

AMNESTY INTERNATIONAL PUBLIC STATEMENT

Date 1/02/2023 Index number EUR 30/6407/2023

ITALY: WITHDRAW MEASURES THAT HINDER THE WORK OF SEARCH AND RESCUE NGOS AND INCREASE THE RISK OF DROWNINGS

In the central Mediterranean, over 2 thousand people lost their lives in 2022 while engaging in irregular sea crossings to seek international protection or better lives in Europe. In December 2022, the Italian government adopted two measures affecting NGO ships that patrol the central Mediterranean and rescue people in distress at sea. The first is a new “distant ports” practice, that requires NGO ships carrying refugees and migrants rescued at sea to have people disembark in ports in central and northern Italy, including in the Adriatic Sea – i.e. in ports particularly distant from the position where rescues are typically carried out. The second is a new decree-law introducing a number of additional requirements for NGO rescue vessels. In combination, these measures significantly reduce the capacity of NGO rescue ships to patrol the areas of the central Mediterranean where shipwrecks are more likely to occur. Amnesty International calls on the Italian authorities to end such measures as a matter of urgency.

The “distant ports” practice and the decree-law undermine the integrity of the system of rescue at sea. Relevant international law and standards require states to assign a safe port at which people rescued at sea can disembark as soon as possible after their rescue; ensure that ships of all states enjoy the right of innocent passage through the territorial sea; and guarantee a safe and enabling environment in which human rights defenders can operate without fear of reprisals.

THE “DISTANT PORTS” PRACTICE

In mid-December 2022, the Italian government introduced a new practice in relation to the disembarkation of people rescued by NGO ships carrying out search and rescue operations. Italian authorities started to instruct NGO ships to have people disembark in ports in central and northern Italy, in particular Livorno (Life Support, 22 December 2022, 142 people; and Sea Eye 4, 23 December 2022, 108 people), Ravenna (Ocean Viking, 31 December 2022, 113 people), Ancona (Ocean Viking, 10 January 2023, 37 people; and Geo Barents, 12 January 2023, 73 people), La Spezia (Geo Barents, 28 January 2023, 237 people) and Carrara (Ocean Viking, 29 January, 95 people). In many cases, rescue vessels were forced by Italian authorities to navigate well over one thousand kilometres to reach the port assigned for disembarkation, when suitable ports would have been available at a third of the distance or less.

At the time of writing, all NGO ships have complied with these instructions, although denouncing their negative impact on the rescued people involved, on their operations and the possibility of rescuing more people at risk, and regarding their inconsistency with the international law of the sea. In one case at least, given punishing weather conditions at sea, the shipmasters of ships Geo Barents and Ocean Viking requested Italian authorities to provide a closer port for disembarkation, but these requests were denied and the ships completed the journey as per instructions.

The Minister of Interior, Matteo Piantedosi, has offered as the only justification for the new practice the purported need to reduce the burden imposed on reception systems in Sicily and Calabria, allegedly ensuring an equitable distribution of people among various ports.¹ However, the same objective could be pursued – and has already been achieved for a number of years – with alternative measures, such as transfers via transport on land shortly after disembarkation. In previous years, following rescues in the central Mediterranean, authorities had routinely instructed rescue ships to have survivors disembark in ports in southern Italy, and in particular in Sicily (including the small island of Lampedusa). Indeed, this was long considered as a necessary and obvious practice,² in view of the obligation for Italy to release

¹ Conferenza stampa del Ministro dell'Interno Matteo Piantedosi, 9 January 2023, <https://www.radioradicale.it/scheda/687301/conferenza-stampa-del-ministro-dellinterno-matteo-piantedosi>

² When the Italian naval operation Mare Nostrum was in place (2013/14), the Italian Navy used the port of Augusta, in Sicily, as main base for its operations, and disembarkations would ordinarily take place in ports in Sicily or other southern regions. The Italian government set up a number of hotspots to enable the prompt processing of individuals upon disembarkation, all located nearby ports in Sicily (Lampedusa, Pozzallo, Messina and, for a certain period, Trapani) with the exception of one hotspot located in Apulia (Taranto) in view of crossings from the Eastern Mediterranean. Notably, this system was set up in the years when sea crossings reached their

shipmasters from their obligations “with minimum further deviation from the ship’s intended voyage”,³ and “as soon as practicable”.⁴

Between mid-December 2022 and the end of January 2023, virtually all rescues by NGO ships have been concluded with the disembarkation in ports in central or northern Italy, often in the Adriatic Sea. During the same period, the authorities continued to instruct ships of the Italian Coast Guard and other state agencies engaging in rescues to disembark in Sicily and Calabria. The government has not clarified why the “distant port” practice only applies to NGO ships, although people rescued by NGO ships only represent a small portion of total arrivals. Given the government’s expressed hostility toward rescue NGOs and their operations,⁵ the intention behind the practice – and indeed, the only notable consequence of its introduction – appears to be to keep NGO rescue vessels far away from the areas where boats carrying refugees and migrants are most often in distress. This results in reducing the number of people who are rescued and require disembarkation in Italy, in line with the anti-immigration programme of the government. It also hinders NGO rescue operations by decreasing the time they can spend looking for people in distress,⁶ and by punitively increasing the costs of their sea operations.

THE DECREE-LAW 1/2023

On 29 December 2022, the Italian government adopted a new decree-law to regulate activities of search and rescue (SAR) NGO ships. Italy’s president signed the decree-law on 2 January 2023, and it became immediately enforceable for 60 days as Decree-Law 2 January 2023, n. 1. The Italian Parliament is currently considering whether to transpose the decree-law into permanent legislation, potentially with amendments.

The Decree-Law 2 January 2023, n. 1, modifies the previous Decree-Law 21 October 2020, n.130 (as converted with amendments into Law 18 December 2020, n. 173) that enabled the Minister of Interior, for “reasons of order and public security”, to “limit or forbid the transit or stay of ships in territorial waters”.

The peaceful transit of ships in the territorial waters of any country is regulated by the UN Convention on the Law of the Sea and can be restricted only in line with its provisions. In line with the Convention, the Decree-Law 21 October 2020, n.130, excluded the application of orders limiting or forbidding transit or stay in territorial waters in the case of SAR operations. However, the decree-law goes on to state that such exception only applies when SAR operations are “immediately communicated to the competent coordination centre for maritime rescue and to the flag state, and carried out in line with instructions from competent SAR authorities, adopted on the basis of obligations deriving from international conventions on maritime law, from the European Convention on Human Rights, and from national, international and European laws on the right to asylum”. Such requirements, which are not provided for in the international law of the sea, can generate problematic situations, particularly when competent SAR authorities do not issue timely instructions (e.g. on the place of safety where rescued people should disembark) or issue instructions that the rescuing shipmaster considers as not in line with international law (e.g. to have rescued people disembark in Libya, which is not a place of safety).

The Italian government first adopted orders under Decree-Law 21 October 2020, n.130 in late October 2022 when it tried to force NGO rescue ships to leave the territorial waters after a rapid selection of people who could be permitted to disembark on humanitarian grounds. The NGOs presented appeals against those orders before the competent administrative court, which is yet to rule on the matter.

peak (with about 170 thousand arrivals in 2014, 153 thousand in 2015 and 181 thousand in 2016), when arrivals were significantly more than the 105 thousand recorded in the past year. This did not mean that, after disembarkation and processing, refugees and migrants were necessarily accommodated in structures in the same regions where they had been disembarked; on the contrary, thousands of people were transferred by coach or other ordinary means of transport to reception centres in other regions, including in northern Italy, according to distribution plans agreed between national government and local authorities. In following years, when Operation Mare Nostrum was discontinued and NGO rescue ships stepped in to fill the void left by State vessels in the central Mediterranean, they were also commonly instructed to disembark shipwreck survivors in ports in southern Italy – until the new practice of “distant ports” was introduced in December 2022.

³ SOLAS Regulation V/33, para. 1.1, and SAR Convention, Annex, para. 3.1.9, as amended.

⁴ IMO, Res. MSC. 167(78), *Guidelines on the treatment of persons rescued at sea*, adopted on 20 May 2004, para. 6.3.

⁵ AlaNews, *ONG: Piantedosi: “Presto sanzioni più efficaci contro le loro navi”*, 15 December 2022, <https://youtu.be/gKHMJfOBHzg>

⁶ Information received from a leading SAR NGO indicates that up to a quarter of its recent rescues in the central Mediterranean were carried out after rescue ships patrolling the sea spotted boats in distress from the bridge.

The Decree-Law 2 January 2023, n. 1 modifies Decree-Law 21 October 2020, n.130 by adding new requirements that rescue ships must abide by in order to be excluded from the application of orders limiting or forbidding their transit or stay in territorial waters.

The new requirements are:

- a) Any ship “that carries out systematic activities of search and rescue at sea” (i.e. NGO rescue ships, as opposed to merchant vessels) must operate in conformity with authorizations and certifications by competent authorities of the flag state, and comply with technical requirements related to the safety of navigation.
- b) Activities have been carried out promptly to inform people taken onboard of the possibility to seek international protection and, in case they express interest, to gather relevant data to be shared with authorities.
- c) The indication of a port for disembarkation has been requested immediately.
- d) The port indicated for disembarkation by competent authorities is reached without delay to complete the rescue.
- e) Information requested by SAR and police authorities, in order to reconstruct in detail the rescue operation, is provided.
- f) The SAR activities have been carried out by the ship in ways that have not concurred to create situations of danger, nor hampered the possibility to reach the port of disembarkation promptly.

The decree-law provides that “the transit and stay of ships in the territorial sea are anyway guaranteed solely in order to ensure the rescue and assistance on land of people taken onboard, to safeguard their physical safety”.⁷ However, in such cases the ship, shipmaster, shipping company and ship owner are not exempt from the application of sanctions and therefore can still be subjected to penalties if they have violated an order limiting or forbidding transit or stay in territorial waters or if they have not complied with the requirements listed above. The decree-law confirms the application of fines for violations (from 10 to 50 thousand euro), extending the liability to shipping company and ship owner. When authorities claim any relevant violations, the ship is seized for two months, with liability for relevant expenses usually falling on the shipping company or shipmaster. In the case of repeated violations by the same ship, the ship is confiscated.⁸ In addition, fines between two and 10 thousand euro are applied and the ship is seized for 20 days when the shipmaster or the shipping company do not provide information requested by competent national SAR authorities or do not act in line with their instructions. If the violation is repeated, the ship is seized for two months, and the fine is between 10 and 50 thousand euro. A third violation is followed by the confiscation of the ship.

HUMAN RIGHTS CONCERNS

Amnesty International is concerned that the combination of the “distant ports” practice and the new decree-law risks further jeopardizing the protection of the life and rights of people at sea in the central Mediterranean and of human rights defenders engaging in rescues.

INCREASED RISK OF LOSS OF LIVES AT SEA

The provision of places of safety that are located at several days of navigation from the position where the rescue was carried out, combined with the requirement to disembark immediately after each rescue operation, results in forcing rescue ships to spend a significant amount of time of deployment in transfers, rather than in the areas of the Mediterranean where shipwrecks are statistically more likely to happen. These measures – like the decreased recourse to transfers of survivors from one rescue ship to another, used in the past to ensure prompt disembarkations while relieving rescue ships from their obligations as soon as practicable – appear to be designed on purpose to keep NGO rescue ships far from the areas where they are most needed. It is unlikely that the number of attempted crossings will decrease, as the “pull-factor” theory routinely referred to by Italian authorities has not been proven correct.⁹ In the absence of a state-led effort to patrol the central Mediterranean with naval assets ready to promptly intervene in case of distress, the forced removal of NGO rescue ships increases the risk of loss of lives at sea. In addition, more frequent and longer journeys back impose high financial costs on rescue NGOs, which may force some NGOs to reduce or even halt the deployment of rescue ships.

It is important to emphasise that the objective of ensuring an equitable distribution of newly arrived people across Italy – and indeed across the whole EU – for medium and long-term reception, cannot justify measures that have such a

⁷ Art. 2-ter

⁸ Art. 2-quarter and 2-quinquies

⁹ Eugenio Cusumano and Matteo Villa, *Sea rescue NGOs: a pull factor of irregular migration?*, Migration Policy Centre, 22, 2019.

profound and disproportionate impact on human rights. The same objective could be easily achieved through less extreme measures, namely transfers by ordinary means of transport following disembarkation and first assistance in a place of safety. Similar transfers have allowed for the distribution of newly arrived people even in periods when arrivals were more numerous than at present. In addition, EU member states could step up cooperation to ensure effective responsibility-sharing through relocation.¹⁰

Moreover, hampering the work of human rights defenders who provide life-saving assistance may place a state in breach of its obligation to protect the right to life, which is codified in multiple international instruments, notably in Article 6 of the International Covenant on Civil and Political Rights and in Article 2 of the European Convention on Human Rights. It is notable that in December 2022, the Tribunal of Rome found two high-ranking Italian officials responsible for the deaths of 268 people, including 60 children, who had perished in a shipwreck on 11 October 2013, because the officials failed to deploy a ship navigating in the area to rescue them. Italy's heavy responsibilities in the case had already been recognized by the UN Human Rights Committee in 2021.¹¹

LONGER SUFFERING FOR RESCUED PEOPLE

Amnesty International is concerned that lengthy transfers to ports of disembarkation may impose additional and avoidable suffering on people who have just survived potentially fatal shipwrecks and/or witnessed the drowning of close relatives and who may also be vulnerable due to age, health and other circumstances, including infants and children, pregnant people, people with injuries and illnesses, and torture survivors. This is even more the case when weather conditions at sea are sub-optimal. Even if some of the biggest NGO ships are equipped to allow for people to stay onboard for several days, the assistance that crews can provide onboard is inherently more basic and limited, compared with the assistance that can be provided on land.

Under international law, Italy and other states have an obligation to coordinate and cooperate to ensure that shipmasters providing assistance to people in distress at sea “are released from their obligations with minimum further deviation from the ship’s intended voyage”.¹² While governments maintain the flexibility to address each situation on a case-by-case basis, they must always ensure that shipmasters are released of their responsibility “as soon as practicable”, so that ships are not “subject to undue delay, financial burden or other related difficulties after assisting persons at sea”.¹³ Governments are expected to “make every effort to minimise the time survivors remain aboard the assisting ship”,¹⁴ and to “make every effort to expedite arrangements to disembark survivors from the ship”.¹⁵

Italian legislation should not place excessive or unjustified responsibilities on the shipmaster, nor require that people rescued at sea engage in activities instrumental to the assessment of their potential protection needs before receiving the urgent assistance they may require. Basic inquiries by the shipmaster to rescued people may be necessary and appropriate, including to ensure compliance with non-refoulement obligations in the choice of the port of disembarkation; however, shipmasters should be allowed to concentrate on their key responsibility to deliver rescued people to a place of safety as soon as possible. Indeed, “[a]ny operations and screenings such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation of survivors from the assisting ship(s)”.¹⁶ It should also be noted that shipmaster and crew may not have the necessary linguistic and technical capabilities to provide adequate information and safely gather the required data. A ship is also not an adequate environment for conducting activities instrumental to status determination, which often require the sharing of sensitive confidential information. As recently noted by UNHCR, “[c]laims to international protection by rescued persons are best assessed in fair and efficient procedures on dry land, once disembarkation in a safe place has been secured and the immediate needs of rescued people, including those with specific vulnerabilities, have been addressed”.¹⁷ Notably, any provision or gathering of information by private actors on

¹⁰ Amnesty International, HRW and ECRE, *Europe: Plan of Action – Twenty steps to protect people on the move along the central Mediterranean route*, 16 June 2021, <https://www.amnesty.org/en/documents/eur01/4289/2021/en/>

¹¹ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3042/2017, CCPR/C/130/D/3042/2017, 28 April 2021.

¹² SOLAS Regulation V/33, para. 1.1, and SAR Convention, Annex, para. 3.1.9, as amended.

¹³ IMO, Res. MSC. 167(78), *Guidelines on the treatment of persons rescued at sea*, adopted on 20 May 2004, para. 6.3.

¹⁴ *Ibidem*, para. 6.8

¹⁵ *Ibidem*, para. 6.9

¹⁶ IMO, Res. MSC. 167(78), *Guidelines on the treatment of persons rescued at sea*, adopted on 20 May 2004, para. 6.20

¹⁷ UNHCR, *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*, 1 December 2022, para. 4.1.

rescue ships does not relieve state authorities from the obligation to ensure that people who have disembarked are provided with access to adequate information on their legal status and with a genuine opportunity to seek international protection.

NEW TOOLS TO CRIMINALIZE LEGITIMATE ACTIVITIES BY HUMAN RIGHTS DEFENDERS

Amnesty International is deeply concerned that the Italian government may use the new measures to confer legitimacy on actions that hamper and penalize human rights defenders for their life-saving activities. In addition, in some cases shipmasters may have to carry out actions that are not in line with the requirements established in the new decree-law, but that are instead required by the norms of international law, which supersede national laws. For example, shipmasters have an obligation to proceed to the rescue of people in distress that they encounter at sea, even when doing so may delay the transfer to land of the people rescued in a previous SAR operation. In these cases, there is a risk that rescue NGOs that abide by their international law of the sea obligations may still be subjected to damaging administrative measures, including fines and the seizure or confiscation of the ship. This risk is compounded by the vague nature of some of the requirements imposed by the decree-law, for example the requirement to provide the information requested by SAR and police authorities. This increases opportunities for relevant authorities to adopt administrative measures that will have a negative impact on those NGOs and their staff even before relevant judicial authorities have a chance to review their lawfulness. Therefore, the new decree-law provides authorities with tools to continue and even expand the criminalization campaign waged against rescue NGOs since late 2016. That campaign continues, including through the public stigmatization and slandering of NGO workers and volunteers who have been unjustifiably targeted as responsible for allegedly unlawful actions, despite a lack of evidence to support such allegations and in breach of the principle of presumption of innocence. NGO rescuers are human rights defenders. Under the 1998 UN Declaration on Human Rights Defenders (A/RES/53/144), which articulates legally binding obligations enshrined in human rights treaties, states are required to guarantee a safe and enabling environment in which human rights defenders can operate without fear of reprisals.

CONCLUSIONS

The “distant ports” policy and Decree-Law 2 January 2023, n. 1 risk resulting in loss of life and human rights violations against people stranded or rescued at sea in the central Mediterranean, and in the imposition of penalties against people who have legitimately engaged in rescue operations. Like other measures taken in the past to reduce the presence of rescue ships in the central Mediterranean, these measures are likely to increase the risk of loss of lives amongst people attempting to cross the central Mediterranean. They also increase the suffering of people rescued at sea and offer new tools to authorities willing to impose administrative sanctions against human rights defenders in order to hinder their legitimate and laudable activities.

Meanwhile, neither the decree-law nor the new practice provide any benefits that cannot be achieved through rights-compliant means. A prompt disembarkation of rescued people could be achieved with the deployment of more rescue ships and the transfer of survivors from one rescue ship to another. A fairer distribution of people could be achieved through transfer via ordinary means of transport following disembarkation and first assistance.

Amnesty International regrets that these measures target NGOs instead of addressing key issues leading to human rights violations documented in the central Mediterranean, such as the failure of European states to act in line with relevant international law and standards; their unwillingness to cooperate with each other to ensure prompt disembarkations and mechanisms to share responsibility for assisting refugees and migrants; and their efforts to instrumentalize search and rescue to ensure the disembarkation of as many people as possible in Libya, although Libya cannot be considered a place of safety.

Amnesty International calls on the Italian government to withdraw both the “distant ports” practice and the Decree-Law 2 January 2023, n. 1 and urges the Italian Parliament not to convert the latter into permanent legislation. Italian authorities should refrain from taking any further measures that criminalize, stigmatize or hamper the work of human rights defenders assisting refugees and migrants, including rescue NGOs and their staff.

Italy and other EU Member States should instead commit to ensuring proactive search and rescue operations in the central Mediterranean; protecting rights in migration-related cooperation with Libya; establishing a mechanism for

predictable disembarkation and relocation; ensuring global responsibility-sharing; facilitating regular migration pathways; and guaranteeing accountability for human rights violations wherever they have taken place.¹⁸

/END

¹⁸ Amnesty International, HRW and ECRE, *Europe: Plan of Action – Twenty steps to protect people on the move along the central Mediterranean route*, 16 June 2021, <https://www.amnesty.org/en/documents/eur01/4289/2021/en/>