

Ms Geneviève Mayer

Head of the Department for the Execution of Judgments
Directorate of Monitoring
Council of Europe
Avenue de l'Europe
F-67075 Strasbourg Cedex
France

Genevieve.Mayer@coe.int

**AMNESTY
INTERNATIONAL**



European Institutions Office

Brussels, 14 August 2012
Our Ref': B1241
TIGO IOR 61/2012.003

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

Dear Ms Mayer,

Please find enclosed a briefing submitted in accordance to Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Italian government to fulfil its obligations to implement the Grand Chamber's judgment in the case of *Hirsi Jamaa and Others v Italy*.

Annexed to the briefing are the following documents:

- Migration control agreement between Italy and Libya, 3 April 2012
- Unofficial English translation of the Migration control agreement between Italy and Libya
- Libya: Rule of Law or Rule of Militias?, Amnesty International, Index: MDE 19/012/2012, July 2012

Yours sincerely,

Dr Nicolas J Beger
Director

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

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006.

In the light of Italy's obligations under international human rights and refugee law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general measures that 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 Jamaa* judgment of individual measures necessary for its execution was "without prejudice to the general measures required to prevent other similar violations in the future".¹

Regarding the general measures, the following information focuses on:

- the 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 in the country; and,
- the additional risk people in an "irregular situation" face, including those entitled to international protection, of being arbitrarily repatriated from Libya to third countries, as the Grand Chamber found in *Hirsi Jamaa*.

Amnesty International considers that the said risks are partly the result of the continuing "cooperation measures" between Italy and Libya in the context of preventing "irregular migration".

1. Continuing cooperation between Italy and Libya on 'migration control'

Despite substantial public evidence that migrants, refugees and asylum-seekers still face serious abuse in Libya, on 3 April 2012 Italy signed a new agreement with Libya on migration control. Amnesty International repeatedly asked the Italian authorities to make the content of the agreement public but the requests went unheeded. The text of the agreement was leaked to the Italian press on 18 June. A copy of the text is attached, together with an unofficial English translation.² The veracity of the leaked document was not questioned by Italian authorities.³

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

² A copy of the agreement can be found annexed to this submission and in the following link: <http://www.lastampa.it/web/tmplframe/default.asp?indirizzo=http://www.lastampa.it/web/download/pdf/ruotolo.pdf>. An unofficial English translation of the agreement, by the Jesuit Refugee Service, is attached.

³ On 20 June 2012, the Italian Minister of Interior, Annamaria Cancellieri, released an interview on this matter, also reported on the website of the Ministry of Interior. In it, among other things, Minister Cancellieri confirmed that she did not intend to revise agreements already established between Italy and Libya, although the Italian government would not implement further pushbacks, "even because we are working to create conditions where Libya has the instruments and means to avoid departures from its coasts".

The provisions in the agreement confirm Amnesty International's concerns: the Italian authorities seek support from Libya in stemming migration flows, while turning a blind eye to the fact that migrants, refugees and asylum-seekers are at real risk of serious human rights abuses there. Through the agreement, Libya commits itself to strengthening control over its borders to prevent "unauthorized" departures from its territory, and Italy commits itself to providing training and equipment to enhance "border surveillance". However, apart from a tokenistic mention of human rights, there is no indication of any concrete measures to prevent human rights abuses from occurring in the context of this cooperation.

- In relation to foreign nationals held in detention centres, commitment to respect human rights is not accompanied by any implementation mechanism, such as giving access to UNHCR and other independent organizations to detention places to monitor conditions of detention, ensuring access to legal counsel and interpretation services and the courts.
- There is no commitment to provide for the specific protection needs of asylum-seekers, such as signing a Memorandum of Understanding with the UNHCR, ratifying the UN Refugee Convention and adopting asylum legislation and practices consistent with international law and standards. The right to asylum is not even mentioned, despite the fact that among the many Sub-Saharan African nationals living in Libya or transiting the country who are the target of Italian-Libyan cooperation, there will inevitably be many who need international protection.

Moreover, the agreement euphemistically refers to 'reception', rather than detention centres, and to the construction of new 'reception centres' and European support to re-establish existing ones. This is despite the fact that Italy knows or ought to know that Libya's holding centres for "irregular migrants" are detention centres, and currently, largely outside government control. Within a framework of bilateral cooperation, the agreement includes a commitment to re-start the activities already agreed on for the construction of the health centre in Kufra. This is intended to provide medical services for first aid to "illegal immigrants" who come from Kufra and surrounding areas. As Amnesty International has documented, the situation in Kufra is extremely dangerous and volatile and the city serves as a hub for unscrupulous human smugglers. Migrants, refugees and asylum-seekers who are apprehended crossing into Libya are subjected to harsh detention in inhumane conditions.

The agreement signed on 3 April refers to planning sea operations in the respective areas of jurisdiction, in accordance with bilateral agreements. As emerged from the *Hirsi* judgment, the operation to intercept vessels on the high seas and to push the occupants back to Libya followed the entry into force of bilateral agreements between Italy and Libya. According to the Committee of Ministers Decision on *Hirsi Jamaa and others v. Italy*,⁴ the Italian authorities have provided the Committee of Ministers with information about renegotiation of these agreements with a view to adapting them to the Convention's requirements. However Amnesty International cannot see how, under the terms of the 3 April agreement, previous bilateral agreements have been made consistent with the Convention's requirements, as they have been left untouched. The Committee of Ministers may wish to establish, in particular:

http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/interviste/Interviste/2099_500_ministro/0979_2012_6_20_intervista_la_stampa.html

⁴ Adopted at the Committee of Ministers 1144th (DH) meeting, 4-6 June 2012, paragraph 4.

- what steps the Italian Government has taken since 3 April to ensure the new agreement and former bilateral agreements are implemented in a way that is consistent with Italy's international human rights and refugee law obligations; and
- what steps the Italian Government has taken to ensure that the Libyan Government is not violating the human rights of refugees, asylum-seekers and other foreign nationals as part of the implementation of these agreements.

The 3 April agreement envisages that Italy supplies technical means and equipment to Libya to strengthen border surveillance and prevent departures of migrants from its territory. Amnesty International has collected testimonies from people who described embarking from the Libyan coast, being intercepted by a Libyan coastguard and taken into detention. The conditions prevailing in detention centres in Libya, where foreign nationals in an “irregular situation” are held, are described below. Any supplies provided by the Italian Government are likely to cause or contribute to human rights violations. 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 Court's case-law holds contracting parties responsible for violations of their obligations under the Convention which are neither negotiable, nor avoidable through extra-territorialisation.⁵

2. Overview of the current human rights situation, with particular respect to refugees, asylum-seekers and migrants in Libya

Research by Amnesty International and other human rights groups has exposed widespread human rights abuses against foreign nationals in an “irregular situation”, particularly refugees, asylum-seekers and migrants from Sub-Saharan Africa, in Libya during Colonel al-Gaddafi's rule, as well as during and following the conflict that deposed him.⁶ In a report published on 5 July 2012, *Libya: Rule of Law or Rule of Militias?* (see attachment), Amnesty International documents the prevailing lawlessness in Libya, where transitional authorities have been unable or unwilling to rein in the hundreds of militias formed during and after the 2011 conflict that ended the rule of Colonel al-Gaddafi.⁷ The militias now threaten the very future of Libya. They are killing people, making arbitrary arrests, torturing detainees and forcibly displacing and terrorising entire communities. They act above the law, committing crimes without fear of punishment.

Since March 2011, Amnesty International has visited over 30 places of detention in Libya, including official, semi-official and unrecognised ones. Follow-up visits in 2012 to several facilities confirmed that while treatment generally improves for longer-term detainees, new arrivals continue to suffer abuse. In May and June this year, Amnesty International found evidence of recent abuses, including torture, in 12 of 15 detention facilities where it was allowed to interview detainees in private.

⁵ See, *inter alia*: *M.S.S. v Belgium and Greece* [GC], application no. 30696/09, 21 January 2011, § 342; *T.I. v United Kingdom* (decision, 2000); *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 67, ECHR 1999 I.

⁶ See for example Amnesty International reports: *Libya of Tomorrow: What hope for human rights?* (Index: MDE 19/007/2010); *Libya: Militias threaten hopes for new Libya* (Index: MDE 19/002/2012).

⁷ *Libya: Rule of Law or Rule of Militias?*, Amnesty International, Index: MDE 19/012/2012, July 2012, available at <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf> See particularly Chapter 3, entitled ‘Foreign Nationals at Risk’, pp. 34-45.

Amnesty International's above-mentioned report also shows that the situation of foreign nationals in an "irregular situation" is more precarious now than during the al-Gaddafi era. Undocumented foreign nationals, especially those from Sub-Saharan Africa, remain at risk of arbitrary arrest, indefinite detention in harsh conditions, and beating or other ill-treatment, which in some cases amounts to torture. They are frequently taken by armed militias at check-points or from the streets, rounded up from their homes, intercepted in the desert or at sea, or caught while trying to board boats. Their "crime" is to have entered or remained in the country "illegally". Detention centres for "irregular migrants" are under the control of armed militias, and are not overseen by the Ministry of Justice or any other central authority.

Individuals who need international protection are vulnerable to the same kind of abuses faced by other foreign nationals in an "irregular situation", but their plight is compounded by the fact that there is no possibility of their seeking asylum. Libya has no functioning asylum system; the UNHCR operates there without an official memorandum of understanding, and is not in a position to exercise its protection mandate over people of concern. What is more, UNHCR has not been in a position to register any new asylum-seeker or carry out any refugee status determinations since June 2010.

In May and June this year, Amnesty International visited various detention facilities known as "holding centres" for "irregular migrants", including the Kufra detention centre. They were directly controlled by armed militias. Kufra is at the crossroads for people who need international protection and migrants coming from the Horn of Africa. Since the end of the conflict, fighting has erupted several times and tension in the area remains extremely high.

While at the time of Amnesty International's most recent visits to the country in May and June this year, a tacit policy of refraining from deporting Somali and Eritrean nationals appeared to remain in place, the situation remains extremely precarious for Somalis and Eritreans who need international protection. Their release from detention was at times conditional on the authorities of their own country confirming nationalities and signing documents to that effect. Amnesty International is deeply concerned that Somali and Eritrean officials are being granted access to asylum-seekers and refugees from those countries as this can put the individuals concerned and their families at real risk. Under its *non-refoulement* obligations, Libya is required to ensure the safety of individuals seeking protection. This must include ensuring confidentiality for those seeking asylum and not exposing asylum-seekers or their families to direct or indirect risk.

Nationals from other countries who have no valid documents are subject to deportation. The absence of a functioning asylum system and the failure to assess cases individually means safeguards against *refoulement* are non-existent or ineffective.

CONCLUSIONS

As detailed above and in the above-mentioned report on Libya, Amnesty International's recent research has established continuing and widespread serious human rights abuses against migrants, refugees and asylum-seekers in Libya with no opportunity for any effective redress.

The organization considers that there is ample, credible information publicly available which indicates that foreign nationals in an "irregular situation", and particularly Sub-Saharan African refugees and asylum-seekers, face a real risk of human rights abuses in Libya. Amnesty International therefore considers that the Italian authorities, and the authorities of any other state, know or ought to know that such a situation currently endures in Libya.

The organization therefore considers that the Italian authorities are not in a position to assert that their Libyan counterparts are able and willing to comply with fundamental human rights in the context of the implementation of any Italian-Libyan cooperation agreements on the prevention of "illegal immigration". Indeed, Amnesty International considers that such cooperation will continue to result in grave human rights violations for which, in the circumstances, Italy bears joint responsibility.

RECOMMENDATIONS

Amnesty International calls on the Committee of Ministers to consider recommending that the Italian Government adopts the following measures:

- Set aside its existing migration control agreements with Libya
- Not enter into any further agreements with Libya until the latter demonstrates that it respects and protects the human rights of refugees, asylum-seekers and migrants, and has in place a satisfactory system for assessing and recognising claims for international protection
- Ensure all migration control agreements negotiated with Libya or any other countries are made public
- Ensure that any new migration control agreements include adequate safeguards to protect human rights with appropriate implementation mechanisms
- Ensure that interception operations look to the safety of people in distress and include measures that provide access to individualised assessment procedures, including the opportunity to claim asylum
- Disclose details of cooperation projects with Libya, including those funded by the EU, as well as information on provision of official resources, personnel and equipment
- Disclose details of current interception at sea practices vis-à-vis migrants departing from Libya.