

S.O.S. EUROPE

HUMAN RIGHTS AND
MIGRATION CONTROL

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Cover photo:

“La Porta d’Europa”, or “la Porta di Lampedusa”, Italy. A monument honouring more than 10,000 refugees and migrants who died on the Mediterranean Sea in their attempt to reach the island, October 2011.

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GLOSSARY

A **refugee** is a person who has fled from their own country because their human rights have been abused. This means that their fundamental freedoms have been taken away, they have been discriminated against or they have suffered violence because of who they are, their beliefs or their opinions, and their government cannot or will not protect them. **Asylum procedures** are designed to determine whether someone meets the legal definition of a refugee or not. When a country recognizes someone as a refugee, it gives them **international protection** as a substitute for the protection of their country of origin.

An **asylum-seeker** is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that an asylum claim is being examined, asylum-seekers cannot be forced to return to their country of origin.

A **migrant** is someone who leaves their country to live in another country for work, study, or family reasons. A migrant who is authorized to stay in a country, for example by having a valid visa or residency permit, is a **regular migrant**. An **irregular migrant** is someone who is not authorized to stay by the authorities of the country.

Refoulement is the forcible return of an individual to a country where they would be at risk of serious human rights violations. It is prohibited by international law to return refugees and asylum-seekers to the country they fled – this is known as the principle of **non-refoulement**. The principle also applies to other people who risk serious human rights violations such as torture and the death penalty, but do not meet the legal definition of a refugee.

Collective deportation or collective expulsion is the deportation of a group of people (migrants, asylum-seekers and/or refugees) without looking at each case individually and considering the individual circumstances of each person separately. It is prohibited under international law.

1. INTRODUCTION

Every year, thousands of people embark on perilous sea voyages on unseaworthy vessels, without a proper crew or any safety equipment, in an attempt to reach Europe from North and West Africa. Some are fleeing conflict; others are trying to escape grinding poverty. They are all looking for a better future. Many never make it to Europe: they die at sea from dehydration; they drown; or they are intercepted by patrol boats and returned to the country from which they departed.

While some of the women, men and children attempting this dangerous journey to Europe are leaving their own country, for many others the country of departure is not their own, but somewhere through which they were transiting in an attempt to reach Europe. If returned there, they will usually be considered “illegal” migrants, and face a real risk of arbitrary and prolonged detention, ill-treatment and other human rights violations.¹ Even when not detained, irregular migrants, refugees and asylum-seekers can be subjected to abuses at the hands of police and employers who exploit the vulnerability inherent in their irregular status.

WHAT IS EXTERNALIZATION?

Over the last decade, European countries have increasingly sought to prevent people from reaching Europe by boat from Africa, and have “externalized” elements of their border and immigration control. Externalization refers to a range of border control measures including measures implemented outside of the territory of the state – either in the territory of another state or on the high seas. It also includes measures that shift responsibility for preventing irregular migration into Europe from European countries to countries of departure or transit.

European externalization measures are usually based on bilateral agreements between individual countries in Europe and Africa. Many European countries have such agreements, but the majority do not publicize the details. For example, Italy has co-operation agreements in the field of “migration and security” with Egypt, Gambia, Ghana, Morocco, Niger, Nigeria, Senegal and Tunisia,² while Spain has co-operation agreements on migration with Cape Verde, Gambia, Guinea, Guinea-Bissau, Mali and Mauritania.³

At another level, the European Union (EU) engages directly with countries in North and West Africa on migration control, using political dialogue and a variety of mechanisms and financial instruments. For example in 2010, the European Commission agreed a co-operation agenda on migration with Libya, which was suspended when conflict erupted in 2011. Since the end of the conflict, however, dialogue between the EU and Libya on migration issues has resumed.

The European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the EU (known as FRONTEX) also operates outside European territory. FRONTEX undertakes sea patrols beyond European waters in the Mediterranean Sea, and off West African coasts, including in the territorial waters of Senegal and Mauritania, where patrols are carried out in co-operation with the authorities of those countries.

The policy of externalization of border control activities has been controversial. Critics have accused the EU and some of its member states of entering into agreements or engaging in initiatives that place the rights of migrants, refugees and asylum-seekers at risk. A lack of transparency around the various agreements and activities has fuelled criticism.

This report examines some of the human rights consequences for migrants, refugees and asylum-seekers that have occurred in the context of Italy's migration agreements with Libya. It also raises concerns about serious failures in relation to rescue-at-sea operations, which require further investigation. The report is produced as part of wider work by Amnesty International to examine the human rights impacts of European externalization policies and practices.

2. MIGRATION CONTROL AGREEMENT BETWEEN ITALY AND LIBYA

THE RIGHTS OF MIGRANTS AND REFUGEES IN LIBYA

Libya has a long history of inward migration from other parts of Africa. Those entering Libya include: “regular” migrants who come to work in the country in a range of sectors; “irregular” migrants who come to Libya seeking work and – sometimes – trying to reach Europe; and refugees fleeing conflict and persecution. The vast majority of those who leave Libya seeking to reach Europe by boat are not Libyans, but from countries such as Eritrea, Ethiopia, Somalia and Sudan, as well as Iraq and Palestine. In the past, Libya tolerated such inward migration, but those without regular status have always been at risk of human rights violations. As Libya has no asylum system, people in need of international protection, such as refugees and asylum-seekers, are usually viewed as irregular migrants.

Research by Amnesty International and other human rights groups has exposed widespread abuses against refugees, asylum-seekers and irregular migrants in Libya during Colonel al-Gaddafi’s rule, as well as during and following the conflict that deposed him.⁴ Documented violations and abuses include indefinite detention in extremely poor conditions, beatings and other ill-treatment, in some cases amounting to torture. Refugees and asylum-seekers also face a real risk of *refoulement* (being returned to a country where they are at risk of persecution or serious human rights abuses). Libya is not a party to the 1951 UN Convention relating to the Status of Refugees and its



Refugees and migrants in the yard at Misratah Detention Centre, Libya, November 2008.

“The problem is my black skin; the *thuwwar* [revolutionaries] think I am with Colonel al-Gaddafi. Mu’*ammar* [al-Gaddafi] repressed my people, and those opposing him because of his brutality are now doing the same.”

Detainee held in Misratah’s Zarouq Cultural Centre, Libya, May 2011

1967 Protocol. The operations of the UN High Commissioner for Refugees (UNHCR) have always been limited by the authorities in Libya in the past. The situation deteriorated further in June 2010 when the then Libyan authorities suspended the UNHCR's operations in the country. By May 2012 UNHCR, although present in Libya, had not been able to secure an official agreement to operate with the new Libyan authorities.

Since the fall of the al-Gaddafi government, the human rights situation for asylum-seekers, refugees and irregular migrants in the country has deteriorated. There has been a breakdown of law and order, weapons have proliferated across the country, and racism and xenophobia are on the rise. The widespread belief that al-Gaddafi forces used "African mercenaries" in an effort to crush the opposition has made Sub-Saharan Africans – regardless of their migration status – targets of violent attacks, detention and torture. During and in the immediate aftermath of the conflict, armed militias arrested and detained thousands of alleged al-Gaddafi supporters and soldiers, including hundreds of suspected foreign mercenaries, most of whom were in fact migrant workers. Amnesty International researchers found that the worst treatment was reserved for nationals from Sub-Saharan Africa and black Libyans. Many were beaten or otherwise abused in detention, and several reported being tortured.

While many Sub-Saharan Africans were detained during the conflict and in its immediate aftermath because of the belief that they were mercenaries fighting for al-Gaddafi, hundreds are now being arrested by armed militias on so-called "migration

related offences". Almost daily, Libyan media report fresh arrests of irregular migrants entering the country through its porous borders. One official claimed in April 2012 that "more than 1,000 persons are coming here daily".⁵ Those arrested have not been charged with any crimes and they cannot challenge the legality of their detention. The justice system in Libya remains paralyzed. There is widespread tolerance of the armed militias' abuse of non-nationals.

AL-MADINA AL-KADIMA IN TRIPOLI

Armed fighters who opposed the government of Colonel al-Gaddafi raided the al-Madina al-Kadima neighbourhood of Tripoli on 26 August 2011. They searched houses, looking for weapons and money, and then seized dozens of black Libyans and Sub-Saharan African nationals from Chad, Mali, Niger and Sudan. Twenty-six of those taken from their homes that day told Amnesty International that their hands were tied with metal wire and that they were blindfolded. They said they were beaten during the raid, and again at a football club near al-Madina al-Kadima to which they were taken. There, they were forced to lie face down on the ground and were beaten with rifle butts, sticks and electric wires. When Amnesty International interviewed them some nine days after the beatings, they still had marks consistent with their testimonies. A detainee recounted that his cousin was shot three times while tied. One of the detainees told Amnesty International: *"I was at home with my wife and children. I heard banging on the doors, and then people forced the door and entered. They were screaming "murtazaqa [mercenaries]". They already condemned me because of the colour of my skin. In front of the house, they started beating me... They continued to beat us at the football club..."*



AGREEMENTS BETWEEN ITALY AND LIBYA

Despite substantial public evidence that migrants, refugees and asylum-seekers were being subjected to serious abuses in Libya between 2006 and 2010, Italy concluded a number of agreements with the Libyan authorities. They included direct references to migration control and provided financial and technical assistance for migration control activities. Italy also agreed that people attempting the sea crossing to Europe could be returned to Libya but no processes were established to prevent human rights abuses occurring in this context.⁶

Sebha patrol in the desert in Libya, 2008.

In 2008, Libya and Italy signed the Treaty of Friendship, Partnership and Co-operation. The Treaty, which included a US\$5bn package for construction projects, student grants and pensions for Libyan soldiers who served with Italian forces during the Second World War, also included provisions on “control of migration”. In April 2012, the Chairman of the Libyan National Transitional Council confirmed Libya’s commitment to the Treaty.



Several technical agreements, concluded before the 2011 conflict, established the specifics of Italy-Libya co-operation in combating “illegal migration”. None of these agreements has ever been made public through official channels, and any details have come through unofficial sources or have been exposed in court actions.⁷

A “Protocol”, signed in December 2007, and an “Additional Technical-Operational Protocol”, signed in February 2009, provided for joint patrolling of international and territorial waters – Libyan and Italian – by mixed Libyan and Italian crews, and for joint “control, search and rescue” operations. In the “Additional Technical-Operational Protocol”, the two countries also agreed that each country would “carry out the repatriation of illegal migrants from its territory”; no safeguards were included in this agreement to specifically protect human rights; nor were there any provisions to identify and screen individuals potentially in need of international protection. A third “Technical-Operational Protocol to combat illegal migration through the sea” was signed on 7 December 2010 in Rome.

Zliten detention centre, Libya, November 2008.

The implementation of the agreements between Libya and Italy was suspended in practice during the first months of the conflict in Libya, although the agreements themselves were not set aside. While the armed conflict was still raging in Libya, Italy signed a memorandum of understanding with the Libyan National Transitional Council in which the two parties confirmed their commitment to co-operate in the area of irregular migration including through “the repatriation of immigrants in an irregular situation.”⁸ In spite of representations by Amnesty International and others on the current level of human rights abuses, on 3 April 2012 Italy signed another agreement with Libya to “curtail the flow of migrants”.⁹ The agreement has not been made public. A press release announced the agreement, but did not include any details on the measures that have been agreed, or anything to suggest that the present dire human rights predicament confronting migrants, refugees and asylum-seekers in Libya will be addressed.

HUMAN RIGHTS VIOLATIONS

The co-operation between Italy and Libya gives rise to a number of serious human rights concerns falling broadly into two categories: violations committed by Libyan authorities that Italy has ignored or tacitly condoned; and violations committed by Italy outside its territory.

When Italy entered agreements with Libya, the government knew or ought to have known that irregular migrants, refugees and asylum-seekers – the very people who attempt to reach Europe by boat from Libya – were subjected to arbitrary and prolonged detention, beatings and other human rights abuses in Libya. The third “Technical-Operational Protocol to combat illegal migration through the sea” was signed in December 2010, despite the fact that Libya had suspended the already extremely limited operations of UNHCR six months earlier, which had left refugees and asylum-seekers in an even more vulnerable position than before.

The April 2012 agreement between Italy and the new Libyan authorities was also established, despite publicly available information exposing ongoing and widespread human rights abuses against migrants, asylum-seekers and refugees, and despite the fact there are still no provisions in place in Libya for refugee status determination.

When states take any immigration and border control measures they must do so in a manner that complies with their human rights obligations. However, some of the measures implemented within the context of externalization agreements between Italy and Libya violate international law. Moreover, the Italian authorities have reached agreements with Libya, turning a blind eye to the fact that migrants, refugees and asylum-seekers risk serious human rights abuses in Libya. The agreements between Italy and Libya do not include any effective human rights safeguards. The inclusion of a human rights clause in the 2008 Italy-Libya Treaty of Friendship, Partnership and Co-operation appears entirely tokenistic as no measures were ever taken to implement it.

Italy has, at best, ignored the dire plight of migrants, refugees and asylum-seekers. At worst, it has shown itself willing to condone human rights abuses in order to meet national political self-interest.



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Migrant shows Amnesty International a scar caused by abuse, Libya, January 2012.

SAFEGUARDING HUMAN RIGHTS WITHIN MIGRATION CONTROL AGREEMENTS

The existence of bilateral or multilateral agreements between states does not relieve states of their human rights obligations. All agreements must be consistent with human rights.

Migration control agreements should include specific measures that ensure that the rights of migrants, refugees and asylum-seekers are safeguarded. The exact nature of these protections will vary to some extent, depending on the context and the nature of the agreement. However, all agreements should include: guarantees of access to effective procedures for people to make claims for asylum; the prohibition of any form of summary or collective expulsions; and a clear commitment to uphold the principle of *non-refoulement*.

Agreements should guarantee people's access to adequate information and to mechanisms for effective remedies. They should also include specific commitments to minimize the use of detention and prevent separation of families. The provision of technical and financial assistance should be made consistent with human rights.

States should not enter into agreements unless there are effective mechanisms to ensure that the human rights safeguards will be implemented.

REFUGEES TRAPPED IN LIBYA

Prior to June 2010, in the absence of asylum procedures in Libya, UNHCR was responsible for registering asylum-seekers and processing their claims for international protection. As of January 2011, there were about 8,000 recognized refugees awaiting resettlement and 3,200 asylum-seekers whose claims UNHCR was yet to process, in Libya. When UNHCR's operations were shut down in June 2010, these people were left with no support in the country, while new arrivals could not even register their need for protection. Although UNHCR is still present in Libya, it has not been able to secure an agreement with the new Libyan authorities to operate – in sharp contrast to the swiftly concluded agreement between Libya and Italy on “migration control”.

The options for refugees and asylum-seekers arriving in Libya from countries where they faced conflict and persecution, such as Eritrea, Ethiopia, Somalia and Sudan, are limited. None of Libya's neighbouring states has effective refugee protection systems in place.¹⁰ Italy has made agreements which accept that people in need of international protection remain effectively trapped. They are left in a country where they are not recognized as refugees, and where they are at risk of human rights abuses, including forced return to a country where they would face further threats to their lives.

OPERATIONS AT SEA: INTERCEPTION AND 'PUSH-BACKS'

One of the most disquieting elements of Europe's migration control system is the practice of interception of boats and push-backs at sea. Under agreements signed between Italy and Libya surveillance operations have been carried out in the Mediterranean Sea with the aim of intercepting boats attempting to reach Europe and pushing or diverting them back to Libya.

Prior to concluding agreements on migration control with Libya, Italy had brought people intercepted at sea to Italian territory for an assessment of their protection needs. This was in keeping with its obligations under

human rights and refugee law, including the obligation to provide asylum-seekers with an opportunity to apply for international protection. However, from mid-2009 the Italian coastguard and customs police began intercepting vessels on the high seas and returning their occupants directly back to Libya. In some cases, people intercepted were taken on board Italian vessels and returned directly by Italian officials to Libya; in others, people picked up by Italian ships were transferred to Libyan patrol boats.

PUSH-BACK TO LIBYA

Amnesty International interviewed R., a 25-year-old woman from Eritrea, at the Choucha refugee camp in Tunisia in June 2011. She had attempted to leave Libya for Europe in June 2009. With the assistance of smugglers in Tripoli, she boarded a boat carrying 82 people, mainly Eritrean nationals, bound for Italy. After four days drifting at sea, their boat was approached by an Italian ship which took them on board. R. thought she was being taken to Italy. However, a Libyan boat pulled alongside and Libyan soldiers boarded the Italian vessel. All of the 82 people were then forced to board the Libyan vessel. R. says that the men were handcuffed and that she witnessed the men being beaten. On arrival in Libya, R. was detained and held for approximately 12 months. When conflict erupted in Libya in 2011, R. was forced to flee again, and ended up in Choucha refugee camp in Tunisia.

The number of people intercepted at sea and returned to Libya by the Italian authorities is not known, as neither country has disclosed this information. The only official data available is for the period between 5 May and 7 September 2009: according to the Italian Ambassador to Libya more than 1,000 individuals were returned to Libya in that four-month period.¹¹ Further push-backs are reported to have taken place after September 2009, but the number of individuals affected is not known.¹²

The fact that boats leaving Libya include asylum-seekers and refugees as well as migrants was well known to the Italian authorities before they

commenced push-backs. UNHCR estimates that in 2008, before push-backs began, 75 per cent of the foreign nationals arriving in Italy on boats – the vast majority of whom came from Libya – were asylum-seekers, and 50 per cent of those seeking asylum were granted some form of international protection.¹³ Some of the people who had been pushed back by Italy to Libya spoke to UNHCR. It confirmed that among those interviewed there were individuals immediately in need of international protection. It also confirmed that some of those interviewed reported being subjected to violence during their transfer to Libyan territory and on arrival at detention centres.¹⁴

International and European human rights and refugee law prohibits Italy from removing anyone to a country or territory where they face a real risk of serious human rights abuses, or where they may face a real risk of *refoulement*. Human rights law also precludes collective expulsions without an examination of each person's individual situation. In 2012 the Grand Chamber of the European Court of Human Rights found that push-backs, which involved the mass return of people to Libya without any assessment of their individual personal circumstances, amounted to collective expulsions, and thus violated the human rights of the people subjected to this measure.

EUROPEAN COURT OF HUMAN RIGHTS: *HIRSI JAMAA AND OTHERS V. ITALY*

In the landmark judgement in February 2012, the Grand Chamber of the European Court of Human Rights found that a push-back operation conducted by Italy in May 2009 violated the European Convention on Human Rights. On that occasion, Italian military ships forcibly returned 11 Somalis and 13 Eritreans to Libya as part of a group of approximately 200 people who had left that country aboard three vessels, attempting to reach Italy. The forcible returns took place despite the fact that Italy knew or ought to have known that the individuals concerned would face a real risk of ill-treatment in Libya. In returning them there, Italy would also expose them to the risk of onward *refoulement* to Eritrea and Somalia, where, in turn, they would face a real risk of persecution or other forms of serious harm.

The Grand Chamber noted the fact that, although Italy had intercepted the boats on the high seas, once on board Italian ships they were under Italian jurisdiction. The Court held that, since the applicants were under Italian jurisdiction, Italy had an obligation to safeguard their human rights. Italy failed to do this. On the contrary, the Italian authorities did not inform them that they were

being returned to Libya, much less provide them with the means to challenge this decision. In its defence, Italy argued that its agreements with Libya provided legitimacy for returns to Libya and effectively relieved Italy of its human rights obligations under the European Convention on Human Rights. Italy also attempted to evade the jurisdiction of the Court by describing the events as rescue operations on the high seas.

The Grand Chamber rejected each objection and found that by its actions Italy had violated the applicants' right not to be returned to face a real risk of ill-treatment and their right not to be subjected to collective expulsions.

The Italian authorities reacted to the judgement by stating that the Court's decision would, as a matter of course, be implemented, rather than being a topic of debate. Further, Italy stated that any new co-operation initiative with the new Libyan authorities would be informed by an "absolute respect for human rights and the need to safeguard the life of people at sea". Nevertheless, soon afterwards, Italy and Libya concluded a new agreement regarding migration control (as mentioned on page 9). To date, the contents remain secret, thus shielded from public scrutiny.

3. RESCUE AT SEA

Migrants' boat journeys to Europe are often facilitated by smugglers or traffickers. The vessels used are frequently overcrowded and unseaworthy. Normally, there is no professional crew, nor any safety equipment. Situations of migrant boats in distress at sea are common. According to UNHCR, at least 1,500 people are known to have lost their lives attempting to cross the Mediterranean Sea in 2011.¹⁵

The international law of the sea sets out the principles for aiding boats and people in distress in the sea. A key principle is that countries must assist those in distress at sea, without regard to their nationality, their status or the circumstances in which they are found; private vessels also have an obligation to help any boat in distress.

However, the policies and practices of several European countries have resulted in delays in rescuing boats in distress; in some cases the delays appear to be an attempt to avoid taking responsibility for migrants and refugees. Malta and Italy have both refused, on several occasions, to allow people rescued in international waters by private boats to disembark on their territory, leaving the private vessels (often fishing boats) carrying distressed and traumatised passengers until there is a political agreement on where they can go.¹⁶

DISTRESS CALLS GO UNANSWERED

Several cases have come to light, through the testimony of survivors. For example, on 6 April 2011, more than 200 people drowned when a boat carrying mostly Somalis and Eritreans from Libya capsized. The incident occurred in Malta's search and rescue area. Although

Malta received the distress call, it failed to mount a search and rescue operation, claiming that Italy's search and rescue assets were geographically closer. By the time an Italian vessel arrived, most of those on the boat were dead; only 47 people survived. The Italian authorities claimed that Malta had failed to meet its international obligations, a claim Malta has refuted.¹⁷

One of the most shocking instances of failure to rescue people at sea occurred only days before, when 63 people lost their lives in the Mediterranean Sea. At the end of March 2011, while NATO forces were patrolling the area, a small boat carrying 72 people from Sudan, Nigeria, Ghana, Eritrea and Ethiopia, including two babies, was left drifting in the Mediterranean Sea for over two weeks.

The boat had departed from Libya and the passengers were trying to escape the ongoing conflict and reach Europe. However, they quickly ran out of fuel and of their meagre supply of water and food. People on the boat made desperate calls using a satellite phone alerting an Eritrean priest in Rome to their predicament. He in turn contacted both the Italian Coast Guard and NATO headquarters in Naples. According to survivors, a military helicopter lowered some water and biscuits with a rope but never returned. Fishing boats and military vessels also reportedly approached or saw the stranded boat, but nobody rescued them. After a week, people started dying; the dead bodies were lowered into the sea. By then, those still alive on the boat had become delirious. In despair, some people jumped overboard. Eventually, the boat drifted back to Libya. Only nine of the 72 people survived this horrific journey.¹⁸



An Italian coastguard vessel prepares to dock in Lampedusa's port, Italy, May 2011. It was carrying 142 people who had sailed from Tripoli, Libya, including 30 women and three children. They were rescued before their boat sank at sea.

These deaths took place at the time when prevention of civilian casualties had been advanced as the primary justification for military intervention in Libya and the area of the South Mediterranean Sea where people lost their lives was at its busiest, precisely because of the military deployment.

Following public exposure of the tragedy, the Parliamentary Assembly of the Council of Europe (PACE) appointed one of its members to investigate the case. The investigation, published on 29 March 2012,

confirmed that the Italian and Maltese national Maritime Rescue Co-ordination Centres, FRONTEX and NATO had all been alerted to the plight of the boat in distress. The report of the investigation stated:

"[A] catalogue of failures became apparent: the Libyan authorities failed to maintain responsibility for their Search and Rescue zone, the Italian and Maltese Maritime Rescue Co-ordination Centres failed to launch any search and rescue operation, and NATO failed to react to the distress calls, even though there were military vessels under its control in the boat's vicinity when the distress call was sent... Perhaps of most concern in this case is the alleged failure of the helicopter and the naval vessel to go to the aid of the boat in distress, regardless of whether these were under national command or the command of NATO."

The investigation also raised concern about measures being taken by European coastal states that negatively affect the willingness of fishing and commercial vessels to fulfil their rescue-at-sea obligations. These include delays by the state to agree where the rescued people should be disembarked. This in turn can lead to serious financial losses for the vessels concerned, as well as the risk of being prosecuted for offences related to assisting “clandestine immigration”. In a Resolution following the investigation, adopted on 24 April 2012, PACE recommended action to address these among several other issues.

RESCUE DOES NOT ALWAYS MEAN SAFETY

In some cases, those in need of rescue found themselves victims of push-back operations that violated their human rights.

On 17 July 2010, a group of 55 Somalis travelling in a dinghy from Libya to Europe found themselves in distress and were intercepted and rescued, some 73km south-east of Malta. Twenty-eight were taken to Malta by an Armed Forces of Malta (AFM) P-52 patrol vessel, while 27 were returned to Libya by a Libyan patrol boat. The Maltese authorities said that the 27 – 18 men and nine women – returned to Libya voluntarily, but some of the Somalis interviewed by Amnesty International gave a different account. They said that the first vessel to approach them was the Maltese boat: it picked up five women considered particularly vulnerable, but left everyone else in the dinghy after handing out life-jackets, water and biscuits. Shortly after, another ship approached. The Somalis were addressed in English and Italian. Thinking that they would be taken to Italy, 27 of them boarded the vessel. When one of them overheard Arabic, he attempted to jump overboard screaming “they are Libyans”. Those still in the dinghy refused to board the ship once they realized it was Libyan. Some panicked, jumping into the water or threatening to commit suicide. The Maltese vessel, which was reportedly standing nearby, then picked up the remaining Somalis on the dinghy and took them to Malta.

The 27 Somalis were then taken back to Libya, where they lacked any prospect of international protection, and where they were at risk of torture and other human rights abuses. All 27 were immediately detained in Libya for periods ranging from a few days to a few weeks. In detention, according to reports, all males were lined up against a wall and beaten with batons, and some were given electric shocks during interrogation.

The 28 Somalis taken to Malta were all released from detention within two months and granted international protection. The Maltese authorities continue to deny any wrongdoing. In September 2010 they told Amnesty International that, in the context of the 17 July and other similar incidents, Malta does not consider that the obligation of *non-refoulement* applies on the high seas. Malta stated that it believes that it has no obligation towards asylum-seekers outside its territorial jurisdiction beyond ensuring the physical safety of individuals in distress at sea.¹⁹ This position appears contrary to a recent ruling of the European Court of Human Rights (See *Hirsi Jamaa and other v. Italy*, page 11).



© UNHCR/Noy

These people were among almost 500 people rescued from a skiff in the Mediterranean Sea and taken by six Italian boats to Lampedusa, Italy, May 2011.

4. HUMAN RIGHTS OBLIGATIONS BEYOND BORDERS

Human rights and refugee law requires all states to respect and protect the rights of people within their jurisdiction: this includes people within the state's territorial waters, and also includes a range of different contexts where individuals may be deemed to be within a certain state's jurisdiction.

Externalization of border control measures has given rise to a number of jurisdictional questions, both because states act on the high seas and because externalization involves the officials of one state acting in the territorial waters of another state, or onboard vessels flying the flag of another state.²⁰

When state authorities take people intercepted or rescued at sea on board a vessel flying their flag, those people are within that state's jurisdiction. Even in cases where interception or rescue operations on the high seas do not involve taking people on board a state vessel, the state will, in most cases, exercise effective control and authority over those intercepted or rescued and must uphold international legal obligations with respect to human rights and rescue at sea. This means taking immediate action to address urgent needs for medical assistance, food and water, ensuring that people are taken to a safe destination where their rights, including the right of *non-refoulement*, will be respected. People intercepted or rescued at sea must also have access to individualized procedures. They should be allowed to explain their circumstances and those who wish to apply for international protection should have access to fair and effective asylum determination procedures.

Where people are returned to their country of departure or origin, the process must be done in safety and dignity. Wherever state responsibility is engaged under international human rights and refugee law and the law of the sea, the state cannot relieve itself of that responsibility by referring to the involvement of or agreements with other states.

States must also ensure that they do not enter into agreements – bilaterally or multilaterally – that would result in human rights abuses. This means states should assess all agreements to ensure that they are not based on, or likely to cause or contribute to, human rights violations. In the context of externalization, this raises serious questions about the legitimacy of European involvement – whether at a state-to-state level or through FRONTEX – in operations to intercept boats in the territorial waters of another state, when those intercepted would be at a real risk of human rights abuses.

A state cannot deploy its official resources, agents or equipment to implement actions that would constitute or lead to human rights violations, including within the territorial jurisdiction of another state.

5. CONCLUSION

Agreements between Italy and Libya include measures that result in serious human rights violations. Agreements between other countries in Europe and North and West Africa, and agreements and operations involving the EU and FRONTEX, also need to be examined in terms of their human rights impacts. However, with so little transparency surrounding migration control agreements and practices, scrutiny to date has been limited.

The desire of some European countries to prevent “irregular migration” is undermining safe and timely rescues at sea. Desperate men, women and children have been left at sea for days while countries argue about where they should be taken. Those who survive the terrifying ordeal may be returned to a country where they risk further human rights abuses and where their legitimate need for international protection is ignored. Delayed rescues have reportedly cost the lives of hundreds of people, and the full extent of the problem has not been documented.

States must be held accountable for the human rights abuses committed in the context of externalization. A lack of transparency surrounding many European countries’ border management practices and agreements with third countries means that the violations continue unchecked. In the permissive environment created by this lack of scrutiny, migrants, refugees and asylum-seekers are denied any protection of their rights.



Italian Coast Guard scuba divers, seen bottom left, rescue migrants in Pantelleria, Italy, 13 April 2011. Officials say two women drowned while attempting to reach Italy from North Africa after their boat with 250 people aboard went off course and ran aground just off an Italian island.

6. RECOMMENDATIONS

Amnesty International urges all states to protect the rights of migrants, refugees and asylum-seekers, according to international standards. This report has focused on Italy. The Italian authorities must review their existing migration control agreements with Libya and other countries.

THE ITALIAN GOVERNMENT SHOULD:

- set aside its existing migration control agreements with Libya;
- not enter into any further agreements with Libya until the latter is able to demonstrate that it respects and protects the human rights of refugees, asylum seekers and migrants and has in place a satisfactory system for assessing and recognizing claims for international protection;
- ensure that all migration control agreements negotiated with Libya or any other countries are made public.

EUROPEAN COUNTRIES AND THE EU AS A WHOLE SHOULD:

- ensure that their migration control policies and practices do not cause, contribute to, or benefit from human rights violations;
- ensure their migration control agreements fully respect international and European human rights and refugee law, as well as the law of the sea; include adequate safeguards to protect human rights with appropriate implementation mechanisms; and be made public;
- ensure their interception operations look to the safety of people in distress in interception and rescue operations and include measures that provide access to individualized assessment procedures, including the opportunity to claim asylum;
- ensure their search-and-rescue bodies increase their capacity and co-operation in the Mediterranean Sea; publicly report on measures to reduce deaths at sea; and that Search and Rescue obligations are read and implemented in a manner that is consistent with the requirements of refugee and human rights law.



Amnesty International members formed the word “Grazie” with their bodies on a beach in Lampedusa, Italy, to say thank you to the inhabitants of the island for their solidarity with thousands of refugees and migrants from Tunisia, Libya and Africa. July 2011.

ENDNOTES

1 Amnesty International has documented detention and abuses in the past in Mauritania and both past and present in Libya. See: *Mauritania: "Nobody wants to have anything to do with us": Arrests and collective expulsions of migrants denied entry into Europe* (Index: AFR 38/001/2008); *Libya of Tomorrow. What hope for human rights?* (Index: MDE 19/007/2010); *Libya: Militias threaten hopes for new Libya* (Index: MDE 19/002/2012).

2 See news release (in Italian) on the website of the Italian Ministry of the Interior, online at <http://bit.ly/JK4YKn>, last visited on 21 May 2012.

3 See bilateral agreements on the Spanish government website, online at: <http://bit.ly/JgXJXG>, last visited on 21 May 2012.

4 See for example Amnesty International reports: *Libya of Tomorrow, What hope for human rights?* (Index: MDE 19/007/2010), June 2010; *Libya: Militias threaten hopes for new Libya*, (Index: MDE 19/002/2012), 16 February 2012.

5 Libya struggles with illegal migrants, arms trafficking, 28 April 2012, online at: <http://www.alarabiya.net/articles/2012/04/28/210863.html>, last visited on 17 May 2012.

6 See text of the Treaty (in Italian) online at <http://bit.ly/MUUPwn>, last visited 29 May 2012.

7 See for example: *Hirsi Jamaa and Others v. Italy* (application no. 27765/09), the judgement of the Grand Chamber of the European Court of Human Rights is available at <http://www.echr.coe.int/ECHR/EN/hudoc>

8 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011, para. 51, online at: <http://bit.ly/LaQsYM> last visited on 21 May 2012.

9 See the press release of the Italian Ministry of the Interior (in Italian) online at <http://bit.ly/LtV55S>, last visited on 21 May 2012. See also press report in English "Italy, Libya sign anti-migrant pact", <http://bit.ly/HlbgKO>, last visited on 21 May 2012.

10 While UNHCR has operations in Algeria, Chad, Egypt, Niger, Tunisia and Sudan, at the moment none of these countries can offer long term protection to refugees or others in need of international protection.

11 The Italian Ambassador to Libya provided this information during an inquiry of a parliamentary committee on 13 October 2009 – cited on this site http://www.asgi.it/home_asgi.php?n=760&l=it.

12 See, for example, Amnesty International public statement *Italy: Over 100 reportedly "pushed back" at sea* (Index: EUR 30/017/2011), 30 August 2011, and *Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta*, (Index: REG 01/004/2010), 14 December 2010.

13 UNHCR press briefing, 10 December 2010.

14 See Submission by the Office of the United Nations High Commissioner for Refugees in the Case of *Hirsi and Others v. Italy* (Application no. 27765/09), 29 March 2011, online at <http://bit.ly/KDNSOF>, last visited on 17 May 2012.

15 "More than 1,500 drown or go missing trying to cross the Mediterranean in 2011", online at <http://www.unhcr.org/4f2803949.html>, last visited on 17 May 2012.

16 See Amnesty International's *State of the World's Human Rights 2010*. See also "Italy allows ship with rescued migrants to dock", *Guardian*, 19 April 2009; "UN rebuke as governments squabble over immigrants found clinging to tuna nets", *Guardian*, 29 May 2007.

17 UNHCR reported this case <http://www.unhcr.org/4d9c8bf56.html>. Issues related to Italy and Malta were reported in the Italian and Maltese press: for example, *La Repubblica* http://www.repubblica.it/cronaca/2011/04/06/news/lampedusa_naufraga_barcone_strage_immigrati-14584220?ref=HREA-1; and *Times of Malta* – <http://www.timesofmalta.com/articles/view/20110407/local/maroni-implies-blame-on-malta-for-migrants-tragedy.358699>.

18 Amnesty International interviewed two of the survivors of this incident. The Parliamentary Assembly of the Council of Europe's report *Lives lost in the Mediterranean Sea: who is responsible?*, published 29 March 2012, is available online at http://assembly.coe.int/CommitteeDocs/2012/20120329_mig_RPT.EN.pdf. The incident has been widely reported in the media.

19 Amnesty International, *Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta*, (Index: REG 01/004/2010), 14 December 2010.

20 The full judgement of the Grand Chamber of the European Court of Human Rights on *Hirsi Jamaa and Others v. Italy* is a helpful tool in clarifying some of these questions.



WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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S.O.S. EUROPE

HUMAN RIGHTS AND MIGRATION CONTROL

In an attempt to prevent “irregular migration” from Africa to Europe, some European countries implement border control measures outside their own territory, at sea and on land. States have reached agreements to intercept boats at sea and return people to countries in West and North Africa, in circumstances that expose people to serious human rights violations. As there is an almost complete lack of transparency surrounding many European countries’ border management practices and agreements with North and West African states, these violations go unchecked.

This short report examines some aspects of the human rights impacts of European migration control policies, looking in particular at the agreements between Italy and Libya and their consequences. It calls for all border control policies to be consistent with human rights obligations, and for transparency from all governments on agreements on migration control.

The report is published as part of Amnesty International’s campaign “When you don’t exist”, which aims to protect the rights of migrants, refugees and asylum-seekers across Europe.

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