

Ref: CommHR/DM/sf 006-2020

Mr Luigi Di Maio

Minister of Foreign Affairs and International Cooperation of Italy

Strasbourg, 13 February 2020

Dear Minister,

As Council of Europe Commissioner for Human Rights, I monitor member states' observance of their human rights obligations towards migrants, including asylum seekers and refugees, who cross the Mediterranean in an attempt to reach Europe. As I have already stressed publicly on several occasions, I am gravely concerned about certain types of assistance provided to Libya, in particular to the Libyan Coast Guard, which have resulted in increased interceptions of migrants and asylum seekers at sea, and their subsequent return to Libya, where they are subjected to serious human rights violations.

The 2017 Memorandum of Understanding between Italy and Libya's Government of National Accord, which was automatically renewed on 2 February 2020, plays a central role in the facilitation of interceptions of migrants and asylum seekers at sea. On 31 January 2020 I publicly expressed my regret that the Italian government had not cancelled that agreement or at least changed its terms to ensure the appropriate protection of human rights. In this context, I note the announcement, on 9 February 2020, of your submission to the Libyan authorities of a proposal that would amend this Memorandum with the aim of guaranteeing better protection for migrants and promoting migration management that is in full compliance with the Geneva Convention and other international human rights norms.

As these important discussions on mechanisms to guarantee human rights compliance in the future continue, I believe it is essential to remain focused on the present and to fully acknowledge the current realities on the ground in Libya and the time it will necessarily take for any changes that may be secured to have an impact. Given the safety situation in conflict-torn Libya at present and the great amount of evidence pointing to serious human rights violations faced by migrants and asylum seekers returned there, I call on your government to suspend the co-operation activities in place with the Libyan Coast Guard that impact, directly or indirectly, on the return of persons intercepted at sea to Libya.

In the specific context of the discussions with the Libyan authorities concerning the amendment of the Memorandum, I invite you to carefully consider the detailed recommendations contained in my Recommendation 'Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean', published in June 2019, a copy of which you will find enclosed. In particular, in order to effectively guarantee the respect of human rights in any migration cooperation with third countries, any activity envisaged should be preceded by thorough human rights risk assessments, which should look, *inter alia*, at the impact co-operation activities may have on the right to life of migrants and asylum seekers, freedom from torture or inhuman or degrading treatment, protection from refoulement, and the rights to liberty and private and family life.

I also draw your attention to the need to develop risk mitigation strategies, setting out the steps that will be taken to ensure that actual human rights violations do not materialise. These must be complemented by monitoring mechanisms, composed of independent and impartial actors, which continuously assess the impact of any activities implemented on the human rights of those concerned. Furthermore, an effective system of redress should be established for those who nonetheless consider that the enjoyment of their rights has been affected by the co-operation activities. Details of the co-operation activities foreseen, risk assessments, risk mitigation strategies and the results of monitoring should be made public so that they can be subject to scrutiny.

I would appreciate if you could inform me of the extent to which the amendments to the Memorandum currently being discussed will cover the measures mentioned above.

Finally, let me assure you that I will continue to call for more solidarity from Council of Europe member states with those countries which, like Italy, are on the frontline of migration movements to Europe, and for better co-operation to ensure the effective preservation of life and the protection of the human rights of those at sea, including through responsibility sharing for adequate rescue capacity and the timely disembarkation of those rescued. I will also continue to try to impress upon all member states the need to support the efforts of international organisations to provide protection to refugees, asylum seekers and migrants in Libya, and to contribute to safe humanitarian corridors, evacuation and resettlement programs. I stand ready to discuss with you how I can best support Italy and other member states in ensuring these measures are implemented as soon as possible.

I look forward to receiving your reply and continuing a constructive dialogue.

Yours sincerely,



Dunja Mijatović