



## AMNESTY INTERNATIONAL, ECRE AND HUMAN RIGHTS WATCH

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### PLAN OF ACTION: TWENTY STEPS TO PROTECT PEOPLE ON THE MOVE ALONG THE CENTRAL MEDITERRANEAN ROUTE

#### **ACTION 1: Ensure proactive search and rescue operations in the Mediterranean**

The central Mediterranean has been long recognized as one of the most dangerous migration routes in the world. In the last 10 years, around 20,000 people have lost their lives attempting to get to the European Union (EU), on flimsy and overcrowded boats and dinghies. Although the overall number of crossings has decreased since 2017, hundreds of people still drown every year. Many lives could be saved if EU member states ensured and enabled robust search and rescue (SAR) operations in the central Mediterranean, rather than refusing to deploy ships and hampering the work of non-governmental rescue organizations (NGOs). There is no evidence that SAR operations encourage people to embark. Indeed, the absence of rescue ships does not seem to affect the willingness of people to leave from Libya or from other points of departure such as Tunisia. Yet the European Commission has undermined the legitimacy of SAR organizations while member states have used a variety of means to prevent or delay civilian SAR activities.

Amnesty International, ECRE and Human Rights Watch recommend that EU institutions and member states:

1. Deploy an adequate number of vessels, including some with SAR as their primary purpose, along the routes taken by boats carrying refugees, asylum seekers and migrants, including through Frontex operations and EU missions. Re-instating state-led, proactive SAR operations, including under the auspices of the EU, should be a priority.
2. Refrain from penalizing shipmasters and crews for assisting people in distress at sea and attempting to disembark them in a place of safety and assist any shipmasters in such situation to complete the operations safely and promptly.
3. Ensure that NGOs are fully able to carry out their lifesaving SAR activities, including through responsive and consistent cooperation between member state rescue coordination centres and NGOs. In line with the UN Declaration on Human Rights Defenders, ensure that NGOs can operate in a safe and enabling environment. Member states should refrain from misusing criminal laws and administrative procedures to hinder their activities.

#### **ACTION 2: Protect rights in migration-related cooperation with Libya**

Cooperation with the Libyan Government of National Unity (GNU) that enables Libyan forces to intercept people at sea and return them to Libya continues to play a central role in the European strategy aimed at reducing the number of people arriving to Europe irregularly by sea. This strategy endures despite overwhelming evidence that it facilitates the tremendous suffering of women, men, and children returned to Libya. Libya is not a place of safety for the purposes of international law, as acknowledged by UNHCR and numerous other institutions, given the constant risk that refugees, asylum seekers and migrants are subject to serious human rights violations and abuses, including arbitrary detention, enforced disappearances, abductions, torture and other ill-treatment, unlawful killings, rape and other sexual violence, forced labour, denial of medical care and unlawful expulsions. In addition, Libyan authorities are failing to fulfil their SAR responsibilities, including to promptly and effectively coordinate rescue operations and to indicate a place of safety for disembarkation, and their conduct at sea puts people's lives at risk.

In this context, Amnesty International, ECRE and Human Rights Watch recommend that EU institutions and member states:

4. Review and reform policies of cooperation with Libyan authorities on migration and border management, with a view to stopping any actions contributing to the containment of people in Libya, where they are in grave danger. In particular, reset all cooperation with Libyan authorities on migration and border management and focus interventions on the priority of protecting human rights, including through the prompt evacuation of people at increased risk of human rights violations. The EU's policy and funding strategy in relation to Libya should aim at promoting the respect, protection and fulfilment of the human rights of all people under the jurisdiction of Libyan authorities, including refugees, asylum seekers and migrants, rather than the migration control objectives of the EU and/or its member states, and should integrate a strong due diligence component to assess human rights risks and adopt adequate measures for their prevention,

- mitigation and, where appropriate, remediation.
5. Limit any cooperation with the Libyan Coast Guard and the General Administration for Coastal Security in international waters to cases where their intervention is essential to prevent immediate loss of life. Make continued cooperation with Libyan maritime authorities conditional on measures to prevent disembarkations in Libya, including by asking the Libyan Coast Guard and General Administration for Coastal Security to: (a) limit their SAR activities to Libyan waters, except when their vessels are able most quickly to respond to a boat in distress in international waters; (b) ensure that civilian vessels, including boats operated by NGOs, are fully able to carry out their lifesaving SAR activities, without hindrance, in its SAR Region; (c) refrain from instructing any vessel to disembark rescued persons in Libya or to transfer them onto Libyan ships where it is known or should be known that they will disembark people in Libya; and (d) agree to transfer people rescued in international waters to ships that will disembark them in a place of safety, which cannot be Libya.
  6. Engage with the United Nations and the International Maritime Organization to define standard operating procedures, fully aligned with international law and standards, for SAR operations within the Libyan SAR Region. Until that happens, ensure that, in line with obligations under SAR conventions, European Rescue Coordination Centres immediately exert coordination when aware of a distress case, even if this is in international waters within the Libyan SAR Region, in particular when Libyan authorities fail to fulfil their coordinating responsibilities.
  7. Make continuing cooperation with Libyan authorities on migration and border management conditional on concrete and verifiable steps towards: (a) the prompt release of all refugees, asylum seekers and migrants being arbitrarily detained in Libya, and the end of the system of automatic, indefinite detention solely on the basis of migration status, including through the closure of all detention centres; (b) the full and formal recognition of the United Nations Refugee Agency, UNHCR, in the form of a memorandum of understanding that guarantees the organization's full access to people of concern across the country and the possibility to carry out its full mandate, irrespective of the nationality of beneficiaries; (c) the signing and ratification of the 1951 Refugee Convention and its 1967 Protocol and adoption and enactment of new legislation, policies and procedures on migration and asylum, providing for the decriminalization of irregular entry, stay and exit, through amendments to Law no. 19 of 2010 and Law no. 6 of 1987, and the creation of an asylum system that complies with international standards; and (d) the establishment of national mechanisms to provide independent, impartial, and transparent monitoring of human rights violations against refugees, asylum seekers and migrants in Libya, with the aim to ensure accountability for state and non-state actors, and in the meantime the provision to OHCHR/UNSMIL Human Rights Service of full and unimpeded access to detention centres, disembarkation points and other places in Libya where refugees, asylum seekers and migrants are found.

### **ACTION 3: Establish a mechanism for predictable disembarkation and relocation**

The absence of a mechanism to share responsibility amongst EU member states for assisting people arriving in Europe and disputes over where rescued persons should be disembarked are key reasons why individual countries like Italy and Malta, and the EU as a whole, seek to evade – and indeed are falling short of – their SAR responsibilities. The lack of clarity concerning the ports where rescued persons should be disembarked, particularly following rescues in the Libyan SAR Region, has led to hundreds of people in extremely vulnerable situations being stranded at sea for days and sometimes weeks on merchant and NGO vessels, before being allowed to disembark.

Against the backdrop of complex and problematic proposals from the European Commission in the new EU Pact on Migration and Asylum in September 2020, Amnesty International, ECRE and Human Rights Watch call on EU institutions and member states to:

8. Ensure that any vessels engaging in the rescue of refugees, asylum seekers and migrants in distress in the central Mediterranean, including in the Libyan SAR Region, are promptly granted a place of safety, which cannot be Libya, where survivors can disembark and receive adequate assistance, including the ability to apply for international protection.
9. To operationalize this, define a clear mechanism, consistent with international law and standards, to establish in which places of safety rescue vessels shall promptly disembark any people rescued in the Libyan SAR Region. The mechanism should be predictable, meaning that the country of disembarkation should be generally known before and during the rescue, and always prioritize the safety and welfare of rescued people, including by ensuring timely disembarkation to minimize time spent aboard assisting ships.
10. Ensure that disembarkation arrangements comply with the legal framework of the Common European Asylum System. This requires that individuals rescued and disembarked in the EU are immediately informed of the possibility to apply for international protection, are promptly granted access to an asylum procedure and to adequate reception facilities, and are ensured appropriate care and attention if they belong to specific groups such as children or victims of torture, sexual violence or trafficking.
11. Refrain from subjecting people disembarked in the EU to any form of unlawful detention, such as automatic or arbitrary detention. Migrants and asylum-seekers, like anyone else, must benefit from a legal presumption of liberty, and as a consequence any restrictions to their liberty shall be used only as an exceptional measure of last resort, if necessary to the

achievement of a legitimate aim, proportionate, and established on a case-by-case basis for the shortest time possible. The principles of necessity and proportionality also apply to restrictions of liberty linked to public health considerations, including in the context of the ongoing pandemic, and their enforcement must be imposed and carried out in a non-discriminatory manner.

12. Pending a shared vision on how to reform the Dublin Regulation, agree on an equitable system of sharing responsibilities with respect to people disembarked, in the form of relocation arrangements, with allocation shares based on objective criteria (e.g. GDP and population size) defined at the outset, to avoid unpredictable and time-consuming processes of pledging during individual SAR operations.

#### **ACTION 4: Commit to global responsibility sharing and to facilitating regular migration pathways**

The suffering of refugees, asylum seekers and migrants is linked to Europe's failure to pursue effective and principled migration governance. The number of irregular arrivals is relatively low and manageable compared to other regions of the world that have access to much fewer resources. And yet European governments and institutions maintain a myopic focus on preventing arrivals and outsourcing responsibility to non-EU countries, including those with a track record of systematic human rights violations. In practice, this approach severely limits the scope for evidence-based migration policies that reflect labour needs and the region's capacity and potential to provide international protection and erodes the bloc's stated values and human rights obligations. Safe and regular routes for those who need protection, but also for those who want to migrate for other reasons, such as work or study, are a crucial part of a long-term, sustainable response to the situation in the Mediterranean. Despite Europe's significant need for workers in many sectors, the opportunities for regular labour migration have consistently declined over 30 years, one of the root causes pushing people to attempt to cross the Mediterranean. The record level of forcible displacement due to the rise in conflicts and armed violence globally is another root cause.

Keeping in mind the commitments engaged in the Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration, Amnesty International, ECRE and Human Rights Watch call on EU states and institutions to:

13. Implement and increase resettlement pledges and open alternative pathways, such as community sponsorship, for people in need of international protection – including for the thousands of people in vulnerable situations stranded in Libya.
14. Review migration policies to expand and diversify the availability of regular pathways for those who wish to migrate, for example for employment, study, and family reunification.
15. Enhance assistance to refugees, asylum seekers and migrants in neighbouring regions, in particular in the Sahel, North Africa and the Horn of Africa, investing in the protection and realization of their human rights rather than in measures aimed at their containment in places where they cannot live in dignity and security.

#### **ACTION 5: Ensure accountability for human rights violations wherever they have taken place**

Libya's weak institutions continue to fail to ensure access to justice and effective remedy for victims of human rights violations and abuses. Although fully aware of existing shortcomings, EU governments, led by Italy, have assisted Libyan maritime authorities to intercept tens of thousands of women, men and children and return them to Libya's detention centres, despite well-documented inhumane conditions and widespread and systematic torture and other ill-treatment. This practice has been supported by all EU member states and institutions and has benefited from the operational support of the European Border and Coast Guard (Frontex) and of Operation EUNAVFOR MED Sophia/Irini. EU member states have therefore failed to uphold their obligations towards people in distress at sea, attempted to circumvent their obligations under the principle of non-refoulement, and have assisted Libyan authorities in the commission of serious human rights violations. EU states and institutions have also failed to condition their cooperation and support upon the adoption by Libya of measures to ensure that EU assistance does not implicate the EU in further abuse.

In this regard, Amnesty International, ECRE and Human Rights Watch call on EU institutions and member states to:

16. Ensure accountability for any human rights violations they might have been responsible for through their actions or omissions at sea, or on land upon disembarkation, as well as their cooperation with Libyan authorities. This should be pursued through prompt, thorough and independent investigations and, in cases where there is enough admissible evidence, the initiation of criminal or civil legal proceedings, with a view to providing adequate and effective remedies to people who have suffered serious human rights violations, as well as through parliamentary inquiries.
17. Review Frontex' Multipurpose Aerial Surveillance activities in the central Mediterranean, with a view to ensure accountability for any actions that may have represented a breach of the agency's obligations under international and EU law.
18. Ensure robust monitoring of the Libyan Coast Guard conduct and operations at sea, and adequate accountability processes in case of breaches of international law, including, where appropriate, prosecutions for criminal acts.
19. Ensure that the UN Fact-Finding Mission, established by the UN Human Rights Council to investigate violations of

international law in Libya committed by all parties since 2016, has sufficient resources, administrative support and time to complete its work.

20. Work with Libyan authorities to ensure that accountability and reparation for victims are central components of the political process in Libya, and that all parties to the conflict remove from their ranks individuals against whom there is reasonable suspicion that they have committed crimes under international law and other serious human rights abuses with a view to holding them accountable in fair trials that do not resort to the death penalty. Any integration efforts for militias or armed groups in the Libyan armed or security forces needs to ensure proper individual vetting for fighters to ensure that they have not been involved in crimes under international law or other serious human rights abuses. EU institutions and member states should work collectively to tackle the human rights and humanitarian consequences of conflicts and militia rule in Libya and to support efforts to establish the rule of law and uphold victims' rights to remedy and reparation.