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Ylva Johansson  
Commissioner for Home Affairs  
European Commission

21 May 2020

Dear Commissioner Johansson,

## CONCERNS ABOUT PUSHBACKS OF REFUGEES AND MIGRANTS AT SEA AND CLOSURE OF SEA PORTS

I am writing to you to express our concerns with regard to the transfer of refugees and migrants rescued in the Maltese search and rescue (SAR) region to Tripoli on 15 April, the role played by the European Border and Coast Guard Agency (Frontex) in this and other SAR-related events, and the Maltese government's decision to close the country's ports as part of the response to the Covid-19 pandemic.

We note that, with a ministerial decree dated 7 April, the Italian government has also declared that the country cannot be regarded as a place of safety for the purposes of disembarking people rescued outside Italy's SAR region. Albeit in this letter we wish to focus on Malta, we consider that Italy's decision, which we have publicly criticized alongside other NGOs, has contributed to render the situation in the central Mediterranean more dangerous for refugees and migrants and to undermine the law of the sea and international human rights and refugee law.

### Transfer to Tripoli of refugees and migrants rescued/intercepted in the Maltese SAR region on 15 April

Amnesty International is concerned that a group of 51 people, including eight women and three children, were unlawfully returned to Tripoli on 15 April 2020. They had been previously rescued in Malta's SAR region by the fishing boat known as *Dar Al Salam 1* (in fact registered as *Mae Yemanja*), in an operation coordinated by Maltese authorities. Malta has confirmed coordination of the operation in a press release dated 15 April<sup>1</sup> – which however does not offer precise information as to the date and time of the rescue – as well as in statements to the media in the following days. Seven people of the same group were reported missing at sea, while five died before disembarkation in Libya. Many of the people in the group are of Eritrean origin, and therefore likely with a well-founded fear of persecution.

According to the information we have been able to gather, the 51 people were returned to detention in the centre of Tarik Al Sikka in Tripoli. Refugees and migrants interviewed by Amnesty International last year have described Tarik Al Sikka as having awful conditions and where deaths have taken place due to lack of medical care. International organizations have documented abuses against refugees and migrants inside Tarik Al Sikka. We are extremely concerned for the safety of the 51 people, as they are held in arbitrary detention, in conditions that amount to cruel, inhuman and degrading treatment, and are at risk of being subjected to other grave violations and abuses.

The International Organization for Migration (IOM), whose representatives in Tripoli were present at the disembarkation of the 51 people, 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

<sup>1</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/15/pr200673en.aspx>

ports.”<sup>2</sup> 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.”<sup>3</sup>

Amnesty International has gathered information about this case from multiple sources, including the non-governmental organization (NGO) AlarmPhone, which was in contact with this group of people while they were in distress at sea. AlarmPhone repeatedly alerted maritime authorities in Italy, Libya and Malta, starting in the early hours of 11 April, but no rescue operation was initiated for several days, while the people remained stranded at sea and at risk of dying of dehydration, starvation or by drowning. Eventually, Maltese authorities coordinated a rescue operation involving private vessels, as mentioned in the government’s press release, albeit without details allowing for a full official reconstruction of the events. According to media reports and information published by AlarmPhone<sup>4</sup>, three private vessels, under the coordination of the Maltese authorities, left Malta to search for the boat in distress; having located it, one of the three vessels, the *Dar Al Salam 1*, took the refugees and migrants onboard and proceeded towards Tripoli accompanied by a second vessel, which was carrying goods to be delivered to the Libyan authorities. At some point before the rescue, seven of the refugees and migrants, jumped in the sea and disappeared in the waters. Five more people were reportedly hoisted while unconscious onto the rescuing vessel and died during the transfer to Libya. The refugees and migrants were disembarked in Tripoli on 15 April. Details about the departure of the three vessels from Malta, their presence in the vicinity of Libya and their subsequent return to Malta have been verified by Amnesty International through AIS data, although the three ships turned off their AIS signals before the rescue operation and reactivated it after the disembarkation in Libya. According to reports published in various newspapers, including the New York Times, Maltese authorities have requested commercial vessels to return refugees and migrants found in the Maltese SAR region back to Libya in at least two further occasions in recent months.

As repeatedly stated by international organizations and acknowledged by European States and Institutions, Libya is not a place of safety where refugees and migrants can be disembarked and European states would be acting unlawfully, were they to instruct a shipmaster to return to Libya people rescued in international waters. In 2012, in the case of *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights ruled against Italy for having intercepted at sea and returned to Libya a group of Eritrean and Somali nationals, thus exposing them to ill-treatment and potential *refoulement* towards their countries of origin.

#### **Role played by Frontex in facilitating return of refugees and migrants to Libya and in contributing to delayed rescues**

With regard to the 15 April incident, the Executive Director of Frontex, Fabrice Leggeri, at a hearing at the LIBE Committee on 27 April, confirmed that four rubber boats with approximately 250 people on board were spotted by a Frontex aerial asset while departing from, but still within the Libyan SAR area, and that Frontex informed the Maritime Rescue Coordination Centres of Italy, Malta, Libya and Tunisia of the exact location of the boats.<sup>5</sup>

Amnesty international is concerned that in the context of its Multipurpose Aerial Surveillance (MAS) over the central Med, started in 2017, it has become routine practice for Frontex to notify Libya’s MRCC of SAR sightings, without adopting measures to ensure such notification does not lead to disembarkation in Libya, in view of the fact that Libya cannot be considered a place of safety. Furthermore, since by its own admission Frontex was aware of the boats in distress practically from their departure, Amnesty International would like to understand whether Frontex has initiated a serious incident report for failure by any of the MRCCs notified to take prompt action and ensure an immediate rescue.

EU Member States and agencies must uphold their obligations under European and international human rights law in all circumstances. While both Frontex and the European Commission consider that the practice of notifying sightings to the competent MRCC is in line with obligations under maritime law, they have refrained from ensuring that other non-

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<sup>2</sup> [https://twitter.com/IOM\\_Libya/status/1250383167351128065?s=20](https://twitter.com/IOM_Libya/status/1250383167351128065?s=20)

<sup>3</sup> <https://twitter.com/UNHCRLibya/status/1250433528979795973?s=20><https://twitter.com/UNHCRLibya/status/1250412347815948289?s=20>

<sup>4</sup> [https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/?post\\_type\\_release\\_type=post](https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/?post_type_release_type=post)

<sup>5</sup> [https://multimedia.europarl.europa.eu/en/libe-committee-meeting\\_20200427-1600-COMMITTEE-LIBE\\_vd](https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200427-1600-COMMITTEE-LIBE_vd)

derogable principles of international law, such as that of non-refoulement, are equally upheld during Frontex operations. We consider that these objectives can be achieved only if adequate guarantees are provided, including in the operational plans of Frontex operations, that a place of safety is readily available following MAS sightings. As the European Commission itself has recognized, Libya cannot be considered as a place of safety. If coastal EU member states in the central Mediterranean fail to provide a place of safety, and to agree where disembarkation of people rescued in the Libyan SAR region should take place, MAS operations by Frontex in the area should be suspended until such guarantees are given.

### **Decision to close Maltese ports**

Finally, Amnesty International would like to raise with you the decision by Malta, communicated to the European Commission, to close its ports and the government's statement that Malta is in no position to ensure search and rescue activities during the Covid-19 health emergency. The impact of this new policy on the lives and safety of refugees and migrants is of great concern to Amnesty International.

To implement the policy of closed ports, Malta has recently chartered private ships to keep refugees and migrants outside its territorial waters. This new practice, aimed at avoiding the disembarkation in Malta of people rescued at sea under the coordination of Maltese authorities, started after the pushback of 15 April generated international criticism and the opening of a magisterial inquiry. Well over 150 people are currently reported to be on board such vessels. There appears to be no plan regarding their disembarkation – unless relocation is offered by another European State. The situation of the people on board appears to be increasingly distressful, with reports that some are on hunger strike and others have attempted suicide.<sup>6</sup>

While highlighting the urgent need to find an immediate solution for these people, Amnesty International wishes to bring to your attention how such practice could constitute a breach of the right to seek asylum and potentially of the right to liberty of the refugees and migrants affected by it. Measures limiting human rights, for example for the protection of public health, may at times be necessary; however, they should be set out in law and be proportionate and necessary to the pursuit of a legitimate aim. In accordance with Commission guidance, they should furthermore take into account the principle of non-refoulement and obligations under international law, including the right to seek asylum.<sup>7</sup> Moreover, as UNHCR has affirmed in the context of the Covid-19 crisis, “[W]hile States may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in refoulement.”<sup>8</sup>

In this respect, Amnesty International concurs also with the view expressed by UNHCR in a statement dated 1 May 2020, that “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 puts 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.”<sup>9</sup>

In these last hours further reports are emerging of other potentially unlawful operations carried out by Maltese authorities in order to prevent disembarkations in Malta. According to these reports, Maltese authorities failed to rescue and further

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<sup>6</sup> <https://www.independent.com.mt/articles/2020-05-19/local-news/Migration-Hunger-strikes-and-attempted-suicide-on-Captain-Morgan-migrant-boats-6736223310>

<sup>7</sup> Communication from the Commission, *COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement* 2020/C 126/02, [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587138114770&uri=CELEX:52020XC0417\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587138114770&uri=CELEX:52020XC0417(07))

<sup>8</sup> UN High Commissioner for Refugees, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020, available at: <https://www.refworld.org/docid/5e7132834.html>

<sup>9</sup> <https://www.unhcr.org/uk/news/press/2020/5/5eac53214/news-comment-search-rescue-central-mediterranean-gillian-triggs-assistant.html>

endangered the lives of a hundred people on a rubber boat to force it to sail out of Maltese waters and direct towards Italy. The boat reached the Italian port of Pozzallo on 12 April.<sup>10</sup>

Malta has already received over 1,200 refugees and migrants this year, and the resources and efforts necessary to ensure reception, access to international protection, and protection from Covid-19 are undoubtedly considerable. Our organization continues to call on EU Member States to share responsibility for assisting people rescued in the central Mediterranean, including through the adoption of a predictable disembarkation and relocation mechanism, and we fully support efforts by the Commission to achieve this. The absence of such a mechanism, however, does not relieve Malta of the obligation to indicate a place of safety for the disembarkation of people rescued under its coordination; to cooperate with other states towards the prompt identification of a place of safety to disembark people rescued in the Libyan SAR region, in line with the principle of non-refoulement; and to provide adequate assistance to people disembarked in Malta – without resorting to unlawful detention.

In light of the concerns described above, we urge you to:

- Urgently follow up on the return of people to Libya coordinated by Maltese authorities, including the 15 April case involving the transfer to Libya of 51 people, and take appropriate measures, such as infringement proceedings, to bring Malta's practice in line with international and EU law.
- Take measures to ensure that EU Border Agency's involvement in SAR-related events does not lead to disembarkation in Libya and that aerial operations be suspended, unless member states provide guarantees that SAR sightings will lead to disembarking people in a place of safety.
- Ensure Malta complies with EU and international law in continuing to guarantee access to asylum even during the Covid-19 pandemic, by ensuring the prompt disembarkation of the rescued refugees and migrants, including those currently kept on board chartered ships, and their reception on land in conditions in line with international and EU standards.

I thank you in advance for your attention to these important matters and look forward to your response.

Yours sincerely,



Eve Geddie  
Head of European Institutions Office and Advocacy Director

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<sup>10</sup> [https://alarmphone.org/en/2020/05/20/maltas-dangerous-manoevres-at-sea/?post\\_type\\_release\\_type=post](https://alarmphone.org/en/2020/05/20/maltas-dangerous-manoevres-at-sea/?post_type_release_type=post)