



Euro-Med Human  
Rights Monitor  
الأورومتوسطي لحقوق الإنسان

# Renewed Tragedy

The Rise of Drowned & Missing  
Migrants & Asylum Seekers  
Toll in 2021

Euro-Mediterranean Human Rights Monitor

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## Renewed Tragedy..

The Rise of Drowned & Missing Migrants  
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Activists trying to rescue migrants and asylum seekers heading to Europe from Libya on a rubber boat (Associated Press - November 2020)

# Introduction

Since 2011, many countries in the Middle East and North Africa (MENA) have witnessed rising turmoil and deterioration in economic and living conditions due to armed conflicts, persecution and crackdown on dissent.

Whereas safe, sustainable and legal migration pathways to Europe are lacking, hundreds of thousands of people fleeing

war or extremely difficult conditions found no choice but to embark on irregular and increasingly deadly sea journeys to Europe.

Smugglers exploit migrants' despair, also due to the continued violence and insecurity in Libya where the majority of migrants start their sea journey, and charge them exorbitant amounts of money, then cramp them into unseaworthy boats and dinghies. As the fragile boats far exceed their maximum

capacity, they are susceptible to sinking and vulnerable to pushbacks—causing the death and disappearance of hundreds of migrants and asylum seekers annually in Mediterranean waters.

Data from the International Organization for Migration (IOM) indicate that since 2014, the Mediterranean has witnessed about 176,406 crossing attempts by sea migrants from the coasts of North Africa and Turkey to the European coasts. Among them, as of December 2021, about 23,150 migrants have died or gone missing as a result of these attempts<sup>(1)</sup>.

While people dying or gone missing in the process of migration through the Mediterranean are on the rise, the EU still doesn't have a common legal framework covering Search and rescue (SAR) and disembarkation activities of EU Member States. On the contrary, it is constantly working to tighten asylum laws to limit the arrival of migrants to its southern coasts, especially making deals

with source countries and criminalizing non-governmental organizations saving lives in the Mediterranean.

On the one hand, to stop the irregular flow of third country nationals, European states forcibly return migrants through the Mediterranean to unsafe countries such as Libya, without regard to the dire circumstances of forced return operations and to the degrading and inhumane conditions of prisons and detention centers in source countries.

On the other hand, several EU countries have been imposing for years administrative and judicial restrictions on humanitarian NGOs working to rescue and aid migrants in the Mediterranean. Up to June 2021, Germany, Greece, Italy, Malta, the Netherlands and Spain initiated 58 administrative or criminal proceedings against humanitarian boats since 2016<sup>(2)</sup>. National authorities initiated proceedings against crew members or entire vessels, limited access to national territories,

1 International Migration Organization. 2022. «Missing Migrants». Accessed online on January 5, 2022. Retrieved from: <https://missingmigrants.iom.int/region/mediterranean>

2 EU Agency for Fundamental Rights. 2021. "June 2021 Update – Search and Rescue (SAR) operations in the

caused disembarkation delays and left rescued people at sea for more than 24 hours waiting for a place of safety, leading to the obstruction of life-saving activities, the increasing of migrants' vulnerabilities, and eventually to migrants' death or disappearance at sea.

## Legal background

Under international law, migrants and asylum seekers have rights by virtue of their humanity, and states are obliged to guarantee them. Apart from the conventions and declarations protecting all human beings, starting with the milestone document of the Universal Declaration of Human Rights, there are also a number of international instruments that specifically address the protection of migrants and people in distress at sea. The most important instrument is the 1951 International Convention relating to the Status of Refugees and its 1967 Protocol, followed by the 1974 International

Convention for the Safety of Life at Seas, the 1979 International Convention on Maritime Search and Rescue, the 1982 United Nations Convention on the Law of the Sea and the recent New York Declaration for Refugees and Migrants of 2016.

The instruments of international law paid special attention to protecting a nutshell of absolute rights, like the right to life and the prohibition of torture and inhuman or degrading treatment or punishment, which are the most important rights, on which the others are based. These rights belong to each and every single person, including people finding themselves undocumented or in "irregular" situations, and can never be restricted. In the New York Declaration on Refugees and Migrants (2016), all 193 UN Member States has once again underlined the importance of ensuring "a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons

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Mediterranean and fundamental rights". Accessed online on January 6, 2022. Retrieved from:  
<https://fra.europa.eu/en/publication/2021/june-2021-update-ngo-ships-sar-activities>

arriving in our countries, and particularly those in large movements, whether refugees or migrants”.

The most important instrument concerning the protection of all migrants and asylum seekers is the principle of non-refoulement, that prohibits States from expelling or returning individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment, or other serious human rights violations. The prohibition of refoulement is explicitly included, among others, in the 1951 Refugee Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Charter of Fundamental Rights of the European Union. The principle of non-refoulement has an absolute and

non-derogable nature, meaning that it applies to all persons, irrespective of their migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State’s territory.

Yet European Member States rarely comply with their international obligations. Whether directly by stopping Search and Rescue missions or carrying out illegitimate pushbacks<sup>(3)</sup> of migrants’ boats and dinghies, also through the European Border and Coast Guard Agency (Frontex)<sup>(4)</sup>, or indirectly through their support for the Libyan Coast Guard that intercept the boats and return them forcibly to Libya<sup>(5)</sup>, EU Member States violate many of these treaties on a regular basis. From the principle of non-refoulement and the prohibition of collective expulsions, to the prohibition of torture, inhuman and degrading treatment and the right to

3 European Court of Human Rights – HUDOC Database. 2012. “Hirsi Jamaa and Others v. Italy”. Accessed online on January 6, 2022. Retrieved from: <https://hudoc.echr.coe.int/spa#%7B%22itemid%22:%5B%2200122%109231-%7D>

4 European Parliament. 2021. “Pushbacks at the EU’s external borders”. Accessed online on January 6, 2022. Retrieved from: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS\\_BRI\(2021\)689368\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS_BRI(2021)689368_EN.pdf)

5 UN Office of the High Commissioner for Human Rights. 2021. “‘Lethal Disregard’ - Search and rescue and the protection of migrants in the central Mediterranean Sea”. Accessed online on January 6, 2022. Retrieved from: <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>

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access the asylum procedures. Most of all, every time they do not respond promptly to a distress call from a sinking boat, they breach migrants' absolute right to life. <sup>(6)</sup> The International Convention on Maritime Search and Rescue of 1979 states: "Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found."

## Number of migrants and asylum seekers who took to the Mediterranean and key drowning incidents in 2021

The number of migrants who arrived in Europe by sea or drowned in the process saw a noticeable rise in 2021. Data from the United Nations High Commissioner for Refugees (UNHCR) <sup>(7)</sup> indicate that 116,573

migrants and asylum seekers reached Europe through the Mediterranean in 2021, which is a 20% increase compared to 2020, when the number was 88,143. Likewise, 2021 witnessed an increase in the number of people dying or going missing after drowning incidents in the Mediterranean. About 1,864 migrants died or went missing in 2021, including at least 64 children, —more than five people per day—compared to 1,401 people in 2020. The great majority of victims are recorded in the Central Mediterranean.

September recorded the highest rate of arrivals on European shores with over 16,000 people, while July, only two months before, recorded the most tragic, with 311 migrants dying or going missing <sup>(8)</sup>. This means more than 10 victims per day.

2021 witnessed several incidents of shipwrecks of migrant boats in the Mediterranean, causing hundreds of

6 UN Office of the High Commissioner for Human Rights. 2021. "Italy failed to rescue more than 200 migrants, UN Committee finds". Accessed online on January 6, 2022. Retrieved from: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26691&LangID=E>

7 UNHCR Operational Data Portal. 2022. "Mediterranean Situation". Accessed online on January 6, 2022. Retrieved from: <https://data2.unhcr.org/en/situations/mediterranean>

8 IOM Missing Migrants Project. 2022. "Migration within the Mediterranean". Accessed online on January 6, 2022. Retrieved from: [https://missingmigrants.iom.int/region/mediterranean?region\\_incident=All&route=All&year%5B%5D=2500&month=All](https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=All&year%5B%5D=2500&month=All)

victims. In the second half of December, 170 migrants died and went missing in three separate incidents, with their boats sinking after sailing from the Libyan shores towards Europe. Few weeks before, on 17 November, 75 migrants died after their boat sank off the Libyan coast, while 15 people were rescued by Libyan fishermen. Again, on 21 April, about 130 migrants died after their rubber boat, set off from the Libyan coast, capsized. <sup>(9)</sup>

## Criminalization of rescue operations

For years, the EU's policy towards migrants and asylum seekers has been more heavily focused on pushbacks, rejections, and deterrence rather than adequate processing of asylum claims. For instance, in March 2020, the EU officially suspended Operation Sophia and the ship patrols that used to rescue tens of thousands of migrants annually. Instead, the EU now

relies on air surveillance and coordination with the Libyan authorities.

The European Commission has consistently emphasized that SAR is not an EU competence <sup>(10)</sup> despite the humanitarian crisis unfolding at its maritime borders, and with growing number of arrivals by sea, frontline states like Spain, Italy and Greece have begun to adopt even stricter and inhumane policies.

Conservative policymakers in Europe view rescue operations as an encouragement to those wishing to migrate, thus treating them as part of the problem rather than a life-saving process. Therefore, European countries made unremitting efforts and spent huge resources, part of which were used in pushbacks and preventing and criminalizing rescue operations, to close their borders.

Although the rise in the number of migrants is not connected to migrant rescue efforts, multiple European countries, like Italy

9 IOM Missing Migrants Project. 2022. "Migration within the Mediterranean". Accessed online on January 6, 2022. Retrieved from: [https://missingmigrants.iom.int/region/mediterranean?region\\_incident=All&route=All&year%5B%5D=2500&month=All](https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=All&year%5B%5D=2500&month=All)

10 European Parliament. 2021. "Search and rescue in the Mediterranean". Accessed online on January 6, 2022. Retrieved from: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442//EPRS\\_BRI\(2021\)659442\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442//EPRS_BRI(2021)659442_EN.pdf)

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and Greece, have begun criminalizing and prosecuting migrant rescue activists, organizations, and non-governmental initiatives, accusing them of smuggling and human trafficking.

In multiple incidents all around Europe, national authorities have seized ships in ports and enacted penalties against vessels and crew members carrying out search and rescue operations without official authorization or permission. Between 2018 and 2020, humanitarian NGOs operating in the Mediterranean were subjected to at least 40 cases of criminal charges, applied through administrative fines, seizure and confiscation of ships, or crews otherwise prevented from leaving or docking at port. <sup>(11)</sup>

Carola Rackete, the former captain of the rescue vessel Sea-Watch 3, was arrested by Italian authorities in June 2019 for docking her rescue ship, with 53 migrants on board, without permission. The charges

against her included “aiding and abetting illegal immigration”, for which she risked up to 20 years of imprisonment and various fines of up to 50,000 euros. Only very recently, in December 2021, Italian authorities dropped the last charges against her.

Many other cases occurred this year. On 1 March 2021, the Italian police stormed the offices of the NGO Mediterranean Saving Humans, raided the homes of its workers, and seized its ship, Mare Jonio, accusing the organization of making financial profits from SAR operations. In August 2021, the Ocean Viking and the Sea Watch 3, carrying about 800 migrants, waited several days in the Mediterranean to disembark at a safe port. Only after several distress calls due to the deteriorating health of dozens of people on board the two ships, Italian authorities allowed them to dock.

Authorities often justify these measures

11 EU Agency for Fundamental Rights. 2021. “June 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights”. Accessed online on January 6, 2022. Retrieved from: <https://fra.europa.eu/en/publication/2021/june-2021-update-ngo-ships-sar-activities>

by questioning the legality of NGOs' work and funding, discrediting the activists and claiming that SAR activities may supposedly act as a "pull factor" for irregular migration, despite having no evidence. <sup>(12)</sup> In November 2021, a Greek court postponed the trial of 24 volunteers, including Syrian refugee Sarah Mardini, accused of "espionage, fraud, and the illegal use of radio frequency" as well as being part of a criminal organization "helping illegal immigration and migrant smuggling networks." Usually, European countries' decisions to punish activists and NGOs come after they rescue hundreds of migrants facing the risk of drowning in the Mediterranean. Indeed, the 24 volunteers were involved in multiple life-saving operations in Greek waters in 2016 and 2018.

While EU Member States criminalize unauthorized rescue operations, they still license SAR disembarkations and NGOs willing to carry out rescues,

but they obstruct and discourage their fundamental work with lengthy bureaucratic procedures. For example, the Greek authorities turned the registration process for NGOs willing to carry out rescue operations into an uphill battle after enacting new registration requirements in February 2020. Again, in September 2021, a new bill was brought in the Greek Parliament, making it illegal for charities to undertake rescues at sea without close conjunction with the Greek coastguard. Failure to comply carries a fine of at least 500 euros per participant, at least 3,000 euros for the organization and a minimum prison sentence of up to a year.

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12 UN Office of the High Commissioner for Human Rights. 2021. "'Lethal Disregard' - Search and rescue and the protection of migrants in the central Mediterranean Sea". Accessed online on January 6, 2022. Retrieved from: <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>

## Reckless pushbacks

Pushback operations are illegal collective expulsions that can take place at any international border, both on land or at sea, and aim to physically prevent migrants from reaching, entering or remaining within the territorial jurisdiction of a State. Pushbacks usually involve the threat or use of force by border officials to prevent human rights' defenders or migrants from approaching the border, or to intimidate those who have successfully crossed the border, before pushing them back to the country of departure, mainly Libya.

The EU relies mainly on the highly controversial European Border and Coast Guard Agency (Frontex) to secure its land and sea borders from security threats and "illegal crossings". Frontex faced sharp human rights criticism and multiple official European investigations, especially during 2021, especially for its involvement in the illegal pushbacks carried out by Greece and its various violations of European and international

human rights law. However, its role, staff and budget were increased without clear legal limits and without any clear sanction for its illegal practices.

Not only have European migration policies and illegal pushbacks made the Mediterranean one of the deadliest migration routes in the world, they have also left migrants vulnerable to the extortion of smugglers. It is the lack of safe and legal pathways to Europe that drive migrants in rickety ships and push them to take dangerous routes from Libya, eventually causing the disappearance and drowning of thousands of migrants annually.

In recent years, the EU concluded agreements with key source countries, most notably Libya which is the major point of departure for migrants crossing the Mediterranean to Europe. Since 2015, the EU has provided about \$525 million to Libya to limit the arrivals and to physically "pull back" migrants' boats to Libya before they could reach European waters, without

considering the dire consequences and threats migrants face in the hands of the Libyan Coast Guard's (LCG) and in Libya. Europe directed a large share of this support to strengthen LCG's capabilities, modernize its equipment, and train its cadres to intercept migrants' boats. The EU has systematically been turning a blind eye to LCG's abuses against migrants during the pushbacks, ranging from direct violence to damaging their boats and leaving those on them under the risk of drowning.

## Conditions of prisons & detention centers in Libya

In 2021, the results of cooperation between the EU and Libya in returning migrants appeared clearly. Up to mid-November, a total of 28,636 asylum-seekers, refugees and migrants have been intercepted by the LCG and disembarked in Libya in 2021, compared to 11,891 in 2020 <sup>(13)</sup>. They were returned despite the IOM and the UNHCR reiterated their calls to not consider Libya a "place of safety", as decade-long human rights' violations continues to be the order of the day. Moreover, most of the migrants returned were immediately transferred to different detention centers and prisons that do not meet decent living standards and basic human rights and were systematically subjected to torture, sexual violence, forced labor and

13 EU Agency for Fundamental Rights. 2021. "December 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights". Accessed online on January 6, 2022. Retrieved from: <https://fra.europa.eu/en/publication/2021/december-2021-update-ngo-ships-sar-activities>

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Migrants and asylum seekers held in a detention center in Libya - Source: UNHCR

other exploitation with total impunity. <sup>(14)</sup>  
In some cases, Italian and Libyan coast guard forces collaborated in intercepting and returning migrants. **Hassan Zakaria Omar, 29, a Sudanese refugee in Libya who tried to migrate by sea from Libya to Italy multiple times, told Euro-Med Monitor:** «One day in December 2019, I set out with a group of migrants at midnight from the coastal area of Qara Boli in the northwest of the country, heading to the European shores. We sailed for 16 continuous hours, **and then a military**

**[reconnaissance] plane – not Libyan – appeared in the sky, and after six hours of leaving the air, LCG boats arrived, took control of the boat, transferred us to one of theirs, dismantled the engine of the boat we were on, and shot it with live bullets. The LCG took us to the port of Tripoli. When we arrived, we were severely beaten and insulted. There was no presence of any of the teams of the United Nations High Commissioner for Refugees or the Red Cross.»**

The LCG has been involved in serious

14 Amnesty International. 2021. “No one will look for you: Forcibly returned from sea to abusive detention in Libya”. Accessed online on January 6, 2022. Retrieved from: <https://www.amnesty.org/en/latest/news/2021/07/libya-horrific-violations-in-detention-highlight-europes-shameful-role-in-forced-returns/>

violations during the process of returning migrants; some of them have gotten killed or gone missing.

**Sudanese refugee Hassan Zakaria Omar told Euro-Med Monitor:** “In 2020, I tried again to ride the sea and migrate to Europe. This time we set out from the coastal city of Khums in the northwest of the country. The boat moved at about 2:00 a.m., and we sailed for about 10 hours. The next day at 2:00 p.m., the boat engine broke down, and we were stuck in the water. We had no choice but to contact the LCG to save us. Indeed, the LCG boats arrived and evacuated us from the boat. But the shocking thing was that they left six people on the boat for no reason and without any means of livelihood. Most likely, these six died slowly, as we have not heard any news from them since then.”

# Recommendations

2021 witnessed the death and disappearance of a large number of migrants and asylum seekers in the Mediterranean. This figure has been contributed to by the European restrictions on rescue efforts and the continuation of deals and agreements aimed at externalizing its borders and limiting the arrival of migrants to Europe, regardless of violent pushback mechanisms and the risks of forcible return to unsafe countries of origin. Hence, Euro-Med Monitor recommends the following:

1. Creating safe and legal pathways to Europe, in order to disincentivize asylum seekers and migrants from undertaking dangerous sea routes.
2. Reactivating official European search and rescue missions in the Mediterranean and conducting permanent patrols to ensure a rapid response to the sinking of migrant boats in the Mediterranean.
3. Ensuring that all Frontex operations are consistent with European Law and with human rights' obligations.
4. Ensuring that the Libyan Coast Guard respect migrants' and asylum seekers' rights and working to end all violent practices against migrants and asylum seekers in their custody.
5. Opening urgently needed pathways to Europe for the thousands of migrants in need of protection currently trapped illegitimately in arbitrary detention in Libya.



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