

Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants

Ref.: AL ITA 4/2024
(Please use this reference in your reply)

31 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 52/4, 53/5 and 52/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the administrative detention of civilian search and rescue ships in the Central Mediterranean and the continued practice of assigning distant ports for the disembarkation of individuals rescued in distress at sea.**

Sea-Watch is an organisation that grew out of a volunteer movement responding to the refugee situation in late 2014. The organisation has been engaged in search and rescue activities in the Central Mediterranean, rescuing over 45,000 individuals in distress at sea. It currently operates the Aurora and the Sea-Watch 5 ships, as well as conducting aerial human rights monitoring missions.

Médecins Sans Frontières (MSF) is a humanitarian organisation that has been conducting search and rescue operations in the Central Mediterranean since 2015, rescuing tens of thousands of individuals in distress at sea.

Since 2014, and as of the time of writing, the International Organization for Migration (IOM), through its 'Missing Migrant' project, has recorded the deaths and disappearances of 23,291 migrants along the Central Mediterranean route. Since 9 February 2023, the date of the previous communication to your Excellency's Government, in which allegations as to the repression and obstruction of civilian search and rescue in the Central Mediterranean were raised (AL ITA 1/2023), 2,980 deaths and disappearances have been recorded.¹ IOM highlights “gaps in search-and-rescue capacity and restrictions on the life-saving work of NGOs” as one of the factors contributing to making the route the world's deadliest for migrants.² The data on deaths and disappearances collected through the project likely represents a significant undercount.

Serious concerns as to the compatibility of Decree-Law no. 1/2023 with international maritime law and the law of the sea and its impact on civilian search and rescue activities were raised with your Excellency's Government in AL ITA 1/2023. The communication also expressed serious concerns in relation to the establishment of

¹ https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&month=3966&incident_date%5Bmin%5D=02%2F07%2F2023&incident_date%5Bmax%5D=05%2F09%2F2024

² https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

extremely distant ports of disembarkation for individuals in distress at sea, rescued by civilian search and rescue ships, a new practice adopted by the Italian authorities in late December 2022. While we appreciate the response received from your Excellency's Government to this communication on 28 April 2023, we remain gravely concerned about the impact of the legislation and new practice in light of the developments outlined below.

Serious concerns related to the criminalization of human rights defenders working in support of migrants, refugees and asylum seekers in Italy and at its borders have been repeatedly raised with your Excellency's Government by multiple Special Procedures mandate holders (see, most recently, ITA 1/2022, ITA 2/2021, ITA 1/2021 and ITA 7/2020).

According to the information received:

Since January 2023 and the enactment of Decree-Law no. 1/2023, subsequently converted into Law no. 15/2023, at least 20 civilian search and rescue vessels have been detained on the basis of the legislation. In parallel, the practice of assigning extremely distant ports of disembarkation for individuals rescued in distress at sea, by civilian search and rescue boats, has continued since its mainstreaming in December 2022.

The Sea-Watch 5

On 3 March 2024, the Sea-Watch 5, sailing under the German flag, took 70 people on-board in the course of two rescue missions. In both instances, the crew contacted, or attempted to contact, the Libyan Coast Guard with regard to the ships in distress at sea but received no response. Following the rescue operations, the Italian authorities assigned the port of Reggio di Calabria as the place of safety for the disembarkation of those who had been rescued. Despite bad weather conditions and requests made by the Sea-Watch 5 on the night of 3 March 2024 and the morning of 4 March 2024, the Italian authorities initially refused to provide a closer port for disembarkation. In response to the bad weather conditions and the situation on board, the Sea-Watch 5 took shelter in front of Lampedusa. On 5 March 2024, the authorities agreed to trans-ship the rescued persons onto an Italian Coast Guard vessel and bring them to Lampedusa to disembark.

In the morning of 6 March 2024, the Sea-Watch 5, while in international waters, received a request from a Libyan Coast Guard vessel to change course. When the Sea-Watch 5 queried the request, indicating that it would put them on course for a collision with a nearby merchant ship, the Libyan vessel provided no further information and failed to reply to any further contact requests from the Sea-Watch 5. Later that same day, the Sea-Watch 5 spotted a potential boat in distress and attempted to call the Libyan Coast Guard vessel twice, without response. They then informed the Italian, German, Libyan and Maltese authorities about the potential ship in distress and the need for immediate assistance, before proceeding with the rescue operation. The Sea-Watch 5 took 56 people on-board during the rescue operation, including several people who were unconscious and in urgent need of medical assistance. Members of the Libyan Coast Guard were present during the rescue and instructed the Sea-Watch 5 to take the unconscious people on-board.

Following the operation, the Sea-Watch 5 informed all relevant authorities about the emergency on-board. Over the next two hours, the Sea-Watch 5 sought support for an urgent medical evacuation of those who were in a grave condition on-board, only to be met with a failure by any of the aforementioned authorities to take responsibility and intervene. In the absence of assistance, and due to the delay in disembarkation, two hours after the rescue operation, a 17-year-old boy who had been brought on board the Sea-Watch 5 that day, died.

Following the death of the young boy, the Sea-Watch 5 informed all relevant authorities and requested support for the evacuation of those remaining onboard in a critical medical condition, as well as a place of safety for the disembarkation of all the rescued persons. Over the following four hours, the Sea-Watch 5 was passed from the Italian authorities to the Tunisian authorities and the Maltese Authorities, and from the Maltese authorities to the Italian authorities, before eventually being instructed by the Italian Maritime Rescue and Coordination Centre (MRCC) to sail for Lampedusa to evacuate the remaining people in a critical medical condition. This happened during the night of 6 March 2024. In parallel, the Italian authorities identified Ravenna, which was 800 nautical miles and approximately 4-days sailing from the Sea-Watch 5's location, as a place of safety to disembark the remaining rescued individuals. No guidance was reportedly provided concerning the removal of the body of the boy who had died on-board. In response, the Sea-Watch 5 made at least 6 requests for a closer port of disembarkation, noting the precarious state of the survivors on-board and the lack of equipment on the vessel to appropriately transport a corpse. On the night of 7 March 2024, the Sea-Watch 5 was contacted by the harbour of Pozzallo and informed that they could disembark all the rescued persons there. Disembarkation took place later that same night.

On 8 March 2024, the Sea-Watch 5's Head of Mission was questioned by the Italian police for two hours, from approximately 3 a.m. to 5 a.m. Subsequently, the Shipmaster was questioned from approximately 5.30 a.m. to 8.30 a.m. These interrogations were carried out without the presence of a lawyer, with neither the Head of Mission nor the Shipmaster having been provided a transcript of the interview as they were considered “persons informed of the facts” under article 351 of the Italian Code of Criminal Procedure. Such interrogations have reportedly become standard practice since the enactment of Law no. 15/2023. Following the interrogations, the Sea-Watch 5's Captain was summoned by the Capitaneria di Porto and informed that the Sea-Watch 5 had been detained and that they were being issued two fines under article 1.2bis (f) of Law no. 15/2023. These fines were based on the allegation that the Sea-Watch 5 had, firstly, failed to comply with the orders of the Libyan Coast Guard on 3 March 2024, and, secondly, failed to comply with the orders of the Italian authorities on 6 March 2024. The Sea-Watch 5 was detained for 20 days.

An appeal was filed by Sea-Watch against the administrative sanctions, and the suspension of the detention of the Sea-Watch 5 was ordered by the Court of Ragusa in an interim ruling on 28 March 2024, one day before the expiry of the detention order.

The Geo Barents

On 15 March 2024, the Geo Barents, operated by MSF and sailing under the Norwegian flag, witnessed an alleged 'pullback' by the Libyan Coast Guard, when a vessel in distress located in the Maltese search and rescue zone was intercepted by the Libyan authorities who subsequently forcibly brought the passengers, numbering over 100 people, to Libya.

On 16 March 2024, the Geo Barents was engaged in the rescue of 146 people, including children, on board a wooden boat in distress. The rescue operation took place in international waters. As it was proceeding, a Libyan Coast Guard vessel arrived at the scene and attempted to intervene during the rescue mission by the Geo Barents, performing dangerous, destabilizing manoeuvres, attempting to forcibly board a Geo Barents rescue boat, and threatening the Geo Barents crew and the persons in distress. The events took place over the course of two hours, during which the Geo Barents crew were prevented from completing the rescue. The Libyan Coast Guard finally left the scene after negotiations between the Geo Barents and the Italian, Norwegian and Libyan authorities. Later, on the same day, the Geo Barents rescued a further 75 individuals in distress, who had been on a fiberglass boat which had capsized, throwing approximately 45 people into the sea.

On 20 March 2024, all those who had been rescued by the crew that day were disembarked in the port of Marina Di Carrara, 620 nautical miles or approximately 80 hours sailing from the location of the Geo Barents when the port was assigned as a place of safety by the MRCC Rome. Following disembarkation, the Project Coordinator and Captain of the Geo Barents were interrogated by the police and Italian Coast Guard for between 4 and 5 hours. Subsequently, the Geo Barents crew were informed that the ship had been detained under Law no. 15/2023, articles 1.2bis para 1 and 1.2bis (f), for the alleged failure of the Geo Barents to comply with the instructions of the Libyan Coast Guard during the rescue on 16 March 2024 and allegedly contributing to a dangerous situation and preventing the ship from promptly reaching the port of disembarkation. On 22 March 2024, MSF lodged an appeal against the detention with the Italian Civil Court of Massa.

In the light of the above-detailed information, we express our serious concern as to the administrative detention of civilian search and rescue ships and the issuing of fines against their operating NGOs on the basis of Law no. 15/2023. We stress our concern that these detentions have been without justification, and amount to a restriction on the right to freedom of association and the right to promote and protect human rights. We underline and restate our concerns as to the compatibility of Law no. 15/2023 and the practice of assigning distant ports of disembarkation for persons rescued in distress at sea with international maritime law and the law of the sea (see AL ITA 1/2023), and question the objective of both the law and policy in light of their substantial negative impact on search and rescue capacity in the Central Mediterranean, most notably through the reduction of the time they can spend in the search and rescue zone. We reiterate our belief that while search and rescue responsibility at sea lies with the State, cooperation between civilian search and rescue ships and state authorities is crucial to ensuring the protection, respect and fulfilment of the rights of those embarking on maritime migration routes. As such, we urge your Excellency's Government to ensure that civilian search and rescue

operations carried out in line with international law can take place without obstruction to ensure no more lives are lost in the Central Mediterranean.

We also draw the attention of your Excellency's Government to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that States are required to take all reasonable precautionary steps to protect life and prevent excessive violence and have committed to cooperate internationally to save lives and prevent the deaths and injuries of migrants, asylum seekers, and refugees, in accordance with international law. In this regard, delays in searching for and rescuing migrants, asylum seekers, and refugees in distress at sea, as well as in designated safe ports of disembarkation, may amount to torture or ill-treatment and undermine the right to life (parr. 44).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information as to the rationale behind the administrative detention of both the Sea-Watch 5 and the Geo Barents, along with any fines applied. Please explain how these sanctions are compatible with the UN Declaration on Human Rights Defenders, notably article 12, paragraphs 2 and 3. Please also provide a list of all civilian search and rescue ships which have been detained on the basis of Law no. 15/2023 since its introduction.
3. Please provide details of any human rights impact assessment that has been carried out concerning Law no. 15/2023. Please also provide details of any such assessment carried out concerning the policy of assigning ports of disembarkation other than those closest to the place of rescue of individuals in distress at sea. If no such assessments have been carried out, please explain why.
4. Please provide details as to how Law no. 15/2023 provides balance between the need to ensure the safety of individuals recovered at sea and the need to protect public order and safety, as referenced in the response of your Excellency's Government to AL ITA 1/2023.
5. Please explain how your Excellency's Government plans to strengthen its search and rescue operations as well as reception and assistance capacities. Please also provide information on how Italy ensures that the provision of assistance of an exclusively humanitarian nature, including search and rescue for migrants in distress at sea, is not considered unlawful.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that a copy of this letter has also been sent to the Governments of Germany, Libya, Malta, Tunisia and Norway for their information.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Cecilia M. Bailliet
Independent Expert on human rights and international solidarity

Gehad Madi
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with the above-detailed allegations and our related concerns, we wish to call the attention of your Excellency's Government to the following international law and standards, much of which we previously underlined in AL ITA 1/2023.

With regards to the situation of migrants in distress in the Central Mediterranean, we take the opportunity to again refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978. Article 6(1) provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of one's life. The Human Rights Committee, in its General Comment no. 36 (CCPR/C/GC/36), confirmed that the right to life has crucial importance both for individuals and for society as a whole and that article 6 guarantees this right for all human beings, without distinction of any kind. The right is not to be narrowly interpreted and includes acts and omissions that would cause any unnatural or premature death. Its protection thus requires that the State adopt positive measures, which are only discharged if individuals are protected by the State against violations of its own agents, and private persons and entities alike. The Committee has made this clear, stating that the State duty to respect the right to life includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even where those threats and situations are not caused directly by the State. Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility. The obligations borne by State Parties under article 6 may be broader than the scope of the principle of non-refoulement under international refugee law, as it may also require the protection of aliens not entitled to refugee status. States parties must allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement.

Concerning Law no. 15/2023, as previously stated, under international maritime law and the law of the sea, a range of actors have obligations to render assistance to persons in distress at sea, including flag States, the captains of ships, coastal States and States responsible for the coordination of relevant search and rescue zones. The United Nations Convention on the Law of the Sea (UNCLOS), obliges flag States to require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed *with all possible speed* to the rescue of persons in distress.³ The International Convention for the Safety of Life at Sea (SOLAS Convention), similarly provides that any ship master at sea who is in a position to be able to provide assistance, *upon receiving information that persons are in distress at sea must proceed with all speed to their assistance*, and that “[t]his obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found.”⁴

³ UNCLOS, article 98

⁴ SOLAS Convention, chapter V, regulation 33(1)

The SOLAS Convention further carries an obligation for Governments to co-ordinate and co-operate to ensure that shipmasters providing assistance by embarking persons in distress at sea are released from their obligations with “*minimum further deviation from the ship’s intended voyage*”.⁵ The International Convention on Maritime Search and Rescue (SAR Convention) reinforces this obligation upon States.⁶ It is unclear how Law no. 15/2023 complies with these obligations.

The IOM, recalling the provisions of the above-cited Conventions, clarified the obligations of States and shipmasters flowing from them in its Guidelines on the Treatment of Persons Rescued at Sea. In doing so, it reinforced that paragraph 1.1 of SOLAS Regulation V/33 and paragraph 3.1.9 of the Annex to the SAR Convention, as amended, were introduced to ensure the provision of a place of safety within a reasonable period of time in all cases.⁷ It further clarified that all persons in distress at sea should be assisted without delay, that “**flag and coastal States should have effective arrangements in place for timely assistance to shipmasters in relieving them of persons recovered by ships at sea**”⁸ and that a ship “**should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable.**”⁹

In further connection with Decree, we would also like to refer to the OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations, and in particular principle 4, according to which States should protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance. In order to fulfil this duty, the Guidelines outline that **States should ensure that relevant national legal frameworks uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international human rights and refugee law, the international law of the sea, and other relevant standards, and that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses.**

Additionally, we would also like to recall that article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the right of association but also have a positive obligation to facilitate and protect the right in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1).

As with AL ITA 1/2023, we would also like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the

⁵ SOLAS Convention, chapter V, regulation 33(1.1)

⁶ See SAR Convention, Annex, para. 3.1.9, as amended.

⁷ MSC 78/26/Add.2, Annex 34, adopted 20 May 2004, para. 2.5

⁸ Ibid. para 3.1

⁹ Ibid. para 6.3

protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, and to article 12, paragraphs 2 and 3 of the Declaration, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we would like to make reference to the recommendations made in the recent report of the Special Rapporteur on the situation of human rights defenders to the UN General Assembly (A/77/178), on the situation of defenders of the rights of refugees, migrants and asylum seekers. In particular, we wish to underline her key recommendation that States publicly promote the lifesaving work of defenders working on these issues, intervene to stop them from being attacked, desist from targeting them, including through spurious legal procedures, and provide a safe, accessible and supportive environment for their work, both in law and in practice.