

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE LIST OF ISSUES PRIOR TO REPORTING

BORDER VIOLENCE MONITORING NETWORK SEA-WATCH E.V



MALTA

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REPORTING ORGANISATIONS

1. Border Violence Monitoring Network (BVMN)

is a coalition of organisations [1] working to document illegal pushbacks, collective expulsions and police violence along the EU's external borders in the Western Balkans, Greece and Turkey since the network's formulation in 2016. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field volunteers who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

2. Sea-Watch e.V.

is a non-profit organisation that conducts civil search and rescue operations for over five years with two vessels, the Sea-Watch 3 and the Sea-Watch 4 in the Central Mediterranean. Moreover, Sea-Watch supports rescue operations, and documents human rights violations in this area with two civil reconnaissance airplanes operated together with the non-profit organisation Humanitarian Pilots Initiative, Moonbird and Seabird. In the presence of the humanitarian crisis, Sea-Watch provides emergency relief capacities, demands and pushes for rescue operations by the European institutions and stands up publicly for legal escape routes.

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EXECUTIVE SUMMARY

3. Despite the ratification of the International Covenant on Civil and Political Rights (ICCPR) and its subsequent integration into Maltese domestic law, we assert that Malta has failed to meet its obligations under the ICCPR.

4. We affirm that the continuous action of pushbacks and refoulement of refugees and migrants carried out by Maltese authorities or third parties contracted [2] by the Maltese government [3] is in contradiction to the obligations set out under the ICCPR.

5. As set out within Article 6 and 7 of the International Covenant on Civil and Political Rights, States have an obligation not to return a person where there are substantial grounds for believing that there is a real risk of irreparable harm. Therefore, due to the continued human rights violations being perpetrated against refugees and migrants in Libya, we assert that all actions of pushbacks, collective expulsions or any other forms of return carried out or facilitated by Malta to Libya would be in violation of Article 6 and Article 7 of the ICCPR.

6. Considering the aforementioned, we further assert that the continued cooperation between the Maltese government and the so-called Libyan coastguard [4], whereby the Libyan authorities are permitted or assisted with the interception of migrant boats from the Maltese Search-and-Rescue zone, is a clear breach of the obligations set out under Article 6 and Article 7 of the ICCPR.

PUSHBACKS, MISTREATMENT, DELAYED OR REFUSED ASSISTANCE AT SEA

7. 'Pushback' is a common term to denote the action of State representatives forcibly and in most cases collectively returning individuals seeking protection to another country in an irregular/informal manner and subsequently preventing or restricting them access to protection mechanisms.

8. Pushbacks encompass the legal concept of collective expulsion and the principles of non-refoulement which are prohibited under Article 6 and Article 7 of the ICCPR. Previous interpretations of Article 6 and Article 7 of the ICCPR by the Human Rights Committee have outlined that states must not expose individuals to danger or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement [5]. Furthermore, State parties are required to ensure these rights extend to persons who may not be in the States territory but fall under the States effective control [6].

9. We assert that all actions of pushbacks, collective expulsions or any other forms of return carried out by Malta to Libya would be in violation of Article 6 and Article 7 of the ICCPR. Furthermore, as we shall present to the Committee, the violent mistreatment at sea including the continued practice of delayed [7] or refused assistance [8] in the Mediterranean Sea [9] should, in light of the danger that such practice poses, be viewed as a breach of Article 6 and 7 of the ICCPR. Past statements made by Maltese Prime Minister Robert Abela [10] and official sources [11] from the Office of the Prime Minister [12] confirm the coordination of refugee and migrant returns between Maltese and Libyan authorities has been ongoing for three years and it's important to underline that Malta played a role even in the construction of the Libyan SAR region [13]. The cooperation between the two countries was recently strengthened with the signature of a common Memorandum of Understanding, establishing two joint centres coordinating efforts [14]. Thus, we affirm that the cases listed below are not isolated incidents and that pushbacks, mistreatment at sea, and delayed or refused-assistance is endemic within Maltese policy and the result of a general attitude of the Maltese authorities which has escalated over the years.

10. On April 12th, 2020, the initiative Watch The Med - Alarm Phone reported [15] that a boat containing 63 migrants was pushed back to Libya within three days of entering Malta's Search-and-Rescue zone [16]. Detailed accounts of this event show how under the coordination of the Armed Forces of Malta, two private vessels (a fishing vessel and a second unidentified vessel) had 'rescued' the migrants from the sea, but further testimonies from individuals on the boat indicate that by Wednesday 15th of April they had been returned by the fishing boats to Libya. We attest that this demonstrates how Maltese officials are carrying illegal pushbacks from Maltese Search-and-Rescue zones by commissioning third party vessels to carry out the pushback on their behalf and by preferring these vessels instead of a merchant vessel involved in this event. After disembarking, the migrants were forcibly taken to a detention centre in Tripoli [17]. The use of private vessels to conduct pushbacks could be observed at least in another case, when, on the 26th of May 2020, 98 migrants were returned to Libya after being rescued by a Portuguese ship instructed to do so by the Maltese authorities [18].

11. Once pushed-back or returned to Libya, as demonstrated in the aforementioned case, refugees and migrants are then transferred to Libyan detention centres. As of July 3rd, the UNHCR estimates among the eleven official detention facilities, some 2,500 people are being detained [19]. Many more are taken to 'unofficial centres' or warehouses that are controlled by smugglers and traffickers who subject them to physical abuse in order to extract payments [20]. The IOM described the conditions within the detention centre as 'utterly appalling' and described how 'people are caged in overcrowded hangars with barely any access to food or sanitation facilities' [21]. Subsequently, other international organisations have further described the brutal treatment that detainees are forced to endure, including rape [22], torture [23] and extreme beatings [24]. In July, one detention centre in Tripoli was targeted with an airstrike leaving 44 refugees and migrants dead and 140 injured [25]. The UNHCR, as well as the IOM, unanimously declares that Libya [26] is not a safe place [27].

12. In addition to continuously facilitating illegal returns to Libya, the Maltese authorities have also been accused of violent mistreatment at sea

including but not limited to, conducting extreme and dangerous boating manoeuvres against refugee boats and persons overboard. On April 8th [28], 03:00h, the initiative Watch The Med - Alarm Phone received a distress call from a boat in international waters. At 17:34h April 9th, the boat in distress still had not been rescued, and its coordinates now positioned the boat 17 nautical miles off the Maltese coast. A few minutes later at 17:38h the people in distress reached out to Alarm Phone once more and reported that 'a Maltese military ship had cut the cord to their engine and had told them to die at sea'. While the people on the boat were eventually disembarked in Malta at 22:30h April 9th, this was not before a clear and egregious attempt to threaten the lives of those onboard.

13. On April 11th, Watch The Med - Alarm Phone [29] reported that after three days at sea, a boat with 101 people onboard encountered the Armed Forces of Malta (AFM). In an apparent attempt to stop them from reaching Malta, and push them back to Libya, the AFM approached the boat, requested their satellite phone, and entered the coordinates for Libya before returning it. Testimonies collected by Watch The Med - Alarm Phone show how AFM officers threatened the group, at times with firearms, and tried to force them to turn around and head back towards Libya. Some members of the group jumped into the sea to try to force the Maltese authorities to begin a rescue operation, but instead of proceeding to immediately rescue those overboard, the AFM carried out dangerous boating manoeuvres, driving dangerously close to the people in the water, further endangering their lives and the lives of those still on the rubber boat. The testimonies regarding the behaviour of the Maltese authorities are corroborated by video footage taken during the incident [30]. We assert that the demonstrable attempt to force the migrants back to the unsafe port of Libya and then the subsequent attempts to threaten, injure, or to drown the migrants is a clear and egregious violation of the obligations set out under the ICCPR.

14. As previously asserted, Sea-Watch has continued to document the systematic non-assistance or unjustified delay to render assistance to migrant boats within the Mediterranean Sea. We affirm, due to the unparalleled risk to life that refused or delayed assistance poses to individuals in dire need of assistance when in danger at sea, any systematic attempt to introduce a policy of refused or delayed assistance to deter migrant crossings should be considered a clear and deliberate violation of a States obligations under the ICCPR.

15. On June 17th [31], Moonbird's crew spotted 25 persons in distress in the Libyan and then in the Maltese Search-and-Rescue zone. The Maltese authorities were constantly informed about this case. Moonbird's crew was able to find the people again on June 19th in the Maltese Search-and-Rescue zone. On this day, Sea-Watch unsuccessfully called the Maltese authorities as the responsible Rescue Coordination Centre (RCC) five times. On these occasions, either the operator said the duty officer was busy and refused to provide Sea-Watch with information, or the operator directly hung up. The Italian authorities took information about the case but refused to engage in any rescue operation without being asked by the Maltese RCC to intervene. For three days, the Maltese authorities were informed of a boat in distress in their Search and Rescue zone but did not deploy any assets to rescue the persons and knowingly put lives in danger at sea. The people were eventually intercepted by the Tunisian Coastguard and disembarked in Tunisia. The decision by the Maltese authorities not to intervene is a clear degradation of their legal duty to render assistance, and further endangered the lives of the individuals in distress. Therefore, we assert that the aforementioned case must be considered an example of Malta's continued breach of its obligations under the ICCPR.

COLLABORATION WITH LIBYAN AUTHORITIES TO FACILITATE PUSHBACKS

16. The IOM estimates that as of the 5th August 2020, the so-called Libyan coastguard has intercepted and returned 6,588 people from the Mediterranean Sea [32]. In 2019, the IOM estimated this figure to be 9,225 [33].

17. We affirm that the Maltese government is facilitating the illicit return and pushback of refugees and migrants from the Maltese Search-and-Rescue zone through the continued cooperation with the so-called Libyan coastguard.

18. We assert that through permitting the Libyan authorities to intercept migrant boats inside of Maltese SAR, Malta, through proxy, is violating its obligation not to return a person where there are substantial grounds for believing that there is a real risk of irreparable harm.

19. Furthermore, due to the mounting evidence that the so-called Libyan coastguards are themselves also responsible for committing human rights abuses, facilitating the interception of migrant boats by the so-called Libyan coastguard, should be considered a further breach of Malta's obligations under the ICCPR. On November 6th, 2017, the so-called Libyan coastguards 'beat and threatened' the people they intercepted, 'threw potatoes and lifebuoys at the Sea-Watch rescue boats' [34]. On October 26th, 2019, the so-called Libyan Coastal Security threatened an ongoing rescue operation carried out by the NGO vessel 'Alan Kurdi', monitored by Sea-Watch's surveillance aircraft Moonbird [35]. On June 25th, 2020, Sea-Watch spotted how the so-called Libyan coastguards engaged in dangerous manoeuvres, navigating between persons in the water, who were not wearing any life vests and were at high risk of drowning, and the persons in a boat in distress who were attempting to escape. The people were likely brought back by the so-called Libyan coastguards [36] to Libya [37]. Recently, three rescued persons were killed while attempting to escape from a disembarkation point following an interception [38] at sea [39]. By cooperating with the so-called Libyan coastguards, Malta knowingly commits violations of human rights as enshrined in the ICCPR.

20. On October 18th 2019, the initiative Watch The Med - Alarm Phone was contacted by a boat in distress that had entered into the Maltese Search-and-Rescue zone [40]. It was reported that this boat was carrying approximately 50 people. Alarm Phone asserts that whilst they had contacted the RCC Malta multiple times and provided them with the GPS positions of the boat in distress, the Maltese coast guard had never made attempts to rescue them. Instead, the Maltese authorities had deployed air assets to the location of the boat and waited for the so-called Libyan coastguard to enter the Maltese Search-and-Rescue zone and intercept the group. As a result of Malta's failure to render assistance and their cooperation with the so-called Libyan coast guard, Maltese officials facilitated the pushback of people in distress from Maltese Search-and-Rescue zone back to Libya.

21. On January 30th 2020, Sea-Watch's reconnaissance aircraft Moonbird spotted a boat with 17 persons in distress in the Libyan Search-and-Rescue zone. The authorities were constantly informed by Watch The Med - Alarm Phone and Sea-Watch about this distressing case but denied to engage in any rescue operations. While the boat was in the Maltese Search-and-Rescue zone, the people were intercepted by the so-called Libyan Coastguard and returned [41] to Libya [42]. We assert that Malta's refusal to provide assistance to a migrant boat in distress within the Maltese Search-and-Rescue zone, that resulted in interception and returns by Libyan authorities, is a demonstration of the States policy to help facilitate these illegal pushbacks and returns to Libya.

22. On July 14th 2020, Moonbird overheard an aircraft that Sea-Watch's crew assumed to be Maltese, calling several times the so-called Libyan coastguard patrol boat Ras Jadar on the radio, requesting them to 'go north, go north, turn 360 [degrees]!'. In another communication, the aircraft requested them to proceed '7 miles' more to the north, 'follow follow', 'go go'. Later, the patrol boat asked 'Are you with me?' which was confirmed by the aircraft stating 'I'll stay with you, I'll stay with you, no problem, no problem!' [43]. We assert this is a further demonstration of the Maltese State assisting Libyan authorities, that we affirm helps to facilitate the dangerous interception and return of migrant boats to Libya.

23. On July 24th 2020, Moonbird's crew spotted two boats in distress only two nautical miles away from each other in the Maltese Search-and-Rescue

zone [44]. The Maltese authorities were constantly informed by Sea-Watch and Watch The Med - Alarm Phone and instructed the merchant vessel Cosmo to monitor the situation and that they were trying to organise a rescue operation. While the first boat with 108 persons was rescued by the merchant vessel Cosmo, the second boat, with around 70 persons was intercepted in the Maltese Search-and-Rescue zone by the so-called Libyan coastguard [45]. We conclude this case demonstrates a policy of constant non-assistance by the Maltese authorities and represents a clear breach of their legal duty to render assistance to boats in distress. We affirm that as the aforementioned case highlights, Maltese authorities have continuously attempted to delegate this duty to the so-called Libyan coastguard, even when the boats in distress are inside the Maltese Search-and-Rescue zone. As demonstrated, this has further been facilitated with the deployment of Maltese aerial assets.

24. In May 2020, a press briefing delivered by the Spokesperson for the UN High Commissioner for Human Rights demonstrated the frequency of migrant boat interception by the so-called Libyan authorities. The briefing states that the 'Libyan Coast Guard is continuing to turn vessels back to its shores and place the intercepted migrants in arbitrary detention facilities where they face horrendous conditions including torture and ill-treatment, sexual violence, lack of health care and other human rights violations' [46].

25. In May 2020, the Council of Europe's Commissioner for Human Rights published a letter sent to the Prime Minister of Malta stating that 'it has been well documented that Libya, both on account of the ongoing conflict and the serious human rights violations that persons disembarked there face, cannot be considered a place of safety.' In the letter, the Commissioner urges the Maltese authorities to restrain from 'handing over responsibility to the Libyan Coast Guard or related entities where the foreseeable consequence of this would be disembarkation [of migrants] in Libya' [47].

SUGGESTED QUESTIONS

26. Please confirm if Libya is considered a 'safe' destination of return? If so, please indicate through which criteria was Libya considered 'safe' and how frequently this decision is reviewed? Alternatively, if Libya has not been considered as a 'safe' destination of return, please clarify under which criteria its cooperation with the so-called Libyan coastguard is in line with its obligations under the ICCPR?

27. Has the State taken any steps to implement a full, effective and independent investigation into the allegations of refoulement, collective expulsions or illegal pushbacks by Maltese authorities or within Maltese jurisdiction? If yes, please confirm the steps and outcomes of these measures.

28. What measures has the Maltese State implemented to ensure that the rights of all persons who enter the Maltese Search-and-Rescue zone are fully protected in line with the ICCPR? Furthermore, please explain what specific measures exist to protect all individuals who enter the Maltese Search-and-Rescue zone from collective expulsion, torture or a threat to life?

29. Please clarify the events of the alleged pushback and illicit return of 63 migrants from the Maltese Search-and-Rescue zone on April 12th, 2020 by boats allegedly commissioned by the Maltese government.

30. Please clarify the events of the alleged pushback and illicit return of 17 and 70 migrants from the Maltese Search-and-Rescue zone on January 30th, 2020 and on July 24th, 2020 by the so-called Libyan coastguard. Please confirm to what extent was the Maltese State involved in the coordination or facilitation of their return.

31. Please clarify the events of the alleged direct coordination between a Maltese aircraft and the so-called Libyan coastguard on July 14th, 2020. To what extent does the Maltese government help facilitate the interception and return of migrants and migrant boats to Libya?

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[4] The so-called Libyan Coastguards are financed, trained, equipped by the European funds. They consist of different militia groups, use violence. The Libyan 'Joint Rescue Coordination Centre' is mainly unresponsive and mainly cannot speak English as required by the SAR convention.

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[7] The obligation to render assistance to anyone in distress at sea as enshrined in Article 98 (1) UNCLOS, regulation 33/V SOLAS convention considering that Malta has ratified these conventions. Furthermore, Malta has ratified the SAR Convention.

[8] The Maltese authorities have consistently refused to cooperate with credible international NGOs and organisations who provide accurate and up to date information about the location or whereabouts of migrant boats in distress. On July 3rd, the Maltese authorities told Sea-Watch that they 'don't speak with NGOs' before hanging up the phone, leaving no possibility for Sea-Watch to inform the Maltese RCC with information about 52 people in distress Further to this, as presented within this evidentiary submission, we believe the Maltese authorities engage with a deliberate policy of delayed or refused assistance to in danger migrant boats as a punitive and abusive deterrent to future crossing or as a complementary tactic to help facilitate the interpretation and return of these boats to Libya.

[9] Within the Central Mediterranean, Sea-Watch has continued to document the behaviour of various stakeholders including relevant government authorities, Frontex, European Military Operation Irini, Military or Merchant vessels. BVMN and Sea-Watch assert that the systematic non-assistance or unjustified delay in rendering assistance by European authorities is a serious degradation of their international rights and obligations.

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