

“NO ONE CAME TO OUR RESCUE”

**THE HUMAN COSTS OF EUROPEAN MIGRATION
POLICIES IN THE CENTRAL MEDITERRANEAN**



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Methodology

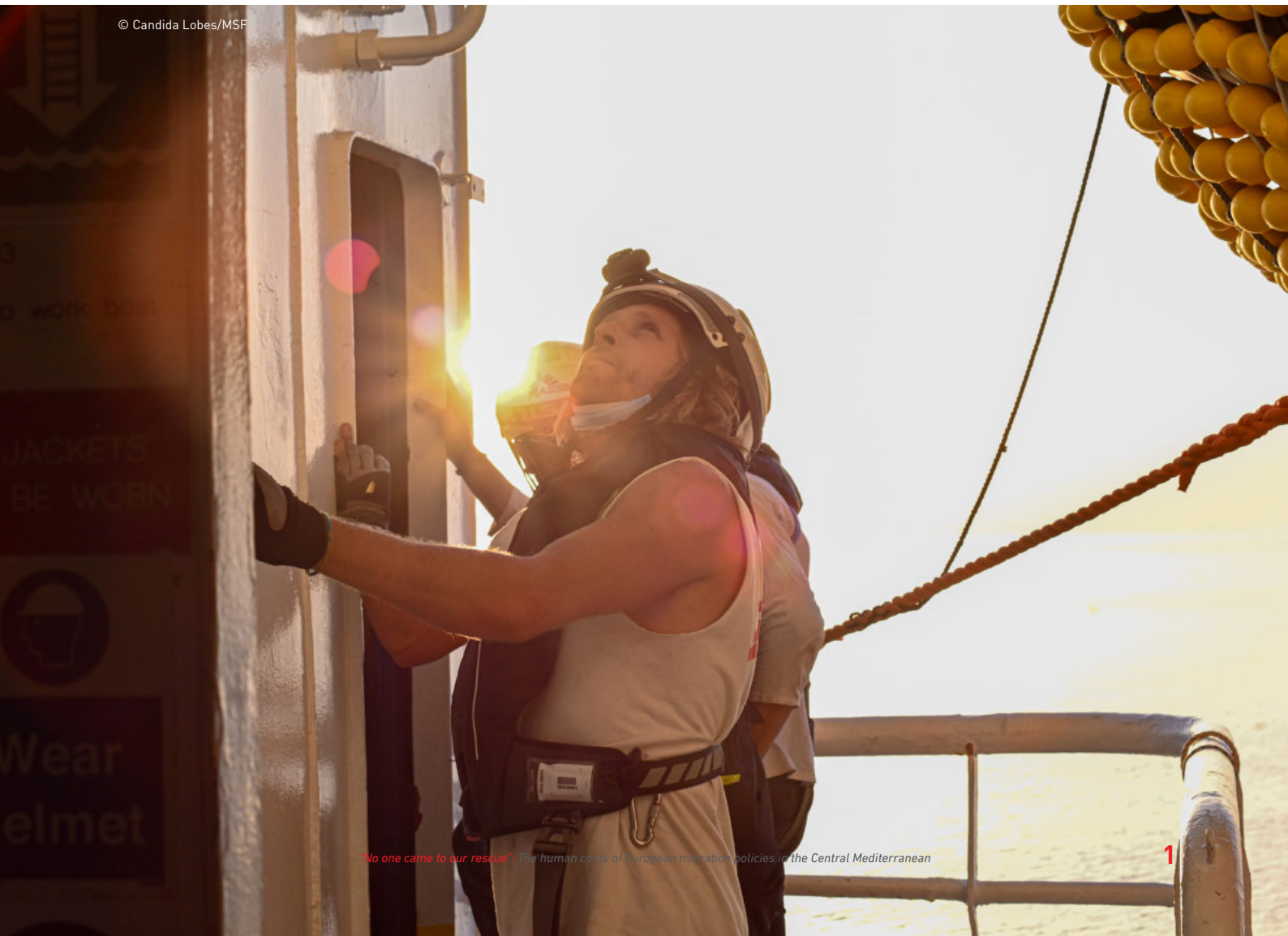
This report draws on medical and operational data as well as testimonies of rescued people collected on board the Médecins Sans Frontières (MSF) rescue ship *Geo Barents*, mainly between January and September 2023. All data in this report, and the processes used to collect it, comply with MSF's data collection policy and respect medical confidentiality.

The medical data, operational data and patients' accounts contained in this report are further amplified by secondary sources of information referenced in footnotes. The report also draws on direct observations from MSF teams during search and rescue operations, official communications with the national maritime authorities, other NGOs operating in the Central Mediterranean, and/or private vessels.

Interviews were carried out in English, French or the spoken language of the interviewees (with the translation of a cultural mediator where necessary). All survivors quoted in this report chose freely to share their stories and gave consent for them to be shared publicly. To protect people's identity and safety, all interviews were conducted anonymously.

The environment in which data was collected (often large number of people on board, limited time on board with the survivors, rough weather conditions and the stressor of being on board a ship etc.) clearly affects the ability of our teams to identify vulnerabilities and health conditions among rescued people. Hence, the data collected on board does not account for the full scale of the violent incidents taking place at Europe's southern border.

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DEMOGRAPHICS OF PEOPLE RESCUED BY MSF BETWEEN JUNE 2021 - SEPTEMBER 2023



9,411
people rescued



2,848 minors rescued, including
2,388 unaccompanied minors



Main points of departure:
78% from Libya, **21%**
from Tunisia, and
1% from Turkey



11
bodies
recovered



1
birth on board

INTRODUCTION

SUMMARY

In the Central Mediterranean Sea, Médecins Sans Frontières (MSF) is witnessing appalling levels of human suffering. MSF has been running search and rescue (SAR) activities since 2015 as a direct response to European Union (EU) policies of disengagement and non-assistance along this stretch of the sea. Working on eight different SAR vessels, independently or in partnership with other non-governmental organisations (NGOs), our teams have provided lifesaving assistance to more than 90,000 people. On board our rescue ships, we have treated the physical and mental health consequences—the human costs—of EU migration policies in the Central Mediterranean.

In May 2021, MSF launched operations on board the rescue vessel *Geo Barents* and has rescued 9,411 people at risk of drowning between then and September 2023. The people were rescued by MSF from unseaworthy boats that had embarked on the perilous journey, often in bad weather conditions, from Libya and, since March 2023, increasingly from Tunisia as well. On board *Geo Barents*, many have told us that taking to the sea was often the only option left to them.

GEO BARENTS OPERATIONS BETWEEN JUNE 2021 - SEPTEMBER 2023



357
operational days



138 boats in
distress assisted



40
rotations*



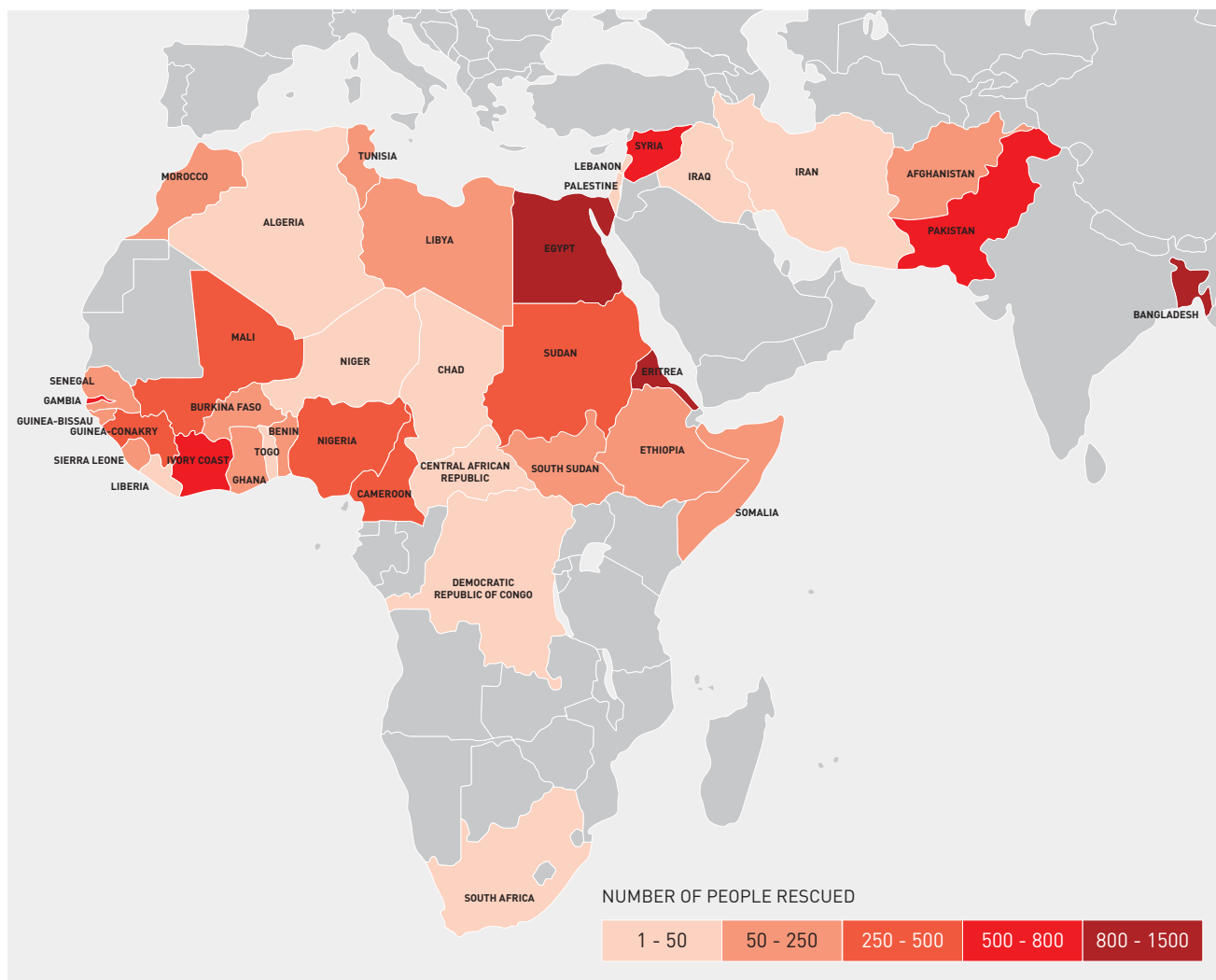
45 days of administrative
detention**



Over **70** days of unnecessary
navigation to/from distant ports

* A rotation is the period between leaving and heading back to port.
** 25 days of detention in July 2021 following a port state control and 20 days in February 2023 linked to a new law in Italy.

COUNTRIES OF ORIGIN OF PEOPLE RESCUED BY MSF BETWEEN JUNE 2021 - SEPTEMBER 2023



During more than two years of operations with *Geo Barents*, we have witnessed the deadly void left by the EU and its member states in halting or impeding search and rescue activities in the Central Mediterranean and its direct impact on people seeking safety and protection at Europe's shores. In the international waters between Italy, Malta, Libya and Tunisia, our teams have seen first-hand the manifold ways in which EU states have gradually withdrawn from their SAR obligations and have simultaneously enabled third countries to forcibly return people to unsafe places such as Libya, where many are either trapped in inhumane conditions or have no choice but to take to the sea due to a lack of safe and legal options.

In July 2022, MSF took stock of the first 12 months of search and rescue operations on board *Geo Barents* and the human rights violations we witnessed in the report, *Left to Drown in the Southern European Border: One year of Geo Barents at sea*.¹ More than a year later, the number of crossings in the Central Mediterranean is picking up again, while EU states have largely withdrawn from search and rescue operations. At the same time, we see a more reckless Europe, where violent border practices such as pushbacks and systematic non-assistance to those at risk of drowning proliferate. While people continue to drown at Europe's deadliest maritime border, new policies, laws and practices at the EU and member state level continue to fuel the hostile environment towards people on the move.

¹ MSF, *Left to Drown in the Southern European Border: One year of Geo Barents at sea*, July 2022.



Instead of offering a solution to the immense suffering and distress of people seeking safety and protection at Europe's borders, EU leaders continue to endorse and re-package harmful policies to reduce arrivals at European shores. After years of stalled talks on the 'New Pact on Migration and Asylum of the EU' (a set of policies and regulations on migration and asylum proposed by the European Commission back in 2020), this year European leaders reached an agreement on key regulations: first on the Asylum Procedure Regulation (APR) and the Asylum and Migration Management Regulation (RAMM) in June 2023; then on the merged Crisis and Instrumentalisation Regulations in October 2023. While the reform of the EU's migration and asylum system is long overdue, the measures currently on the table replicate the same flawed logic of deterrence and containment that show serious political disregard for the protection of human lives, as MSF has seen for years. Across political factions in Europe, the agreement on the Crisis Regulation in particular has been celebrated as a key step towards a common approach to increased arrivals at the EU external borders. However, MSF and other groups have raised concerns that instead of fixing a broken asylum system in Europe and guaranteeing safe and legal pathways for those in need, the specific regulation as well as the wider measures discussed in the context of EU asylum reform implicitly condone the harmful practices we have observed across Europe.²

² MSF, *MSF statement in response to the "EU Crisis Regulation"*, 6 October 2023. See also European Council on Refugees and Exiles (ECRE), *Editorial: So that's it then? Agreement(s) on the EU Asylum Reform*, 6 October 2023.

Further, NGO search and rescue vessels are confronted with new restrictions in Italy that critically limit their capacity to save lives at sea. Since 2017, MSF and other NGOs are confronted with an ever-shrinking humanitarian space and have faced frequent harassment by Italian authorities, including through criminal charges, inspections and prolonged detainment, which aim to prevent our lifesaving activities at sea.³ New rules implemented by the Italian government gradually in late 2022 and early 2023 mark a new stage in the obstruction of lifesaving medical humanitarian activities at sea, however, they are just the latest attempt by an EU member state to restrict humanitarian assistance along the EU's borders.

Drawing on operational and aggregated medical data, survivor testimonies, and observations of MSF staff gathered on board *Geo Barents*, this report further details the scale of rights violations witnessed by MSF during the first three trimesters of 2023, as well as the nature of the new restrictions applied against NGO ships and the consequences for people making the dangerous crossing to Europe. While MSF continues to respond to the humanitarian crisis in the Central Mediterranean by providing assistance including emergency medical care, we call upon the EU and its member states to immediately change course and to prioritise the safety of those seeking sanctuary at European shores.



³ MSF, *Appeal lodged against illegitimate detention of MSF rescue ship*, 3 March 2023. See also European Union Agency for Fundamental Rights, *June 2023 update - Search and rescue operations in the Mediterranean and fundamental rights*.

MSF CALLS

In light of an ever-rising death toll in the Central Mediterranean, MSF calls for the following actions to be taken as a matter of urgency:

1



An end to EU migration policies based on deterrence that come at the cost of human lives

2



Proactive and lawful coordination of rescues at sea

3



An immediate end to the obstruction of humanitarian assistance at sea

4



The creation of safe and legal pathways for those seeking safety and protection in Europe

BACKGROUND

During the course of 10 years, EU member states have gradually disengaged from saving lives and their duty to assist people in the Central Mediterranean. Instead, they have heavily invested in deterrence and containment measures to prevent migrants and asylum seekers from reaching Europe by boat and to knowingly return them to horrific abuse in Libya. Between October 2013 and October 2014, the Italian maritime operation *Mare Nostrum* saved the lives of more than 150,000 people. However, in lack of support from other EU states, the operation ended and was replaced by other instruments of border management heavily based on agreements with third countries that have a track record of human rights violations, such as Libya.

Over the years, the EU has provided €59 million in funds to Libya for border management, including the delivery of patrol boats, the provision of training and other equipment to the Libyan authorities.⁴ The Memorandum of Understanding signed between Italy and Libya in 2017 and the EU Malta Declaration are the cornerstone of this strategy, which aims to enable the Libyan Coast Guard to intercept and forcibly return people to Libya—knowing full well that they will be trapped in systematic and widespread abuse there.⁵

Since 2017, more than 120,000 people have been intercepted at sea by the EU-trained Libyan Coast Guard with EU-donated vessels,⁶ and illegally pushed back to Libya.⁷

The EU's strategy of preventing migrants and asylum seekers from reaching Europe by boat, however, goes even further. To further remove itself from its search and rescue responsibilities at sea, the EU has largely retreated⁸ its rescue ships from the Central Mediterranean, while simultaneously increasing aerial assets that play an active role⁹ in facilitating forced returns to Libya. The deployment of surveillance aircraft and drones allows the EU to maintain a physical distance from boats in distress while keeping a close eye from the sky, enabling Libyan partners to carry out so-called 'refoulement by proxy'.¹⁰

⁴ European Commission, Press release, 6 February 2023.

⁵ MSF, *Out of sight, out of mind. Refugees in Libya's detention centres*, 12 July 2019. See also HRW, *No Escape from Libya*, 21 January 2019; Amnesty International, *Between life and death: Refugees and Migrants trapped in Libya's cycle of abuse*, 24 September 2020.

⁶ Euractiv, *EU delivers new patrol boats to Libya despite militia links*, 23 June 2023.

⁷ United Nations High Commissioner for Refugees (UNHCR), *Mediterranean Situation Dashboard* [Accessed 09 October 2023]; International Organization for Migration (IOM), *Maritime Update 24-30 September* [Accessed 09 October 2023].

⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), *"Lethal Disregard": Search and rescue and the protection of migrants in the central Mediterranean Sea*, 26 May 2021.

⁹ Frontex Consultative Forum, *Tenth Consultative Forum Annual Report 2022*, 26 June 2023.

¹⁰ Border Forensics and HRW, *Airborne Complicity – Frontex Aerial Surveillance Enables Abuse*, 12 December 2022.



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In reference to the non-refoulement principle of the 1951 Geneva Convention, contracting states should not expel or return a person “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹¹ According to this principle, people rescued at sea must be taken to a place of safety where the survivors’ safety or life is not threatened and where their basic human needs can be met.¹² EU policies instead aim to contain migrants, asylum seekers, and refugees in Libya and seal off the coast. Trapped in a cycle of abuse, tens of thousands of migrants, refugees and asylum seekers have experienced abhorrent mistreatment such as arbitrary detention and extreme violence in Libyan detention centres.¹³

Since late 2022, we have seen a new level of hostilities towards NGO-led search and rescue activities. In the absence of state-led search and rescue operations, new laws and measures have drastically impacted our activities to save lives at sea. The capacity to prevent deaths at sea is further exhausted by civilian SAR vessels being forced to navigate for days after a rescue to reach a distant place of safety, and held in port during detentions. Subverted by disregard for the duty to rescue, the EU’s policy of externalising migration control and SAR continues to widen the void in lifesaving assistance, and instead distorts it into a dangerous instrument for border management (see Part II: A new era of obstruction of NGO rescue).

In response to the increase in departures from Tunisia since the beginning of 2023, the EU expanded its Libya strategy to Tunisia. Against the backdrop of violent, racist attacks against Sub-Saharan Africans in Tunisia and the collective expulsions of migrants from Tunisia,¹⁴ the EU signed a Memorandum of Understanding with the North African country in July 2023, providing €105 million to curb undocumented migration—including through incentives, trainings and material support to increase interceptions at sea.¹⁵ By mandating the containment of people on the move to third countries at the expense of human rights, the deal replicates the well-known aims of the EU-Libya agreement. The President of the European Commission described the deal as a “blueprint”, a “template” for future partnerships with other third countries in the region.¹⁶ MSF is specifically concerned that the agreement will cover with impunity and systemize violence against migrants in Tunisia, making the EU complicit in their deaths and abuse.

While the EU and its member states continue outsourcing their rescue responsibilities to third countries, with little regard to the human costs of their policies, their withdrawal from search and rescue means that shipwrecks and avoidable deaths are multiplying.

In 2023, the number of people arriving at Italy’s shores via the Central Mediterranean route has doubled compared to the same period last year. Tunisia has overtaken Libya as the main departure point for people on the move, with nearly five times more arrivals than last year.¹⁷

¹¹ 1951 Geneva Convention, Art. 33(1) - Prohibition of expulsion or return (“refoulement”).

¹² International Maritime Organization (IMO), Resolution MSC.167(78), *Guidelines on the Treatment of Persons Rescued At Sea*, 20 May 2004 (6.12 and seq.).

¹³ MSF, *Thousands beaten up, detained following days of mass arrests in Tripoli*, 6 October 2021.

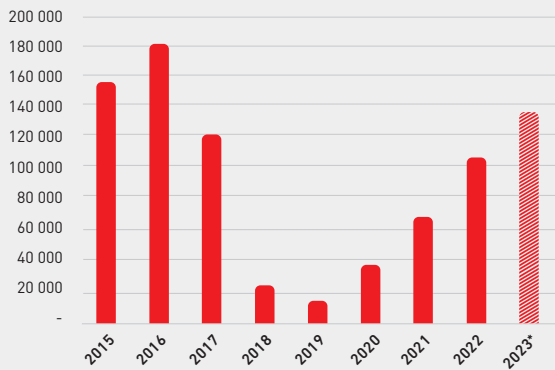
¹⁴ HRW, *Tunisia: No Safe Haven for Black African Migrants, Refugees*, 19 July 2023.

¹⁵ Politico, *Tunisia yet to receive EU funds to stem migration, senior EU official says*, 31 August 2023.

¹⁶ European Commission, *Speech by President von der Leyen at the International Conference on Development and Migration*, 23 July 2023.

¹⁷ UNHCR, *Mediterranean Situation Dashboard* [Accessed 09 October 2023].

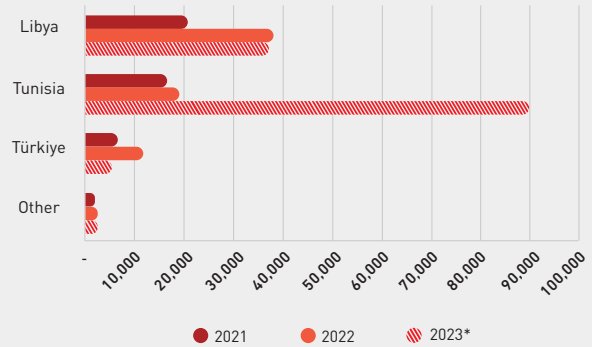
SEA ARRIVALS IN ITALY AND MALTA BETWEEN JANUARY 2015 - SEPTEMBER 2023



* Data from January to September only

Source: IOM

SEA ARRIVALS IN ITALY BY COUNTRY OF EMBARKATION BETWEEN JANUARY 2021 - SEPTEMBER 2023

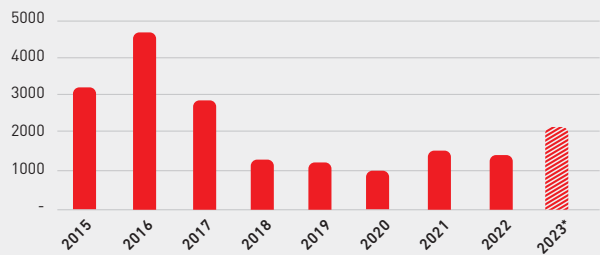


* Data from January to September only

Source: UNHCR

This drastic increase in departures coupled with the lack of state-led rescue capacities have resulted in more distress cases and shipwrecks. In the first nine months of 2023, at least 2,145 people died or went missing in the Central Mediterranean, exceeding the number of deaths and disappearances at sea in all of 2022.¹⁸ On average, at least eight people have lost their lives or went missing in the Central Mediterranean route each day in 2023 so far.¹⁹ The dead have also washed up on Europe's shores. On 26 February, at least 94 people lost their lives in a shipwreck off the coast of Cutro, Italy; on June 14, approximately 600 people died or went missing in a shipwreck off the coast of Pylos, Greece.²⁰ Both shipwrecks have brought up questions regarding the role of national coast guards in such incidents and why no immediate rescue operations were launched even though both distress cases were known to authorities hours before the tragedy unfolded.²¹

NUMBER OF DEATHS AND MISSING PERSONS IN THE CENTRAL MEDITERRANEAN PER YEAR



* Data from January to September only

Source: IOM

¹⁸ IOM, *Missing Migrants Project* [Accessed 09 October 2023].

¹⁹ Note that the documented number of deaths and disappearances in the Central Mediterranean is likely an undercount, as many shipwrecks are 'invisible' and many dead and missing are unaccounted for.

²⁰ IOM, *Missing Migrants Project* [Accessed 11 October 2023].

²¹ Association for Juridical Studies on Immigration (ASGI), *Cutro shipwreck: Associations file collective complaint with prosecutor's office*, 09 March 2023 [in Italian]; HRW, *Greece: Disparities in Accounts of Pylos Shipwreck Underscore the Need for Human Rights Compliant Inquiry*, 3 August 2023.



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PART I - VIOLENT JOURNEYS

For years, MSF has been treating the physical and mental health consequences of European migration policies. Across our projects along the EU external borders, such as in Libya and the Central Mediterranean, we have seen how measures implemented by European states have lowered safeguards for people in dire need. We witness violent practices such as pushbacks at borders, prolonged and arbitrary detention, as well as other inhumane practices at all EU borders where MSF works. Agreements with third countries such as the deals between Italy and Libya, or the EU and Tunisia,

support the system of exploitation, extortion and abuse in which so many find themselves trapped. We know from experience that these measures often restrict independent humanitarian aid and civil society monitoring, making assistance to individuals in need increasingly difficult.

Far from offering a solution to the immense suffering and distress of people seeking safety and protection at Europe's borders, MSF has seen in the Central Mediterranean how the EU and its member states reinforce policies and practices that further ignore basic human rights and promote inhumane practices.

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THE WOUNDS TELL THEIR OWN STORIES

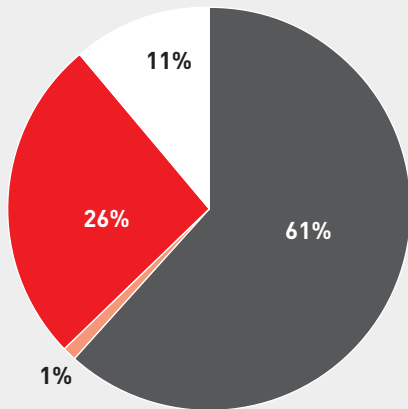
The types of injuries we treat on the MSF rescue ship illustrate the scale of violent incidents at Europe’s southern border. Between January and September 2023, the MSF medical team carried out 3,660 general consultations for survivors on *Geo Barents*. Among the main morbidities seen were conditions directly related to long journeys at sea, including fuel burns, fuel poisoning, motion sickness, injuries related to incidents on the boats, hypothermia, hyperthermia due to staying under the sun for long periods of time, and dehydration. Other survivors presented with conditions related to cramped and inhumane living conditions during captivity in Libya, such as skin infections, untreated wounds and untreated chronic diseases, due to lack of access to medical care and medication.

Of the 3,660 general consultations, 273 patients presented with serious violence-related conditions. Their wounds and stories reflect the scale of violence to which they were subjected in their country of origin, countries of transit, and during the sea crossing. Patients seen by the medical team suffered from physical injuries including scars from gunshot wounds, broken and severed limbs, and scars and bruises caused by recurrent violent beatings with metal bars, electric cables, baseball bats, machetes and knives. In addition to physical injuries, these conditions include mental health conditions and the direct consequences of sexual and gender-based violence such as sexually transmitted infections (STIs), unwanted pregnancies, and female genital mutilation (FGM), among others. Survivors reported concerning levels of psychological distress, anxiety, difficulty sleeping and nightmares, flashbacks as well as trauma from witnessing extreme violence, including seeing other people being raped and killed in front of their eyes.

While the number of violence-related health conditions is significant, it is most likely an undercount of the actual figures, as only the most urgent needs of patients can be addressed on the ship.

The majority of violence-related injuries seen by the MSF team were caused by civilian, criminal gangs or national armed forces. A total of 67 per cent of violence-related consultations stemmed from violence experienced in Libya, while nine per cent were from violence inflicted in Tunisia. Note that this is not a representative sample of abuses and violations that people are exposed to in both countries. A total of 72 per cent of all people rescued by MSF between January and September 2023 had departed from Libya, whereas those who had departed from Tunisia made up for 28 per cent.

MEDICAL CONSEQUENCES OF VIOLENCE* BETWEEN JANUARY - SEPTEMBER 2023



- Physical injury or scar
- Physical injury or scar with long-term disability
- Physical disorder including psychosomatic consequences
- Suspected sexual injury, sexually-transmitted infections, unwanted pregnancies, female genital mutilation

* Reported by survivors on board *Geo Barents*

Survivors rescued at sea by the MSF search and rescue vessel *Geo Barents* shared harrowing accounts of the humanitarian situation in Tunisia, as well as the general climate of fear, everyday harassment, forced evictions from their homes, arbitrary arrests, and expulsions to the borders.²² Their accounts reflect the experiences endured by other people still trapped in the country, who face widespread violence and little or no access to assistance and protection.

SURVIVORS' ACCOUNTS FROM TUNISIA: "IT WAS EITHER THE SEA, LYNCHED, OR ABANDONED IN THE DESERT"

▀▀ They evicted me. All homeowners were evicting African tenants. I lost everything. I was living in Tunis. One morning I got up and the homeowner came. (...) He tells me: 'The President has said, you Africans must go home. We cannot host Africans anymore.' ▀▀

- A 32-year-old woman from Cameroon, rescued by MSF in July 2023

▀▀ One day we had finished work and were coming back to our house in Sfax, and the police came to catch us and threw us in Algeria. They took our money and phones. They took everything. All the problems I had were with the police. They see you in the street and they arrest you. One day I was with a friend, it was a Saturday, and we finished work at around 2 p.m. The police arrested us and took everything. The Tunisian police do not want to see black people. They hate us. When they took us to Algeria, we walked for almost a week in the desert. This was four weeks ago, like a month ago. We came back to Sfax the same week after being pushed back to Algeria. ▀▀

- A 26-year-old man from Ivory Coast, rescued by MSF in July 2023

▀▀ It was never my intention to cross the sea. Never, never. For me, taking to the sea was a huge risk. The boat in which they put us... If I had seen it during the day, I would have never entered it. When they embark you at night, everything happens very quickly because the police [might] see you and catch you. I had no means to pay for the crossing. (...) For me personally, I had to act with him [the smuggler] sexually so that I could embark. It was the price to pay to be able to get where I am now. Yes, it was survival. ▀▀

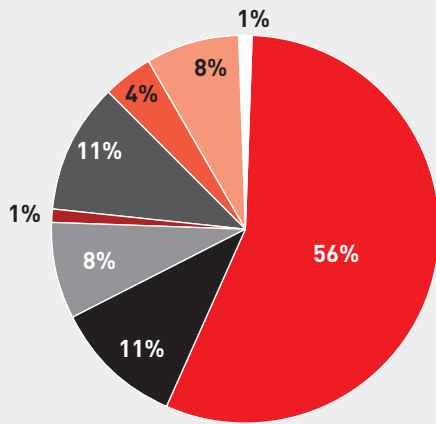
- A 23-year-old man from Cameroon, rescued by MSF in July 2023

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22 MSF, *It was either the sea, lynched, or abandoned in the desert - Accounts from Tunisia*, October 2023.



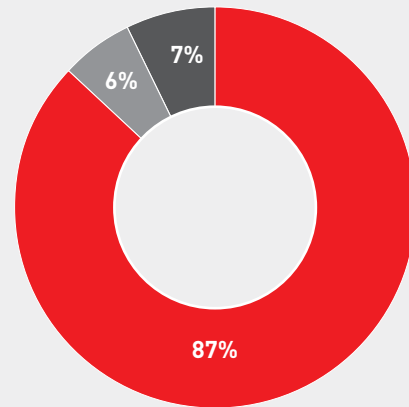
**LOCATION OF VIOLENT INCIDENT*
BETWEEN JANUARY - SEPTEMBER 2023**



- Libya
- Country of origin and Libya
- Tunisia
- Country of origin and Tunisia
- Country of origin
- Other transit country
- Unknown / Other
- At sea

* Reported by survivors on board *Geo Barents*

**TYPE OF VIOLENCE INFLICTED IN DETENTION*
BETWEEN JANUARY - SEPTEMBER 2023**



- Physical violence
- Psychological violence
- Sexual violence

* Reported by survivors on board *Geo Barents*



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In many cases, MSF patients had experienced several instances of violence, sometimes in different countries, including their country of origin and transit countries along their migration path. The conditions treated on board *Geo Barents* highlight the levels of violence in border areas, notably in the desert areas between Algeria, Tunisia and Libya, and the northern border of Niger, where several patients reported being kidnapped, raped and held in captivity both by civilians and security forces.

In 112 consultations, patients presented with consequences of violence inflicted in detention, in many cases following an interception at sea. Survivors reported regular mass beatings in detention, food deprivation and forced labour. In some of the consultations, survivors told the MSF team that they were tortured. People reported that they were repeatedly beaten, sometimes filmed, and forced to ask their relatives to pay a ransom for their release. Several witnessed shootings and deaths in detention centres.

SURVIVORS' ACCOUNTS FROM LIBYA: TRAPPED IN A CYCLE OF ABUSE AND THE HORROR OF DETENTION

■ ■ *In Libya the main problem is that you do not know who is a policeman and who is not because everybody is armed. You can be robbed at any time during the day – in the afternoon, in the morning and at night.* ■ ■

- A 34-year-old man from Cameroon, rescued by MSF in May 2023

On 27 June 2022, two men from Cameroon were rescued from a shipwreck by the MSF rescue ship *Geo Barents*. At least 30 people had died at sea in that incident. Before escaping from Libya, they were exposed to refoulement at sea and detention in Libya.

■ ■ *At Roshofana prison [Libyan detention centre in al-Zawiya area], they made us line up and get out of the truck. There was a gate with a door and behind that, a big courtyard. When entering the prison, you cannot see that there is a door that goes down underground, and on the other side, six hangars with 5,000 people inside. This way, in the front, they put people to show, I don't know, the European Union, that we are treated well. But in the back, there are people who are skinny like the leg of a chair.*

Osama [manager of the detention centre] said, 'In my prison, you pay 33,000 dinars. You have three to four days to pay this amount. If you do not pay, I will transfer you to another prison.' But he does not transfer us, he sells us. He said that he would give us a phone to contact our family and ask for money. Then he left and his men came in and beat us for at least an hour. Then, they called us one by one. They looked at our stature; those who were strong were recruited to work inside the prison. ■ ■

- An 18-year-old man from Cameroon, rescued by MSF in June 2022

■ ■ *In November 2021, the Libyan Coast Guards caught me at sea and sold me to the jail of Roshofana. I know this jail very well, because I worked there to be able to earn my freedom. I think it is a former factory, because when we were working there, we found boxes with pharmaceutical products. Before they started constructing cells inside, everyone was sleeping in a large hall, except for the women. The women were sleeping nearby and we could hear their shouting. When the first cell was finished, they removed the Bangladeshis because they were too weak. They put them in there while the construction was still in progress.*

In Roshofana jail, there were 4,000 people from Sub-Saharan Africa, Bangladesh, Eritrea, and Syria. When we arrived, they gave us one piece of bread and jam in the morning, and one piece of bread and cheese in the evening. This caused constipation and haemorrhoids. We could not go to the toilet for a month or two. (...)

The guards were coming to beat us, and they were filming and taking pictures while doing so. Sometimes, when people were wounded, they piled them up in one place and filmed them. We do not know how these videos were used. ■ ■

- A 19-year-old man from Cameroon, rescued by MSF in June 2022



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PART II – A NEW ERA OF OBSTRUCTION OF NGO RESCUE

Against the backdrop of insufficient state-led SAR capacities in the Central Mediterranean, NGOs carrying out SAR activities have recently confronted a new level of obstruction and criminalisation, which has drastically impacted their activities to save lives at sea. The result is that the void in lifesaving assistance continues to widen.

November 2022 marked the beginning of a new phase of escalation in the obstruction of NGO-led search and rescue activities. Since 2017, MSF and other NGOs have faced frequent harassment by the authorities, including criminal charges, inspections and prolonged detainment, with the aim of preventing our lifesaving activities at sea.²³ Ongoing efforts to restrain and criminalise humanitarian operations have increasingly reduced NGOs' ability to assist people in distress at sea.

Following years of imposing prolonged stand-offs with NGO vessels in which the disembarkation of survivors was delayed up to more than a week, in November 2022 the Italian authorities prohibited *Geo Barents* and two other SAR ships from stopping in their territorial waters, and eventually facilitated only those considered most vulnerable to disembark. The 'selective' disembarkation lasted for three days and eventually, following intense media coverage, political pressure, and the intervention of medical specialists on board the rescue ships, all survivors could eventually disembark in Italy.²⁴ This sudden change of approach towards disembarkation of survivors came after the change in government in Italy and against the backdrop of a polarised public debate around migration in Europe. Soon after, a series of new measures was introduced, initiating a new phase in the restriction of humanitarian assistance at sea.

²³ MSF, *Appeal lodged against illegitimate detention of MSF rescue ship*, 3 March 2023. See also European Union Agency for Fundamental Rights, *June 2023 update - Search and rescue operations in the Mediterranean and fundamental rights* [Accessed 09 October 2023].

²⁴ MSF, *All survivors disembarked to safety after illegal delay at Catania port*, 11 November 2022. See also C. Denaro and F. Esposito (2023) *Using Vulnerability-Centred Health Assessment as a Tool for the Differential (De)Valuing of Human Life: The Case of Italian 'Illegal*



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NOVEMBER 2022: THE ANATOMY OF A 'SELECTIVE' DISEMBARKATION

After rescuing 572 people between 27 and 29 October 2022, the MSF ship *Geo Barents* was stranded at sea for a total of 10 days, waiting for authorities to assign a safe place for survivors to disembark.

On 5 November, Italian authorities issued an inter-ministerial decree to *Geo Barents*, i.e., an administrative measure that prohibits the vessel "from stopping in Italian territorial waters beyond the time necessary to provide rescue and assistance operations for people in emergency conditions and in precarious health conditions reported by the competent national authorities." According to the measure, Italian authorities assigned Catania, Sicily as the disembarkation place for survivors assessed by local health authorities to be in the most vulnerable condition.

On 6 November, 357 survivors were allowed to leave the ship after assessment by the authorities as most vulnerable based on ad hoc medical and social criteria, while 215 people remained on board. Until this moment, this selective approach to disembarkation of survivors after rescue at sea was not common praxis.

Left without any instructions for nearly two days, the mental and physical health condition among survivors deteriorated dramatically with heightened anxiety, leading to several incidents including people jumping overboard, and two medical evacuations (one survivor was evacuated due to strong abdominal pain; the other showed signs of anxiety and had panic attacks).

On 8 November, the remaining people were finally allowed to disembark in Catania.

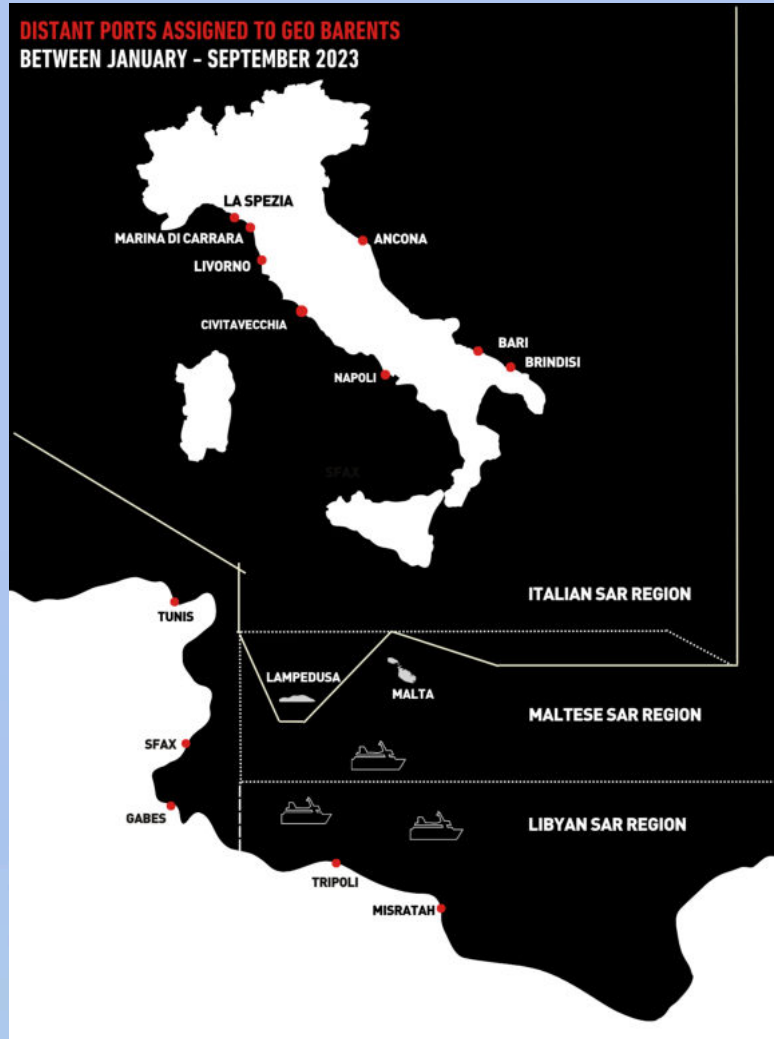
In addition to causing the severe deterioration of the psychological and physical state of survivors, this unjustified delay in disembarkation of survivors rescued from distress at sea also prevented them from accessing assistance and protection onshore.

MSF appealed the unacceptable administrative measure in court, referring to international maritime law, which states that survivors must be disembarked in a safe place as soon as possible. Moreover, in the appeal MSF stressed that relevant legal instruments and guidelines do not make disembarkation conditional to specific medical conditions or other reasons.

DECREE LAW 15/2023: NEW ADMINISTRATIVE RESTRICTIONS ON HUMANITARIAN SAR IN ITALY

On 3 January 2023, the Italian government introduced a new set of rules applying exclusively to civilian rescue vessels that further restricts humanitarian assistance at sea. The Decree-Law 1/2023, which was converted into Law 15/2023 in March, modifies the previous Decree-Law 130/2020, "Urgent provisions on immigration and security," and introduces a series of constraints and bureaucratic burdens for civil SAR operations. Failure to comply could result in fines of up to €10,000 and the detention of vessels. The new law called "Urgent provisions for the management of migratory flows", outlines the increase of sanctions in cases of repeated non-compliance, potentially leading to the seizure of the vessel.

According to the new law, rescue ships must head to the place of safety assigned by the authorities immediately after each rescue. As a direct consequence, civilian SAR vessels are restricted to conducting one rescue at a time, and in some cases are forced to ignore other alerts of boat in distress unless they receive explicit instructions from Italian maritime authorities.²⁵ The law requires NGO vessels to provide a range of information to authorities about the rescue conducted and allows them wide discretion in deciding the nature of the information required.



²⁵ National Public Radio, *Italy pressures NGOs to stop migrant boat rescues*, 7 October 2023.





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FEBRUARY 2023: *GEO BARENTS* IS DETAINED FOR 20 DAYS

On 23 February 2023, Italian authorities detained *Geo Barents* for 20 days and issued a €5,000 fine under the provisions of the new law for failing to provide the data from the voyage data recorder (VDR) following a rescue operation. It was the second time since MSF launched its rescue operations with *Geo Barents* back in 2021 that Italian authorities detained the vessel and thereby pulled one of the biggest rescue assets out of the sea, increasing the already existing gap in rescue capacity in the Central Mediterranean.

The VDR is similar to a flight data recorder, or 'black box', of an aircraft. Its role is to make the data available for investigations into a maritime incident. The authorities' request to save and share this data is inconsistent with usual practice. Moreover, the sanction in the form of detention is out of scope because national Italian legislation related specifically to VDR data provides for fines in case of failure to comply. MSF considers this sanction an illegitimate act to obstruct civilian efforts to save lives at sea.

The sanction (fine and detention) issued against *Geo Barents* was appealed in front of the Ancona Civil Court and proceedings are ongoing.

The legal provisions introduced by the new law are moreover coupled with a regular practice of assigning ports to NGO vessels that are unjustifiably far from the area where the rescue took place.²⁶ Since December 2022, the overall majority of rescues conducted by NGO vessels concluded with disembarkation in ports in central and northern Italy, such as Ancona, La Spezia and Marina di Carrara. In addition to delaying survivors' access to adequate medical assistance, protection and reception services on land, the practice drastically increases the number of days spent in transit, during which rescue vessels are effectively not able to respond to distress cases.

In the first nine months of 2023, Italian authorities detained six NGO vessels under the new law, two of them twice, cumulating to 160 days of detention. In August 2023, three vessels received a notice of detention within a period of 48 hours.²⁷ The official grounds for detention were non-compliance with instructions to navigate immediately to the assigned place of safety without further delay (such as by responding to open distress calls), as well as failure to provide information requested by the authorities regarding the rescue operations. As the type of information that can be requested is not thoroughly specified in the law, NGOs can receive a large range of requests for information including those considered by MSF as unjustified and outside the scope of maritime law—for instance, the request to provide the voyage data recorder (VDR), which led to the 20-day detention of *Geo Barents* in February 2023.

The new law is only the latest example of the Italian government deploying its administrative powers to punish organisations involved in search and rescue activities, and obstructing civilian efforts to rescue people in distress at sea. While the current restrictions we face in Italy are new in method, they follow the same logic of obstruction of humanitarian assistance aiming to eventually reduce arrivals at Italy's shores.

²⁶ There is no agreed-upon definition of what can be considered a 'distant' or 'close' port. MSF generally bases its definition on the distance between the location of a rescue and the disembarkation point (more than 800km) and the availability of other, closer ports as a baseline to determine if an assigned port can be considered 'distant' or not. Practically, it takes *Geo Barents* approx. 48 hours to cover a distance of 800 km.

²⁷ See the joint NGO statement, *Increased deaths at sea, NGO vessels detained – European states must stop obstructing civilian search and rescue efforts in the Central Mediterranean*, 28 August 2023.



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SHRINKING HUMANITARIAN SPACE LEAVES A DANGEROUS RESCUE GAP AT SEA

The detention of *Geo Barents* and other NGO vessels in 2023 took place against the backdrop of insufficient state-led search and rescue capacity in the Central Mediterranean. While the measures taken by the Italian authorities directly targeted SAR NGOs and MSF, the real price is paid by those fleeing across the Central Mediterranean, who are left without assistance.

The set of restrictions introduced in Italy this year has had a very tangible effect on the presence of NGO ships at sea and their ability to rescue—especially the obligation to head back to port immediately after a rescue which, in combination with the distant port practice, has seriously affected NGOs’ operations at sea by limiting the time NGO ships can spend in active patrol in international waters to search for boats in distress.

In 2022, almost a quarter of the boats rescued by MSF had been spotted from the ship’s bridge, meaning that they were only found thanks to active patrolling in the area rather than following the coordinates of a distress case. This number has sharply dropped in 2023 with the obligation to head back to port immediately after each rescue. In light of insufficient state-led coordination for distress cases, NGO ships’ ability to patrol the Central Mediterranean and actively search for boats in distress is paramount for the prevention of further loss of life.

IMPACT OF NEW MEASURES INTRODUCED IN ITALY ON *Geo Barents* OPERATIONS


	Number of <i>Geo Barents</i> rotations*	Number of distress boats spotted from <i>Geo Barents</i> bridge	Average number of rescued survivors per <i>Geo Barents</i> rotation*
Jan. – Sep. 2022	11	13	248
Jan. – Sep. 2023	19	5	183
Variation	+73%	-62%	-26%

* A rotation is the period between leaving and heading back to port.

In addition to preventing active patrolling after the first rescue an NGO ship conducts, the new Italian measures have drastically increased the time MSF has to spend between leaving and heading back to port after rescues. Between January and September 2023, *Geo Barents* travelled an additional 28,000 kilometres to reach and return from unnecessarily distant ports, compared to previous years in which NGO ships were assigned ports closer to where most rescues are conducted, such as Augusta in Sicily. The additional days of navigation delay survivors’ access to assistance on land, as well as our speedy return to the operational area in the Central Mediterranean, where in light of inadequate rescue capacities, every ship is desperately needed.



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JANUARY 2023: 'FAR UP NORTH' - ITALIAN AUTHORITIES SEND RESCUE SHIPS TO PORTS FAR FROM RESCUE LOCATIONS FOR DISEMBARKATION

On 12 January 2023, Italian authorities instructed MSF to bring 73 survivors previously rescued by *Geo Barents* on 7 January 2023 to Ancona on the Adriatic coast. The port of Ancona is over 1,500 km from the location where MSF conducted the rescue, translating into four and a half days of navigation in extremely rough weather conditions with waves of over four meters high. The assignment of such distant ports is contrary to the well-being of those rescued from distress at sea and it keeps MSF away from the search and rescue region for too long.

Later, MSF appealed the assignment of Ancona as a place of safety before the Administrative Regional Court of Lazio as well as the following assignment of La Spezia as a place of safety for the disembarkation of 237 survivors rescued on 24 and 25 January 2023. Both cases were eventually merged and are ongoing.

In the appeals, MSF asks the Court to annul the administrative measures used as the basis for assigning *Geo Barents* such faraway ports and to recognise that this practice is contrary to international maritime law and relevant guidelines. Among other points, MSF argues that:

- The decisions to assign such faraway ports are unlawful, as the law of the sea and relevant international legal provisions on search and rescue, to which Italy is party, establish that:
 - disembarkation should be carried out as soon as reasonably practicable, taking into account the particular circumstances of the case;
 - authorities should make every effort to minimize the time survivors remain aboard the assisting ship;
 - the assisting ship should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea.

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Due to the new law, *Geo Barents* had to spend a total of 70 additional days traveling back and forth from port - in other words, two out of nine months of operations were wasted. This precious time could have been used to prepare and conduct rescues.

The new law and distant port practice have not only seriously affected MSF's operations at sea, but also raise serious concerns regarding its compatibility with national (constitutional), international and EU law regarding search and rescue activities at sea.²⁸ NGO-led SAR activities have been recognised as a significant contribution by the European Commission. By providing humanitarian assistance at sea, SAR NGOs exercise their legitimate right of freedom of association.²⁹ Above all, the activities of SAR NGOs contribute to the respect and safeguarding of human and fundamental rights of those rescued, including the right to life and the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the right to asylum and protection against refoulement, enshrined in EU law and treaties.

²⁸ See also legal opinions of the Council of Europe Expert Council on NGO Law and Danish Refugee Council as well as public communications by the Council of Europe Human Rights Commissioner and the UNHCR.

²⁹ See, for example, the judgment of the European Court of Human Rights on *Yoldanovi v. Bulgaria* and the Court of Justice of the European Union judgment of 24/11/2016, *Hungary v. Commission*, C-78/18, regarding Article 11 of the European Convention on Human Rights. It is noted that the ECHR is the cornerstone of another organisation, the Council of Europe. Such Convention has taken on constitutional significance by virtue of Article 6 of the Treaty on EU, is therefore relevant to this complaint.

JULY 2023: MSF CALLS ON THE EUROPEAN COMMISSION TO SCRUTINISE ITALY'S ANTI-NGO LAW

On 12 July 2023, MSF along with four other NGOs—Oxfam Italia, SOS Humanity, Association for Juridical Studies on Immigration (ASGI) and EMERGENCY—submitted a complaint to the European Commission regarding Law 15/2023 and Italian authorities' practice of assigning distant ports to NGO vessels.³⁰ As guardian of the EU treaties, it is the responsibility of the European Commission to ensure that EU member states comply with relevant law and stop obstructing the lifesaving work of search and rescue NGOs. In this role, we encourage the EU Commission to put the Italian law and the distant port practice under scrutiny and to open infringement procedures against Italy in case no changes are implemented.

In the complaint we argue that:

- The requirement to reach the assigned port of disembarkation without delay hinders the search activities of NGOs and violates international law, which includes the obligation to render assistance to any person in distress at sea.
- The obligation to provide information about the details of rescues conducted lacks specificity, and therefore results in excessive and unrelated information requests.
- The collection of data on survivors wishing to claim asylum, required by law for shipmasters, is contrary to EU regulations,³¹ which set out that only the responsible authorities of a member state can acquire this information, and constitutes an unreasonable burden on rescue ships.
- The Italian authorities' practice of assigning ports very far away from the rescue area, despite the existence of numerous closer ports, is contrary to relevant international and EU law,³² which require states to coordinate and cooperate in rescue operations, so that survivors can be delivered to a place of safety as soon as reasonably possible.

³⁰ MSF, *MSF files complaint to European Commission on search and rescue law*, 13 July 2023. See also the Executive Summary of the MSF complaint.

³¹ See EU Directive 2013/32 on "common procedures for granting and withdrawing international protection status."

³² See, for example, International Convention for the Safety of Life at Sea 1974, Chap. V, Reg. 33; SAR Convention, para. 3.1.9; MSC Resolution of 20/05/2004 167(78), paras 6.3, 6.8, 6.12 and 6.13, and EU Regulation No 656/2014.



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JULY 2023: 'DOWN THE LINE' - ITALIAN AUTHORITIES FORCE DISEMBARKATION OF SURVIVORS IN MULTIPLE LOCATIONS FROM *GEO BARENTS*

Nearly nine months after the 'selective' disembarkation in Catania, the Italian authorities instructed MSF to disembark 462 survivors in three different ports in the span of several days, thereby adding unjustified burdens to the survivors.

Between 17 July and 20 July 2023, *Geo Barents* navigated to Lampedusa, Marina di Carrara and then Livorno in order for 116, 213 and 133 survivors to disembark, respectively. Despite MSF having shared relevant information to facilitate the disembarkation, including about the most vulnerable groups on board, the authorities in Marina di Carrara announced during disembarkation that they do not have the capacity to host all of those flagged by MSF for prioritised disembarkation. Some of the most vulnerable, including a very young baby, disembarked one day later in Livorno, raising serious questions about the best interest of the survivors.

Unjustified and prejudicial to the rescued people, these instructions once more delayed survivors' access to assistance on land and added an additional burden on the crew who tried their best to prevent family separation.

While MSF has legally challenged the unjustified measures implemented against its rescue ship and has formally requested that the European Commission scrutinise Law 15/2023 with the aim of safeguarding the lifesaving work of NGO-led SAR activities, the obstruction of our work continues. Italian authorities continue to assign *Geo Barents* to distant ports and thereby prevent MSF rescue ship from proactively patrolling and often to conduct more than one rescue at a time.

In a new concerning development in July 2023, the Italian authorities instructed *Geo Barents* to disembark survivors rescued in 12 consecutive operations, 11 of which were coordinated by the Italian rescue coordination centre, in three different locations in Italy. The polarisation of the debate on humanitarian SAR should not overshadow the fact that civilian organisations have filled the void left by the EU and coastal states in trying to prevent further tragedies at sea. With multiple measures targeting SAR NGOs, states continue to fail their own duty to rescue.

PART III – THE DEADLY VOID AT SEA WIDENS

From aboard *Geo Barents*, MSF has been a direct witness to the lack of assistance and systematic disengagement of EU coastal states from their international obligations related to search and rescue. In 2022 and 2023, we documented numerous cases in which Italy and Malta failed to lawfully coordinate rescues and ensure assistance to those at risk of drowning, leading to delayed rescues or no rescue at all. They have left a deadly void in which people at risk of drowning are either left to drown or forcefully returned to unsafe countries such as Libya and Tunisia. Only a few are rescued by either NGO vessels or state assets.

That EU states are backing away from their duty to rescue underlines the grim picture of a neglected humanitarian space, where shipwrecks have multiplied, often with no rescue at sight. Since the beginning of 2023, each day an average of eight people have lost their lives or have gone missing in the Central Mediterranean.

ITALY: SHUTTING OUT HUMANITARIAN SHIPS, DELAYING ASSISTANCE

In the Central Mediterranean, Italy and Malta have the primary responsibility to coordinate rescues in their respective Search and Rescue Regions (SRRs) and a duty to cooperate with neighbouring states to perform rescues beyond their SRRs.³³ In the past months, both the Maltese and Italian Rescue Coordination Centres (RCCs), as well as the EU border agency Frontex, have retained relevant information about distress cases from civilian SAR vessels ready to assist and thereby delayed or prevented rescues.

Italian maritime authorities on their end are largely shutting NGOs out of rescue operations; first by forcing NGO vessels to proceed to port immediately after their first rescue and often in spite of open distress cases and also by instructing NGOs not to assist boats in distress in the Italian area of responsibility.



OCTOBER 2022: MSF INSTRUCTED NOT TO RENDER ASSISTANCE WHILE OVER 1,300 LIVES ARE AT IMMEDIATE RISK

On 22 October 2022, while navigating south of the Sicilian coast, MSF received a distress alert from the activist distress hotline Alarm Phone about two large wooden boats with approximately 650 and 700 people on board. *Geo Barents* headed immediately towards the indicated position but the Italian Maritime Rescue Coordination Centre (MRCC) requested it change course and “not interfere” with Alarm Phone’s operations.

For over 10 hours, while *Geo Barents* kept a distance from the scene, our teams overheard maritime radio conversations that made clear that no ships with sufficient rescue capacity were on the scene, and instead, merchant vessels were instructed to attend to the boats in distress. During this time, we overheard desperate captains calling on Italian authorities to send help.

Eventually, the Italian Coast Guard conducted the rescue with assistance from a navy and a Frontex ship.

As in many other cases, no report was shared publicly on this specific operation to shed light on the consequences survivors faced after the extensive delays in their rescue.

³³ See International Convention on Maritime Search and Rescue 1979, Chapter 3: Cooperation between States.



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Furthermore, Italian maritime authorities often do not share information with NGO ships regarding the status of open distress alerts, leaving civil rescuers completely in the dark. Often, we receive no information from the RCCs as to whether a specific distress case is still open (i.e., if no other ship has responded to the alert yet) or if it has been closed and the people at risk of drowning have been rescued. This lack of transparency regarding the case management of distress cases practically means that MSF and other NGO ships cannot plan their already limited capacities in the most efficient way.

More recently, in direct link to the increase in small boats departing from Tunisia, Italian authorities have given MSF and other SAR NGOs explicit instructions to assist these boats, sometimes multiple boats at the same time. While coordinating these rescues and explicitly requesting our assistance, Italian authorities instructed MSF not to exceed a certain number of survivors on board linked to the ship's officially certified rescue capacity. These instructions put us in a dilemma, as it meant that in order to comply, we would have to leave people at imminent risk of drowning behind. In these cases, we need to make complex decisions, either to rescue or to comply with the authorities' instructions if ultimately, we want to avoid sanctions and preserve our lifesaving operations at sea. While we could successfully negotiate with authorities for the safe rescue of all people in distress at sea, these instructions caused critical delays in rescues. This is even more striking since in the past, maritime authorities have in several occasions explicitly requested us to take more survivors on board than the official rescue capacity of the MSF ship to prevent loss of life.

JULY 2023: 'DANGEROUS DELAYS' - ITALIAN AUTHORITIES HAMPER THE RESCUE OF 95 PEOPLE AT RISK OF DROWNING

- On 15 and 16 July 2023, MSF conducted 12 consecutive rescues, of which 11 were carried out in direct coordination with the Italian MRCC. After the first nine rescues, *Geo Barents* team saw three additional boats in distress. The nearby NGO ship *Mare*Go* stabilised one of the boats and the civilian aircraft *Colibri* monitored the scene from the air.
- MSF proceeded to rescue the first of the three boats, evacuating 26 people safely onto our ship. Then, Italian authorities instructed *Geo Barents* to rescue no more than 16 additional people from the other two iron boats in order to not exceed the certified capacity of the ship. And to stand by and leave the 95 people other people remaining on the unseaworthy and overcrowded boats, exposing them to extreme and unnecessary risk.
- After nearly two hours of negotiating with the authorities—during which *Geo Barents* repeatedly sent alerts on the need for immediate assistance for the boats in distress, the Italian authorities instructed MSF to carry out the rescues. MSF safely took 95 more people aboard *Geo Barents*.
- Italian authorities then instructed *Geo Barents* to head to the port of Lampedusa for the disembarkation of 116 survivors in order to bring the remaining number of passengers on board to 346—below the ship's officially certified maximum capacity. We were then ordered to make the rest of the survivors disembark in Livorno and Marina di Carrara.
- Note that Italian authorities themselves stated several times that it is not uncommon for a ship to exceed its certified capacity when lives are at immediate risk. For instance, in May 2023, they instructed *Geo Barents* to rescue 606 people from a fishing vessel in acute distress.

MALTA: IGNORING SITUATIONS OF DISTRESS

Malta has systematically disengaged from rescues in recent years. Despite maritime conventions and regulations, as well as the Malta Merchant Shipping Act, which legally obliges Maltese authorities to provide “adequate and effective search and rescue service,”³⁴ Maltese authorities have ignored distress calls and were involved in several pushbacks.³⁵ MSF is seeing Malta is neither effectively, nor lawfully coordinating ships to respond in due time, thereby violating its obligations under the law of the sea.



Drawing by a survivor of the June 2023 “Left to drown” case.

© Skye McKee/MSF

According to maritime conventions and regulations, several factors must be taken into account to assess whether a situation at sea can be considered in distress, including the seaworthiness of the boat; the weather conditions; the number of persons on board in relation to the type and condition of the boat; the presence of necessary supplies such as fuel, food, and water; the presence of qualified crew; and the need for medical assistance.³⁶

Between January and September 2023, MSF performed 33 rescues inside the Maltese SRR. None of these rescues were coordinated by the responsible authorities. Requests by MSF to share information about open distress cases were left unanswered by the rescue coordination centre, which also ignored calls for support from merchant vessels actively engaged in the search for missing boats.

JUNE 2023: ‘LEFT TO DROWN’ - MALTA RISKS LIVES TO PREVENT ARRIVALS AT ALL COSTS

In June 2023, Maltese authorities ignored the calls of a boat in distress in its own area of responsibility. On board were 14 people from Syria and South Sudan, including two women and three minors. Nine hours later, one of the people on board the boat at risk of drowning fell overboard and went missing.

Accounts collected by MSF along with data gathered by the Sea-Watch airplane and Alarm Phone, including survivor accounts, suggest that over the course of three days, Malta not only repeatedly ignored the distress calls but also instructed a merchant vessel that came to help not to take any people on board.

Eventually, according to survivors’ testimonies collected aboard *Geo Barents*, the Maltese authorities sent an Armed Forces of Malta patrol boat twice to directly provide the distress boat with fuel so it could continue its journey to Italy instead of arriving on Maltese shores.

More than 38 hours after the first distress alert, MSF took the remaining 13 people on board *Geo Barents* who were highly traumatised survivors to La Spezia for disembarkation. Survivors told the MSF teams that they had desperately pleaded for rescue, yet their calls for help were ignored.

³⁴ United Nations Convention of the Law of the Sea (1982), Art. 98: Duty to render assistance.

³⁵ See Times of Malta, *One in four people who applied for protection in 2022 was Syrian*, 3 March 2023. See also *Sea-Watch, Crimes of Malta*, for abuses documented for previous years [Accessed 11 Oct 2023].

³⁶ See Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. IMO, International Convention on Maritime Search and Rescue, 27 April 1979, 1403 UNTS; and IMO, International Convention for the Safety of Life At Sea, Regulation V/33, 1 November 1974, 1184 UNTS 3.



VOICES OF SURVIVORS OF THE JUNE 2023 'LEFT TO DROWN' CASE*

▀▀ Even though at one point we could see the big boat [a merchant vessel] coming towards us. (...) It came towards us, it just stayed next to us and they towed us to their boat. They gave us water and small food. We spent more than four hours sitting in the boat like that. No one came to us and no one came to our rescue. ▀▀

- A 17-year-old boy, rescued by MSF in June 2023

▀▀ They [the Maltese boat] gave us water, food, and three gallons of fuel. They told us: 'You are 50km away from Italy. There is no need for us to help you. Continue on your own.' ▀▀

- A 27-year-old man, rescued by MSF in June 2023

▀▀ Women were crying out for help. We really asked them [the Maltese boat] multiple times for help, but they refused all our demands. 'We do not need fuel, please help us, take us with you, please do not leave us in the middle of the sea,' we pleaded. 'Please at least take the women,' we emphasized. But they refused all our calls. ▀▀

- A 44-year-old man, rescued by MSF in June 2023

* Nationalities have been removed for protection reasons.

In addition to failing to coordinate rescues, MSF has documented cases in which Maltese authorities have ignored distress cases in its own area of responsibility despite being aware of them. In some cases, Maltese assets were even physically on scene.³⁷ The Maltese authorities generally adopt a narrow definition of what they consider to be a distress case. Based on this, boats that are still able to move are not regarded to be in distress, ignoring the condition of the boat, number of people on board, and other factors (see above).

Moreover, in the overall majority of distress cases in the Maltese area of competence, MSF witnessed Maltese authorities refusing to coordinate with NGO vessels that were ready and often best able to assist distress cases (they are often also the only assets in the vicinity) and instructing merchant vessels not to assist but to instead continue their journey or merely remain on standby and monitor the situation.

APRIL 2023: MALTA IGNORES 440 PEOPLE AT RISK OF DROWNING

On 4 April 2023, *Geo Barents* rescued 440 people from an overcrowded fishing vessel that was drifting in very poor weather conditions inside the Maltese SRR. Maltese authorities then accused *Geo Barents* of conducting an autonomous ‘interception’ and not a rescue operation.

We later learned that Malta had instructed two merchant vessels to “monitor” the boat and to not intervene, while not instructing *Geo Barents* to provide assistance, despite being on scene and best equipped to do so.

Survivors later reported to MSF they had been at sea for four days and had run out of food two days prior to the rescue, stressing the precarious situation on the boat. In addition, one survivor had to be evacuated for emergency medical care immediately after the rescue.

FACILITATING REFOULEMENT TO UNSAFE PLACES

Data and survivor testimonies collected by MSF throughout the past years shows the gradual withdrawal of EU ships from the Central Mediterranean and the shift to aerial surveillance as a means to facilitate pushbacks to Libya and prevent arrivals at Europe’s shores. EU assets—mainly aerial—increasingly monitor the Central Mediterranean far beyond the Italian and Maltese SRRs, and into the maritime space claimed as an area of responsibility by Libya. By keeping a close eye from the sky in order to locate and track boats in distress, the EU facilitates forced returns to Libya.³⁸ The positions of boats in distress are allegedly shared with the Libyan authorities rather than systematically sharing with nearby NGO rescue ships. This failure to inform other ships in the vicinity of distress cases creates unjustifiable delays, risking people’s lives and returning them to a cycle of arbitrary detention and abuse in Libya.

AUGUST 2023: EU BORDER AGENCY FRONTEX WITHHOLDS INFORMATION REGARDING A DISTRESS CASE

On 17 August 2023, the Frontex drone *Heron 1* circled above a boat in distress for around 30 minutes, as shown by the drone’s aerial track, before the civil aircraft *Seabird* (operated by Sea-Watch) eventually relayed the information.

Frontex did not share information about the case with MSF, neither by radio nor email. However, *Geo Barents* eventually conducted the rescue, and approximately one hour after completion, the Libyan Coast Guard vessel *662 Murzuq*—recently donated by Italy—approached *Geo Barents* and verbally threatened the ship over the radio, urging MSF to leave the area.

³⁷ Reuters, *Migrant’s drowning in Mediterranean prompts criticism of Malta’s rescue policies*, 17 October 2023. See also joint statement by Alarm Phone, MSF and Sea-Watch, 17 October 2023.

³⁸ See HRW and Border Forensics, *Airborne Complicity - Frontex Aerial Surveillance Enables Abuse*, 12 December 2022.

By delaying rescues and facilitating refoulement to unsafe places, coastal state authorities have deliberately put people's lives at risk in recent years. MSF has documented cases in which people were forcibly returned to unsafe places, exposing them to abuse and ill treatment.

OCTOBER 2022: MALTA INSTRUCTS MERCHANT SHIP TO TAKE SURVIVORS TO EGYPT INSTEAD OF CLOSER PORTS IN EUROPE

On 26 September 2022, 23 survivors disembarked in Egypt following instructions by the Maltese RCC. The survivors, among them Syrian nationals, had initially fled from Libya and were rescued by a merchant vessel inside the Maltese SRR while it was en route to Egypt.

At the time of the rescue, the people on board the small boat had already been at sea for four days, in poor weather conditions and with limited food and water.

Malta and Italy were not only the closest ports to the boat's position (144 and 159 nautical miles respectively) but also safe places for survivors to disembark. However, Maltese authorities instructed that the 23 people be taken 760 nautical miles to Egypt. While Egypt is a signatory to the 1951 Geneva Convention, the country lacks an adequate national legal framework for the protection of refugees and asylum seekers reported to be at risk of deportation back to their country of origin, including Syrian nationals.³⁹

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AUGUST 2023: ITALY FACILITATES THE PUSHBACK OF 100 PEOPLE TO LIBYA

On 25 August 2023, MSF was in contact with two merchant vessels navigating south of Crete, in the Libyan SRR. After spotting two boats in distress with about 100 people on board, the two merchant vessels stayed on standby for hours, under the instructions of the Italian MRCC. They eventually continued their route to Egypt. The fate of the people on board the boats remains unconfirmed, however it appears that the Libyan Coast Guard, informed by the Italian MRCC, most likely intercepted the boats and forcibly returned them to Libya.



³⁹ MSF, Sea-Watch, Alarm Phone, *Malta instructs rescue ship to take 23 people to Egypt rather than to closer ports in Europe*, 19 October 2022.



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SURVIVORS' ACCOUNTS: INTERCEPTED AT SEA AND FORCED BACK TO LIBYA

▀▀ *I tried for five months to leave [from Libya]. I tried, I tried, I tried. On the fourth attempt, we were standing on the shore where a small boat would carry us from the shore to the big fishing boat. (...) They put too many people on the small boat. It didn't hold. The small boat that goes to the bigger boat couldn't handle the load...The small boat could hold maybe ten to fifteen persons. They put forty people. There were children, women. The waves hit the small boat. The people panicked and stood up on the small boat. Eventually, the small boat hit the big boat: sixteen people died. Women and children among them. I saw it with my own eyes. ▀▀*

- A 26-year-old man from Cameroon, rescued by MSF in April 2023

An 18-year-old man from Cameroon attempted to cross the Mediterranean five times, and on the fifth attempt, he was rescued by *Geo Barents*.

▀▀ *The third attempt was in August 2020. I took the sea with 83 people, on a white inflatable boat. One woman was pregnant. At 7:30 in the evening, we saw the Libyans behind us. They came next to us, and they said 'stop, or we will shoot.' We said no, we cannot stop. They circled around us as we tried to escape. The captain refused to stop. They shot at the boat to deflate it. Water came inside. Then we did not have a choice. They threw a rope and stayed above us, shouting and insulting us. We helped the women onto the Libyan boat. We had to climb quickly. The water was coming into the boat, and it was going lower under the water. Two brothers, a Malian and a Guinean, drowned like this. The Libyans didn't go in the water, and left their bodies there. They took us again to the prison. ▀▀*

- An 18-year-old man from Cameroon, rescued by MSF in March 2022

CONCLUSION

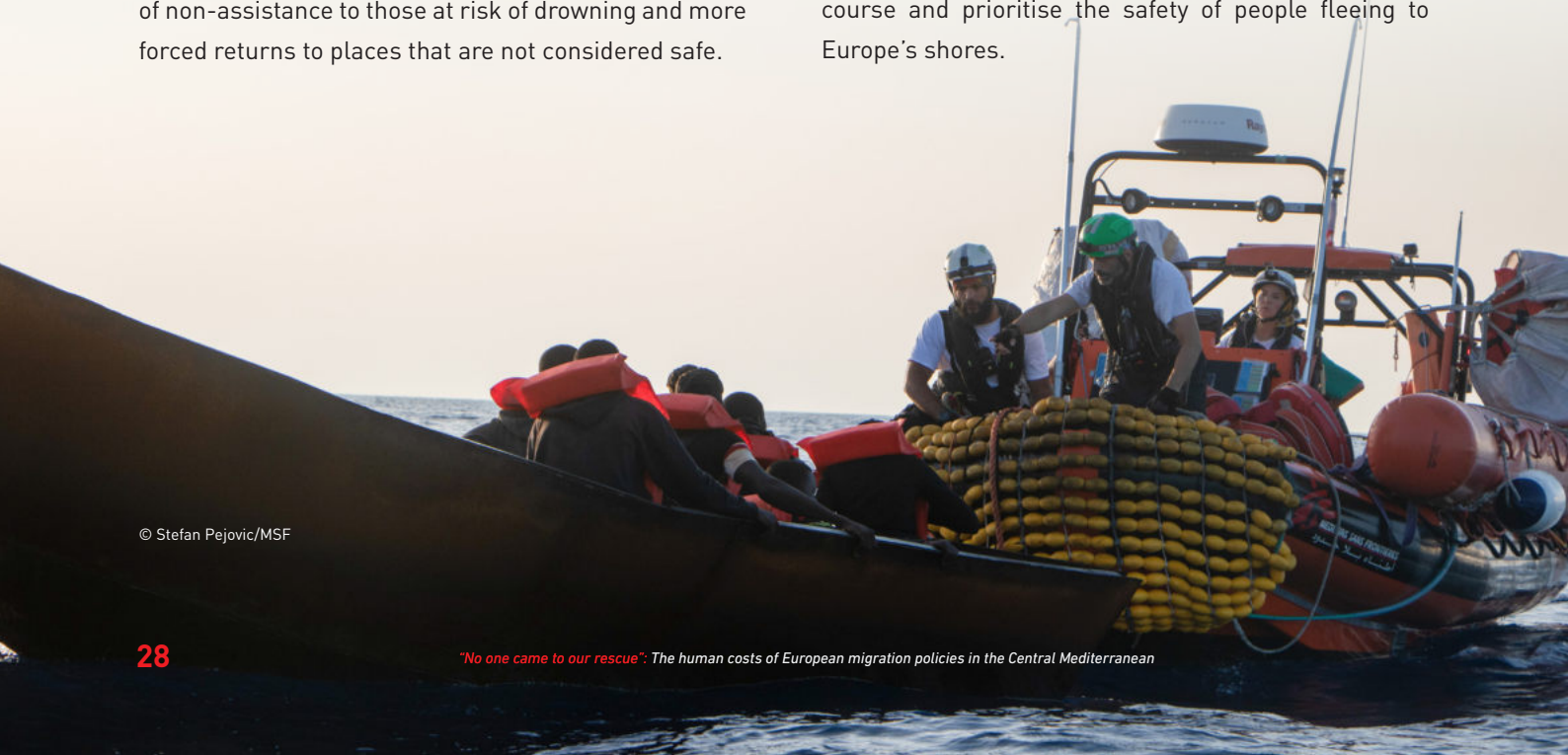
In the Central Mediterranean Sea, MSF continues to witness the complete disregard for the protection of human lives. For more than two years, our teams on board *Geo Barents* have treated the physical and mental health impacts of EU migration policies playing out at the EU's southern border. Our teams have witnessed first-hand the human costs of these policies, with the gradual disengagement by European member states from their duty to assist people in distress at sea, direct support to third countries resulting in forced returns to unsafe places, and increasing attempts to hinder the lifesaving assistance of NGOs at sea. Since the start of 2023, people seeking safety and protection at Europe's shores have faced an unwelcoming and dangerous Europe. Violent border practices have spread further and the number of shipwrecks has multiplied while people in search of safety are either locked up in unsafe places or left to drown at sea.

In 2023, the EU stepped up its efforts to extend agreements with third countries to Tunisia. In response to increased departures from the North African country, the EU sealed a deal with the Tunisian government based on the same violent methods of deterrence and containment that MSF has seen in Libya during the past several years. MSF warns that the agreement between Tunisia and the EU will lead to the same harmful policies and practices we have witnessed in Libya and in the Central Mediterranean, resulting in more cases of non-assistance to those at risk of drowning and more forced returns to places that are not considered safe.

Instead of offering a solution to the immense suffering and distress of people seeking safety and protection at Europe's shores, the EU and its member states have introduced new policies, laws and practices that show little to no regard for the human cost.

In the meantime, attempts by authorities to restrict humanitarian assistance at sea have reached a new peak in Italy since the change in government in late 2022 and the implementation of a new law and new rules seriously limiting the capacity of MSF and other NGOs to assist those at risk of drowning. The new practice of assigning ports far from the initial rescue location effectively means that MSF has spent over 70 days in the first nine months of 2023 navigating to and back from distant ports. Being requested to head back to port immediately after each rescue, MSF has been in several cases practically forced to leave open distress cases behind. The policies and measures implemented against SAR NGOs in 2023 are new, but the objective of obstructing humanitarian assistance at sea is not. While the new rules target NGO vessels, the real price will be paid by those fleeing across the sea.

The Central Mediterranean remains the deadliest maritime border. With no political solution in near sight, European leaders and institutions cannot allow the obstruction of humanitarian assistance at sea to continue. It is high time for EU institutions and European states, especially Italy and Malta, to immediately change course and prioritise the safety of people fleeing to Europe's shores.



In light of the ever-rising death toll in the Central Mediterranean, MSF calls for:



An end to EU deterrence policies that come at the cost of human lives:

- The EU and its member states must end policies based on deterrence and the outsourcing of border management, which result in forced returns and refoulement to unsafe places;
- The EU and its member states must halt all material and financial support to governments responsible for serious human rights violations;
- The UN and its bodies should recognize that Tunisia cannot be considered safe and call on all actors not to disembark survivors from distress at sea there.



Proactive and lawful coordination of rescues at sea:

- European member states, and coastal states Italy and Malta in particular, must fulfil their duty to assist persons in distress at sea, investigate abuses at sea, and ensure timely, dignified rescue in line with international maritime law and regulations as well as disembarkation in a safe place;
- EU coastal states must share available information about distress cases with actors able to assist and make full use of all available assets for search and rescue operations, including vessels operated by NGOs;
- The EU and its member states must establish a dedicated, proactive state-led search and rescue mechanism and deploy dedicated search and rescue ships to the Central Mediterranean with the clear objective of saving lives at sea and ensuring disembarkation in a place of safety;

- EU agencies present at sea, especially Frontex, must fulfil their legal duty to assist persons in distress at sea and proactively share information on distress cases with all ships able to assist.



An immediate end to the obstruction of humanitarian assistance at sea:

- Italy must halt all restrictions imposed on civilian rescue ships and cease the implementation of laws and praxis hindering and obstructing civilian SAR activities in the Central Mediterranean, including measures that raise serious concerns about their compatibility with national, international, and EU law regarding search and rescue activities at sea;
- The European Commission, as guardian of the EU treaties, must urgently put Italy's Law 15/2023 and the practice of assigning distant ports under scrutiny and open infringement procedures against Italy if no changes are implemented. Further, it must carry out an in-depth review of the widely documented criminalisation of search and rescue activities in Italy.



The creation of safe and legal pathways for those seeking safety and protection in Europe:

- The EU and its member states must prioritise the protection of life and ensure people trapped in unsafe places have other options besides risking their lives by crossing the sea.



MSF ACTIVITIES IN THE CENTRAL MEDITERRANEAN

MSF has been running search and rescue activities in the Central Mediterranean since 2015, working on eight different search and rescue vessels (alone or in partnership with other NGOs). Since 2015 our teams have provided lifesaving assistance to more than 90,000 people in distress at sea.

The decision to continue our search and rescue operations was dictated by the lack of dedicated, state-led search and rescue operations in the Central Mediterranean. MSF relaunched search and rescue activities in the Central Mediterranean in May 2021, chartering its own ship, *Geo Barents*, to save lives, provide emergency medical care to rescued people, as well as make survivors' voices heard from the world's deadliest sea border.

