

**Ms Geneviève Mayer**

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**AMNESTY  
INTERNATIONAL**



**European Institutions Office**

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Dear Ms Mayer,

**AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF  
MINISTERS: HIRSI JAMAA AND OTHERS V. ITALY (APPLICATION NO. 27765/09)**

Please find enclosed a briefing submitted in accordance with rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and with the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006. This is with a view to continuing our assistance to the Committee of Ministers in its evaluation of the general measures, which the Italian Government states that it has taken to date to fulfil its obligations to implement the Grand Chamber's judgment in the case of *Hirsi Jamaa and Others v. Italy*.

Yours sincerely,

Dr. Nicolas J. Beger  
Director  
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**AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: HIRSI JAMAA AND OTHERS V. ITALY (APPLICATION NO. 27765/09)**

**Executive Summary**

In light of Italy's obligations under international human rights and refugee law, and following up on the submission, which Amnesty International sent on 14 August 2012, the organization seeks to continue to assist the Committee of Ministers in its evaluation of the general measures, which the Italian Government states that it has taken to date to comply with the judgment of the Grand Chamber of the European Court of Human Rights in the case of *Hirsi Jamaa and Others v. Italy*.

The Grand Chamber's indication in its *Hirsi* judgment of individual measures necessary for its execution was "without prejudice to the general measures required to prevent other similar violations in the future".<sup>1</sup>

Regarding the general measures, Amnesty International draws the Committee's attention to the following areas which remain of concern to the organization:

- the continuing risk to foreign nationals in an 'irregular situation' in Libya, particularly those from Sub-Saharan Africa, whether refugees, asylum-seekers or migrants, of being subjected to ill-treatment, arbitrary and indefinite detention, conditions of detention amounting to cruel, inhuman and degrading treatment or punishment, and of being arbitrarily repatriated from Libya to third countries, as the Grand Chamber found in *Hirsi*;
- the continuing cooperation between Italy and Libya aimed at preventing 'irregular migration', which is implemented in the absence of any effective legal safeguards or mechanisms to ensure that obligations deriving from international human rights and refugee law are upheld, notwithstanding a wealth of public evidence that foreign nationals in Libya continue to be subjected to grave violations and abuses of their human rights;
- the risk that refugees, asylum-seekers and migrants intercepted at sea in the context of the Italian operation "Mare Nostrum" may be denied access to a fair and satisfactory asylum procedure and as a result may be denied international protection; and
- the continuing lack of clarity regarding instructions to private and commercial vessels as to the port of disembarkation after a search and rescue operation, potentially placing refugees, asylum-seekers and migrants at risk of push-backs to Libya, as occurred on at least one occasion in 2013.

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<sup>1</sup> *Hirsi Jamaa and Others v. Italy*, [GC] no. 27765/09, 23 February 2012, para. 210.

## 1. Overview of the situation of foreign nationals in detention in Libya

In the August 2012 submission to the Committee, Amnesty International described the widespread human rights abuses and violations against foreign nationals in an 'irregular situation' in Libya, especially from Sub-Saharan Africa. The serious concerns expressed at the time remain: the absence of a functioning asylum system and the failure to assess cases individually means safeguards against *refoulement* are non-existent or ineffective; and the risk of arbitrary arrest, indefinite detention in extremely harsh conditions, beating and other ill-treatment, which in some cases amounts to torture. A still widespread lawlessness in the country and the fact that state authorities are still unable to exercise control over migration detention centres compound these concerns.

Throughout 2013, Amnesty International has continued to document human rights violations and abuses perpetrated against foreign nationals in Libya, be they refugees, asylum-seekers or migrants, including in immigration detention centres under the authority of the Libyan Ministry of Interior.

As documented in the briefing published on 20 June 2013, [Scapegoats of Fear: Rights of Refugees, Asylum-Seekers and Migrants Abused in Libya](#) (Index: MDE 19/007/2013), refugees, asylum-seekers and migrants continue to be subjected to: arbitrary arrests; indefinite detention for immigration purposes by both state and non-state actors, often driven by misguided fears of diseases and xenophobia; torture or other ill-treatment; and deportations on the ground of their health status.

When Amnesty International delegates were in Libya in April and May 2013, approximately 5,000 migrants, refugees and asylum-seekers were held indefinitely in poorly resourced centres run by the Ministry of Interior. They were detained without having been brought before a judicial authority and had no opportunity to challenge their detention. Of these detainees, an estimated 1,700 were asylum seekers in need of international protection detained solely because of their irregular status. Libya still lacks an asylum system and national asylum legislation. It has not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and no memorandum of understanding has been signed with UNHCR.

An unknown number of detainees were also being held by militias that were formed during and after the 2011 armed conflict and which continue to operate without state oversight. The number of detainees fluctuates as the cycles of arrests and deportations continue. It is estimated that between 4,000 and 6,000 foreign nationals are being detained at any given time. Approximately 2,000 people are deported every month by land vehicles or by plane. Deportation is carried out without any procedural safeguards, and foreign nationals do not have any access to any legal or administrative measures to challenge the decision to deport them.

Conditions observed in most "holding centres" visited by Amnesty International delegates fell short of international standards, and at times amounted to cruel, inhuman and degrading treatment. Foreign nationals were held in overcrowded cells, often without regular access to fresh air; many suffered from irregular access to washing and sanitary facilities and insufficient access to drinking water, hygiene products and other basic necessities. Poor hygiene standards and detention conditions have led to the spread of skin diseases and other medical problems, which have been exacerbated by insufficient treatment, and at times the denial of medical care altogether.

Amnesty International also found evidence that the Libyan authorities had started deporting foreign nationals diagnosed with infections such as hepatitis B and C or HIV. Compulsory medical tests, which were developed under al-Gaddafi's rule as a prerequisite for foreign nationals applying for a work and residency permits in Libya, were reintroduced at the beginning of 2013. These tests are discriminatory and violate the *International Labour Organisation (ILO) Code of Practice on HIV/AIDS and the world of work*.

Some of the refugees, asylum-seekers and migrants detained at more than 20 centres across Libya had been intercepted by the Libyan coastguard at sea as they attempted to cross the Mediterranean; others had been arrested arbitrarily by state-affiliated militias formed during the 2011 armed conflict.

Amnesty International researchers returned to Libya in September and November 2013. They visited the immigration detention centre near Gharyan, some 80 km south of Tripoli, one of the largest in the country. The centre is run by the 9<sup>th</sup> Brigade, a militia nominally under the control of the Ministry of Defence. The centre has not yet been handed over to state authorities. Although outside of direct state control, Libyan security agencies cooperate with the 9<sup>th</sup> Brigade, meaning that refugees, asylum-seekers and migrants continue to be brought to the facility on a regular basis. It can hold up to 3,000 people. At the time of the visit there were some 1,250 migrants in the centre, from countries including Chad, Egypt, Eritrea, Niger, Somalia and Sudan. They were detained in metal hangars, in freezing conditions, and were never allowed outside. The centre had no ambulance and no functioning sewage system nor clean drinking water. Many detainees reported that their shoes had been confiscated to prevent escapes and many reported ill-treatment, including beatings with metal bars or plastic tubes, being forced to roll over in dirty water while being kicked by the guards with their boots, and being intimidated by guards shooting at the ceiling inside the hangars. Amnesty International researchers identified about 20 unaccompanied children, some as young as 12, from Somalia and Eritrea, detained alongside the adults.<sup>2</sup>

Amnesty International researchers also visited three immigration detention centres in Khoms, Soroman and Zliten in western Libya. At the Khoms "holding centre", researchers interviewed several detainees, including asylum-seekers from Eritrea, who had visible marks of beatings on their bodies. According to their testimonies, ill-treatment by guards mainly takes place during food distribution, when detainees are taken outside of their rooms to the courtyard. They are beaten with metal bars, sticks, water pipes and electric cables. They also reported that the guards threaten them by pointing their rifles at them, and often shoot in the air. Christian detainees, mainly from Eritrea, further alleged that they were beaten for practising their religion and that their religious objects had been confiscated and destroyed by the guards. In general, hygiene standards and detention conditions were very poor. Detainees complained of a lack of hygiene products and some showed signs of scabies on their hands. In a bloc, the sewage was blocked up, and a pool of water had formed in the corridor. To prevent detainees from escaping, the administration of a detention centre confiscated their shoes, forcing them to walk barefoot in very unhygienic conditions. The mattresses were very old, and garbage was not being collected.

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<sup>2</sup> Amnesty International, ['If an African dies here, no one cares'- abuses of migrants and refugees in detention in Libya](#), 18 December 2013.

At a women's immigration detention centre in Soroman, where 45 female detainees, including migrants and asylum-seekers, were being held, Amnesty International found evidence of routine strip-searches by male guards upon the admission of new detainees. In some cases, invasive strip-searches, including of the women's private parts with plastic hoses, were being conducted as disciplinary punishment. Some female detainees interviewed by Amnesty International, including one pregnant Nigerian woman, alleged having been beaten with sticks on the soles of their feet and their upper bodies. Amnesty International is also concerned about the absence of female guards at the facility in violation of UN Standard Minimum Rules for the Treatment of Prisoners, which stipulate that women prisoners are to "be attended and supervised only by women officers".

## **2. Continuing cooperation between Italy and Libya on 'migration control'**

In its first submission of August 2012, Amnesty International expressed grave concern that notwithstanding the substantial public evidence that refugees, asylum-seekers and migrants still faced serious violations and abuse in Libya, Italy continued to pursue cooperation with Libya aimed at stemming migration flows. In particular, Amnesty International criticized the agreement signed on 3 April 2012 between Italy and Libya, because while envisaging that Italy supplies technical means and equipment to Libya to strengthen border surveillance and prevent departures of migrants from its territory, the agreement contained no indication whatsoever of any concrete measures to uphold international human rights and refugee law standards.

The concerns about the 3 April 2012 agreement described in our August 2012 submission remain in effect. That agreement failed to include any human rights safeguards, and instead reiterated Libya's commitment to strengthening its borders to prevent departures of migrants from its territory, and Italy's commitment to provide training and equipment in order to enhance border surveillance. The 3 April 2012 agreement remains deeply inadequate to protect the human rights of refugees, asylum-seekers and migrants in Libya and Amnesty International is unaware of any modification to the existing bilateral agreements between Libya and Italy which would make such agreements consistent with the Convention's requirements. On the contrary, cooperation with Libya continues in the absence of adequate and effective human rights safeguards.

Amnesty International welcomes the public commitment of the Italian government, as emerged at the June 2013 G8 in Lough Erne (Northern Ireland), to support Libya's political transition, economic development, reconciliation process and constitutional reform "in an inclusive and peaceful manner", as reported by the Libyan and Italian media on that occasion. Amnesty International also recognizes the important security challenges faced by the Libyan authorities, and the need to rein in militias by implementing an effective disarmament, demobilisation and reintegration programme compliant with human rights standards. The organization acknowledges that Libya needs international cooperation to meet the security and human rights protection challenges it faces.

However, the organization notes that the pledged assistance from Italy, once again, appears to be driven principally by security considerations and to include a strong component of border control, including the strengthening of the Libyan Coast Guard. Amnesty International is concerned that the new assistance package is translating into further cooperation on migration control between Italy and Libya in the absence of human rights safeguards.

For years, Amnesty International has documented human rights violations committed by Libyan authorities against refugees, asylum-seekers and migrants. Consequently, the organization has repeatedly urged the government of Italy to avoid entering into agreements on migration control with Libya until Libya demonstrates that it respects and protects the human rights of refugees, asylum-seekers and migrants, and puts in place a satisfactory system for assessing and recognizing claims for international protection. As described above, this is far from being the case and yet cooperation between the two countries on migration control continues.

A further “technical agreement” of bilateral cooperation was signed in Rome on 28 November 2013 by the Defence Ministers of Italy and Libya. Italy will offer Italian drones to assist in the control of Libya’s southern border, which presents undeniable security concerns. Italian drones will also presumably ensure an earlier and more thorough detection of trucks transporting refugees, asylum-seekers and migrants.

In light of the continuing grave violations and abuses against refugees, asylum-seekers and migrants in Libya, Amnesty International remains concerned that supplies, including drones, provided by the Italian government could cause or contribute to human rights violations.

As Amnesty International already noted in its August 2012 submission, a state cannot deploy its official resources, agents or equipment for actions that would constitute or lead to human rights violations, including within the territorial jurisdiction of another state. The case-law of the European Court of Human Rights holds contracting parties responsible for violations of their obligations under the Convention which are neither negotiable, nor avoidable through extra-territorialisation.<sup>3</sup>

### **3. Operation Mare Nostrum**

In the aftermath of the shipwrecks of 3 and 11 October 2013, which claimed at least 400 and possibly over 600 lives, on 14 October 2013 the Italian government announced that it was starting operation Mare Nostrum. The operation aimed to strengthen search and rescue at sea to prevent further loss of lives, and to combat human trafficking. The Italian Foreign Affairs Minister described the operation as capable of saving lives while differentiating between who is and who is not a refugee.<sup>4</sup> Although due to end on 2 December, the operation was ongoing as of the beginning of February 2014.

In some three months, approximately 8,000 people were intercepted as part of the operation and, according to official information, transferred to the island of Sicily, in the “reception centres of Pozzallo (RG), Porto Empedocle (AG), Augusta (SR) and Catania”.<sup>5</sup>

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<sup>3</sup> See, inter alia, *M.S.S. v. Belgium and Greece* [GC], application no. 30696/09, 21 January 2011, para. 342; *T.I. v. United Kingdom* (decision, 2000); *Waite and Kennedy v. Germany* [GC], no. 26083/94, para. 67, ECHR 1999 I.

<sup>4</sup> See statement issued on 12 November 2013 at a joint hearing of the foreign affairs committees of the Senate and Chamber of Deputies and reiterated at a press conference with the foreign press on 9 December 2013.

<sup>5</sup> See press release of the Italian Ministry of Defence dated 22 January 2014, “Italy and Slovenia for the operation Mare Nostrum”.

Amnesty International welcomes the Italian government's decision to strengthen its search and rescue operations at sea. It is however essential that search and rescue and border control procedures are implemented in a manner that is fully consistent with Italy's obligations under international human rights and refugee law.

Amnesty International considers that several aspects of operation Mare Nostrum need clarification to verify its compliance with international human rights and refugee law. Of particular relevance here are the following:

- whether identification procedures (possibly including fingerprinting) of refugees, asylum-seekers and migrants are being carried out on board the Italian vessels employed in Mare Nostrum and with which legal safeguards. Amnesty International is concerned that such procedures, carried out at sea on individuals who are likely to be in a vulnerable and traumatized state, could be in violation of international human rights and refugee law and standards;
- whether Libyan officials are on board the Italian Mare Nostrum vessels and what is their role. The possibility of inviting Libyan officials to take part in Mare Nostrum operations on board Italian vessels was mentioned by the Italian Minister of Defence following the signing of the "technical agreement" with the Libyan Minister of Defence on 28 November 2013;<sup>6</sup> and
- whether all refugees, asylum-seekers and migrants intercepted at sea – reportedly some 8,000 people – have been disembarked in Sicily; whether they have had adequate access to a fair and satisfactory asylum procedure; and whether any other procedures may have been used to process refugees, asylum-seekers and migrants disembarked from the Mare Nostrum vessels in Sicily, including as part of readmission agreements signed with third countries. Amnesty International has reviewed information indicating that some people intercepted as part of Mare Nostrum operations may be denied access to legal safeguards and an individualized, fair and effective asylum procedure.

In sum, Amnesty International is concerned that the operation Mare Nostrum has remained focused on migration control rather than on strengthening search and rescue at sea, and that access to a fair and satisfactory asylum procedure may not be ensured to each individual in all cases.

#### **4. Risk of *refoulement* in the context of search and rescue operations performed by private and commercial vessels**

Amnesty International is concerned that refugees, asylum-seekers and migrants rescued at sea in the Italian search and rescue area by private vessels may be at risk of *refoulement*, and that in at least one incident at the beginning of August 2013 involving a private vessel the principle of *non-refoulement* may have been breached on the instructions of the Maritime Rescue Coordination Centre Rome.

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<sup>6</sup> See press release of the Italian Ministry of Defence, at: [http://www.difesa.it/Primo\\_Piano/Pagine/Italia\\_Libia.aspx](http://www.difesa.it/Primo_Piano/Pagine/Italia_Libia.aspx)

Information disclosed by the Maltese government indicates that Italian authorities instructed two private vessels, M/V Salamis and M/V Adakent, to disembark individuals rescued at sea in Libyan ports. In the case of M/V Adakent, such instructions were implemented.

According to the information reviewed by Amnesty International so far, the private oil tanker **M/V Salamis** (IMO 9188776), flying Liberian flag and operated by Greek shipping company Mantinia, left the port of Khoms, Libya, on 4 August 2013, directing towards Malta. Off the Libyan coast – but apparently in international waters – the M/V Salamis rescued a group of 102 individuals, mostly Eritrean and Sudanese nationals, stranded at sea. The group reportedly included four pregnant women, a five-month-old baby and an injured woman. After boarding the group, the vessel continued sailing towards Malta.

On 5 August 2013, a vessel of the Armed Forces of Malta stopped the M/V Salamis before it entered Maltese territorial waters, contending that the vessel had disobeyed orders given by the Maritime Rescue Coordination Centre Rome to return to Libya and disembark individuals rescued at sea there. Such instruction seems confirmed by official documents published by the Maltese government, namely the communication dated 5 August 2013 from Maritime Rescue Coordination Centre Rome to Rescue Coordination Centre Malta (prot. 03.03.01/9558/C.O.), which indicated the following:

“SUBJECT: RUBBER BOAT ADRIFT WITH 250 MIGRANTS ON BOARD IN UNKNOWN POSITION - THURAYA PHONE NUMBER ON BOARD 008821655527133.

FOLLOWING OUR FAX N, 03.03.01/9519/C.O. DATED 04TH AUGUST 2013.

TEXT: DEAR SIRs,

WE NEED TO CLARIFY THAT, M/V SALAMIS WAS DIVERTED IN POSITION LAT. 33°30.22'N - LONG. 014°19.03'E BY THIS MRCC. ON BEHALF LIBYAN AUTHORITIES.

FURTHERMORE, AT THE END OF RESCUE OPERATIONS THIS M.R.C.C. GAVE INSTRUCTIONS TO M/V SALAMIS TO DIVERT TOWARDS CLOSEST PORT, IN ORDER TO COMPLETE THE RESCUE OPERATION. AT THE MOMENT, THE CLOSEST PORT WAS TRIPOLI. MASTER OF THE SHIP HAS REPLIED US THAT, AS MASTER OF THE SHIP, HIS OWN DECISION WAS TO PROCEED TOWARDS MALTA AS ORIGINAL PORT OF CALL.”

Following intense diplomatic negotiations, on 7 August 2013 the Italian government eventually authorized, reportedly on humanitarian grounds, the M/V Salamis to disembark the 102 individuals in Siracusa. Amnesty International welcomed the decision by the Italian government, on 7 August 2013, to allow the M/V Salamis to sail towards Siracusa and disembark the 102 individuals rescued at sea three days before, after having spent two days in open sea and having been refused disembarkation by Malta.

The Maltese government also reported the case of a Turkish cargo ship, which rescued a number of individuals in distress at sea on 4 August 2013, and returned them to Libya following instructions by the Maritime Rescue Coordination Centre Rome. According to media reports, the Turkish cargo **M/V Adakent** sailed to Tripoli and there turned 96 rescued persons over to Libyan authorities. Information available indicates that the Turkish flagged M/V Adakent (IMO 9037305) was detected by Automated Identification System as calling at the port of Tripoli on 5 August 2013 at 11.15 UTC, its previous recorded position being Marina di Carrara (Italy) on 2 August 2013 at 16.03 UTC.



Among the group of Eritreans interviewed by Amnesty International at the beginning of September 2013 at the Khoms detention centre in Libya, seven men alleged that they were detained after their attempt to cross the Mediterranean failed. They reported that they were returned to Libya on an Italian commercial boat called “Cardinal”, following a rescue operation at a distance of about four hours sailing from the island of Lampedusa. According to the testimony given to Amnesty International researchers, 102 sub-Saharan Africans, mainly Eritreans, had left Tripoli at 3:00 am some three weeks before, in August 2013, aboard a zodiac, directed towards Lampedusa. There were 17 women among the group, including two who were pregnant at the time (one apparently had a miscarriage during the journey). They had been sailing for approximately 24 hours when the boat’s engine broke down. According to their reports, an Italian commercial boat called “Cardinal”, on its way towards Tripoli, reportedly came to their rescue and, notwithstanding their protests, returned them to Tripoli.

Upon arrival to Tripoli, five of the Eritreans escaped. The rest of the group (97 people in total) were transferred to a detention centre in Abu Salim area, in Tripoli. From there, the women were taken to a migrants “holding centre” in Garabulli, whereas the men were taken to a “holding centre” near Gharyan. The seven Eritreans interviewed by Amnesty International researchers at the beginning of September 2013 had also managed to escape at some point, but they were caught again and transferred to the “holding centre” in Khoms, where they alleged that guards were ill-treating them on a quasi-daily basis. Two of them had visible marks of beatings on their bodies at the time of Amnesty International researchers’ visit.

Under international law, in no case should private vessels rescuing individuals at sea be instructed to disembark them in a country where they would face a real risk of persecution or other serious human rights violations. Amnesty International considers that this would be the case for migrants, asylum-seekers and refugees disembarked in Libya.

Any activity conducted at sea should take into account and be consistent not only with international conventions and guidelines on search and rescue operations but also with states’ obligations under international human rights and refugee law.

Consistently with the principle of *non-refoulement*, the Guidelines on the Treatment of Persons Rescued at Sea of the International Maritime Organization (IMO) Maritime Safety Committee clarify that a “place of safety”, i.e. a location where to disembark individuals rescued at sea and where rescue operations are considered to terminate, cannot be defined on the sole basis of geographical proximity, pointing out that a place of safety is “a place where the survivors’ safety or life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met”.<sup>7</sup> The guidelines also specify that “[t]he need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration [when determining a place of safety] in the case of asylum-seekers and refugees recovered at sea.”<sup>8</sup> Seeking to ensure that “survivors are not disembarked to a place where their safety would be further jeopardized” is one of the duties of shipmasters.<sup>9</sup>

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<sup>7</sup> Guidelines on the Treatment of Persons Rescued at Sea, adopted by the Maritime Safety Committee of the International Maritime Organization with Resolution MSC.167(78) on 20 May 2004, para. 6.12.

<sup>8</sup> Ibidem, para. 6.17

<sup>9</sup> Ibidem, para. 5.1.6

The Parliamentary Assembly of the Council of Europe (PACE) has recommended, in Resolution 1821 (2011), that “the notion of ‘place of safety’ should not be restricted solely to the physical protection of people, but necessarily also entail respect for their fundamental rights (para 5.2)” and that States should “carry out as a priority action swift disembarkation of rescued persons to a ‘place of safety’ and interpret a ‘place of safety’ as meaning a place which can meet the immediate needs of those disembarked and in no way jeopardises their fundamental rights, since the notion of ‘safety’ extends well beyond mere protection from physical danger and must also take into account the fundamental rights dimension of the proposed place of disembarkation (para. 9.5)”.

In consideration of the above, Amnesty International believes that the return to Libya of individuals rescued at sea by the M/V Salamis and the M/V Adakent should not have been considered. The organization is particularly concerned for the 96 individuals who were reportedly disembarked by the M/V Adakent in Libya, as their prospects of getting international protection there are virtually non-existent, and they may be at risk of serious human rights violations or abuses.

In light of the events and concerns described above, Amnesty International considers that the Italian government should clarify:

- the instructions that Maritime Rescue Coordination Centre Rome gave M/V Salamis about disembarkation of the individuals rescued at sea;
- the authenticity of the message attached, allegedly sent by Maritime Rescue Coordination Centre Rome to Rescue Coordination Centre Malta (prot. 03.03.01/9558/C.O.) on 5 August 2013;
- the instructions that Maritime Rescue Coordination Centre Rome gave M/V Adakent about disembarkation of the individuals rescued at sea;
- to which authorities the 96 individuals disembarked in Tripoli by the M/V Adakent were handed over, what was their fate, and what is their current situation; and
- whether instructions of this kind were given to any other private vessels engaging in search and rescue operations off the Libyan coast in 2012 and 2013.

#### **4. Conclusions and recommendations**

On the basis of the information provided above, Amnesty International continues to maintain, as it did in its first submission of August 2012, that Libya is in no position to implement cooperation agreements on migration control in a manner that conforms to international human rights and refugee law. Amnesty International also reiterates that the Italian authorities know – or ought to know – that Libya cannot cooperate in such a manner. Consequently, Amnesty International considers that continuing such cooperation will continue to contribute to human rights violations and abuses for which, in the circumstances, Italy continues to bear joint responsibility.

In addition, Amnesty International is concerned that since the latest consideration of the execution of the Hirsi judgment in March 2013, Italy has carried out search and rescue operations in a manner which may be hampering access to an individualized, fair and satisfactory asylum procedure for all those rescued at sea. Furthermore, the organization is concerned that contrary to its international legal obligation, Italy may still be instructing private vessels to disembark people rescued at sea in Libyan ports, thus denying to those individuals access to asylum and exposing them to a risk of grave human rights violations and abuses.

Amnesty International calls on the Committee of Ministers to recommend that the Italian government:

- set aside existing migration control agreements with Libya;
- refrain from entering into any further agreements or pursuing any assistance package in the area of border and migration control, until Libya demonstrates that it protects and respects the human rights of refugees, asylum-seekers and migrants, including by: adopting national asylum legislation in line with international standards; signing a memorandum of understanding with the United Nations High Commissioner for Refugees; ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; setting a maximum period for immigration detention; stop arbitrary arrests as well as torture and other ill-treatment of foreign nationals; and immediately stop deportations of foreign nationals on the ground of their health status;
- ensure all migration control agreements with Libya or any other country are made public and include adequate safeguards to protect human rights with appropriate implementation mechanisms;
- clarify whether identification procedures are being carried out on board vessels of operation Mare Nostrum and with which legal safeguards;
- clarify whether Libyan personnel are on board Italian vessels employed in the operation Mare Nostrum and in which role;
- clarify where all people intercepted through operation Mare Nostrum have been disembarked in Italian ports and how they have been provided access to an individualized, fair and satisfactory asylum procedure;
- clarify whether any individuals intercepted through operation Mare Nostrum have been returned to a third country, including in the context of readmission agreements, and whether these individuals have had individualized access to a fair and satisfactory asylum procedure;
- clarify which instructions were given by Maritime Rescue Coordination Centre Rome to M/V Salamis and M/V Adakent, or to any other private commercial vessel, regarding disembarkation of individuals rescued at sea in August 2013;
- clarify whether there are circumstances in which the Maritime Rescue Coordination Centre Rome would instruct a private vessel to disembark people rescued at sea in Libya;

- clarify to which authorities the 96 individuals disembarked in Tripoli by the M/V Adakent were handed over, what was their fate, and what is their current situation; and
- refrain from instructing any vessel to disembark people rescued at sea in Libya and provide assurances as to how this recommendation will be implemented.

In conclusion, Amnesty International calls on the Committee of Ministers to continue to supervise the execution of the Hirsi judgment by Italy.