THE INDIVIDUAL CASES

340. In the case of each applicant, we repeat what we have set out above at paragraphs 25, 324, 325, 326 and (with regard to SM) 328 and 330. This can be summarised as follows:

(i) With regard to each of the applicants, what they say they have experienced outside the UK is capable of being believed, such that when considering whether or not any one of their claims is clearly unfounded, we should consider their claims at their highest;

(ii) Notwithstanding the difficulties which any asylum seeker (or BIP) might experience on return to Italy, save insofar as an applicant might be able to demonstrate that he or she has a significant vulnerability, their return to Italy would not arguably cross the Article 3 threshold;

(iii) However, in cases where an applicant is arguably able to demonstrate significant mental and/or physical health problems or disabilities, such as might be found to constitute significant vulnerability, a failure on the part of the respondent to consider exercising discretion under Article 17, or to seek an assurance from the Italian authorities that appropriate support and accommodation would be in place before effecting a transfer, would be likely to render a decision to return that applicant unlawful.

We accordingly now consider the position of each individual applicant.

SM

341. SM is a national of Sudan who claims to have been born on 1 January 1977. He claims (which claim is capable of belief) to have suffered several years of persecution at the hands of the Janjaweed, in the course of which he was beaten on occasion with weapons and sticks (he still bears the scars) and his father was murdered. Following several years of persecution, he left Darfur around July 2005 and travelled to Libya, where he remained for some six years until, during the so-called Arab Spring, he decided that Libya was too dangerous a place in which to remain and so travelled by boat to Sicily, arriving there in May 2011.

342. SM was accommodated in basic conditions in Italy. After a traumatic incident in which he witnessed another asylum seeker being stabbed with a bottle, and was himself injured during the incident, he travelled to France in early October 2012. In December that year he travelled to the United Kingdom under a lorry. His asylum claim was refused and certified on third country grounds on 31 January 2013. His human rights claim was certified as clearly unfounded a week later.

343. Correspondence from the Italian Dublin Unit to the respondent dated 04 February 2013 confirmed that SM had been recognised as a refugee. For this reason, the transfer request under the Dublin Regulation was refused. The

parties have been unable to clarify the exact date that SM was granted status but agree that any five-year residence permit would have expired.

344. In a detailed and comprehensive psychological report dated 18 March 2015, Dr Andrew Hale found that SM was suffering from "chronic and severe" Post-traumatic Stress Disorder (PTSD) and Major Depression arising from traumatic experiences in Sudan, which were compounded by his experiences in Italy. These experiences led to "impairment in functioning across all areas of his life". He reported that he frequently felt dissociated from what was happening around him. The possibility of removal to Italy, "a country where he feels his human rights were violated", is likely to lead to increased anxiety and lack of hope for the future. In Dr Hale's opinion, return to Italy was likely to exacerbate SM's depressive symptoms and would add to his existing PTSD symptoms.

345. The most recent report prepared by Dr Melanie Stevens on 24 April 2018 is less comprehensive, but it is clear she carried out a number of diagnostic assessments. Dr Stevens' assessment indicates that SM's condition is likely to remain the same. She also diagnosed him with PTSD. Her record of the IES-R score (severity rating) indicates that SM is still likely to be suffering from symptoms of severe PTSD. Her assessment indicated that he suffers from high levels of anxiety and negative thoughts. In her opinion return to Italy would increase his clinical levels of anxiety and may result in continued chronic stress and trauma. She noted that SM is supported by his brother in the UK.

346. SM is a recognised refugee who has experienced serious traumatic events in the past. Because of these experiences, SM suffers from severe mental health issues. In our assessment, his condition is sufficiently serious to bring him within the category of demonstrably vulnerable individuals we have identified.

347. It was accordingly incumbent on the respondent to examine SM's position, in order to determine, on an informed basis, whether to exercise discretion under Article 17 to examine SM's claim taking into account his particular vulnerability and the fact that he has a close family member in the UK. If the respondent chose not to exercise discretion, it would be necessary to seek appropriate assurances from the authorities in Italy before returning SM there on safe third country grounds. SM's application for judicial review accordingly succeeds and the decision is quashed.

SOM

348. SOM is a national of Somalia who was born in October 1988. Having arrived in this country in June 2015 with a forged Dutch identity card, she was arrested and detained on suspicion of attempting to enter, using a false document. She claimed asylum. It is common ground that this applicant had previously been fingerprinted in Italy. Her asylum claim was therefore refused and certified on safe third country grounds.

349. SOM is married with one child, born in 2012, but she claims (and her claim needs for present purposes to be treated as credible) not to have seen either her husband or her child since that child was five months old. She would be returning to Italy as a lone female, which is said at paragraph 165 of the applicants' skeleton argument to make SOM vulnerable.

350. Her other vulnerability is said to be that "she suffers from Moderate Major Depressive Disorder Anxiety". It is, however, accepted (paragraph 167 of the skeleton) that "any mental illness from which she suffers is unlikely to be considered of such severity that a medical referral would take place at the border, even if any medical evidence is provided in advance". Her claim is argued essentially on the basis of the systemic failings within the support given to asylum seekers and BIPs within Italy and the generic difficulties which would as a consequence of such failings face any asylum seeker returning to Italy.

351. Lone women are not amongst the "vulnerable persons" identified in the 'recast' Reception Directive although we recognise that a lone woman may be more vulnerable than most if faced with a temporary period of homelessness while registering a claim. The psychological report prepared by Dr Eileen Walsh indicates that SOM may face some psychological challenges but does not indicate that she is suffering from a serious psychiatric illness or a severe psychological condition such that she could not cope with some of the potential challenges of registering a claim in Italy. SOM showed sufficient resilience to travel to Italy and then on to the UK. We accept that the combined effect of SOM's characteristics demonstrate some vulnerability. However, based on the evidence before the Tribunal we do not consider that SOM's vulnerability is of sufficient severity as to have required the respondent to consider the exercise of discretion under Article 17 or to obtain appropriate assurances. Accordingly, SOM's application must be dismissed.

RK

352. RK is an Eritrean national who was born in 1979. His claim, which we take at its highest, is that he was forced to serve for nearly 20 years in the Eritrean Army as a minesweeper but that he deserted in September 2014, after having been arrested and detained following his conversion to Pentecostalism. His body displays significant scarring, which is consistent with his account of torture.

353. Having fled Eritrea, leaving illegally, he crossed into Sudan and then into Libya in which country he was badly injured in a crash when the truck he was travelling in was ambushed by soldiers. He was beaten by the soldiers and two women he was travelling with were killed. One of his shoulders was pulled out of its socket.

354. He travelled by boat to Italy from Libya around April 2015 but he and the other passengers on the boat had to be rescued by the Italian coastguard when the boat broke down.

355. RK has been diagnosed as having PTSD and major depressive episode, for which he has received psychotherapy and for which he takes mirtazapine. He also suffers from musculoskeletal pain and bladder incontinence, as well as pre-diabetes.

356. In light of the nature of RK's ill-treatment within Eritrea and elsewhere, which have caused or at least contributed to what we regard as serious mental and physical disabilities, we consider that RK comes within the category of vulnerable persons, which we identify in paragraph 324 above. For the same

reasons given in SM (paragraph 347) this claim also succeeds and the decision is quashed.

Signed:  Date: 04 December 2018
Upper Tribunal Judge Canavan

SCHEDULE OF BACKGROUND EVIDENCE

Source	Document	Date
Rachel Davis, Asylum Liaison Officer for the Third Country Unit, British Embassy, Italy	Witness Statement and Exhibits	18 May 2018
Italian Ministry of the Interior	Daily Report on the number of migrant arrivals	16 May 2018
National Social Security Institution	Web page on types of income support services	3 May 2018
Elisa Morellini, Legal Affairs coordinator for NAGA	Witness Statement of Elisa Morellini	26 April 2018
Francesca Grisot, head of planning, service organisation and staff training for the opening of new reception centres within the EDECO Cooperative.	Witness Statement of Francesca Grisot and Exhibit	26 April 2018
Ilaria Sommaruga, national legal adviser for CSD Diaconia Valdese and Anna Brambilla, lawyer for CSD Diaconia Valdese and board member of ASGI	Joint witness statement of Ilaria Sommaruga and Anna Brambilla, and Exhibits	26 April 2018
Loredana Leo, lawyer, member of the Rome Bar and member and coordinator for the Lazio region of ASGI	Witness Statement of Loredana Leo and Exhibits	26 April 2018
Erminia Sabrina Rizzi, legal operator in immigration and asylum law with GLR	Witness Statement of Erminia Sabrina Rizzi	25 April 2018
InfoMigrants	Migrants in Rome living in 'inhumane conditions': Report	24 April 2018
Baobab Experience	Report from the Baobab Experience, Rome	23 April 2018
Redattore Sociale	'Migrants: from Via Vannina to the Tiburtina ghetto: 2 Appalling conditions' (Translation)	21 April 2018
MEDU	Letter from MEDU	20 April 2018
Martin Stares, Head of the Country Policy and Information Team in the Home Office	Witness statement of Martin Stares	19 April 2018
AIDA	Report: The Dublin System in 2017: Overview of developments from selected European Countries	27 March 2018
Redattore Sociale	'Rome: Spring arrives with a new eviction: the house of the 'invisibles' in Via Vannina' (Translated)	22 March 2018
Daniel Hobbs, Senior Civil Servant employed as Head of the Asylum and Policy Unit in the Home Office	Witness Statement of Daniel Hobbs and Exhibits	16 March 2018
Qui Cosenza	'Pig feed for migrants every other	12 March 2018

	day, the parish priest among the 108 suspects' (Translated)	
Primo Tempo	'Asylum Seekers: record number of reception and withdrawal orders' (Translated)	March 2018
Redattore Sociale	'Over 120 migrants in the tent like in summer at the Baobab. Appeal to the population' (Translated)	14 February 2018
Italian Ministry of the Interior	Article on the financing of new SPRAR projects	9 February 2018
Osservatorio Diritti	'Migrants: this is how Italy is receiving refugees' (Translated)	9 February 2018
Swiss Refugee Council	Letter from Swiss Refugee Council	9 February 2018
Annalisa Camilli, Internazionale Journalist	'Fuori Campo, why migrants end up in ghettos' (Translated)	8 February 2018
Médecins Sans Frontières	'Out of Sight'	February 2018
Human Rights Watch	World Report 2018 – European Union	18 January 2018
AIDA	Country Report: Italy	31 December 2017
Parliamentary Committee of inquiry	Extracts from the Parliamentary Committee of inquiry into the reception, identification and expulsion system and into the conditions of migrant handling and into the use of public resources	20 December 2017
Baobab Experience Legal Network	'Insufficient reception, here are the figures' (Translated)	6 December 2017
Redattore Sociale	'It is increasingly difficult to seek asylum in Rome. Dublin cases increase' (Translated)	6 December 2017
UNHCR	Italy Sea arrivals dashboard	January - December 2017
Amnesty International	'Italy, Migrants and Asylum Seekers: Inhuman policies in Pordenone and Gorizia'	24 November 2017
European Commission	Report, 'Managing Migration: EU Financial Support to Italy – Long term funding for Italy (allocations) 2014-2020	November 2017
UNHCR	Italy weekly snapshot	8 October 2017
Home Office	Country Information Italy: Returns	05 October 2017
Italian Ministry of the Interior	The National Integration Plan for Persons Entitled to International Protection	October 2017
Internazionale	'Why refugees in Rome live in occupied homes' (Translation)	8 September 2017
Il Sole 24 Ore	'In Rome, 780 places for refugees are missing' (Translated)	1 September 2017
UNHCR	Press release - UNHCR calls for an urgent solution for evicted refugees in Rome and a national commitment to integration	24 August 2017
UNHCR	Press release - Rome: UNHCR expresses concern about the future of around 800 refugees and asylum seekers evicted from Via	21 August 2017

	Indipendenza	
UNHCR	Europe Monthly Report on Italy	August 2017
UNHCR	Italy Sea arrivals dashboard	January - August 2017
UNHCR	Italy Unaccompanied and Separated Children dashboard	August 2017
Osservatorio Diritti	'Milan: refugees' reception to the brink of collapse' (Translated)	21 July 2017
UN Committee on the Elimination of Discrimination Against Women	Concluding Observations on the seventh periodic report of Italy	21 July 2017
Osservatorio Diritti	'Prato: 100 refugees left on the street' (Translated)	5 July 2017
Redattore Sociale	'Refugee day: UNHCR- we are very concerned by the situation in Rome' (Translated)	20 June 2017
Integrated Regional Information Networks (IRIN)	'Italy's migrant reception system is breaking'	15 June 2017
Globalist	'Raggi turns her back on the refugees: on the streets after being chased out of Vannina' (Translated)	14 June 2017
Osservatorio Diritti	'In Bolzano 200 refugees live on the streets' (Translation)	8 June 2017
Loredana Leo	Statement of Loredana Leo made in First-tier Tribunal proceedings in the case of *AMJ and ZT*	2 June 2017
UNHCR	'Desperate Journeys'	January -June 2017
Aisling Ní Chuinn (Wilson Solicitors)	Statement of Aisling Ní Chuinn made in First-tier Tribunal proceedings in the case of *AMJ and ZT*	30 May 2017
Swiss Refugee Council	Letter from Swiss Refugee Council	25 May 2017
MEDU	Letter from MEDU	16 May 2017
UN Human Rights Committee	Concluding observations on the sixth periodic report of Italy	1 May 2017
UNHCR	Article 'UNHCR urges suspension of transfers of asylum seekers to Hungary under Dublin'	10 April 2017
UNHCR	Europe Monthly Report on Italy	April 2017
Council of Europe	Report of the fact-finding mission to Italy by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016	2 March 2017
European Commission	ESPN Flash Report 2017/16 'Asylum Seekers and Migrants in Italy: are the new migration rules consistent with integration programmes?'	March 2017
Amnesty International	Report 2016/17: The State of the World's Human Rights (Italy extracts)	22 February 2017
Danish Refugee Council and Swiss Refugee Council	'Is Mutual Trust Enough? - The situation of persons with special reception needs upon return to Italy'	9 February 2017
Asylum Information Database	Country Report: Italy (2016 Update)	February 2017

(AIDA)		
Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Central Service of the SPRAR - in collaboration with the UNHCR	Report on international protection in Italy 2017 (Translated)(summary)	2017
UNHCR	'UNHCR asks Virginia Raggi, the Mayor of Rome, for fast and proper assistance to city refugees'	29 November 2016
Swiss Refugee Council	Report, 'Reception Conditions in Italy'	August 2016
Italian Ministry of the Interior	Webpage on health care for foreign citizens in the Prefecture of Rome	14 March 2016 (date last modified)
Médecins Sans Frontières	'Out of Sight'	March 2016
Médecins Sans Frontières	'Out of Sight' report data	March 2016
Open Democracy	'The EU hotspot approach at Lampedusa'	26 February 2016
Open Democracy	'Hotspot system as a new device of clandestinisation: view from Sicily'	25 February 2016
ASGI Puglia	'Denied rights – from deaths at sea to hotspots'	22 January 2016
Interview with Stefano Di Carlo, head of MSF in Italy, by Daniela Biella	'Di Carlo (MSF): A return to Pozzallo? Only when facilities are operating properly' (Translated)	7 January 2016
SPRAR	Extract from SPRAR annual report 2016 (page 52) and English translation	2016
AIDA	Country Report: Italy	22 December 2015
DPA International	'Under EU pressure, Italy opens new migrant screening centre in Sicily'	22 December 2015
Médecins Sans Frontières	Report by MSF on conditions at the Pozzallo reception centre presented to the Committee investigating the migrant reception, identification and care system.	17 November 2015
Loredana Leo	Statement of Loredana Leo in *MS and Others v Secretary of State for the Home Department*	31 July 2015
United Nations Human Rights Council	Report by the Special Rapporteur on the human rights of migrants, Francois Crepeau: Follow-up mission to Italy 2-6 December 2014	1 May 2015
Carl Dangerfield, Asylum and Immigration Liaison Officer in Italy for UKVI	Witness Statement of Carl Dangerfield	30 March 2015
Loredana Leo and Salvatore Fachile	Report of Loredana Leo and Salvatore Fachile	30 March 2015
Loredana Leo	Report of Loredana Leo	18 March 2015
Carl Dangerfield, Asylum and Immigration Liaison Officer in Italy for UKVI	Witness Statement of Carl Dangerfield	6 March 2015
ASGI	'The Dublin System and Italy: A relationship on the edge'	March 2015
MEDU (Doctors for Human Rights - Italy)	Expert Report	16 September 2014
Loredana Leo	Report of Loredana Leo on the Italian system of International Protection	15 September 2014
Carl Dangerfield, Asylum and Immigration Liaison Officer in	Witness Statement of Carl Dangerfield	13 May 2014

Italy for UKVI		
UNHCR	Case for the Intervener (UNHCR) in *EM (Eritrea) and Others v Secretary of State for the Home Department* [2014] UKSC 12	3 October 2013
UNHCR	UNHCR Recommendations on Important Aspects of Refugee Protection in Italy	July 2013
Commissioner for Human Rights of the Council of Europe	Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Italy from 3 to 6 July 2012	18 September 2012
UNHCR	Recommendations on Important Aspects of Refugee Protection in Italy	July 2012
Carl Dangerfield, Asylum and Immigration Liaison Officer in Italy for UKBA	Witness Statement of Carl Dangerfield	5 September 2011
Carl Dangerfield, Asylum and Immigration Liaison Officer in Italy for UKBA	Witness Statement of Carl Dangerfield	31 March 2011
Pro Asyl	Report 'The Living Conditions of Refugees in Italy'	27 February 2011
Home Office	Report on Third Country Nationals / Dublin Returns to Italy	Undated
Italian Ministry of the Interior	Annual Report 2016-2017 on the number of applications for international protection	Undated
Italian Ministry of the Interior	Monthly Report (January 2018) on the number of applications for international protection	Undated
Italian Ministry of the Interior	Monthly Report (February 2018) on the number of applications for international protection	Undated
Italian Ministry of the Interior	Monthly Report (March 2018) on the number of applications for international protection	Undated
SPRAR	Document regarding SPRAR	Undated
Secretary of State for the Home Department	Respondent's report of Italian Fact-Finding Mission on 9 October 2017	Undated