

Geneva, 4 December 2020

Submission of information to the OHCHR pursuant to Human Rights Council resolution 43/1

on

***Policing the Central Mediterranean: mass drownings and
systematic torture of persons of African descent.***

*“States and the ICC-Prosecutor should examine whether investigations for crimes against humanity or war crimes are warranted in view of the scale, gravity and increasingly systematic nature of torture, ill-treatment and other serious human rights violations ... as a direct or indirect consequence of deliberate State policies and practices of deterrence, criminalization, arrival prevention, and refoulement”.*¹

Nils Melzer, Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment

¹ Special Rapporteur on torture quoted in Itamar Man et al., 2018, *EJIL: Talk!*; <https://www.ejiltalk.org/time-to-investigate-european-agents-for-crimes-against-migrants-in-libya/>.

| TABLE OF CONTENTS | PAGE |
|---|-------------|
| I. Executive Summary | 3 |
| II. Policing the Central Mediterranean | 9 |
| A. Drownings | 9 |
| a. Termination of EU and Italian Rescue Activities in the Mediterranean | 9 |
| b. Redefining Sea-Rescue as a Crime: the Obstruction of NGO Search and Rescue Efforts | 14 |
| c. Closing Ports | 16 |
| i. Italy | 16 |
| ii. Malta | 22 |
| B. Torture and Ill-treatment | 29 |
| a. Italy and Pull-Backs to Torture: a Case Study on <i>Refoulement</i> by Proxy | 29 |
| i. Background to Bilateral Cooperation between Italy and Libya | 29 |
| ii. The Memorandum of Understanding of February 2017 and its Renewal in February 2021 | 33 |
| iii. The Re-creation of the Libyan Coast Guard as a proxy force | 37 |
| iv. The Systematic Torture and Ill-treatment of Migrants Pulled-Back to Libya | 46 |
| III. Conclusion | 53 |

I. Executive Summary²

1. European law enforcement practices have made the Central Mediterranean the deadliest migration route in the world. In particular, the European Union (EU) and individual member states have 1) withdrawn search and rescue (SAR) operations for migrant boats in distress; 2) actively obstructed independent NGO rescue efforts, and 3) externalised border control by promoting the pull-back of migrants by the Libyan Coast Guard (LCG).
2. As a result, tens of thousands of Africans and persons of African descent have drowned while attempting to reach the safety of European shores. Many others have been forcibly returned to detention camps in Libya where they are subjected to life-threatening violence including torture and ill-treatment.
3. Africans constitute the majority of migrants and refugees³ crossing the Central Mediterranean from Libya to Italy and Malta. According to the United Nations High Commissioner for Refugees (UNHCR), the primary nationalities of persons departing Libya in the first five months of 2020 included Sudanese (19%), Somalis (9%), Moroccans (8%), Ivorians (5%) and Eritreans (4%), Guineans (4%), Malians (4%), Nigerians (3%) and Senegalese (2%).⁴ The law enforcement practices described in the present submission thus preponderantly affect Africans.
4. According to the International Organization for Migration (IOM), 20'781 migrants have drowned in the Mediterranean between 1 January 2014 and 1 December 2020.⁵ However, due to the “challenges of collecting information about these people and the contexts of their

² This submission is partially based on research developed in the context of three prior submissions by the CSDM including our request of 26 June 2020 for an inquiry under Article 20 of the UN Convention against Torture into Italy's responsibility for the torture of migrants pulled-back to Libya at <https://centre-csdm.org/wp-content/uploads/2020/07/CAT-Art.-20-Inquiry-CSDM-01.07.2020.pdf>; joint submission with the OMCT on Closed Ports at <https://centre-csdm.org/wp-content/uploads/2020/11/UNCAT-Inquiry--Closed-Ports-16.11.2020-1.pdf>; and our joint urgent appeal with four rescue NGOs to the Special Rapporteur on Torture and the Special Rapporteur on the Human Rights of Migrants, 4 September 2020, at <https://centre-csdm.org/csdm-alarm-phone-sea-watch-and-mediterranea-to-request-urgent-intervention-from-un-special-rapporteurs-for-27-migrants-on-board-maersk-etienne/>, and follow-up at <https://centre-csdm.org/urgent-update-maersk-confirms-that-3-migrants-jumped-over-board-on-the-etienne-malta-still-refuses-safe-port/>

³ UNHCR estimates that 28% of persons crossing the Central Mediterranean route are in need of international protection (refugee status or subsidiary protection status) and many others are likely to have specific vulnerabilities due to the grave human rights violations they have suffered during the journey, particularly in Libya, see *UNHCR Arrivals to Europe from Libya*, May 2020, at [file:///C:/Users/Boris/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Arrivals%20to%20Europe%20from%20Libya%20-%20May%202020%20\(1\).pdf](file:///C:/Users/Boris/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Arrivals%20to%20Europe%20from%20Libya%20-%20May%202020%20(1).pdf)

⁴ See *UNHCR Arrivals to Europe from Libya*, May 2020, *supra*.

⁵ See *IOM Missing Migrants, Tracking Deaths along Migratory Routes*, <https://missingmigrants.iom.int/region/mediterranean>

deaths, the true number of lives lost during migration is likely much higher.”⁶ The UNHCR estimates that 15’000 people have lost their lives in the Central Mediterranean alone in the last 5 years.⁷

5. European policing of external borders in the Central Mediterranean has, as the UN Special Rapporteur on Torture aptly noted, centred on “*deterrence, criminalization, arrival prevention, and refoulement*”⁸. These practices are at the very heart of the high death tolls at sea.
6. From the end of 2015, the EU and Italy radically shifted focus from humanitarian operations such as *Mare Nostrum* which successfully rescued up to 170’000 people between 2014 and 2015,⁹ to programmes focussed on the externalisation of border control through surveillance and extensive cooperation with Libya. The aim of the new strategy was to facilitate the detection and return of migrants and refugees taking the Central Mediterranean route, before they reached Italian or Maltese jurisdiction.
7. In order to achieve these goals, the EU and its Member States 1) assisted Libya with the declaration of an extensive Libyan SAR zone in June 2018 for which Libya would be exclusively responsible; 2) financed, trained and equipped the Libyan Coast Guard with a view to enabling it to intercept and pull-back migrant boats in its new extensive SAR zone; and 3) provided real-time intelligence to the Libyan authorities concerning the movement of migrant boats along its coast via sophisticated surveillance technologies in the Central Mediterranean.¹⁰ The EU’s current programme named IRINI, which is run by FRONTEX, was launched in March 2020 and has as one of its stated aims the surveillance (aerial,

⁶ IOM *supra*.

⁷ Data on missing and dead persons from UNCHR between 2015 and 2020:

<https://data2.unhcr.org/en/situations/mediterranean>; according to the International Organisation for Migration (IOM), 20’000 people have lost their lives in the Mediterranean since 2014, see “Calculating ‘Death Rates’ in the Context of Migration Journeys: Focus on the Central Mediterranean”; <https://publications.iom.int/system/files/pdf/mortality-rates.pdf>.

⁸ Special Rapporteur on torture quoted in Itamar Man et al., 2018, *EJIL: Talk!*; <https://www.ejiltalk.org/time-to-investigate-european-agents-for-crimes-against-migrants-in-libya/>.

⁹ Alarm Phone, Borderline Europe, Mediterranean – Saving Humans, Sea-Watch, “*Remote Control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean*”, 17 June 2020 at https://www.eu-libya.info/img/RemoteControl_Report_0620.pdf.

¹⁰ See generally Charles Heller and Lorenzo Pezzani, *Mare Clausum: Italy and the EUs Undeclared Operation to Stem Migration Across the Mediterranean*, 2018, <https://content.forensic-architecture.org/wp-content/uploads/2019/05/2018-05-07-FO-Mare-Clausum-full-EN.pdf>

satellite and maritime) of the Central Mediterranean and capacity building of the Libyan Coast Guard.¹¹

8. By means of the above strategy, more than 40'000 migrants and refugees have been intercepted by the LCG with EU and Italian assistance since February 2017 and forcibly returned to Libya in violation of the *non-refoulement* principle.¹²
9. Based on documented case studies, the rescue the NGOs Alarm Phone, Borderline Europe, Mediterranea, and Sea-Watch have conclusively demonstrated,

*... the crucial role played by EU aerial surveillance in mass interceptions off the coast of Libya, which have been expanded over recent months. EU aerial assets are deployed to spot migrant boats from the air and to then guide the [LCG] to the location of escaping boats. This aerial surveillance has led to the capture of tens of thousands of people and their return to the Libyan war zone. In effect Europe is delegating its 'dirty work' to Libyan forces which depend on donated military assets as well as surveillance and coordination activities under taken by EU institutions and Member states.*¹³

10. All of this is happening despite the UNHCR's determination that Libya does not "meet the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea."¹⁴ Therefore, by creating a programme of massive pull-backs by proxy, the EU and individual member states are in gross violation of the *non-refoulement* principle under the 1951 Convention relating to the Status of Refugees as well as international human rights law.
11. Once returned to Libya, migrants and refugees are detained in migrant detention centres where they are routinely tortured, raped and exposed to forced labour, trafficking and summary executions. Information on what happens to migrants in Libya has been made

¹¹ Operation EUNAVFOR MED "IRINI" is officially characterized as a military operation. Its stated objective is to implement the UN arms embargo on Libya, but also to "contribute to the capacity building and training of the Libyan Coast Guard and Navy in law enforcement tasks at sea" and "contribute to the disruption of the business model of human smuggling and trafficking networks through information gathering and patrolling by planes" (our emphasis), see <https://www.consilium.europa.eu/en/press/press-releases/2020/03/31/eu-launches-operation-irini-to-enforce-libya-arms-embargo/>

¹² Human Rights Watch, "Italy: Halt Abusive Migration Cooperation with Libya", 12 February 2020; <https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya>.

¹³ Alarm Phone, Borderline Europe, Mediterranea – Saving Humans, Sea-Watch, "Remote Control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean", 17 June 2020 at pp. 3 – 4 https://www.eu-libya.info/img/RemoteControl_Report_0620.pdf.

¹⁴ UNHCR Position on Returns to Libya, September 2020, at <https://www.refworld.org/publisher.UNHCR...5f1edee24.0.html>

widely available by the OHCHR¹⁵ and international NGOs¹⁶ and is a matter of public knowledge. Indeed, it has been openly acknowledged by EU¹⁷ and Italian¹⁸ officials in public statements.

12. For example, in his State of the Union address, former President of the EU Commission, Mr. Jean-Claude Juncker stated:

We must also urgently improve migrants' living conditions in Libya. I am appalled by the inhumane conditions in detention or reception centres. Europe has a responsibility – a collective responsibility – and the Commission will work in concert with the United Nations to put an end to this scandalous situation that cannot be made to last (our emphasis).

13. In parallel with the massive pull-back programme, European governments set about obstructing and discrediting¹⁹ the independent NGO SAR efforts that had arisen in response to the humanitarian vacuum in the Central Mediterranean.
14. Governments criminalised civilian rescue activities including by imposing prohibitive fines on SAR operations and prosecuting NGO personnel under domestic trafficking and smuggling legislation. NGO vessels were also deflagged and seized for spurious administrative reasons and for indefinite periods of time. While they were blocked in ports, it was not possible for NGOs to fulfil their rescue mandate, often leaving the Central

¹⁵ United Nations Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR), 'Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya', 20 December 2018 at <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf> and OHCHR and UNSMIL, 'Detained and Dehumanized: Report on Human Rights Abuses against Migrants in Libya', 13 December 2016, at

https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf

¹⁶ Amnesty International (AI), 'Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean', August 2018, at <https://www.amnesty.org/en/documents/eur30/8906/2018/en/>
Human Rights Watch (HRW), 'No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya' 21 January 2019, at <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya> ; Doctors without Borders (MSF), 'Trading in suffering: detention, exploitation and abuse in Libya', 23 December 2019, at <https://www.msf.org/libya's-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>.

¹⁷ EU Commission President Jean-Claude Juncker, State of the Union Address, 2017 , https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165

¹⁸ Deputy Foreign Minister Mario Giro tells the press that returning migrants to Libya means "condemning them to hell" (our translation), La Stampa, 14 August 2017, at <https://www.lastampa.it/cronaca/2017/08/14/news/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-all-inferno-1.34431931>

¹⁹ Charles Heller, and Lorenzo Pezzani, *Blaming the Rescuers: Criminalising Solidarity, Re-Enforcing Deterrence*, Forensic Oceanography 2015, <https://blamingtherescuers.org/>

Mediterranean without any independent search and rescue capacity during the summer months when migrants and refugees were at highest risk of shipwreck.²⁰

15. In addition, Maltese and Italian authorities have regularly refused to grant NGO and other vessels permission to disembark rescued migrants forcing them to remain at sea for prolonged periods under distressing and inhuman circumstances. In one recent instance, the standoff lasted a record 37 days causing the suicide attempts of 3 of the migrants on board the *Maersk Etienne*, a chemical tanker off the coast of Malta which was not equipped to accommodate civilian passengers, let alone traumatized refugees and migrants in need of medical assistance.²¹
16. The law enforcement practices described in this submission constitute massive and systematic violations of international human rights law perpetrated preponderantly against Africans and persons of African descent by the EU through its border agency FRONTEX, as well as by individual EU member states. By externalising key aspects of border control in the Central Mediterranean while at the same time harassing civilian rescue efforts, the EU and European states continue to escape legal liability for violations of international law including the *non-refoulement* principle, the prohibition of torture and ill-treatment and the right to life. Indeed, the very purpose of externalising law enforcement at the sea-borders of Europe is to avoid liability²² for breaches of fundamental rights.²³
17. As one commentator aptly puts it: “For years, European governments have chosen not to put an end to preventable deaths, and instead to thwart private actors’ attempts to do so. ... **Blocking the civic engagement of activists has been a crucial step in a push to create a “maritime legal black hole” in the Mediterranean: In certain regions of the sea, migrants are travelling while having no *de-jure* rights to speak of**” (our emphasis).²⁴

²⁰ See <https://www.theguardian.com/world/2018/sep/12/migrant-rescue-ships-mediterranean>

²¹ See CSDM and rescue NGOs urgent appeal the Special Rapporteur on Torture and the Special Rapporteur on the Human Rights of Migrants, 4 September 2020, at <https://centre-csdm.org/csdm-alarm-phone-sea-watch-and-mediterranea-to-request-urgent-intervention-from-un-special-rapporteurs-for-27-migrants-on-board-maersk-etienne/>, and follow-up at <https://centre-csdm.org/urgent-update-maersk-confirms-that-3-migrants-jumped-over-board-on-the-etienne-malta-still-refuses-safe-port/>

²² See Thomas Gammeltoft-Hansen, James C. Hathaway, *Non-Refoulement in a World of Cooperative Deterrence*, Columbia Journal of Transnational Law, 2015.

²³ See Boris Wijkström and Ousman Noor, *Can Italy be Held Accountable under Article 20 UNCAT for its Role in the “Pull-back” of Migrants in the Mediterranean?*, Asyl: Revue suisse pour la pratique et le droit d’asile, 3/2020, at https://centre-csdm.org/wp-content/uploads/2020/09/Asyl-3_2020-CSDM-pull-backs.pdf ;

²⁴ See Itamar Mann, *The Right to Perform Rescue at Sea: Jurisprudence and Drowning*, German Law Journal, 2020, 21, at p. 599; see generally Itamar Mann, *Maritime Legal Black Holes: Migration and Rightlessness in International Law*, 29 EUR. J. INT’L L. 347 (2018).

18. Given the general accountability gap and the near impossibility for the drowned and tortured persons or their families to obtain effective legal redress²⁵, the UN High Commissioner’s report pursuant to Resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers” could play a critically important role by shedding light on these illegal practices and calling for the creation of mechanisms to bring them to an end, including avenues for redress for victims.
19. We therefore urge the OHCHR to take into account the information in the present submission and to discuss and adopt recommendations aimed at bringing European border management in the Central Mediterranean into compliance with binding international norms.

²⁵ Migrant advocates have launched legal challenges in several international *fora* which remain pending. They include the CSDM’s *Request for an Inquiry under Article 20 of the UN Convention against Torture into Italy’s Responsibility for the Torture of Migrants pulled-back to Libya* at <https://centre-csdm.org/wp-content/uploads/2020/07/CAT-Art.-20-Inquiry-CSDM-01.07.2020.pdf> ; a Communication to the Office of the Prosecutor of the International Criminal Court pursuant to Article 15 of the Rome Statute available at: <https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>; a Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa’s ‘Support to Integrated Border and Migration Management in Libya’ (IBM) Programme, submitted by GLAN, ASGI and ARCI at <https://www.statewatch.org/media/documents/news/2020/apr/eu-libya-legal-complaint-finance-27-4-20.pdf>

II. Policing the Central Mediterranean

A. Drownings

a) Termination of EU and Italian Rescue Activities in the Central Mediterranean

20. Italy constitutes the main entry point for migrants wishing to reach Europe because of its geographical proximity with the North African coastline. The departure point for migration to Italy from 2003 to 2010 was generally Tunisia, by entering Italy through the Strait of Sicily.²⁶ Departure from Tunisia became more difficult after Tunisia adopted legislation criminalizing irregular exit.
21. With the sharp deterioration in security in the aftermath of the Libyan conflict in 2011, Libya became the main departure point for migration to Europe via Italy. The journey across the Central Mediterranean from Libya to Italy takes between 2 and 3 days and is often facilitated through use of substandard vessels that are unsafe and which are at heightened risk of requiring emergency rescue at sea.
22. In an effort to secure the safety of migrants crossing the Mediterranean, the Italian government launched Operation *Mare Nostrum* (hereafter ‘*Mare Nostrum*’), Latin for “Our Sea”, a naval and air search and rescue operation.
23. *Mare Nostrum* began on 18 October 2013 and was terminated on 31 October 2014. It was launched and run by the Italian government following two deadly boat capsizes off the coast of the Italian island of Lampedusa, resulting in the deaths of over 600 migrants,²⁷ and a general increase in migrants attempting to cross the Mediterranean to Europe, particularly since 2000.²⁸
24. The express purpose of *Mare Nostrum* was to search for those at risk of drowning in the Mediterranean Sea and rescuing them, as well as arresting and detaining any smugglers

²⁶ Ibid., p.10.

²⁷ The Guardian, “Italy: end of ongoing sea rescue mission puts thousands at risk”, 31 October 2014; <https://www.theguardian.com/world/2014/oct/31/italy-sea-mission-thousands-risk>; Yahoo News, “Italy ignores pleas, ends boat migrant rescue operation”, 31 October 2014; <https://news.yahoo.com/italy-confirms-end-boat-migrant-rescue-op-mare-142437512.html?guccounter=1>; see also reports from other major news outlets such as the BBC.

²⁸ IOM, 2017, op. cit., p.1; p.13 (figure 3.1).

identified in the process.²⁹ *Mare Nostrum* deployed units from the Italian Navy and Air Force, including sea vessels, submarines, planes and helicopters.³⁰ The search and rescue area included international waters, in particular the search and rescue zones of Italy, Libya and Malta, and spanned 70,000 km² (27,000 square miles).³¹

25. Boats carrying migrants across the Mediterranean, sinking or at risk of sinking, were intercepted and migrants were taken on board Italian vessels and given medical assistance by medical staff, doctors of the Sea and Air Border Health Department, personnel of the Military Corps and Voluntary Nurses of the Italian Red Cross, and voluntary medical personnel of the Order of Malta's Italian Relief Corps and Francesca RAVA Foundation.³²

26. On-board migrant identification procedures were also undertaken by personnel from the Italian Department of Public Security, Centre Directorate for Immigration, and Border Police.³³ The rescued migrants were taken to Italian shores where they were then given access to pre-existing channels and programmes for asylum seekers.

27. Overall, *Mare Nostrum* ran 421 missions and rescued over 170,000 migrants in its one year of operation.³⁴

28. *Mare Nostrum* was driven and funded by Italy and cost Italy € 9 million per month to run.³⁵ In total, the Italian government spent approximately € 114 million on the operation.³⁶ Despite its appeals to the EU for support, Italy received very little financial or operational support for *Mare Nostrum*. The EU provided Italy with € 1.8 million from the Emergency

²⁹ Marina Militare - Ministero Della Difesa, 2018, op. cit.

³⁰ Ibid.

³¹ European Political Strategy Centre, "Irregular Migration via the Central Mediterranean: From Emergency Responses to Systemic Solutions", 2 February 2017, p.3; https://ec.europa.eu/epsc/sites/epsc/files/strategic_note_issue_22_0.pdf.

³² Marina Militare - Ministero Della Difesa, 2018, op. cit.

³³ Ibid.

³⁴ European Political Strategy Centre, 2 February 2017, op.cit., p.3, figure 1.

³⁵ For varied cost breakdowns across sources, see: Reuters, "Italy in talks with EU to share responsibility for boat migrants", 8 July 2014; <https://www.reuters.com/article/us-eu-italy-migrants/italy-in-talks-with-eu-to-share-responsibility-for-boat-migrants-idUSKBN0FD1YL20140708>; The Washington Post, "Italy ran an operation that saved thousands of migrants from drowning in the Mediterranean. Why did it stop?", 20 April 2015; <https://www.washingtonpost.com/news/worldviews/wp/2015/04/20/italy-ran-an-operation-that-save-thousands-of-migrants-from-drowning-in-the-mediterranean-why-did-it-stop/>.

³⁶ Yahoo News, 31 October 2014, op.cit.

Actions part of its External Borders Fund,³⁷ and Slovenia provided the support of one vessel and crew for two months.³⁸

29. Throughout 2014, Italy raised concerns about the ongoing costs of running *Mare Nostrum*, and increased its requests to the EU member states to help share the costs and responsibility for rescuing Mediterranean boat migrants.³⁹ Over time, as its appeals to the EU for support went unmet, Italy stopped taking fingerprints of migrants not intending to stay in Italy as required by the Dublin Convention so as to avoid a record of Italy as the point of arrival.⁴⁰
30. Despite the success of *Mare Nostrum* in securing the safety of migrants and refugees crossing the Mediterranean, it was terminated on 31 October 2014. Italy gave a number of reasons for its decision, including that it had been intended as a temporary emergency solution from the outset, and that Italy was unable to shoulder the cost of continuing to run the operation, particularly against the backdrop of a recession it had been facing for the previous three years.⁴¹
31. Another reason was that *Mare Nostrum* became an “unintended pull factor”, encouraging more migrants and refugees to attempt to cross the Mediterranean;⁴² further, that smugglers used less safe vessels for the crossing due to the increased likelihood that those on board would be saved.⁴³
32. Operation *Mare Nostrum* was superseded by the EU-run ‘Operation Triton’ (hereafter referred to as ‘Triton’) commencing on 1 November 2014. Triton was run by the European Agency for the Management of Operational Cooperation at the External Borders of the

³⁷ European Commission, “FRONTEX Joint Operation ‘Triton’ Concerted efforts to manage migration in the Central Mediterranean”, 7 October 2014;

https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_566.

³⁸ Radiotelevizija Slovenija, “Triglav Ship nearing end of mission”, 22 January 2014;

<https://www.rtvsl.si/news-in-english/triglav-ship-nearing-end-of-mission/327985>.

³⁹ EU Observer, “EU migrant mission will not replace *Mare Nostrum*”, 3 September 2014;

<https://euobserver.com/justice/125456>.

⁴⁰ Vice News, “Italy Is About to Shut Down the Sea Rescue Operation That Saved More Than 90,000 Migrants This Year”, 4 October 2014; https://www.vice.com/en_us/article/d3j9gi/italy-is-about-to-shut-down-the-sea-rescue-operation-that-saved-more-than-90000-migrants-this-year.

⁴¹ Deutsche Welle, “Italy phases out sea rescue mission for migrants”, 31 October 2014;

<https://www.dw.com/en/italy-phases-out-sea-rescue-mission-for-migrants/a-18033647-0>; Australian Broadcast

Company, “Recession to force Italy to abandon *Mare Nostrum* refugee rescue program”, 14 October 2014;

<https://www.abc.net.au/radio/programs/am/recession-to-force-italy-to-abandon-mare-nostrum/5811262>.

⁴² Yahoo News, 31 October 2014, op.cit.

⁴³ Vice News, 4 October 2014, op.cit.

Member States of the European Union, known as ‘FRONTEX’ (from the French *Frontières extérieures*).

33. Triton combined efforts and resources from a number of EU states, and concluded in 2018. The express purpose of Triton was the protection of borders, as opposed to search and rescue.⁴⁴ Thus, vessels operating under Triton were not to enter international waters and were limited to waters within 30 miles of the Italian coast.⁴⁵ Triton received significantly less funding than *Mare Nostrum*, running on a budget of € 2.9 million per month.⁴⁶ FRONTEX has been specific in noting Italy’s coordination role in Operation Triton, and FRONTEX vessels sent on search and rescue missions brought those migrants to Italian shores.⁴⁷
34. International civil society raised strong concerns about the limited scope of Triton and fears that more migrants and refugees would die in their attempts to cross the Mediterranean.⁴⁸ Tineke Strik, rapporteur for the human rights body the Parliamentary Assembly of the Council of Europe (PACE), said: “We know that [under Triton] there will be gaps and a vacuum in the territorial waters off Libya, for instance, and that is where the main accidents occur.”⁴⁹ Further, Italy’s Minister of the Interior, Angelino Alfano, expressly noted that Triton would place the burden on North African countries to attend to search and rescue operations in their own waters.⁵⁰
35. The result of the downshift from Operation *Mare Nostrum*, a search and rescue operation, to Operation Triton, a border protection operation, **saw almost no drop in the number of people attempting to cross the Mediterranean in 2015, as well as huge rise in the number of deaths in the Mediterranean in 2015, particularly around Libya.**⁵¹

⁴⁴ European Commission, 7 October 2014, op.cit.

⁴⁵ Vice News, 4 October 2014, op.cit.; The Guardian, 31 October 2014, op.cit.

⁴⁶ European Commission, 7 October 2014, op.cit.

⁴⁷ FRONTEX European Border and Coast Guard Agency, “Operation Triton” video, 13 April 2017; <https://FRONTEX.europa.eu/media-centre/videos/operation-triton-uroUIS>.

⁴⁸ The Guardian, 31 October 2014, op.cit.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ The Guardian, “Migrants can’t be left to die in the seas of Europe”, 15 April 2015;

<https://www.theguardian.com/commentisfree/2015/apr/15/migrants-cant-be-left-to-die-in-the-seas-of-europe>;

The Guardian, “700 migrants feared dead in Mediterranean shipwreck”, 19 April 2015;

<https://www.theguardian.com/world/2015/apr/19/700-migrants-feared-dead-mediterranean-shipwreck-worst-yet>;

The Guardian, “EU under pressure over migrant rescue operations in the Mediterranean”, 15 April 2015;

<https://www.theguardian.com/world/2015/apr/15/eu-states-migrant-rescue-operations-mediterranean>.

36. FRONTEX has since continued to run operations in the Mediterranean, focussing on cross-border crime and security. Operation Triton was expanded over time to include cross-border crimes, and ended on 1 February 2018, when it was superseded by Operation Themis, a projected four-year operation also supported by FRONTEX. Themis has an enhanced cross-border crime and security focus and does not extend into international waters.⁵² Under Themis, Italy was not obliged to receive all migrants rescued, rather they were to be delivered to the nearest EU port.⁵³

37. Concurrently, FRONTEX also launched Operation Sophia on 22 June 2015. While the operation's core mandate is expressed as contributing to the EU's work to 'disrupt the business model of migrant smugglers and human traffickers in the Southern Central Mediterranean', it also has a direct focus on Libya.

38. The Council of the EU describes Operation Sophia in the following terms:

*[T]rains the Libyan Coastguard and Navy and monitors the long-term efficiency of the training and it contributes to the implementation of the UN arms embargo on the high seas off the coast of Libya. In addition, the operation also conducts surveillance activities and gathers information on illegal trafficking of oil exports from Libya, in accordance with the UN Security Council resolutions. As such, the operation contributes to EU efforts for the return of stability and security in Libya and to maritime security in the Central Mediterranean region.*⁵⁴

39. Up until March 2019, Operation Sophia rescued around 50,000 people before it was heavily compromised by member states' withdrawal of 'all naval assets'.⁵⁵ Sophia ended and was replaced by Operation EUNAVFOR MED IRINI ('Irin') on 31 March 2020.

⁵² FRONTEX European Border and Coast Guard Agency, "Operation Themis (Italy)"; <https://FRONTEX.europa.eu/along-eu-borders/main-operations/operation-themis-italy/>.

⁵³ Deutsche Welle, "FRONTEX launches new EU border control mission Operation Themis", 1 February 2018; <https://www.dw.com/en/FRONTEX-launches-new-eu-border-control-mission-operation-themis/a-42417610>.

⁵⁴ European Council / Council of the European Union, "EUNAVFOR MED Operation Sophia: mandate extended until 30 September 2019"; <https://www.consilium.europa.eu/en/press/press-releases/2019/03/29/eunavfor-med-operation-sophia-mandate-extended-until-30-september-2019/>.

⁵⁵ EURACTIV, "A European 'Mare Nostrum' instead of Operation Sophia 2.0", 12 September 2019; <https://www.euractiv.com/section/justice-home-affairs/opinion/a-european-mare-nostrum-instead-of-operation-sophia-2-0/>.

40. Iriini, the name of the Greek goddess of peace, is not a humanitarian operation, rather a military operation which uses ‘aerial, satellite and maritime assets’ to implement the UN arms embargo on Libya.⁵⁶ Its secondary tasks include gathering information on illegal exports from Libya of products such as petroleum, and human smuggling and trafficking networks, and to ‘**contribute to the capacity building and training of the Libyan Coast Guard and Navy in law enforcement tasks at sea.**’⁵⁷

41. Iriini is headquartered in Rome, Italy, and has an initial operation period of 12 months, continuing until 31 March 2021.⁵⁸ Rear Admiral Fabio Agostini is leading the operation as ‘EU Operation Commander’, while EU Member States will exercise ‘political control and strategic direction’.⁵⁹ Further, for Iriini to continue, it must be reconfirmed every four months unanimously by the Political and Security Committee of the Council of the EU; otherwise it will be terminated.⁶⁰

42. Iriini does not expressly address search and rescue, and internal EU memos have revealed that the EU does not expect to be involved in rescue through this Operation.⁶¹

b. Redefining Sea-Rescue as a Crime: the Obstruction of NGO Search and Rescue Efforts

43. After termination of *Mare Nostrum* – the only state-sponsored programme with a search and rescue mandate in the Mediterranean – independent NGOs began operating in an attempt to fill the humanitarian vacuum. Italy and Malta quickly responded with a series of administrative and criminal measures designed to disrupt these activities. They included impounding and deregistration of rescue vessels, imposition of prohibitive fines, criminal prosecutions of sea-captains for “trafficking” and refusal to allow rescue vessels to dock in

⁵⁶ European Council / Council of the European Union, “EU Launches Operation IRINI to enforce Libya Arms Embargo”, 31 March 2020; <https://www.consilium.europa.eu/en/press/press-releases/2020/03/31/eu-launches-operation-irini-to-enforce-libya-arms-embargo/>.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ European Union External Action, “EUNAVFOR MED Operation IRINI”, 2020; <https://www.operationirini.eu/about-us/>.

⁶⁰ EU Observer, “Operation Iriini is Wrong, for Libya and for Sea Rescues”, 11 May 2020; <https://euobserver.com/opinion/148307>.

⁶¹ The Guardian, “EU Agrees to Deploy Warships to Enforce Libya Arms Embargo”, 17 February 2020; <https://www.theguardian.com/world/2020/feb/17/eu-agrees-deploy-warships-enforce-libya-arms-embargo>.

a safe port for prolonged periods of time. This effectively brought NGO rescue efforts to a standstill for prolonged periods during the summer months during which migrant crossings in the Central Mediterranean reach their apex.

44. In 2017 Italy introduced a code of conduct governing rescues following a campaign to delegitimize and criminalize NGOs that conducted independent SAR missions in the Mediterranean.⁶² This effort to delegitimise such missions was backed by EU institutions.⁶³
45. In 2018, Italy's Interior Minister (from 1 June 2018 to 5 September 2019), Matteo Salvini, argued that all migrants rescued by European vessels should be sent back to Libya.⁶⁴ In May 2019, Salvini drafted a new law, dubbed the *Decreto Sicurezza Bis*, which set out fines for NGO vessels of up to € 5,500 per rescued person.⁶⁵ The tabled decree included provisions which give the Interior Minister the power to restrict and prohibit transit within Italian territorial waters. Italian president Sergio Mattarella signed the bill and it is now law.⁶⁶
46. The UNHCR reports that “[u]nder changes approved by Parliament, fines for private vessels that undertake the rescue of people and do not respect the ban on entry into territorial waters have risen to a maximum of € 1 million”, and “[i]n addition, vessels will now be automatically impounded”.⁶⁷
47. The UNHCR condemned the bill, arguing “it would penalise rescues at sea” and urged Rome “to revise the decree and ... to amend it, putting the protection of refugees and the saving of human lives at the centre”.⁶⁸

⁶² Human Rights Watch, “European Union: Events of 2017”, 18 January 2018; <https://www.hrw.org/world-report/2018/country-chapters/european-union>.

⁶³ Ibid.

⁶⁴ InfoMigrants, “Salvini Calls for Migrants to go Back to Libya,” 17 July 2018; <http://www.infomigrants.net/en/post/10685/salvini-calls-for-migrants-to-go-back-to-libya>.

⁶⁵ Global Detention Project, October 2019, op.cit.

⁶⁶ L. Tondo, “Italy Adopts Decree That Could Fine Migrant Rescuers up to € 50,000”, The Guardian, 15 June 2019; <https://www.theguardian.com/world/2019/jun/15/italy-adopts-decree-that-could-fine-migrant-rescue-ngo-aid-up-to-50000>.

⁶⁷ UN News, “‘€ 1 million’ fines for rescue boats prompts UN concern for future sea operations”, 6 August 2019; <https://news.un.org/en/story/2019/08/1043751>.

⁶⁸ L. Tondo, The Guardian, 15 June 2019, op.cit.

48. Similarly, the Special Rapporteur for the human rights of migrants and the Special Rapporteur on torture urged the country not to adopt the decree, stating:

*We urge authorities to stop endangering the lives of migrants, including asylum seekers and victims of trafficking in persons, by invoking the fight against traffickers. This approach is misleading and is not in line with both general international law and international human rights law. Instead, restrictive migration policies contribute to exacerbating migrants' vulnerabilities and only serve to increase trafficking in persons.*⁶⁹

C. Closed Ports: Italy and Malta

49. "Closed Ports" refers to the practice of refusing permission to vessels with rescued migrants on board from disembarking at a safe port.⁷⁰ The authorities in both Italy and Malta have engaged extensively in this practice at least since 2018.

50. As a consequence of refusing permission to disembark, the rescue vessels are prevented from docking at the nearest safe port in accordance with established principles of human rights and maritime law. This has resulted in migrants enduring prolonged periods of time in the Mediterranean Sea on board ships without adequate resources, medical facilities or the ability to seek protection under the 1951 Refugee Convention.

51. For the reasons set out in further detail below, these occurrences are constitutive of a systematic practice of cruel, inhuman and degrading treatment of migrants by both Italy and Malta.

i) Italy

52. The Closed Ports policy of refusing permission to disembark to vessels carrying rescued migrants as a means of preventing and deterring migrants arriving began in 2018 after the

⁶⁹ UN Human Rights Council, "Italy: UN Experts Condemn Bill to Fine Migrant Rescuers", 20 May 2019; <https://reliefweb.int/report/italy/italy-un-experts-condemn-bill-fine-migrant-rescuers>.

⁷⁰ The use of the term 'Closed Ports' policy here is not an official term used by either governments of Italy or Malta, but a term commonly adopted by the media and commentators to refer to the repeated and systematic occurrence of sea vessels carrying refused migrants being refused permission to disembark. The term is adopted herein as shorthand to refer to this practice.

electoral success of the Lega, an anti-immigration political party. The election resulted in Matteo de Salvini [‘Salvini’] being appointed Minister of the Interior in June 2018. Upon acceding to his ministerial post, he stated publicly that "the good times for illegal immigrants were over", adding that they should "get ready to pack their bags"⁷¹

53. Immediately after his appointment, in early June 2018, Salvini commenced preventing migrants from arriving in Italy by refusing permission to disembark to the Aquarius, a ship operated by Doctors Without Borders and *SOS Méditerranée*, carrying 629 rescued migrants crossing the Mediterranean. This included 123 unaccompanied minors, 11 other children and several pregnant women. The vessel was brought to Italian waters and sought permission to disembark and for the migrants on board to be processed for their eligibility for asylum in Italy. The vessel was refused permission to disembark at an Italian port by orders made by Salvini.⁷²

54. Upon being refused permission to disembark, the migrants were left stranded at sea on board the Aquarius with no port to receive them. On 12 June 2018, while the migrants remained stranded, MSF released an urgent request to Italy to allow the migrants to disembark which included the following details concerning the serious medical condition of migrants on board the vessel:

MSF is particularly concerned about several critical drowning and hypothermia patients who had to be resuscitated. These patients are being closely monitored on board as they could quickly develop significant pulmonary issues after swallowing sea water. Many rescued people have reported aspiration and are therefore at risk of developing pulmonary disease or pneumonia over the coming days. There are also 21 patients on board who have suffered severe chemical burns after being exposed to a toxic mixture of sea water and fuel for an extended period of time. These patients are stable but will need ongoing wound care and dressing changes over the coming days and weeks. Finally, there are several serious orthopaedic cases with associated infections

⁷¹ BBC News, "Italy migrants: Matteo Salvini calls for end to Sicily 'refugee camp'", 3rd June 2018
<https://www.bbc.com/news/world-europe-44346084>

⁷² Financial Times, "Italy refuses port access to migrant rescue boat", 11 June 2018;
<https://www.ft.com/content/7c6b73a4-6cfe-11e8-92d3-6c13e5c92914>.

*that need immediate surgical evaluations and operations, which MSF is unable to provide on the ship.*⁷³

55. Despite the confirmation of the presence of children, pregnant women and individuals in need of immediate medical attention, the Italian government continued to refuse to allow the vessel to disembark in Italy. After 8 days, the Prime Minister of Spain granted permission for the vessel to disembark at Valencia, where the migrants received medical attention and were permitted to submit claims for refugee protection.
56. The head of MSF Spain stated, “[this] is a very negative precedent. The truth is there is a question on the table as to whether this is a single event which is resolved quickly, or if we will no longer be allowed to dock in Italy and the blockage continues which would completely change rescue operations.”⁷⁴ At the same time, Salvini declared this outcome a ‘victory’ for Italy.⁷⁵
57. Following this precedent, other vessels were refused permission to disembark at Italian ports including Lifeline and NGO vessels such as Sea Watch, Sea Eye, Mediterranean and Open Arms.⁷⁶ An Italian Coast Guard vessel was also prevented from docking at an Italian port.⁷⁷ Between June 2018 and July 2019, MSF documented that 2,443 people remained at sea while waiting for authorization to disembark in Italy.⁷⁸
58. In June 2019 the German charity rescue and Dutch-flagged vessel Sea Watch 3 was sailing in the Strait of Sicily. Following a rescue operation, the vessel had to remain at sea for 16 days awaiting authorisation to dock in a place of safety.⁷⁹ Amongst those rescued were

⁷³ Médecins Sans Frontières/Doctors Without Borders Statement, “MSF urges immediate disembarkation of 629 people on board Aquarius at nearest port of safety”, 12 June 2018; <https://www.msf.org/msf-urges-immediate-disembarkation-629-people-board-aquarius-nearest-port-safety>.

⁷⁴ TheLocal.IT, “Rejected migrant ship is ‘symbol of EU's failure’”, 15 June 2018; <https://www.thelocal.it/20180615/rejected-migrant-ship-is-symbol-of-eus-failure>

⁷⁵ The Guardian, “Italian minister declares victory as Spain accepts rescue boat”, 11 June 2018; <https://www.theguardian.com/world/2018/jun/11/un-calls-for-migrant-ship-to-be-allowed-to-dock-in-italianport>.

⁷⁶ <https://www.theguardian.com/world/2019/aug/20/spain-sends-warship-to-pick-up-migrants-stranded-in-italian-waters>

⁷⁷ Friedrich Ebert Stiftung, “Immigration in Italy Between Two Elections: Myths and Reality”, July 2019; <http://library.fes.de/pdf-files/bueros/rom/15603.pdf>.

⁷⁸ Ibid.

⁷⁹ Infomigrants, “Orphaned in Liberia, Mariam reaches Italy on the Sea-Watch 3”, 26 July 2019; <https://www.infomigrants.net/en/post/18423/orphaned-in-liberia-mariam-reaches-italy-on-the-sea-watch-3>.

toddlers and pregnant women. During this period Salvini declared no NGO would set foot in Italy to land migrants any more, blaming Europe for its inaction.

59. On 15 June 2019 Italian authorities allowed 10 migrants to disembark due to medical concerns.⁸⁰ Captain Carola Rackete was arrested after manoeuvring the ship carrying some 41 migrants⁸¹ into the port of Lampedusa without permission, a crime punishable by between three and 10 years in jail.⁸² Rackete was later released but continues to face charges for helping illegal immigration.⁸³
60. The practice of denying permission to sea vessels carrying rescued migrants on board therefore began in June 2018 following the electoral success of the Lega party, and the appointment of Salvini as Minister of Interior. Since then, and throughout 2019, there were numerous occasions in which vessels were prevented from disembarking resulting in the migrants on board enduring prolonged periods of time without adequate resources or medical supplies. Salvini ended his tenure as Minister of Interior in September 2019.
61. The outbreak of the COVID-19 virus had a significant impact on travel worldwide. Italy was among the first countries to experience a significant and widespread outbreak of the virus and was the first to go into full-country lockdown on 10th March 2020. Significant limitations on the entry of tourists, and compulsory quarantine measures for any arrivals into the country were introduced⁸⁴ and domestic travel in Italy was further banned on 23rd March 2020.⁸⁵
62. In response to COVID-19, the Italian government issued a specific decree on 7 April 2020 which prohibited Italian ports from being considered a port of safety for the purpose of incoming vessels carrying rescued migrants. The decree states:

⁸⁰ Ibid.

⁸¹ Euronews, “Sea-Watch captain Carola Rackete released by Italian judge”, 26 July 2019; <https://www.euronews.com/2019/07/02/sea-watch-captain-carola-rackete-released-by-italian-judge>.

⁸² Al Jazeera, “Sea-Watch enters Lampedusa, captain Carola Rackete arrested”, 29 June 2019; <https://www.aljazeera.com/news/2019/06/sea-watch-enters-lampedusa-captain-carola-rackete-arrested190629050255767.html>.

⁸³ Euronews, 26 July 2019, op. cit.

⁸⁴ Ibid.

⁸⁵ Ibid.

For the entire duration of the national health emergency caused by the spread of the COVID-19 virus, Italian ports cannot guarantee the requisites needed to be classified and defined as a place of safety for the landing of people rescued from boats flying a foreign flag.⁸⁶

63. The impact of this decree was to prevent vessels carrying migrants and refugees rescued in the Mediterranean on the basis that, due to the spread of COVID-19, Italy could not guarantee an absence of threat to their lives. The duration of this decree is to last until the expiry of Italy's 'national health emergency', which was originally declared until 31 July 2020, but has subsequently been extended and is currently due to expire on 31st December 2020, although may be extended upon review beyond this date.
64. Italy's decree came the day after private German search-and-rescue ship, Alan Kurdi, entered Italian waters carrying 146 migrants it had rescued from wooden boats in Libyan waters.⁸⁷ The Alan Kurdi is operated by the German NGO 'Sea-Eye', and sails under a German flag.⁸⁸ On 6 April 2020, the Alan Kurdi entered Italian territorial waters, Italy however, refused to allow the vessel to port. The Alan Kurdi was instead stuck in a blockade for 12 days, joined by other boats carrying rescued migrants, while Italy, and broadly, the EU, debated their obligations.
65. After significant pressure, Italy delivered food to the Alan Kurdi on 11 April,⁸⁹ and finally transferred the passengers on board an Italian ferry, the Rubattino, for a 14-day quarantine beginning on 17 April 2020.⁹⁰ On 19 April, 34 migrants on board a Spanish rescue ship, Aita Mari, were transferred to the same ferry, joining the Alan Kurdi passengers in quarantine.⁹¹ All of the passengers tested negative for COVID-19,⁹² and were allowed to disembark in Palermo, Italy on the 4 May 2020 when the 14-day quarantine period ended.

⁸⁶ Human Rights Watch, 'EU/Italy: Port Closures Cut Migrant and Refugee Lifeline', 9 April 2020; <https://www.hrw.org/news/2020/04/09/eu/italy-port-closures-cut-migrant-and-refugee-lifeline>; See the official government decree here: *Avvenire Italy* [...];

[https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI\(R\).0000150.07-04-2020%20\(3\).pdf?fbclid=IwAR1ND4AFGVqsfno7pzXcIdIG2NIPGcPKUGT1Mjgg6lYqsU-3cEsfPu3ovU4](https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI(R).0000150.07-04-2020%20(3).pdf?fbclid=IwAR1ND4AFGVqsfno7pzXcIdIG2NIPGcPKUGT1Mjgg6lYqsU-3cEsfPu3ovU4)

⁸⁷ Human Rights Watch, 'EU/Italy: Port Closures Cut Migrant and Refugee Lifeline', 9 April 2020

⁸⁸ *Ibid.*

⁸⁹ DW News, 'Italy delivers food to stranded German rescue ship', 2nd May 2020, <https://www.dw.com/en/italy-delivers-food-to-stranded-german-rescue-ship/a-53096627>

⁹⁰ Sea-Eye.Org, 'Odyssey of the Alan Kurdi Rescue Ship Ends', 17th April 2020, <https://sea-eye.org/en/odyssey-of-the-alan-kurdi-rescue-ship-ends/>

⁹¹ Daily Sabah, 'Refugees allowed to disembark from Italy's quarantine ferry', 2nd May 2020

<https://www.infomigrants.net/en/post/24224/180-migrants-quarantined-on-board-ferry-near-palermo>

⁹² *Ibid.*

Italian officials announced that most of the migrants would be transferred to other European countries.⁹³

66. Even after Italy began to loosen its lockdown measures from 4th May 2020 onwards, the decree has remained in effect and continues to prevent or restrict migrant vessels from safe disembarkation. On 9 May 2020, another rescue vessel, the MV Marina, was prevented from port in Italy for five days, during which time conditions were deemed “intolerable” with food supplies dwindling fast, and the 79 migrants on-board forced to sleep on cold steel surfaces on the boat deck.⁹⁴ Further, the Alan Kurdi was held for 12 days, and the crew were then also quarantined for 14 days, preventing the Alan Kurdi from conducting search and rescue operations for a total of nearly a month, despite increased numbers of departures from Libya.⁹⁵ As a result of the blocks to disembarkation, the German government called for rescue operations to stop due to the lack of disembarkation ports, raising concerns about the increasing number of boats departing from Libya and reduced search and rescue vessels.⁹⁶

67. Between 25 - 30th June 2020, a total of 180 individuals were rescued while transiting the Mediterranean in unseaworthy boats by the *SOS Mediterranee* Ocean Viking. Afterwards, the Ocean Viking sought permission to disembark from authorities in 7 different ports in both Italy and Malta.⁹⁷ After all these requests were denied, many of the migrants aboard grew increasingly desperate, and 6 of them made suicide attempts due to the fear that no country would take them in.⁹⁸

68. On 6th July 2020, after over a week of consistent refusals to take action, the Italian authorities transferred the migrants on-board to a private quarantine ship in Sicily for coronavirus tests, and the individuals on board were eventually permitted to disembark. However, on 22nd July 2020, Italian authorities detained the Ocean Viking rescue ship on

⁹³ InfoMigrants, ‘Italy impounds migrant rescue ship Alan Kurdi’, 6th May 2020,

<https://www.infomigrants.net/en/post/24565/italy-impounds-migrant-rescue-ship-alan-kurdi>

⁹⁴ Info Migrants, ‘79 Migrants Disembark in Sicily, 162 More Wait at Sea’, 11 May 2020;

<https://www.infomigrants.net/en/post/24653/79-migrants-disembark-in-sicily-162-more-wait-at-sea>

⁹⁵ Op. Cit; Sea-Eye.org, 17th April 2020

⁹⁶ Ibid.

⁹⁷ InfoMigrants, ‘Ocean Viking: Italy to transfer migrants to quarantine ship after suicide attempts’ 6th July 2020, <https://www.infomigrants.net/en/post/25803/ocean-viking-italy-to-transfer-migrants-to-quarantine-ship-after-suicide-attempts>

⁹⁸ Ibid.

the basis of “technical and operational irregularities”. The detention of the ship was described by *SOS Mediterranee* as "a blatant administrative harassment manoeuvre aimed at impeding our lifesaving work".⁹⁹

69. It should be noted that throughout 2020, Italian prosecutors have sought to bring criminal charges against Matteo Salvini for illegal detention on the basis of his consistent refusal to permit sea vessels carrying migrants and refugees to disembark during his 14 month tenure as Minister of Interior between July 2018 and September 2019. During this time, the Italian Prime Minister called Salvini "obsessed" with keeping migrants out of Italian ports.¹⁰⁰ On 30th July 2020, the Italian senate voted in favour of lifting Salvini’s parliamentary immunity, enabling the criminal prosecution to proceed.

ii. Malta

70. Although Malta is located in the Mediterranean between Libya and Italy, and has a large Search and Rescue (SAR) Region, encompassing a significant portion of the route taken by migrants transiting from Libya to Italy,¹⁰¹ it has taken in relatively few migrants. Arrivals by sea to Malta were recorded as 1,445 in 2018, 3,406 in 2019 and 2,161 so far in 2020.¹⁰²

71. Nonetheless, the Government of Malta has actively pursued a strategy of prevention and deterrence against the arrival of migrants transiting the Mediterranean from Libya. To provide context to the Maltese Closed Ports policy, it is necessary to consider the wider strategy of “push-backs” and the bilateral agreement made between Malta and Libya in May 2020.

72. There have been several documented incidents in which the Maltese authorities have coordinated pull-backs of migrant vessels incoming from Libya, that had entered the Maltese SAR Region and then forcibly returned to Libya, where migrants are

⁹⁹ France 24, ‘ Migrant rescue ship Ocean Viking detained by Italy's coastguard’ , 23rd July 2020, <https://www.france24.com/en/20200723-migrant-rescue-ship-ocean-viking-is-detained-by-italy-s-coastguard>

¹⁰⁰ BBC News, ‘Italy's Salvini in row with PM over Open Arms migrant ship’, 16th August 2019, <https://www.bbc.co.uk/news/world-europe-49364217>

¹⁰¹ A map of the Malta Search and Rescue are can be found online on the Armed Forces of Malta website at: <https://afm.gov.mt/en/operationsanddeployments/national/Pages/Operations-Centre.aspx>

¹⁰² Data from <https://data2.unhcr.org/en/situations/mediterranean> and <https://www.unhcr.org/mt/figures-at-a-glance>

systematically tortured and ill-treated (see below for further details). These include, among others, the following notable incidents:

- a. In October 2019, a wooden boat carrying around 50 people that departed from Libya entered the Maltese SAR Region. Alarm Phone, an NGO monitoring and coordinating distress calls of migrants transiting the Mediterranean, made contact with the Maltese authorities, which acknowledged the call and affirmed that the situation would be coordinated. However, the authorities failed to respond to any further communication for several hours and it was eventually discovered that the Libyan Coast Guard had been contacted to intercept the boat and force their return to Libya. The individuals ended up in the Libyan detention centre of Trik-al-Sikka.
- b. On 14th March 2020, a fiberglass boat carrying 49 people that departed Libya and entered the Maltese SAR Region, was forced back to Libya the LCG's vessel Ras Al Jadar, a speedboat donated to the LCG by Italy. That same weekend of 14-15 March saw over 400 people being pulled-back to Libya by Libyan authorities in multiple operations – an outcome criticized by IOM as “unacceptable”, exposing vulnerable people to detention and abuse.
- c. On 15th April 2020, a group of 63 people including 7 women and 3 children entered the Maltese SAR Region. They were then forcibly returned to Libya by a fishing boat Dar As Salam, a Libyan vessel docked in Malta. When returned to Libya, only 51 individuals remained, 5 people dead and a further 7 people missing at sea. The Maltese authorities confirmed having coordinated the “privatised” (i.e. using a commercial vessel) pull-back in an official statement.

The International Organization for Migration (IOM), whose representatives in Tripoli were present at the disembarkation, stated that “The migrants were rescued by a commercial ship from the Maltese search and rescue zone and handed over to the Libyan Coast Guard. We reiterate that people rescued at sea should not be returned to unsafe ports.”

The Libyan office of the UN Refugee Agency (UNHCR) also expressed criticism about their transfer to Libya, describing the survivors as “traumatized and weakened by days adrift at sea” and reiterating that “Libya is a country at war and not a safe port for refugees and asylum-seekers to be returned to.” Many of the people in the group were of Eritrean origin, and therefore likely to have a well-founded fear of persecution.

73. In addition to these “pull-back” incidents, following the Italy-Libya MoU concerning the prevention of migrant flows from Libya to Italy agreed in February 2017 and renewed in February 2020, the Maltese Prime Minister signed its own Malta-Libya MoU ‘in the field of combatting illegal immigration’ on 28th May 2020.¹⁰³
74. The agreement included the establishment of two new coordination centres in Valetta and Tripoli on 6th July 2020 with the function of ‘offering the necessary support to combatting illegal immigration in Libya and the Mediterranean region’. The MoU commits Malta to coordinate with the EU to ‘propose funding towards additional maritime assets necessary for the interception and follow up of human trafficking activities in the SAR Region in the Mediterranean basin’. The MoU makes no reference whatsoever to guaranteeing any human rights standards or protections for migrants transiting the Mediterranean.
75. The Maltese ‘Closed Ports’ policy of refusing permission to disembark to vessels carrying rescued migrants can therefore be seen as part of a wider strategy aimed at prevention and deterrence of migrants arriving to Malta. As detailed above, in April 2020, Italy closed its ports to disembarkation following a decree based on the outbreak of the Covid-19 pandemic. In May 2020, Malta also declared its ports closed, and also announced that it was incapable of ensuring search and rescue operations within its own SAR Region, due to the Covid-19 outbreak.
76. In response to both Italy and Malta’s declarations of refusal to permit disembarkation at their ports based on Covid-19, in May 2020 the UNHCR and IOM issued a joint statement to all European states that the Covid-19 pandemic must not be used as an excuse to breach

¹⁰³ Memorandum of Understanding between the Government of National Accord of the State of Libya and the Government of the Republic of Malta in the field of combatting illegal immigration, signed in Tripoli on 28 May 2020, www.independent.com.mt/file.aspx?f=206640

existing human rights obligations and that they “must continue to disembark people rescued at sea, in line with international maritime law obligations and ensure access to asylum and humanitarian assistance.”¹⁰⁴

77. Despite the request, Malta refused all disembarkation requests from vessels carrying rescued migrants, including for rescues coordinated and carried out by Maltese authorities throughout May 2020. Instead, the Maltese government ordered incoming migrants to be indefinitely detained on board four privately hired ferry boats. During this month, approximately 425 individuals were kept aboard these ferry boats which were kept just outside Maltese territorial waters.

78. For approximately 6 weeks, lawyers, NGOs and the UNHCR were prevented from accessing the individuals and they were unable to seek protection in Malta under the 1951 Refugee Convention. In their joint statement, the IOM and UNHCR described it as “unacceptable to leave people at sea longer than necessary, especially under difficult and unsuitable conditions”.

79. On 4 June 2020, the Council of Europe Commissioner for Human Rights called for humanitarian aid and urgent safe disembarkation of those held on board the ferry boats, noting that “the confinement of those rescued on the ships, as well as the lack of remedies against this measure and its indefinite duration may not be compliant with the right to liberty of those on board, as guaranteed by Article 5 of the European Convention on Human Rights”.¹⁰⁵ On 7th June 2020, the individuals were finally granted permission to disembark in Malta.¹⁰⁶

80. Malta has since continued to refuse permission to disembark to vessels carrying reduced number of migrants within its SAR Region. On 2nd July 2020, a group of 52 migrants including 12 women were rescued by vessel MV Talia, a cattle-ship that had been alerted

¹⁰⁴ UNHCR, IOM, urge European states to disembark rescued migrants and refugees on board the Captain Morgan vessels, 21 May 2020, www.unhcr.org/news/press/2020/5/5ec664284/unhcr-iom-urge-european-states-disembarkrescued-migrants-refugees-board.html

¹⁰⁵ Council of Europe Commissioner for Human Rights, Immediate action needed to disembark migrants held on ships off Malta’s coast, 4 June 2020, www.coe.int/en/web/commissioner/-/immediate-action-needed-to-disembark-migrants-held-on-ships-off-malta-s-coast

¹⁰⁶ Malta News Agency, ‘425 migrants entered Malta after weeks outside its territorial waters’, 7th June 2020, <http://www.maltanewsagency.com/2020/06/425-migrants-entered-malta-after-weeks-outside-its-territorial-waters/>

to a distress signal. According to Alarm Phone, the captain of the MV Talia had been given assurances of rescue coordination by the Maltese RCC. However, upon approaching Maltese territorial waters the vessel was denied entry. Over several days, Alarm Phone recorded that they telephoned the Maltese RCC 42 times, without substantive response.¹⁰⁷

81. During the time in which the 52 migrants were on board the MV Talia, they endured severe and degrading conditions. The ship's captain, Mohammad Shaaban, told journalists that his ship was not an adequate place for human beings as the Talia is used for transporting livestock and the migrants have been lying in dirty cattle pens, sleeping on animal feces and are running out of water and food.¹⁰⁸ Eventually on 8th July 2020, the migrants were permitted to disembark in Malta.¹⁰⁹

82. On 3rd August 2020, a group of 27 individuals including 1 minor and 1 pregnant woman entered the Maltese SAR Region on a wooden boat. The Maltese RCC was alerted and rescue coordination was sought by Alarm Phone, but no response was received. Nearby merchant vessels were therefore contacted and 4th August 2020 the engine of the wooden boat stopped working, leaving the boat drifting with the individuals on board in significant distress and panic.

83. On 4th August 2020 the airplane "Moonbird" operated by Sea-Watch and Humanitarian Pilots Initiative spotted the drifting boat and informed relevant authorities accordingly. Finally, the *Maersk Etienne*, a chemical tanker sailing under Danish flag stopped and monitored the people on board the wooden boat, but still no SAR vessel from the Maltese AFM arrived.

84. On 5th August 2020, when the people in distress were about to sink, the *Maersk Etienne* took the people on board, which they confirmed to Alarm Phone as having been done under the instructions of RCC Malta. Afterwards the *Maersk Etienne* headed in the direction of Malta, waiting for a port to disembark the 27 migrants on board. However, a positive

¹⁰⁷ Times of Malta, 'Alarm Phone says it called Maltese Authorities 42 times, rarely heard back', 4th May 2020, <https://timesofmalta.com/articles/view/alarm-phone-says-it-called-maltese-authorities-42-times-rarely-heard.789860>

¹⁰⁸ InfoMigrants, 'Migrants disembarked from Talia animal cargo ship in Malta' 8th July 2020, <https://www.infomigrants.net/en/post/25873/migrants-disembarked-from-talia-animal-cargo-ship-in-malta>

¹⁰⁹Ibid.

answer regarding the possibility of disembarking people in Malta was never received, and no Place of Safety (POS) was indicated.

85. On 2nd September 2020, the newspaper Times of Malta reported that the Captain of the *Maersk Etienne* had requested “urgent humanitarian assistance and a safe disembarkation” for the migrants on board the vessel. It was declared that “Our crew continue to provide as much support and assistance as they can to this vulnerable group, but they lack the resources to offer sustained humanitarian and medical care”. Through the communication with relatives of migrants on board, Alarm Phone has learned that during the whole period they spent on board the *Maersk Etienne*, the migrants never had the possibility to communicate with their families.

86. On 6th September 2020, after 32 days on board the *Maersk Etienne*, it was confirmed that 3 of the 27 migrants on board jumped overboard into the Mediterranean Sea. Upon jumping, the migrants were rescued by the crew to prevent them from drowning. These desperate acts of self-harm by the migrants demonstrated that their continued retention on board the *Maersk Etienne* was putting their lives in imminent danger. On 7th September 2020, the ICS, UNHCR and IOM issued an urgent call for the immediate and safe disembarkation of the *Maersk Etienne* stressing the fact that time now was running out for all concerned.¹¹⁰

87. Despite the urgent calls for safe disembarkation, and the fact that 3 migrants had jumped overboard, the Maltese authorities continued to refuse permission for a continuous period of 38 days. This period represents the longest stand-off in European history in which a port has continued to deny safe disembarkation to a vessel carrying rescued individuals. Eventually, the government of Italy intervened and on 14th September 2020, a charity rescue ship the *Mare Jonio* transferred the migrants on board and they were safely disembarked in Pozzallo, Sicily.¹¹¹

¹¹⁰ ICS, UNHCR and IOM call on States to end humanitarian crisis onboard ship in the Mediterranean, <https://www.unhcr.org/news/press/2020/9/5f55e7fe4/ics-unhcr-iom-call-states-end-humanitarian-crisis-onboard-ship-mediterranean.html>

¹¹¹ New York Times, ‘Migrants Rescued by Tanker Arrive in Italy After Weeks long Standoff’ 14th September 2020, <https://www.nytimes.com/2020/09/14/world/europe/migrant-tanker-mediterranean-sicily.html>

88. The Maltese ‘Closed Ports’ policy and use of the Covid-19 pandemic to justify the prolonged refusals to permit vessels carrying rescued migrants to disembark on health grounds, has been widely criticised. In May 2020, the UNHCR stated “rescue at sea is a humanitarian imperative and an obligation under international law. Legitimate public health concerns can be addressed through quarantine, health checks, and other measures. However, delayed rescue or failure to disembark boats in distress put the lives in danger. A safe port for disembarkation should be provided without delay, together with a prompt agreement on how to share responsibility amongst States for hosting people once they reach safety on dry land.”¹¹²

89. This concern was also voiced by Amnesty International. In their reports titled ‘Malta: Waves of Impunity’ it is stated that “measures limiting human rights, for example for the protection of public health, may at times be justifiable; however, they should be set out in law and be proportionate and necessary to the pursuit of a legitimate aim. Rescue at sea, which includes disembarkation in a safe place, is an obligation aimed at protecting the right to life, which is non-derogable”¹¹³

¹¹² UNHCR, News comment on search and rescue in the Central Mediterranean by Gillian Triggs, Assistant High Commissioner for Protection at UNHCR, the UN Refugee Agency, 1 May 2020
www.unhcr.org/uk/news/press/2020/5/5eac53214/news-comment-search-rescue-central-mediterranean-gillian-triggsassistant.html

¹¹³ Amnesty International, ‘Malta: Waves of Impunity, Malta’s Human Rights Violations and Europe’s Responsibilities in the Central Mediterranean’, September 2020, p.7
<https://www.amnesty.org/download/Documents/EUR3329672020ENGLISH.PDF>

B. Torture and Ill-treatment

d. Pull-Backs to torture: a case study on Italian *refoulement* by proxy¹¹⁴

i. *Background to bilateral cooperation between Italy and Libya*

90. Italy has long promoted bilateral cooperation with the Libyan authorities concerning so called “irregular” migration across the Mediterranean. In the summer of 2000, a large number of migrants reached the coasts of Sicily. As a result, in December 2000, the Italian and Libyan Governments signed in Rome the first general agreement aimed at fighting irregular migration.¹¹⁵

91. Several high-level meetings followed. In Tripoli in September 2002, the first High-Level Security Libyan-Italian Committee was held. The two Ministries of Interior achieved an operational agreement which led, in July 2003, to the establishment of permanent liaison in the fields of organized crime and illegal immigration between Italian police officers collaborating in Tripoli with colleagues of the Libyan Security General Directorate.¹¹⁶

92. Significant measures of co-operation were introduced in 2003 and 2004 under the Italian presidency of Silvio Berlusconi. Further bilateral agreements were agreed between Italy and Libya, notably the July 2003 bilateral agreement,¹¹⁷ which was signed by the chiefs of police and regulated the practical cooperation between the security forces.¹¹⁸ A bilateral agreement was also signed in August 2004.

¹¹⁴ See Boris Wijkström and Ousman Noor, *Can Italy be Held Accountable under Article 20 UNCAT for its Role in the “Pull-back” of Migrants in the Mediterranean?*, *Asyl: Revue suisse pour la pratique et le droit d’asile*, 3/2020, at https://centre-csdm.org/wp-content/uploads/2020/09/Asyl-3_2020-CSDM-pull-backs.pdf ;

¹¹⁵ Middle East Institute, “Italy and its Libyan Cooperation Program: Pioneer of the European Union’s Refugee Policy?”, 1 August 2010; <https://www.mei.edu/publications/italy-and-its-libyan-cooperation-program-pioneer-european-unions-refugee-policy>; European Commission, “Technical Mission to Libya on Illegal Migration 27 Nov - 6 Dec 2004 Report”, 2005, p.58; <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>; the 2000 Agreement was not published; Mariagiulia Giuffrè, “State Responsibility Beyond Borders: What Legal Basis for Italy’s Push Backs to Libya?”, 24 *International Journal of Refugee Law*, 692-734, 2012.

¹¹⁶ European Commission, 2005, op.cit.

¹¹⁷ The 2003 Agreement was not published; Giuffrè, 2012, op.cit.

¹¹⁸ Silja Klepp, “Negotiating the Principle of Non-Refoulement in the Mediterranean Sea: Missions, Visions and Policies at the Southern Borders of the European Union”, Working Paper Series of the Graduate Centre Humanities and Social Sciences of the Research Academy Leipzig, No. 1, 2008; https://home.uni-leipzig.de/~gsgas/fileadmin/Working_Papers/WP_1_Klepp.pdf.

93. According to the Middle East Institute, between 2004 and 2006, a programme of charter flights was financed by Italy to fly irregular migrants back to their countries of origin.¹¹⁹ This included the repatriation of 5688 migrants from Libya on 47 charter flights to Egypt, Ghana and Nigeria, Mali, Pakistan, Niger, Eritrea, Bangladesh, Sudan and Syria.¹²⁰ Also, technical equipment and training was provided to assist with control at the Libyan borders, including patrol boats, lifeboats, cars and buses, binoculars, sacks for transport of corpses, road and naval GPS, signalling rockets, and kits for fingerprinting.¹²¹
94. In 2003, Italy financed the construction of a camp for irregular migrants in Gharyan, close to Tripoli.¹²² In 2004, Italy allocated funds for the construction of two additional camps: one in Kufra, south-east Libya and close to the border with Egypt and Sudan, and the other in Sebha, south-west Libya.¹²³
95. Since October 2004, reports document that more than 4,000 migrants were removed from the Italian island of Lampedusa to Libya.¹²⁴ In May 2006, there was a government reshuffle in Italy. However, border security and the financing of deportation flights and detention centres in Libya continued under the government headed by Romano Prodi.¹²⁵
96. Technical, political and operational meetings were held in Rome on 6 January and 28 April, and in Tripoli on 25 August and 26 September 2004.¹²⁶ Four technical meetings were held, in Rome and Tripoli, to better define support offered by Italy to Libya, including engagement and provision of special training, and supplies of devices and equipment requested by the Libyan authorities and used to fight illegal immigration.¹²⁷

¹¹⁹ Middle East Institute, 1 August 2010, op.cit.

¹²⁰ European Commission, 2005, op.cit, p.59.

¹²¹ Ibid.

¹²² Rutvica Andrijasevic, “Renounced Responsibilities: Detention, Expulsion and Asylum at the EU’s Southern Border of Libya and Lampedusa”, July 2006, p.14; <http://policy.hu/studydocs/andrijasevic.pdf>; Middle East Institute, 1 August 2010, op.cit.; European Commission, 2005, op.cit, p.59.

¹²³ Middle East Institute, 1 August 2010, op.cit., fn.11.

¹²⁴ Middle East Institute, 1 August 2010, op.cit. fn.16; Deutsche Welle, “Scharfe Kritik an Flüchtlingslagern auf Lampedusa” [Harsh Criticism of Detention Centers in Lampedusa], 23 September 2005; <https://www.dw.com/de/scharfe-kritik-am-flüchtlingslager-auf-lampedusa/a-1718149>.

¹²⁵ Middle East Institute, 1 August 2010, op.cit.

¹²⁶ European Commission, 2005, op.cit, p.59.

¹²⁷ European Commission, 2005, op.cit, p.59.

97. Between 2007 and 2009, a number of bilateral agreements were signed between Italy and Libya, to reduce migration from Libya. These meetings combined negotiations concerning irregular migration with trade and economic relations. On 16 October 2007 a contract concerning investment in the Libyan oil sector was signed between the two national energy companies ENI (Italy) and NOC (Libya). In November 2007, the Italian Minister of Foreign Affairs, Massimo D'Alema, visited Tripoli, and promised the construction of a highway and enhanced economic relations with Libya.
98. A further agreement was signed on 29 December 2007 aimed at reducing clandestine immigration, which reinforced bilateral maritime cooperation and allowed Italian boats to patrol in Libyan territorial waters for the first time. Joint maritime patrols of the Italian police and Libyan army were created.¹²⁸ Such joint patrols allowed the apprehension and return of migrants leaving Libya. This cooperative agreement resulted from informal negotiations between security experts and officials.
99. On 4 February 2009, Italy and Libya signed an Additional Protocol in Tripoli, which partially amended the 2007 agreement. Libya undertook to “coordinate its actions with those of the countries of origin in order to reduce clandestine immigration and ensure the repatriation of immigrants”. Italy undertook to provide three unmarked ships to Libya, for a period of three years, and to encourage the EU bodies to conclude an agreement between the EU and Libya.
100. On 30 August 2008, during the reign of Muammar Gaddafi, a *Treaty on Friendship, Partnership and Co-operation between Italy and the Great Socialist People’s Libyan Arab Jamahiriya* (“Friendship Treaty”) was signed in Benghazi, which came into force in February 2009.¹²⁹ The bilateral agreement established a coordination unit for a **joint Italian-Libyan patrol**,¹³⁰ **allowing for the interception of migrants and refugees in**

¹²⁸ Natolino Ronzitti, “The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?”, *Bulletin of Italian Politics*, Vol. 1, No. 1, 2009, pp.125-133.

¹²⁹ “Treaty on Friendship, Partnership and Co-operation between Italy and the Great Socialist People’s Libyan Arab Jamahiriya”, concluded in October 2008, and ratified by Italy through Law n. 7/09 of 6 February 2009.

¹³⁰ Report by the Special Rapporteur on the human rights of migrants, François Crépeau, “Mission to Italy (29 September - 8 October 2012)”, A/HRC/23/46/Add.3, 30 April 2013; https://www.ecoi.net/en/file/local/1260757/1930_1368617983_a-hrc-23-46-add3-en.pdf.

international waters to be returned to Libya. It also provided for Italy's direct collaboration with the Libyan Coast Guard.¹³¹

101. Article 19 of the Friendship Treaty stipulates the commitment to prevent clandestine immigration and Article 6 provides that the parties respect the principles of the United Nations Charter and the Universal Declaration of Human Rights.¹³² The Friendship Treaty provided for a budget, of which 50% is paid by Italy and the rest by the European Union.¹³³ To judge from the law implementing the treaty, this budget formed a tax paid by Italian companies engaged in Libya, such as ENI. The Agreement stipulated that Italy would disburse five billion dollars in aid.¹³⁴

102. On 7 December 2010 former Interior Minister Roberto Maroni and Libyan Abdelfattah Farag Younis Al Obeidi signed a new technical and operational protocol to fight irregular migration by sea in order to further improve the cooperation.¹³⁵ In the case of *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights considered this policy, known as “pushbacks”, to breach the European Convention on Human Rights, specifically the right to *non-refoulement*.¹³⁶

103. On 17 June 2011, Italy signed a Memorandum of Understanding with the National Transitional Council of Libya. The MoU referred to earlier commitments in former agreements and provided for mutual assistance and co-operation in combating irregular immigration.¹³⁷ The then-rebel National Transitional Council “agreed to honour several

¹³¹ Global Detention Project, “Country Report: Immigration Detention in Italy: Complicit in Grave Human Rights Abuses?”, October 2019; <https://www.globaldetentionproject.org/wp-content/uploads/2019/10/GDP-Immigration-Detention-in-Italy-E-Version.pdf>.

¹³² ICJ, October 2014, op.cit.

¹³³ Internazionale, “Perché l'accordo tra l'Italia e la Libia sui migranti potrebbe essere illegale”, 20 February 2017; <https://www.internazionale.it/notizie/annalisa-camilli/2017/02/20/italia-libia-migranti-accordo-illegale>.

¹³⁴ Avvenire, “Memorandum. Accordo Italia-Libia sui migranti: il mistero dei 5 miliardi (per Tripoli)”, 31 October 2019; <https://www.avvenire.it/attualita/Pagine/i-soldi-a-tripoli-accordo-migranti>.

¹³⁵ European Migration Network, “Practical responses to irregular migration: the Italian case”, 2012; https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/it_20120105_practicalmeasuresoirregularmigration_en_version_final_en.pdf.

¹³⁶ *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, European Court of Human Rights, 23 February 2012.

¹³⁷ Migrants At Sea, “Memorandum of Understanding Between Italy and Libyan NTC”, 20 June 2017; <http://migrantsatsea.wordpress.com/2011/06/20/memorandum-of-understanding-between-italy-and-libyan-ntc/>; Middle East Institute, “Migration Agreements between Italy and North Africa: Domestic Imperatives versus International Norms”, 20 December 2012; <https://www.mei.edu/publications/migration-agreements-between-italy-and-north-africa-domestic-imperatives-versus>.

accords signed between Italy and Gadhafi, including the deportation of irregular migrants without proper status. In effect, this Memorandum created a joint coordination committee whose function was to prepare for the reactivation of Italy-Libya Friendship.”¹³⁸

104. In 2012, Italy agreed further with Libya to stop departures of migrants from Libya.¹³⁹ The Agreement stipulates that Italy will assist Libyan police forces with training and technical tools to control the border, proposes mechanisms for information sharing on irregular migrants and illegal smuggling networks and proposes construction of a detention centre in Kufra for irregular migrants.¹⁴⁰

ii. The Memorandum of Understanding of February 2017

105. According to the UNHCR, in 2016 departures from Libya accounted for 89.7 percent of arrivals of migrants by sea in Italy.¹⁴¹ On 2 February 2017, the Government of Italy (Prime Minister Paolo Gentiloni) signed a Memorandum of Understanding (MoU) with the Libyan Government of National Accord (“GNA”, Prime Minister Fayed al-Serraj).¹⁴²

106. GNA is the UN-backed and internationally recognized government of Libya and the entity controlling the country.¹⁴³ The European Council backed the 2017 MoU in the Malta Declaration. The Declaration focused on cooperation with the Libyan authorities in order to limit migration across the “Central Mediterranean Route”.

¹³⁸Report by the Special Rapporteur on the human rights of migrants, François Crépeau, “Mission to Italy (29 September - 8 October 2012)”, 30 April 2013, op.cit.

¹³⁹ Amnesty International (Italy), “L’Accordo Italia - Libia in materia di immigrazione mette a rischio i diritti umani”, 12 June 2012; <https://www.amnesty.it/laccordo-italia-libia-in-materia-di-immigrazione-mette-a-rischio-i-diritti-umani/>; Pubblica Amministrazione e Stranieri Immigrati, “Ministero Dell’Interno Italiano - Ministero Dell’Interno Libico Accordo 3 Aprile 2012: Processo verbale della riunione tra il Ministro dell’Interno della Repubblica italiana e il Ministro dell’Interno della Libia (Tripoli, 3 aprile)”, 3 April 2014; https://www2.immigrazione.regione.toscana.it/?q=norma&doc=/db/nir/DbPaesi/accordi/_accordo-3-04-2012.xml&datafine=20190504&css=3.

¹⁴⁰ Amministrazione e Stranieri Immigrati, 3 April 2014, op.cit.

¹⁴¹ Global Detention Project, October 2019, op.cit., p.22; <https://www.globaldetentionproject.org/wp-content/uploads/2019/10/GDP-Immigration-Detention-in-Italy-E-Version.pdf>.

¹⁴² Internazionale, “L’Italia rinnoverà l’accordo con la Libia con alcune modifiche. Annalisa Camilli, giornalista di Internazionale”, 30 October 2019; <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/10/30/italia-memorandum-libia>.

¹⁴³ Human Rights Watch, “Libya Events of 2018”, 2019; <https://www.hrw.org/world-report/2019/country-chapters/libya>.

107. The MoU was intended to extend and incorporate the previous commitments made in the 2008 Berlusconi-Gaddafi Friendship Treaty. According to the MoU, Italy would provide Libyan authorities with training and equipment, while also investing in Libyan border security and assisting with the combat against smuggling of people.¹⁴⁴
108. The MoU consists of three pages and eight articles. Articles 1 and 2 set out commitments and cooperative efforts in accordance with the 2008 Friendship Treaty. Italy promises technical assistance to Libyan institutions that work on reducing irregular migration.
109. Article 2 refers to Italy's financial support of "hosting centres" for migrants for which medical equipment will be supplied. Article 2 also refers to a land border control satellite detection system, referring to Article 19 of the 2008 Friendship Treaty.
110. Both Italy and Libya commit to training Libyan personnel in the hosting centres and agree to adopt a "wider and more complete Euro-African cooperation view, to eliminate the causes of irregular immigration". Both parties agree to support organizations in Libya that return migrants to their country of origin, "including voluntary return", and to start development programmes in Libya to create new jobs and prevent illegal revenue benefiting militias and local groups.
111. Article 3 sets out the parties' aim to create a committee which can oversee the implementation of the agreement. While Article 4 refers to financing, Article 5 commits the parties to interpreting and applying the MoU in accordance with international and human rights obligations. The final three articles detail enforcement mechanisms and procedural matters.
112. The MoU committed Italy to providing military, strategic and technical equipment and support, as well as funds for development, to a Libyan government under the influence of violent and armed militias, in order to block and control the departures of fleeing migrants. Although the European Council supported the parties' priorities of "providing

¹⁴⁴ For a discussion of the MoU, see Anna Liguori, *Migratino Law and the Externalization of Border Controls, European State Responsibility*, Ch. 2: The Italy-Libya Memorandum of 2 February 2017, 2019 Routledge.

training, equipment and support”, the UN Committee against Torture (CAT) has expressed concerns regarding the compatibility of Italy’s cooperation and support, with human rights.

113. In its Concluding Observations on the combined fifth and sixth periodic reports of Italy, the Committee against Torture expressed concern that the MoU “does not contain any particular provision that may render cooperation and support conditional on the respect of human rights, including the absolute prohibition of torture” and **“the lack of assurances that cooperation for the purpose of enhancing the operational capabilities of the Libyan Coast Guard or other Libyan security actors would be reviewed in light of possible serious human rights violations”** (our emphasis).¹⁴⁵

114. **The Committee against Torture drew attention to “the numerous reports of dangerous, life-threatening interceptions by armed men believed to be from the Libyan Coast Guard” with reference to a report of the United Nations Support Mission in Libya,¹⁴⁶ and “the horrific conditions in detention facilities under the control of Libya’s Department for Combating Illegal Migration” as documented by United Nations human rights monitors¹⁴⁷ and a press release from the Office of the United Nations High Commissioner for Human Rights.¹⁴⁸**

115. The language contained in the MoU is broad and imprecise. The precise amount of funding and specificities of support are not detailed, and the MoU does not distinguish asylum seekers from economic migrants. Although the MoU specifies a time duration of three years up to February 2020, the terms agreed upon were designed to automatically renew in the event that no further agreement was reached.

¹⁴⁵ UN Committee against Torture, “Concluding observations on the combined fifth and sixth periodic reports of Italy”, CAT/C/ITA/CO/5-6, para. 22, December 2017.

¹⁴⁶ UN Security Council, “Report of the Secretary-General on the United Nations Support Mission in Libya”, S/2017/726, para. 36, 22 August 2017.

¹⁴⁷ UN Security Council, “Report of the Secretary-General on the United Nations Support Mission in Libya”, S/2017/726, para. 35, 22 August 2017.

¹⁴⁸ The Office of the United Nations High Commissioner for Human Rights News, “UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity”, 4 November 2017; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393>.

116. Within the three years that the original MoU was agreed for, at least 40,000 people, including thousands of children, have been intercepted by the LCG and forcibly returned to Libya.¹⁴⁹
117. Despite the well-documented and extensive human rights violations related to these interceptions, the government of Italy made a decision to renew the MoU with Libya in October 2019. The Italian Foreign Minister, Luigi Di Maio, told the Italian parliament that it would be “unwise for Italy to break off its agreement with Libya on handling asylum seekers and combating human trafficking”.¹⁵⁰
118. The MoU was renewed and extended for a further three years from 2 February 2020 under same conditions, and the Italian government continues to help facilitate the interception by Libyan actors, of migrants crossing the Mediterranean from Libya.
119. The decision to renew the MoU has been widely and internationally criticised, including by UN institutions and NGOs concerned with human rights. In a statement on 19 February 2020, the IOM called for the international community, including the European Union, to find alternative disembarkation mechanisms for migrants fleeing from Libya, hours after Tripoli’s main port was heavily shelled. The IOM Libya Chief of Mission stated, “Libya cannot wait ... it is time for concrete action to ensure lives rescued at sea are taken to ports of safety, and to end the system of arbitrary detention”.¹⁵¹
120. The IOM refers to evidence documented by the UN relating to the abuse, torture and disappearances of migrants in Libya and the brutal conditions within Libyan detention centres, and concludes that a new approach is needed.
121. Amnesty International and Human Rights Watch have both stated that Italy has become complicit in human rights violations through the continued facilitation of migrants crossing the Mediterranean and their forced return to Libya.

¹⁴⁹ Human Rights Watch, “Italy: Halt Abusive Migration Cooperation with Libya”, 12 February 2020; <https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya>.

¹⁵⁰ The Guardian, 'Italy to renew anti-migration deal with Libya', 31 October 2019, <https://www.theguardian.com/world/2019/oct/31/italy-to-renew-anti-migration-deal-with-libya>

¹⁵¹ International Organization for Migration, “IOM Calls on the International Community for Urgent Action to Find Alternatives to Disembarkation in Libya”, 19h February 2020; <https://www.iom.int/news/iom-calls-international-community-urgent-action-find-alternatives-disembarkation-libya>.

122. In a statement entitled “Libya: Renewal of migration deal confirms Italy’s complicity in torture of migrants and refugees”, Amnesty International stated that **the decision of the Italian government to ignore the horrific abuses inflicted on tens of thousands of people in Libya and renew the MoU was a “shameful display of how far EU governments are prepared to go to keep migrants from Europe’s shores”**.¹⁵²
123. The accusation of complicity was echoed by Human Rights Watch in a statement dated 12 February 2020,¹⁵³ where it stated that because the extent of the human rights violations in Libya is known to the Italian government, the decision to renew the MoU makes Italy complicit in the abuse.
124. A spokesperson for Human Rights Watch stated, “Italy can’t paper over its complicity in the suffering of migrants and refugees who fall into the hands of the Libyan Coast Guard”.¹⁵⁴ The statement concludes that the Italian government must insist on the closure of detention centres, increase evacuations from Libya and resume a leadership role in saving lives in the Mediterranean.
125. Despite the international condemnation of the renewal of the MoU between Italy and Libya, the terms and conditions of the agreement remain in their unchanged form and the Italian authorities continue to provide support to the LCG to intercept migrants crossing the Mediterranean.

iii. The Re-creation of the Libyan Coast Guard

126. Following the Libyan armed conflict in 2011, overall control over Libyan infrastructure and resources was fragmented between different militias and forces competing to form the new government. The Libyan Coast Guard’s (LCG) ability to police Libya’s territorial waters was severely reduced or inexistent. Furthermore, control over the remaining LCG

¹⁵² Amnesty International, “Libya: Renewal of migration deal confirms Italy’s complicity in torture of migrants and refugees”, 30 January 2020; <https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/>.

¹⁵³ Human Rights Watch, “Italy: Halt Abusive Migration Cooperation with Libya”, 12 February 2020; <https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya>.

¹⁵⁴ Human Rights Watch, “Italy: Halt Abusive Migration Cooperation with Libya”, *supra*.

assets was splintered between competing militias, with units in the eastern part of Libya reporting to the Parliament based in Tobruq and not to the GNA in Tripoli.¹⁵⁵

127. The inability of the GNA to prevent the outflow of migrants from the country had been noted by experts who stated at the time that “Libya lacks the central government with sufficient control over the security apparatus, or the capacity and reach to govern its borders... **Security – including ... coastguard and customs – is provided by an ever-changing spectrum of politically allied militia groups**” (our emphasis).¹⁵⁶
128. The lack of capacity was also highlighted by the UNSC Panel of Experts on Libya tasked with monitoring the sanctions which stated that “neither the coastguard nor the navy has been notified to the Committee as part of the security forces under the control of the Government of National Accord”.¹⁵⁷
129. The (re)creation of the LCG and the centralisation of its command to the GNA in Tripoli was funded and coordinated by the EU through the EU Trust Fund for Africa and by Italy through its bilateral relationship with the Libyan GNA, for the purpose of reducing the flow of migrants across the Mediterranean through capacitating the LCG to intercept and pull them back to Libya. Officially, in EU documents, the assistance provided to the LCG was labelled as an effort to counter criminal activities such as smuggling and trafficking in persons, although the real aim was to co-opt it for purposes of reducing migration flows to Europe.
130. On 25 January 2017, a joint EU Commission and High Representative for Foreign Affairs document was published, commenting on the failure of the Libyan GNA to exercise control over the country. It stated:

¹⁵⁵ Laessing, U., 2015, “Insight - Why Libya's coastguard struggles with migrant tide”, Reuters; <https://uk.reuters.com/article/uk-libya-security-coastguard-insight-idUKKCN0PU10020150720>.

¹⁵⁶ Reitano, T. and Micallef, M., 2017, “The anti-human smuggling business and Libya’s political end game”, Institute for Security Studies, p.11; <https://issafrica.s3.amazonaws.com/site/uploads/nar2.pdf>. See also Mangan, F. and Murtaugh, C., 2014, “Security and justice in post- revolution Libya: where to turn?”, United States Institute of Peace; <https://www.usip.org/sites/default/files/PW100-Security and Justice in Post-Revolution Libya.pdf>.

¹⁵⁷ The Panel of Experts on Libya, 1 June 2017, “Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)”, United Nations Security Council, para. 152; <https://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>, accessed 11/04/2019.

*“... part of the answer must lie in the Libyan authorities preventing smugglers from operating, and for the Libyan Coast Guard to have the capacity to better manage maritime border and ensure safe disembarkation on the Libyan coast. **Of course, the Libyan authorities’ effort must be supported by the EU and Member States notably through training, providing advice, capacity building and other means of support.** ... Sophia and Triton could focus on anti-smuggling activities and support to search and rescue operations further out at sea and specialise in monitoring, alerting the Libyan authorities and combating traffickers. **Recognising the central role that the Libyan Coast Guard should play in managing the situation, building its capacity is a priority, both in terms of capabilities and equipment needs**”(our emphasis).¹⁵⁸*

131. A week later, on 2 February 2017, Italy and the Libyan GNA signed the MoU with the explicit aim of “stemming illegal migrants’ flows”. As set out above, the GNA agreed to take measures for “stemming the migrant flows to Europe” and Italy agreed “to provide technical and technological support to the Libyan institutions in charge of the fight against illegal immigration, and that are represented by the border guard and the coast guard”.

132. The European Council encouraged efforts and initiatives from individual Member States directly engaged with Libya and welcomed Italy’s efforts to cooperate with Libya on migration through the implementation of the MoU.¹⁵⁹

133. In a Joint Statement on “[a]ddressing the Challenge of Migration”, it was agreed to pursue the return of irregular migrants to the countries of origin.¹⁶⁰ According to the Statement, “the Italian project to cooperate with 14 communities along migration routes in Libya is much welcomed, as are projects financed by the EU Emergency Trust Fund for Africa”.¹⁶¹

¹⁵⁸ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, “Joint Communication to the European Parliament, The European Council and the Council: Migration on the Central Mediterranean route: Managing flows, saving lives”, JOIN(2017), 25 January 2017, p.6; https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf.

¹⁵⁹ Amnesty International, Europe, “A perfect storm: The failure of European policies in the central Mediterranean”, 2017, p. 20.

¹⁶⁰ “Joint Statement: Addressing the Challenge of Migration and Asylum”, 28 August 2017, p. 1; http://www.governo.it/sites/governo.it/files/documenti/documenti/Notizie-allegati/governo/Parigi_20170828/Joint_Statement-20170828.pdf.

¹⁶¹ Ibid, p.4.

134. On 15 September 2017, the former minister of the Interior of Italy, Marco Minniti, stated that an Italy-Libya Committee met with representatives of UNHCR and IOM, and an “action plan” aimed at carrying out the 2017 MoU was produced.¹⁶² Minniti confirmed that the activity of the Italian authorities was aimed at training, equipment and logistical support of the Libyan Coast Guard in close cooperation with the EU bodies. The objective was to collaborate with Libyan authorities, and strengthen their autonomous operative capacities.¹⁶³

135. However, Human Rights Watch (HRW) confirmed that more than any other EU country, Italy was investing significant resources to enable Libyan authorities to intercept and detain those leaving the country by sea.¹⁶⁴ Reports claim Italy has **“taken the lead in providing material and technical assistance to the Libyan Coast Guard and abdicated virtually all responsibility for coordination of rescue operations at sea in a bid to limit the number of people arriving on its shores”** (our emphasis).¹⁶⁵

Equipment

136. Italy has been building the capacity of the Libyan authorities to stop irregular border crossings through provision and refurbishment of ships.¹⁶⁶ Additionally, on 20 March 2017 over € 800 million was requested by Libya: 10 ships, 10 patrol boats, 4 helicopters, 24 inflatable boats, 10 ambulances, 30 off-road vehicles, 15 equipped cars, at least 30 satellite phones and military equipment - not subject to the arms embargo voted by the UN.

¹⁶² Also included in the “action plan” was respect of human rights in Libyan centres, a programme linked with the UNHCR for the relocation in third countries of migrants, and assisted voluntary repatriation of those who cannot benefit from refugee status. The former Minister also stated that Italy was pursuing these initiatives in full harmony with the Commission and the countries of the EU. See: Marco Minniti, former Minister of Interior of Italy, “Letter to the Council of Europe Commissioner for Human Rights”, 11 October 2017; <https://rm.coe.int/reply-of-the-minister-of-interior-to-the-commissioner-s-letter-regardi/168075dd2d>.

¹⁶³ Marco Minniti, former Minister of Interior of Italy, “Letter to the Council of Europe Commissioner for Human Rights”, 11 October 2017; <https://rm.coe.int/reply-of-the-minister-of-interior-to-the-commissioner-s-letter-regardi/168075dd2d>.

¹⁶⁴ Human Rights Watch, “No Escape from Hell: EU Policies contribute to abuse of migrants in Libya”, 21 January 2019; <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>.

¹⁶⁵ Ibid.

¹⁶⁶ Amnesty International, “Italy: Refugees and Migrants’ Rights and Attack”, November 2019, p.10; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>.

137. In May 2017, Italy began to deliver the first of four patrol boats to the LCG.¹⁶⁷ Italy also promised to deliver a further six, and spent € 2.5 million in the refurbishment of another four speedboats to be used by the Libyan General Administration for Coastal Security.¹⁶⁸
138. Also, Italy promised to provide two more large boats as well as 30 Zodiacs (rubber speedboats) by October 2018.¹⁶⁹ In October 2018, a 27-meter patrol boat was delivered by the Italian government to the LCG in order “to strengthen capacity in border control and fight against illegal trafficking”.¹⁷⁰
139. In 2018, the Italian government approved and donated 12 more speedboats to Libya to stem migration and maintained all 16 boats until the end the year.¹⁷¹ Provisions for the sale of Italian naval units in support of the Coast Guard of the Ministry of Defense and of the Coastal Security Organs of the Libyan Ministry of Interior were converted into law on 10 July 2018 by Italy.¹⁷²

¹⁶⁷ Human Rights Watch, “EU: Shifting Rescue to Libya Risks Lives”, 19 June 2017; <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>.

¹⁶⁸ Amnesty International, “Italy: Refugees and Migrants’ Rights and Attack”, November 2019, p.10; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>.

¹⁶⁹ Human Rights Watch, “EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk”, 25 July 2018; <http://www.senato.it/service/PDF/PDFServer/BGT/1063681.pdf>.

¹⁷⁰ Ambasciata d'Italia in Libia, “Official account of the Italian Embassy in Libya”, 21 October 2018; <https://twitter.com/ItalyinLibya/status/1054015828977426433>.

¹⁷¹ Amnesty International, “Italy: Refugees and Migrants’ Rights and Attack”, November 2019, p.10; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>. Also see: Italian Ministry of Interior, “Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica”, 21 April 2017; www.interno.gov.it/it/notizie/contro-traffico-dei-migranticonsegnate-prime-motovedette-alla-marina-libica. Also, “[o]n 29 June 2018, the spokesperson for the Libyan Navy claimed that no logistical, technical or financial support has been received from Europe and that the ships used by LCG were donated by Italy in 2010”; see The Office of the United Nations High Commissioner for Human Rights, “Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya”, 20 December 2018; <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

¹⁷² Senato della Repubblica, “Senate Act n. 624 XVIII Legislature: DL n. 84/2018 - Transfer of naval units to Libya”, 10 July 2018; www.senato.it/leg/18/BGT/Schede/Ddliter/testi/50139_testi.htm.

Training

140. The EU's anti-smuggling operation EUNAVFOR MED/Operation Sophia, which was under Italian command,¹⁷³ started training "Libyan Navy coast guard officers, petty officers, and seamen under the GNA's Defense Ministry in October 2016".¹⁷⁴
141. According to reports, military personnel have participated in Operation Sophia.¹⁷⁵ Allegedly, EU navy ships in the Mediterranean facilitated the training of 93 officers, while 42 officers were trained in Malta and Greece on land; the officers were due to continue in Italy and Spain up to the end of 2017.¹⁷⁶
142. Another example of Italian training is a course held in Rome, Maritime Traffic Tracking (SMART), from 2 to 7 July 2017. Three officers of the Libyan Coast Guard started from 17 September 2017, and an additional course was held in Taranto, divided into a module for 85 students (Patrol Boat Crew Training) which was completed on 17 November 2017 and a module for seven students on 6 October 2017.¹⁷⁷
143. On 7 July 2018, "Italy and Libya signed an agreement providing for the delivery of € 5 million to Libya to curb migration to Europe by stopping boats. The deal also includes military training."¹⁷⁸ Further, Oxfam reported that since 2017 Italy has spent more than € 150 million to pay for the "training of staff employed in Libyan detention centers and to provide means for patrolling the so-called coast guard at sea and on land."¹⁷⁹

¹⁷³ Amnesty International, "Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean", August 2018, p.19;

<https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.

¹⁷⁴ Human Rights Watch, "EU: Shifting Rescue to Libya Risks Lives", 19 June 2017;

<https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>. Also see Amnesty International, August 2018, op. cit.

¹⁷⁵ Council of the European Union, "COUNCIL DECISION on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED)", 17 May 2015;

<https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eunavfor-med-operation-sophia>.

¹⁷⁶ Human Rights Watch, 19 June 2017, op. cit.

¹⁷⁷ Senato Della Repubblica, "Relazione Analitica Sulle Missioni Internazionali In Corso e Sullo Stato Degli Interventi Di Cooperazione Allo Sviluppo o Sostegno Dei Processi Di Pace e Di Stabilizzazione, Deliberata Dal Consiglio Dei Ministri II", 28 December 2017, p.38.

¹⁷⁸ European Parliament, "EU funding of the Libyan coastguard", 11 September 2018;

https://www.europarl.europa.eu/doceo/document/E-8-2018-004604_EN.html.

¹⁷⁹ Internazionale, "Money allocated from the memorandum is sourced from several funds", 30 October 2019;

<https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/10/30/italia-memorandum-libia>.

Operational and Logistical Support

144. Since 2016, the EU has “worked on partnering and capacity-building with the Libyan coastguard”.¹⁸⁰ In 2017, the Italian government asserted that by 2020 over € 280 million would be invested only for maritime authorities.¹⁸¹ Rome has reportedly given at least € 150 million to support the Libyan Coast Guard, to “improve” human rights conditions.¹⁸² Italy has increased its capacity to better assist Libya in carrying out search and rescue operations and preventing irregular departures on the Central Mediterranean route¹⁸³, reportedly to increase the command and control of the LCG.¹⁸⁴
145. In 2017, Italy and the EU signed “cooperation agreements with the Tripoli-based Government of National Accord (GNA) to nominally improve conditions in detention facilities as well as boosting the capacity of the coastguard and the DCIM.”¹⁸⁵ The policy of transferring responsibility to the LCG has intensified and the coordination of rescue operations has been increasingly transferred to the Libyan authorities.¹⁸⁶
146. Prior to the declaration of the Libyan Search and Rescue zone, Italy set up an interagency National Coordination Centre (NCC) and Maritime Rescue Coordination Centre (MRCC), together forming the Joint Rescue Coordination Center (JRCC) in a joint building in Tripoli.¹⁸⁷ This JRCC was funded through the EUTF and was based in a joint

¹⁸⁰ Global Detention Project, August 2018, op.cit.,

¹⁸¹ Avvenire.it, “Memorandum. Accordo Italia-Libia sui migranti: il mistero dei 5 miliardi (per Tripoli)”, 31 October 2019; <https://www.avvenire.it/attualita/Pagine/i-soldi-a-tripoli-accordo-migranti>.

¹⁸² Avvenire.it, “Memorandum. Accordo Italia-Libia sui migranti: il mistero dei 5 miliardi (per Tripoli)”, 31 October 2019; <https://www.avvenire.it/attualita/Pagine/i-soldi-a-tripoli-accordo-migranti>.

¹⁸³ European Commission, “Central Mediterranean Route: Commission Proposes Action Plan to Support Italy, Reduce Pressure and Increase Solidarity”, 4 July 2017; <https://bit.ly/2tnTE1T>.

¹⁸⁴ US Department of State, “Annual report on terrorism (covering 2018), Libya”, 1 November 2019; <https://www.state.gov/reports/country-reports-on-terrorism-2018/#Libya>.

¹⁸⁵ Global Detention Project, “Country Report Immigration Detention in Libya: ‘A Human Rights Crisis’”, August 2018; <https://www.globaldetentionproject.org/wp-content/uploads/2018/08/GDP-Immigration-Detention-Libya.pdf>.

¹⁸⁶ Amnesty International, “Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean”, August 2018; <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.

¹⁸⁷ Alarm Phone, Borderline Europe, Mediterranea – Saving Humans, Sea-Watch, “Remote Control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean”, 17 June 2020, p.7; https://www.eu-libya.info/img/RemoteControl_Report_0620.pdf.

building in Tripoli in order to facilitate the coordination between the different Libyan services involved in border surveillance and control.¹⁸⁸

147. Since May 2017,¹⁸⁹ the MRCC has transferred responsibility to Libyan coast guard forces in international waters “even when there are other, better-equipped vessels, including its own patrol boats or Italian navy vessels, closer to the scene”. Commercial ships are instructed by Italy to give migrants and asylum seekers to LCG forces at sea or disembark people directly in Libya.¹⁹⁰

148. In 2018, it was reported that a Libyan operations room had been set up aboard an Italian navy ship docked in Tripoli.¹⁹¹ Human Rights Watch published details of a meeting with Colonel Abu Ajeila Ammar, head of Libyan Coast Guard search and rescue operations, who said, “[w]e coordinate with MRCCs Rome and Malta, and the operations room is there to enhance the cooperation”.¹⁹²

¹⁸⁸ Ibid. See the reconstruction made by the *Tribunale di Roma – Collegio per i reati ministeriali* in the proceeding against M. Salvini and M. Piantedosi n. 6/2019, decision of 21 November 2019, and N. Scavo, 18 April 2019; <https://www.avvenire.it/attualita/pagine/esclusivo-la-verita-sui-respingimenti-in-mare>.

¹⁸⁹ Human Rights Watch, “EU: Shifting Rescue to Libya Risks Lives”, 19 June 2017; <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>.

¹⁹⁰ Human Rights Watch has documented the Sedef in June 2018, the Vos Thalassa in July 2018, and the Nivin in November 2018. In the case of the Sedef and Vos Thalassa, Human Rights Watch spoke with company representatives. In the case of the Nivin, Human Rights Watch saw email communication between the IMRCC and the Nivin; see Human Rights Watch, “No Escape from Hell: EU Policies contribute to abuse of migrants in Libya”, January 2019; <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>. Also, on 30 July 2018, the commercial supply vessel Asso Ventotto, operating under Italian flag to assist operations at an oil rig 57 nautical miles off Tripoli, disembarked 101 people in Libya. As reported by Amnesty International, the private company operating the ship instructed the vessel’s captain to coordinate with the Tripoli Joint Rescue Co-ordination Centre. A Libyan official present on the oil rig boarded the Asso Ventotto and guided the operation. A Libyan Coast Guard vessel then approached the Asso Ventotto and accompanied it to the port of Tripoli. The Libyan Coast Guard stated that the Italian-owned Asso Ventotto is rented by Libyan authorities and this practice of using merchant vessels to return people to Libya is not new to Libyan authorities (phone conversation with representative of Libyan Coast Guard and Amnesty International, 1 August 2018). See Amnesty International, “Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean”, August 2018; <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.

¹⁹¹ Human Rights Watch, “EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk”, 25 July 2018; <https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>.

¹⁹² Human Rights Watch, “EU: Shifting Rescue to Libya Risks Lives”, 19 June 2017; <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>. Also Human Rights Watch reported that “[o]n May 10, the Italian Maritime Rescue Coordination Center (MRCC) in Rome received the first distress call about a boat in trouble and ordered the German group Sea-Watch to provide assistance but then allowed Libyan coast guard forces to assume coordination and a Libyan patrol boat to take over the operation. Although MRCC Rome learned of the boat when it was still in Libyan territorial waters, the incident occurred roughly 20 nautical miles from the Libyan coast, in international waters, and Sea-Watch had already begun its rescue operation”. See Human Rights Watch, “EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk”, 25 July 2018; <https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>.

149. Italy has assisted the LCG in setting up the Libyan Search and Rescue (SAR) region and two coordination centres in Libya.¹⁹³ In June 2018, the IMO officially acknowledged Libya's declaration of a SAR zone.¹⁹⁴ Since June 2018, Italy has instructed ships undertaking rescues in the SAR zone to refer all emergency calls to the Libyan authorities. Italian ports prevent NGO ships from disembarking, to prevent interference with LCG interception and return of rescues to Libya.
150. Italy has stationed at least one Italian navy ship in Libyan territorial waters.¹⁹⁵ The Italian Navy continues¹⁹⁶ to support Libyan authorities in Libya in the coordination of sea operations within the newly established Libyan SAR region.¹⁹⁷ In July 2017 the LCG intercepted 8,851 migrants at sea; in July 2018, 12,490 migrants at sea were intercepted. This amounts to a 41% increase in LCG interceptions. In July 2018, 71% of migrants leaving Libya's shores were intercepted and brought back, compared to 6% during the same period in the previous year.¹⁹⁸
151. Reports also confirm the existence of a joint maritime surveillance operation between Italy and Libya.¹⁹⁹ According to sources, € 63,442,734 was allocated for the period 1 January 2018 - 30 September 2018 for the purpose of enhancing the national air and naval assets prepared for the surveillance and security of national borders in the Central

¹⁹³ Amnesty International, "Italy: Refugees and Migrants' Rights and Attack", November 2019', p.11; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>.

¹⁹⁴ Human Rights Watch, "EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk", 25 July 2018; <https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>.

¹⁹⁵ Commissioner for Human Rights, "Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean", June 2019, p. 20; <https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87>. Also see "Deliberazione del Consiglio dei Ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla Guardia costiera libica adottata il 28 luglio 2017. Atto del Governo DOC. CCL, n. 2", July 2017, p.5; <http://documenti.camera.it/Leg17/Dossier/Pdf/DI0613.pdf>.

¹⁹⁶ Amnesty International, "Italy: Refugees and Migrants' Rights and Attack", November 2019', p.11; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>.

¹⁹⁷ Amnesty International, "Italy: Refugees and Migrants' Rights and Attack", November 2019', p.11; <https://www.amnesty.org/en/documents/eur30/0237/2019/en/n/>.

¹⁹⁸ Guest post by Matteo Villa (Italian Institute for International Political Studies, Milan), Rob Gruijters (Department of Social Sciences, Humboldt University, Berlin) and Elias Steinhilper (Department of Political and Social Sciences, Scuola Normale Superiore, Florence), University of Oxford, Faculty of Law, "Outsourcing European Border Control: Recent Trends in Departures, Deaths and Search and Rescue Activities in the Central Mediterranean", 11 September 2018; <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/09/outsourcing>.

¹⁹⁹ Institute for Security Services, "Human smuggling and Libya's political end game", December 2017, p.2; <https://globalinitiative.net/wp-content/uploads/2018/01/2017-12-13-pamphlet-migration.pdf>.

Mediterranean area, called Safe Sea, inclusive of the mission in support of the LCG requested by the Presidential Council of the Libyan national accord government.²⁰⁰

152. Italy has also supported “the refurbishment of Libyan detention centres and funded the distribution of aid in these facilities by international and Libyan NGOs”.²⁰¹

iv. The Systematic torture and ill-treatment of Migrants Pulled-Back to Libya

153. As of February 2020, Human Rights Watch documented that the material and technical support from Italy has enabled the LCG to intercept over 40,000 migrants at sea and facilitated their forced return to Libya.²⁰²

154. The conditions experienced by refugees and migrants in Libya have been extensively documented by the OHCHR and UNSMIL,²⁰³ and have been denounced by a wide range of United Nations Special Rapporteurs and working groups on human rights, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on trafficking in persons.²⁰⁴

²⁰⁰ Consiglio dei Ministri, “Relazione analitica sulle missioni internazionali in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione”, 28 December 2017, DOC. CCL-bis, N. 1, Scheda 36, p. 101; www.senato.it/service/PDF/PDFServer/BGT/1063681.pdf.

²⁰¹ Global Detention Project, August 2018, op.cit.

²⁰² Human Rights Watch, “Italy: Halt Abusive Migration Cooperation with Libya”, 12 February 2020; <https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya>.

²⁰³ United Nations Support Mission in Libya & United Nations Human Rights Office of the High Commissioner, “Detained and Dehumanized : Report on Human Rights Abuses Against Migrants in Libya”, 13 December 2016; https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf; and United Nations Support Mission in Libya & United Nations Human Rights Office of the High Commissioner, “Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya”, 20 December 2018; <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

²⁰⁴ Correspondence to Government of Italy concerning negotiations between the Italian government and the Libyan GNA on the Memorandum of Understanding and the human rights impact on migrants from the Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2 February 2017;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22975>;

Correspondence to Government of Italy concerning the completion and implementation of the Memorandum of Understanding and the human rights impact on migrants from the Working Group of Experts on People of

155. Nils Melzer, the United Nations Special Rapporteur on torture, described the detention regime for migrants and refugees in Libya as grossly incompatible with international standards for the treatment of prisoners, as inflicting undue pain and suffering on migrants and as inconsistent with the prohibition of torture and other ill treatment.²⁰⁵
156. Several international NGOs concerned with human rights have documented these findings, including Human Rights Watch, Amnesty International and Doctors Without Borders.²⁰⁶
157. During their time in Libya, migrants and refugees are at extremely high risk of torture, unlawful killings, enforced disappearances, arbitrary and indefinite detention, sexual and gender-based violence, forced labour and exploitation by both State and non-State actors.
158. The evidence of gross abuses of migrants and refugees is so overwhelming that, on 9 May 2017, the ICC Prosecutor made this statement before the United Nations Security Council:

[S]erious and widespread crimes allegedly committed against migrants attempting to transit through Libya ... I am deeply alarmed by reports that thousands of vulnerable migrants, including women and children, are being held in detention centres across Libya in often inhumane conditions. Crimes, including killings, rapes and torture, are alleged to be commonplace ... I am similarly dismayed by credible accounts that

African Descent; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences, 12 November 2017;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24084>;
Correspondence to Government of Italy concerning the Italian Directive for the unified coordination of surveillance activities of maritime borders and fight against illegal immigration and its human rights impact on migrants and search and rescue operations in the Mediterranean from the Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on trafficking in persons, especially women and children, 15 May 2019; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24568>.

²⁰⁵ See for example United Nations Human Rights Council, “Report of the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment”, A/HRC/37/50, 23 November 2018, para. 20; <https://undocs.org/en/A/HRC/37/50>.

²⁰⁶ Human Rights Watch, 21 January 2019, op. cit., & Amnesty International, “Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean”, August 2018; MSF, “Trading in suffering: detention, exploitation and abuse in Libya”, 23 December 2019; <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>; see also MSF videotaped testimonies of migrant abuses; <https://twitter.com/i/status/1274035006726381569>.

*Libya has become a marketplace for the trafficking of human beings ... The situation is both dire and unacceptable ... my Office is carefully examining ... opening an investigation into migrant-related crimes in Libya ... We must act ...*²⁰⁷

159. According to a Communication to the Office of the Prosecutor of the International Criminal Court pursuant to Article 15 of the Rome Statute, the treatment of migrants in the Central Mediterranean “**should be understood as a policy of systematic and widespread attack of a pre-targeted population**” constituting crimes against humanity under Articles 5 and 7 of the Rome Statute.²⁰⁸

160. Within the context of conditions that amount to torture and ill-treatment there are a range of specific issues that have been extensively documented, as set out below.

Indefinite and Arbitrary Detention

161. In the event that an individual is intercepted while crossing the Mediterranean and forcibly returned to Libya, they are criminalized under Libyan law which forbids irregular entry, stay or exit from Libya. Such individuals are subject to imprisonment without consideration of their circumstances or protection needs. In reality, rather than being charged and facing prosecution, individuals are arbitrarily and indefinitely detained in one of Libya’s formal or informal detention centres for migrants. Such detention centres are operated by the DCIM, an entity that has been funded by Italy directly and by Italy through EU programmes.

162. According to the UNHCR, there are 33 detention centres under control of the DCIM,²⁰⁹ and NGOs have reported that there are as many as 10,000 individuals detained at any one time.²¹⁰ The OHCHR and UNSMIL observed that detainees languish in detention centres

²⁰⁷ International Criminal Court, 2017, “Statement of the ICC Prosecutor to the UNSC on the Situation in Libya”; <https://www.icc-cpi.int/pages/item.aspx?name=170509-otp-stat-lib>.

²⁰⁸ Omer Shatz and Dr. Juan Branco, “Communication to the Office of the Prosecutor of the International Criminal Court Pursuant to the Article 15 of the Rome Statute: EU Migration Policies in the Central Mediterranean and Libya (2014-2019)”; <https://statewatch.org/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>;

[https://www.academia.edu/39368138/EU_Migration_Policies_in_the_Central_Mediterranean_and_Libya_2014-2019 - ICC Communication](https://www.academia.edu/39368138/EU_Migration_Policies_in_the_Central_Mediterranean_and_Libya_2014-2019_-_ICC_Communication).

²⁰⁹ United Nations High Commissioner for Refugees, “Libya: Detention centres – Active Official Detention Centres”, 21 September 2017; <data2.unhcr.org/en/documents/download/61006>.

²¹⁰ InfoMigrants, “Up to 10,000 Migrants in 20 Centers Under the Sun, IOM Libya”, 3 July 2018; <http://www.infomigrants.net/en/post/10363/up-to-10-000-migrants-in-20-centers-under-the-sun-iom-libya>.

in conditions that are “generally inhuman, falling far short of international standards and, in some cases, may amount to torture”.²¹¹

163. In 2017, UNSMIL visited detention centres controlled by the DCIM in Gharyan, Tripoli, Misratah and Surman, where thousands were being detained. Investigators documented “cases of torture, ill-treatment, rape and other forms of sexual violence”, while the facilities themselves “remained overcrowded, and detainees were often malnourished, living in poor hygienic conditions and with limited or no access to medical care”.²¹²

Extreme physical violence amounting to torture

164. There has been consistent evidence that migrants and refugees have suffered extreme physical abuse, both within detention centres and outside. UNSMIL reports that the methods of torture include beatings with various objects such as water pipes, metal bars, rifle butts and sticks, forcing detainees into uncomfortable positions, such as squatting, for prolonged periods, punching and kicking, and electric shocks.²¹³

165. Amnesty International reports that detainees are threatened with physical beatings while in detention if they do not pay the security guards.²¹⁴ According to the report, in March 2019 over 20 refugees and migrants, including children, were brought to an underground cell and then tortured in turn, one by one, for days, in punishment for protesting against their arbitrary detention in squalid conditions and the lack of solutions. In response to the protest, over a hundred other detainees were transferred to other detention centres.²¹⁵

166. Human Rights Watch reports that physical intimidation and violence starts already at the hands of the LCG when migrants are intercepted in the Mediterranean. In the report, Human Rights Watch describes interviews with several victims, including a 34 year old mother of three from Cameroon who was in international waters and was approached by the LCG who threatened to shoot her if her boat was not tied to theirs; a 26-year-old Palestinian man whose boat was shot at by the LCG; and a report by *SOS Méditerranée*

²¹¹ UNSMIL & OHCHR, 20 December 2018, op. cit., p.5.

²¹² United Nations Security Council (UNSC), “Report of the Secretary-General on the United Nations Support Mission in Libya”, 22 August 2017; <https://unsmil.unmissions.org/sites/default/files/n1725784.pdf>.

²¹³ UNSMIL & OHCHR, 20 December 2018, op. cit., p.44.

²¹⁴ Amnesty International, “Europe’s shameful failure to end the torture and abuse of refugees and migrants in Libya”, 7 March 2019; <https://www.amnesty.org/en/latest/news/2019/03/europes-shameful-failure-to-end-the-torture-and-abuse-of-refugees-and-migrants-in-libya/>.

²¹⁵ Ibid.

operating the *Aquarius*, that observed people jumping in the sea upon being threatened by the LCG.²¹⁶

Sexual and Gender-Based Violence

167. The OHCHR and UNSMIL report that the overwhelming majority of migrant and refugee women and older teenage girls are either being raped by smugglers or traffickers in Libya, or witnessing others being taken out of collective accommodations and returning distraught, physically hurt and/or with torn clothes.
168. The evidence of such incidents is confirmed by numerous interviews conducted by UNSMIL and “by a plethora of sources, such as medics and other service providers, including in countries of origin and destination”.²¹⁷ A report by Amnesty International, based on the testimony of 70 migrants that travelled through Libya, revealed that women were forced into rape and sexual assault in order to be released from a detention centre.²¹⁸
169. Despite the prevalence of rape and other sexual violence against female and girl migrants and refugees in Libya, UNSMIL stated that they are not aware of a single case of a perpetrator being held to account or survivors receiving redress and adequate rehabilitation.
170. Although women and girls are disproportionately affected by rape and sexual violence, UNSMIL reports that men and boys are also increasingly vulnerable to rape and other sexual abuses while in transit in Libya.

Slavery and Forced Labour

171. There have been widespread reports of slave markets operating in Libya for the sale of sub-Saharan African migrants and refugees in Libya. A CNN news report revealed footage of migrants being auctioned for \$400 per person.²¹⁹ The report resulted in condemnation

²¹⁶ Human Rights Watch, 21 January 2019, op. cit.

²¹⁷ Ibid., p.31.

²¹⁸ Amnesty International, “Libya is full of cruelty: stories of abduction, sexual violence and abuse from migrants and refugees”, 11 May 2015; <https://www.amnesty.org/download/Documents/MDE1915782015ENGLISH.pdf>.

²¹⁹ CNN, “Libya opens investigation into slave auctions following CNN report”, 17 November 2017; edition.cnn.com/2017/11/17/africa/libyaslave-auction-investigation/index.html.

by the United Nations Secretary General, United Nations independent experts, OCHCR and individual Member States.²²⁰

172. The IOM also reported on the emergence of slave markets along migrant routes into Libya where sub-Saharan migrants are “being sold and bought by Libyans, with the support of Ghanaians and Nigerians who work for them”.²²¹

173. A detailed investigative report by Time Magazine entitled “ ‘It Was As if We Weren’t Human’: Inside the Modern Slave Trade Trapping African Migrants”, published on 14 March 2019, provides thorough accounts of migrants throughout Libya forced in to labour without wages, whose captors saw them as “little more than livestock to be bought and sold”.²²² The report details the journey of one migrant who was sold at auction for \$200 and then forced to work on a construction site in exchange for bread.

174. Forced labour also takes place within detention centres, where detainees are exploited for physically difficult manual labour including on farms and construction sites; many are not compensated for their work while others are given only food or tiny sums of money.²²³

Torture of minors

175. Amnesty International and Human Rights Watch have conducted and documented interviews within Libyan detention centres and amongst migrants that have departed Libya. Extensive evidence was found showing that children were also subject to severe abuse and violence by authorities within detention centres.²²⁴

176. Children, including unaccompanied and separated children, are at risk of arrest and indefinite detention in Libya. While detained, children do not receive preferential treatment

²²⁰ See, for example, United Nations, “Secretary General’s Statement on Reported News of Slavery in Libya”, 20 November 2017; <https://www.un.org/sg/en/content/sg/statement/2017-11-20/secretary-general%E2%80%99s-statement-reported-news-slavery-libya>; and OHCHR, “Libya Must End ‘Outrageous’ Auctions of Enslaved People, UN experts insist”, 30 November 2017; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22475&LangID=E>.

²²¹ International Organisation for Migration, “IOM Learns of ‘Slave Market’ Conditions Endangering Migrants in North Africa”, 4 November 2017; <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>.

²²² Time Magazine, “ ‘It Was As if We Weren’t Human.’ Inside the Modern Slave Trade Trapping African Migrants”, 14 March 2019; <https://time.com/longform/african-slave-trade/>.

²²³ UNSMIL & OHCHR, 20 December 2018, op. cit., p.47.

²²⁴ Human Rights Watch, 21 January 2019, op. cit., & Amnesty International, “Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean”, August 2018; <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.

and often share cells with adult detainees, increasing their vulnerability and the risk of abuse.²²⁵

177. A needs assessment conducted by UNICEF in 2016 documented the “appalling situation women and children face” and, although migrant women and children often tried to travel together in order to better protect themselves along the way, guards in detention facilities reportedly often separate men, women and children from one another once they arrive at detention centres, which leaves minors vulnerable to abuse either by guards or fellow detainees.²²⁶ Migrant and asylum-seeking children found to be in Libya irregularly are never brought before a judge.²²⁷

178. During a 2013 visit to the Towisha “holding centre” outside of Tripoli, Amnesty International found that most of the minors held at the facility were at least 16, although it found two unaccompanied Somali children aged 10 and 13.²²⁸

179. A year later, Amnesty International researchers also identified approximately 20 unaccompanied children, some as young as 12, from Somalia and Eritrea, who were detained alongside adults at Al-Hamra, one of the largest immigration detention centres in the country, near Gharyan, which as of November 2014 was run by the 9th Brigade, a militia nominally under the control of the Ministry of Defence.

²²⁵ Amnesty International, “Amnesty International Report 2013. The State of the World’s Human Rights”; http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf; United Nations High Commissioner for Refugees (UNHCR), “External Update – May 2014 UNHCR Libya”, May 2014; <http://www.tawergha.org/docs/2014-05-00-libya-unhcr-report-on-internally-displaced-persons-from-tawergha-english.pdf>.

²²⁶ United Nations International Children's Emergency Fund (UNICEF), “A Deadly Journey for Children: The Central Mediterranean Migration Route”, February 2017; https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf.

²²⁷ Amnesty International, “Libya: Human Rights Abuses Continue as Country Descends into Chaos. Amnesty International Submission to the UN Universal Periodic Review”, May 2015; <https://www.amnesty.org/download/Documents/MDE1900032015ENGLISH.pdf>.

²²⁸ Amnesty International, “Amnesty International Report 2013. The State of the World’s Human Rights”, May 2013; http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf.

III. Conclusion

180. The law enforcement practices described in this submission constitute massive and systematic violations of international human rights law perpetrated preponderantly against Africans and persons of African descent by the EU through its border control agency FRONTEX, as well as individual EU Member States. By externalising key aspects of border control in the Central Mediterranean while at the same time harassing civilian rescue efforts, the EU and European states continue to escape legal liability for gross violations of international law including the *non-refoulement* principle, the prohibition of torture and ill-treatment and the right to life. Indeed, the very purpose of externalising law enforcement at the sea-borders of Europe is to avoid liability²²⁹ for breaches of fundamental rights.²³⁰
181. As one commentator aptly puts it: “For years, European governments have chosen not to put an end to preventable deaths, and instead to thwart private actors’ attempts to do so. ... **Blocking the civic engagement of activists has been a crucial step in a push to create a “maritime legal black hole” in the Mediterranean: In certain regions of the sea, migrants are travelling while having no *de-jure* rights to speak of**” (our emphasis).²³¹
182. Given the general accountability gap and the near impossibility for the drowned and tortured persons and their families to obtain effective legal redress²³², the High Commissioner’s report pursuant to its Resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers” could play a critically important role by shedding light on these illegal practices

²²⁹ See Thomas Gammeltoft-Hansen, James C. Hathaway, *Non-Refoulement in a World of Cooperative Deterrence*, Columbia Journal of Transnational Law, 2015.

²³⁰ See Boris Wijkström and Ousman Noor, *Can Italy be Held Accountable under Article 20 UNCAT for its Role in the “Pull-back” of Migrants in the Mediterranean?*, *Asyl: Revue suisse pour la pratique et le droit d’asile*, 3/2020, at https://centre-csdm.org/wp-content/uploads/2020/09/Asyl-3_2020-CSDM-pull-backs.pdf ;

²³¹ See Itamar Mann, *The Right to Perform Rescue at Sea; Jurisprudence and Drowning*, *German Law Journal*, 2020, 21, at p. 599; see also Itamar Mann, *Maritime Legal Black Holes: Migration and Rightlessness in International Law*, 29 *EUR. J. INT’L L.* 347 (2018).

²³² Migrant advocates have launched legal challenges in several international fora which remain pending. They include the CSDM’s *Request for an Inquiry under Article 20 of the UN Convention against Torture into Italy’s Responsibility for the Torture of Migrants pulled-back to Libya* at <https://centre-csdm.org/wp-content/uploads/2020/07/CAT-Art.-20-Inquiry-CSDM-01.07.2020.pdf> ; a Communication to the Office of the Prosecutor of the International Criminal Court pursuant to Article 15 of the Rome Statute available at: <https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>; a Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa’s ‘Support to Integrated Border and Migration Management in Libya’ (IBM) Programme, submitted by GLAN, ASGI and ARCI at <https://www.statewatch.org/media/documents/news/2020/apr/eu-libya-legal-complaint-finance-27-4-20.pdf>

and calling for the creation of mechanisms to bring them to an end, including avenues for reparation and redress for victims.

183. We therefore urge the OHCHR to take into account the information in the present submission, to seek urgent clarification from the EU and its Member States as to the law enforcement practices raised in the present submission, and to discuss and adopt recommendations aimed at bringing European border management in the Central Mediterranean into compliance with binding international norms.