

**"LETHAL DISREGARD" – SEARCH AND RESCUE AND THE PROTECTION OF MIGRANTS IN THE
CENTRAL MEDITERRANEAN SEA**

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„Libya is not a safe place for the return or disembarkation of migrants rescued at sea; current SAR policies and practices in the central Mediterranean enable a range of violations and abuses against migrants rather than ending them; and all States in the region, as well as the EU Border and Coast Guard Agency, the EU Naval Force for the Mediterranean, the European Commission and other stakeholders, must urgently reform their SAR policies, practices, funding and cooperation in order to promote more principled and effective migration governance that prioritizes the protection of migrants at sea and is consistent with obligations under international law.“ (OHCHR 2021, 35)

- ⇒ The **thematic report** aims to highlight how certain laws, policies and practices related to search and rescue and the protection of migrants at sea have negatively impacted the human rights protection of migrants transiting through Libya (OHCHR 2021, 1)
- ⇒ The report covers the period from **January 2019 to December 2020** and is based on interviews with migrants, visits to reception and detention centers, meeting with Government officials, relevant experts, United Nations partners and stakeholders as well as additional research; it is built upon and complements the finding of previous reports by OHCHR and UNSMIL on the protection of human rights of migrants in Libya; the report portrays **five key human rights challenges** as well as the **human rights legal framework** of each section and an **analysis of the challenge** and a set of **recommendations**
- ⇒ The report confirms a lack of human rights protection for migrants during their journeys and their stays in Libya and while attempting to depart Libya via the central Mediterranean route (OHCHR 2021, 2); the continued violence and insecurity in Libya, combined with a lack of pathways for safe and regular migration leaves migrants with only irregular and increasingly perilous journeys at sea (OHCHR 2021, 3); **Libya cannot be considered a safe place** for the return or disembarkation of migrants intercepted or rescued at sea and that such returns to Libya may violate the principle of *non-refoulement* (OHCHR 2021, 4)
- ⇒ The evidence suggests that this is not a tragic anomaly, but rather a **consequence of concrete policy decisions and practices** that have combined to create an environment where the dignity and human rights of migrants are at risk (OHCHR 2021, 2); Over the past

two years, the EU and its Member States have significantly decreased their maritime SAR capacity and many humanitarian NGOs have been compelled to suspend or reduce their SAR operations, while the Libyan Coast Guard has increased its role in intercepting migrants in the central Mediterranean Sea and returning them to Libya (OHCHR 2021, 3) → **the current situation is a result of a failed system of migration governance**, one that fails to place the human rights of migrants at the center and for too long has been marked by a lack of solidarity (OHCHR 2021, 2) and far too often SAR responses in the central Mediterranean Sea rob migrants of their lives, dignity and human rights (OHCHR 2021, 35)

- ⇒ **Threats to migrants' human rights have intensified during the COVID-19 pandemic** (OHCHR 2021, 3) as SAR operations in the central Mediterranean were significantly affected by (hostile) policy responses to the COVID-19 pandemic (OHCHR 2021, 4)
- ⇒ Occurrence of an ever-growing body of research, reports, and statements highlighting serious human rights concerns arising from policies and practices that fail to prioritize the lives, safety and human rights of migrants in the central Mediterranean Sea (OHCHR 2021, 35)
- ⇒ **Recommendations:** practical guidance to ensure that SAR policies and practices are consistent with the effective respect, protection and fulfilment of the human rights of migrants in the central Mediterranean Sea, including by ending policies or practices that facilitate or enable human rights violations and abuses against migrants or create threats to human life or human dignity. Above all, they seek to reinforce approaches to the challenge at hand that are guided by a will to cooperate to end tragedies at sea, and compliance with international law (OHCHR 2021, 2)

KEY HUMAN RIGHTS CHALLENGES FACED BY MIGRANTS IN THE CONTEXT OF PROTECTION AT SEA

a. Failures to assist migrants in distress and deaths at sea (OHCHR 2021, 6-13)

- The Central Mediterranean Sea remains among the deadliest migration routes in the world, however, there is a lack of systemic monitoring and public reporting on migrant deaths at sea: there is a serious lack of cross-border efforts among coastal States to identify migrants who have died or gone missing during their journey, to trace relatives or family members of the deceased, to recover and repatriate the bodies or belongings of the dead and missing and to report these figures publicly; family members often rely on ad-hoc responses and interventions by the Red Cross → the **mortality rate has more than doubled** during recent years even though there is a decline in the overall number of migrants arriving to Europe
- Due to pushbacks by the so-called Libyan Coast Guard (LCG) as well as mechanical failures, shipwrecks or interceptions by armed groups, many migrants attempt the crossing a several times before successfully disembarking in Europe; migrants reported of **torture, ill-treatment, extortion** and in some cases, **sexual exploitation** and **abuse** of young women and girls by Libyan prison guards
- State authorities responsible for coordinating SAR activities as well as ship masters and their flag states, regularly fail to provide prompt and effective assistance to boats in distress despite being the nearest vessel to boats in distress
- EU Member States have gradually reduced their maritime assets in the central Mediterranean, strengthening surveillance by air and shifting responsibility for SAR operations in international waters to the LCG (by enhanced training and capacity-building) → the new Pact on Migration and Asylum proposed by the European Commission remains to be adopted; recently, the first European Contact Group on search and rescue with the aim of reinforcing cooperation and coordination between Member States and other relevant stakeholders in this field was established
- Due to uncertainties over the responsible coordinating MRCC authority, safe ports for disembarkation and vague interpretations of when boats are in a “situation of distress”, there are **significant delays and failures to render assistance to migrant boats in distress** (in particular in the overlapping SAR zone of Italy and Malta) → migrants reported that distress calls to the Libyan SAR authorities frequently go ignored or unanswered for

extended periods and despite numerous attempts over several hours and that European authorities tend to pass the SAR responsibility to another State and in doing so, delaying rescue; there is a **lack of cooperation**, including information sharing in rescue coordination, particularly from coordinating States to humanitarian NGOs operating in the central Mediterranean Sea → humanitarian NGOs and SAR observers are ignored or being told to “stand down” by State authorities who regularly hand over the SAR responsibility to the LCG

b. Dangerous rescue and interception practices (OHCHR 2021, 13-18)

- Between January 2019 and December 2020, more than 20300 migrants have been registered as rescued/intercepted at sea by the LCG and disembarked in Libya even though the OHCHR has notes “a pattern of reckless and violent behavior” by the LCG during interceptions at sea including destroying migrant boats and thus, endangering the lives of migrants in distress, acts of physical violence as well as forcing migrants to board the LCG vessels
- Humanitarian NGOs have reported incidents of LCG personnel coming on board SAR vessels and threatening the crew and rescued migrants verbally and physically, they noted a lack of preparedness and technical and logistical capacity of the LCG to fulfil its SAR obligations within its own SAR zone as well as raising concerns of complicity of some State actors – including members of the DCIM and the LCG – with human trafficking, smuggling and abuses of migrants by criminal networks → the **OHCHR has called for a moratorium on all interceptions and returns to Libya** and an increasing number of UN entities and civil society organizations have called for **Libya’s SAR zone to be reconsidered** and the **LCG’s SAR responsibilities to be redefined**
- Human rights experts have expressed concern regarding allegations of dangerous rescue and interception practices by Maltese SAR authorities including destroying migrant boats, pushbacks and leaving them in distress at sea; Upon their disembarkation in Malta, migrants claimed that their cell phones with video and photo evidence of the encounter were confiscated and have not been returned

c. Pushbacks at sea (OHCHR 2021, 18-24)

- There are **reports of “coordinated pushbacks” by Maltese authorities** who allegedly requested a private fleet of fishing trawlers/commercial ships to intercept migrants in distress and force them back to Libya; in another incident, it was reported that the AFM

approached a migrant boat within the Maltese SAR zone, handed out life vests to migrants in distress, refused to allow them to arrive to Malta and instead, equipped them with drinking water, fuel as well as navigational instruments calibrated towards Italy (the migrants later arrived and disembarked in Pozzallo, Sicily)

- The coordination, cooperation and sharing of intelligence between EU and Libyan SAR authorities (and in some cases, private or commercial vessels) seems to be effective in intercepting migrant boats in international waters and the Maltese SAR zone and pulling them back to Libya; multiple migrants reported that their interception and return to Libya was facilitated by the **deployment of European aerial assets over international waters within the Libyan and Maltese SAR zones** → civil society and humanitarian SAR organizations have expressed concern at the lack of safeguards to ensure that migrants will only be disembarked in a port of safety and that State authorities act in compliance with the principle of *non-refoulement*
- Coordinated actions between the LCG and the States of Italy and Malta have been facilitated by Memoranda of Understandings (MoUs) between Libya's Government of National Accord and the two European Member States; despite their failure to include sufficient human rights safeguards and assurances that migrants rescued at sea will not be returned to Libya, the MoUs were renewed (Italy-Libya) or established (Malta-Libya) in 2020
- Migrants who are pushed back to Libya are exposed to a range of serious human rights violations and abuses

d. Targeting of humanitarian organizations and human rights defenders (OHCHR 2021, 25-29)

- The High Commissioner for Human Rights has previously expressed her concern about the "lethal disregard for desperate people" borne out by European countries to criminalize, impede or halt the work of humanitarian SAR organizations and **has called for restrictions on the work of humanitarian SAR organizations to be lifted immediately**
- UN Human Rights experts have also expressed concern about the continuing campaigns and criminalization against civil society organizations as well as migrant rights defenders engaged in SAR and have alleged **that authorities use these measures in part to prevent the documentation and reporting of human rights violations** committed by European States in the central Mediterranean

- Shift from targeting humanitarian SAR organizations and activities based on alleged violations of criminal law to the use of administrative regulations or the adoption of public health or other emergency legislation to impede/delay SAR operations; **UN Human Rights experts have noted „skewed“ interpretations of maritime law and safety regulations** → The European Commission reacted by proposing guidance in the Pact on Migration and Asylum clarifying that EU law should be interpreted in a way allowing the easy criminalization of humanitarian activities
- Humanitarian SAR organizations have expressed concern about the lack of transparency and information when restrictive measures are adopted; furthermore, UN entities, SAR NGOs and other migrant human rights defenders have reported that they are frequently denied access to immigration detention centers or other locations where disembarked migrants are received by coastal States limiting their ability to monitor and report on the human rights of migrants
- Restrictive measures imposed in response to the COVID-19 outbreak have negatively impacted humanitarian SAR operations; the fear of COVID-19 has exacerbated existing **hostile rhetoric and xenophobia, racism and stigmatization against migrants and humanitarian NGOs** as well as the intensification of xenophobic and anti-migrants discourses in some EU countries → there are attacks on NGO premises and vehicles, hate speech and (death) threats to human rights defenders as well as threats against authorities who have spoken out in defense of the human rights of migrants
- Measures to prevent, obstruct or (publicly) criminalize the work of humanitarian SAR organizations and human rights defenders do not only endanger the lives of migrants at sea and undermine human rights generally, but they can also have a “chilling effect” on civil society as a whole and undermine the right to freedom of association

e. Delays in safe disembarkation and inadequate reception conditions (OHCHR 2021, 29-34)

- Delays between rescue and disembarkation in a place of safety are most often the result of **protracted political debates** over the lack of solidarity and responsibility for receiving migrants in Europe or diplomatic negotiations about the relocation of migrants within the EU; the conditions on board rescue vessels can exacerbate pre-existing trauma and ultimately harm migrants’ mental and physical health; delays in disembarkation put migrants at further risk, in particular people in vulnerable situations; challenges with

delayed disembarkation have become more acute during the COVID-19 pandemic as Italy and Malta temporarily closed their ports to all vessels after declaring them “unsafe” for disembarkation

- During the pandemic, Italy and Malta further resorted to quarantining migrants offshore on ships before allowing them to disembark; concerns were raised over the mandatory quarantine at sea, the lack of remedies against these measures and its infinite duration not being compliant with the rights to liberty of those on board; **the conditions on board these quarantine vessels are precarious** and there is serious concern over instances of **self-harm** and **attempted suicide**
- Upon disembarkation, migrants face human rights challenges related to inadequate conditions of reception, including the risk of mandatory, prolonged or otherwise arbitrary detention, failures to adequately identify, screen and assess migrants’ human rights protection needs; they reported being automatically placed in closed reception centers resulting in deprivation of their liberty for several months without any information about their legal or asylum status, access to a lawyer or the opportunity for a formal asylum hearing
- Living conditions inside Malta’s immigrations detention facilities are extremely poor as they are overcrowded, lack clean drinking water, sufficient beds for all detained to sleep in and access to air conditioning or fans; there are **allegations of use of force by some detention guards and security forces** and the OHCHR received information regarding multiple instances of depression, self-harm and attempted suicide within immigrations detention centers