

Situation in Libya – Article 15 Communication to the ICC Prosecutor on the Commission of Crimes Against Migrants and Refugees: Interceptions at Sea and Return to and Detention in Libya are Crimes Against Humanity

EXECUTIVE SUMMARY

I. Introduction

1. The European Center for Constitutional and Human Rights (ECCHR) files this Communication to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC or the Court) under Article 15 of the Rome Statute. In the context of the atrocious crimes committed against migrants, refugees, and asylum seekers (hereinafter migrants and refugees) in Libya, as already documented in a [previous Communication](#),¹ this Communication concludes that their interception while in distress in the Central Mediterranean Sea, and their return to and systematic detention in Libya, amount to crimes against humanity. More precisely, the Communication argues that the interceptions and returns, rather than “sea rescue” operations, are crimes against humanity in the form of the severe deprivation of physical liberty (Article 7(1)(e) of the Rome Statute), committed as part of the widespread and systematic attack against migrants and refugees in Libya. The Communication also shows that the ICC has jurisdiction over these crimes in the context of the ongoing investigation into the Situation in Libya.
2. The Communication details 12 exemplary incidents of the interception of migrants and refugees at sea and their return to and detention in Libya between 2018 and 2021. The incidents present a particularly clear and detailed picture of the cooperation between European Union agencies (particularly the European Commission, EUNAVFOR MED, and Frontex) and Member States (including Italy and Malta) with Libyan actors, on both the policy and operational levels, with regard to the interception of migrants and refugees at sea for the purpose of their return to and detention in Libya. The Communication presents information and evidence, drawn from publicly available data, as well as first-hand materials from sea rescue organizations, which point to the alleged criminal liability of specific individuals, namely high-ranking officials of

¹ ECCHR, FIDH, and LFJL Art. 15 Communication to the ICC, November 2021, full redacted version available at: https://www.ecchr.eu/fileadmin/user_upload/Redacted_Art_15_Communication_to_the_ICC_on_crimes_against_refugees_and_migrants_in_Libya.pdf

EU Member States and EU agencies. These individuals are alleged to have acted according to a common plan that resulted in the commission of the crimes at stake and, therefore, are indicated as co-perpetrators under Article 25(3)(a) of the Rome Statute.

3. This Communication to the ICC builds on and extends the scope of the previous Article 15 Communication filed by ECCHR, together with the International Federation for Human Rights (FIDH) and Lawyers for Justice in Libya (LFJL), in November 2021. While that Communication focused on individual criminal liability of high-ranking actors in Libya for alleged crimes against humanity perpetrated against migrants and refugees in the context of detention and transit on Libyan territory, this Communication adds new factual evidence and legal analysis with respect to the interception at sea and return to Libya of migrants and refugees fleeing Libyan territory.
4. In collecting the evidence which forms the basis of this Communication, ECCHR worked in collaboration and exchange with several civil society organizations. In particular, the sea rescue organization Sea-Watch has provided valuable first-hand documentation accumulated during their civil rescue operations at sea and monitoring in the air. Over the course of multiple interactions, Sea-Watch also provided important insight into and assessment of the factual circumstances based on their extensive sea rescue experience. Other sea rescue and civil society organizations, including Initiative Watch the Med – Alarm Phone, Open Arms, Border Forensics, Frag den Staat, and Human Rights Watch, as well as several investigative journalists, provided crucial information on the collaboration between Libyan actors and officials of EU agencies and Member States and on the complex network of actors jointly involved in aspects of border management. Additional information was collected and analyzed from reliable public reports and open-source data.
5. The 12 exemplary incidents included in the Communication expose the multiplicity of entities and actors from EU Member States and EU agencies involved in the alleged common plan with internationally recognized Libyan authorities to intercept migrants and refugees at sea and contain them on Libyan territory. This common plan has been enacted through the implementation of interceptions and returns of migrants and refugees fleeing Libya by sea, along with other border and migration management measures. Based on the materials and analysis presented in the Communication, a number of high-ranking officials from EU Member States and EU agencies are identified, along with evidence demonstrating each of these individuals' essential contributions to the common plan. Based on this, the Communication argues that there are reasonable grounds to believe that the identified individuals can be held criminally responsible, together with Libyan actors, as co-perpetrators of the crime of severe deprivation of physical liberty of migrants and refugees as a crime against humanity.
6. The list of alleged perpetrators and corresponding mode of liability analyzed herein focuses on high-level officials and is not exhaustive. This does not exclude that the conduct outlined in this

Communication may be qualified as other crimes under the Rome Statute or that alternative modes of liability, namely accessory modes of liability, such as aiding and abetting, may be established for the individual criminal responsibility of actors involved in interceptions of migrants and refugees at sea and their return to Libya. ECCHR urges the Prosecutor to open an investigation into these crimes and into the individual criminal responsibility of all relevant suspects.

II. Background

7. For years, the Central Mediterranean route has been considered one of the world's deadliest migration routes. Since 2014, over 20,000 migrants and refugees have died or gone missing on the Central Mediterranean route alone.² While this tragedy has many intersecting causes, the decision of EU agencies and Member State governments to prioritize border control and migration management over sea rescue in the Mediterranean in recent decades has likely played a key role. Since the early 2000s, the EU and certain EU Member States have enacted migration management policies seeking to combat so-called "illegal migration"³ to Europe. This has included evolving policies of engagement with Libyan authorities and entities to stem increasing migration flows from Libya to Europe. The Communication traces the evolution of these cooperative policies in three main phases: (1) before 2011; (2) from 2011 to 2015; and (3) from 2016 to the present.
8. Prior to the 2011 uprising in Libya, when there was a still functioning central government, EU agencies, as well as individual Member States (such as Italy), engaged directly with the Gaddafi regime to manage increased migration flows from Libya to Europe. During 2011 – 2015, due to the volatile internal situation in Libya and the lack of a unified national government, it was difficult for EU Member States and EU agencies to effectively engage with Libya. Hence, while still making some efforts to maintain cooperation with internationally recognized Libyan authorities, their efforts shifted to migration management approaches that focused on curbing the movement of migrants and refugees both before entering Libyan territory and after leaving Libyan territory, e.g., by sea. From 2016 onwards, EU agencies and Member States began to significantly increase their provision of material, capacity-building, and operational support to Libyan actors, such as the so-called Libyan Coast Guard (hereinafter "scLCG"), to contain

² Missing Migrants Project, *Migration within the Mediterranean*, figures updated as of 12 November 2022, <https://missingmigrants.iom.int/region/mediterranean>

³ A UN General Assembly resolution in as early as 1975 has stated that the term "illegal" should not be used to refer to migrants in an irregular situation. See United National General Assembly, Thirtieth Session, Resolution No. 3449, 9 December 1975, <https://digitallibrary.un.org/record/189610?ln=en>. Other institutions, such as the UN Office of the High Commissioner for Human Rights, the European Parliament, the Council of Europe Parliamentary Assembly, and the Council of Europe Commissioner for Human Rights, have also urged for a shift away from this language.

migrants and refugees in Libya, inter alia, through their interception at sea and return to Libyan territory. As detailed in the Communication, the operational support provided has included giving distress location information to the scLCG and even coordinating interceptions in specific incidents. Such support shows the decisive role officials of EU Member States and EU agencies play in interceptions at sea and the subsequent return of migrants and refugees to Libya.

9. The transformation of this engagement with Libya by EU Member States and EU agencies has largely been driven by the latter's interest in avoiding the legal obligations triggered when people seeking protection arrive on EU Member States' territory or within their respective scope of responsibility at sea. Beyond support to and cooperation with Libyan authorities for interceptions and returns, these interests have also driven other policy shifts by EU Member States and EU agencies. These have included increasingly withdrawing from direct engagement in sea rescue activities in the Mediterranean and taking a range of actions to deter civil sea rescue organizations and commercial ships from disembarking rescued migrants and refugees on European territory.

III. Jurisdiction

10. ECCHR submits that the commission of crimes against humanity, namely the severe deprivation of physical liberty of migrants and refugees in violation of fundamental rules of international law, occurring during interceptions at sea and their subsequent return to and detention in Libya, falls under the jurisdiction of the ICC, based on the referral of the United Nations Security Council (UNSC) to the Court.
11. UNSC Resolution 1970 (2011) referred the situation in the Libyan Arab Jamahiriya (now State of Libya) on 15 February 2011 to the ICC. The territorial jurisdiction of the ICC encompasses the whole territory of the State of Libya, including the mainland and territorial waters. It also includes vessels in international waters flying a Libyan flag, such as those operated by the scLCG or Libya-flagged merchant vessels.
12. Resolution 1970 does not limit the temporal jurisdiction of the Court and, thus, covers crimes committed from 15 February 2011 onwards, as long as they are sufficiently connected with the situation as referred to by the UNSC.
13. In terms of personal jurisdiction, Resolution 1970 covers the conduct of Libyan nationals, as well as nationals of ICC States Parties potentially involved in the commission of international crimes in the Libyan context. The Resolution only exempts nationals, current or former officials, or personnel of non-States Parties in relation to operations established or authorized by the UNSC in Libya, unless such exclusive jurisdiction has been waived by the State. As such, nothing precludes the OTP from investigating the responsibility of nationals of States Parties allegedly involved in the commission of crimes against migrants and refugees in the Libyan

context, as is the case with the nationals of Italy, Malta, France, Belgium, and Spain identified as alleged co-perpetrators in this Communication, along with Libyan nationals.

14. In regard to individuals that are officials of EU agencies, they generally enjoy immunity from legal proceedings for acts performed in their official capacity, including after they have ceased to hold office.⁴ However, under Article 12 of the agreement concluded by the EU and ICC defining their terms of cooperation and assistance, the EU is obliged to waive immunity according to the relevant rules of international law to allow the Court to exercise its jurisdiction.⁵
15. Finally, Resolution 1970 does not restrict the Court's subject matter jurisdiction. In his latest report to the UNSC, the ICC Prosecutor reiterated that crimes against migrants and refugees are part of his Office's investigative focus on the Situation in Libya and that "the Office's preliminary assessment is that these crimes may constitute crimes against humanity and war crimes."⁶ This Communication submits additional facts and analysis regarding alleged crimes against humanity against migrants and refugees in the context of the ongoing Situation in Libya, satisfying the necessary link for subject matter jurisdiction.

IV. Severe Deprivation of Physical Liberty as a Crime Against Humanity

16. This Communication argues that the interceptions of migrants and refugees at sea and their return to and detention in Libya constitute crimes against humanity. To qualify as crimes against humanity, the alleged criminal conduct must occur as part of a widespread or systematic attack against a civilian population. This Communication argues that the interception of migrants and refugees at sea and their return to and detention in Libya constitute part of the widespread and systematic attack against migrants and refugees in Libya since 2011, as already identified in the previous 2021 Communication.⁷
17. Since 2011, a broad criminal system has developed in Libya aimed at the exploitation of migrants and refugees and enacted through their subjection to violence and inhumane living, detention, and transport conditions. The crimes committed against migrants and refugees – including unlawful detention, torture, murder, persecution, sexual violence, enslavement, and other inhumane acts – are not singular or isolated but, rather, constitute part of a course of conduct.⁸ The attack is systematic in that it follows clear patterns and the crimes are committed

⁴ Protocol (No 7) on the Privileges and Immunities of the European Union, 26 October 2012, Art 11(a), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F07>.

⁵ International Criminal Court, Agreement between the International Criminal Court and the European Union on Cooperation and Assistance, 10 April 2006, ICC-PRES/01-01-06, https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/6EB80CC1-D717-4284-9B5C-03CA028E155B/140157/ICCPRES010106_English.pdf.

⁶ OTP, Twenty-Fourth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011), 9 November 2022, para. 68, <https://www.icc-cpi.int/sites/default/files/2022-11/2022-11-09-otp-report-unscc-libya-eng.pdf>.

⁷ ECCHR, FIDH, and LFJL Art. 15 Communication to the ICC, November 2021, para. 389 ff.

⁸ ECCHR, FIDH, and LFJL Art. 15 Communication to the ICC, November 2021, para. 393; UN Security Council, Panel of Experts on Libya, Final report of the Panel of Experts on Libya established pursuant to

in pursuance of an apparent policy, implemented by Libyan State and non-State actors alike. While grounded foremost in Law No. 19 of 2010, which authorizes the detention and forced labor of migrants and refugees, such a policy is also evident through other agreements and patterns of conduct. The attack is widespread, as it is directed against thousands of migrants and refugees of different nationalities, religions, genders, and racial and ethnic groups across the entire Libyan territory and – through interceptions and returns – also at sea, not only within Libyan waters but also extending into international waters, including the Libyan, Maltese, and Italian Search and Rescue (SAR) zones.

18. Interceptions at sea of migrants and refugees fleeing Libya for the purpose of returning them to Libyan territory are part of this course of conduct. The interceptions and returns are widespread and carried out in a systematic manner, evident in their well-documented repetition and patterns of conduct. Once intercepted at sea and deprived of their liberty, it is virtually certain that migrants and refugees will be returned to Libya and put into detention facilities through “a systematic transfer” and remain there for indefinite periods of time, while subjected to intolerable conditions.⁹ In this way, interceptions and returns form part of the broader system of exploitation and abuse in which migrants and refugees are the main “commodity.”
19. With knowledge of the above, EU agencies and Member States continued to conclude various resolutions, strategies, and agreements with Libyan authorities and entities enmeshed in this system of exploitation and abuse, such as the scLCG. In the framework of such agreements, they have provided Libyan actors with material, capacity-building, and operational support, including the location of migrants and refugees in distress at sea, for conducting interceptions, returns, and detention.
20. The Communication argues that the severe deprivation of migrants and refugees’ physical liberty, under the coordination of Libyan actors and officials of EU Member States and EU agencies, begins from the point when they are intercepted at sea, and continues as they are returned to Libya, where they are systematically placed in detention facilities. This deprivation of liberty is to be considered severe because it violates fundamental rules of international law, including the right to be free from arbitrary detention, the right to a fair trial, and the principle of non-refoulement.
21. International treaties, such as the International Covenant on Civil and Political Rights (ICCPR), protect the right to be free from arbitrary detention and the right to a fair trial. These protections are breached, as the apprehension of migrants and refugees at sea is not the result of a conviction

resolution 1973 (2011), 5 September 2018, para. 48, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/243/84/PDF/N1824384.pdf?OpenElement>; and UN Security Council, Panel of Experts on Libya, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), 27 May 2022, p. 15-17, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/334/41/PDF/N2233441.pdf?OpenElement>.

⁹ Human Rights Council, *Report of the Independent Fact-Finding Mission on Libya* (Advanced Unedited Version), A/HRC/48/83, 1 October 2021, para. 68, <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>.

for an offense and entails no legal option for them to refuse or challenge the deprivation of their liberty. Even if it were to be accepted that the interceptions are rescue operations carried out in fulfillment of the international law of the sea and search and rescue regulations, the lack of procedural guarantees for the migrants and refugees during their subsequent return, disembarkation, and detention in Libya demonstrates the contrary. The inhumane conditions in detention centers and the commission of other crimes against humanity in these settings also make the deprivation of liberty unjustified and disproportionate.

22. The principle of non-refoulement – which prohibits States from returning individuals to a country where they risk being subjected to ill-treatment or other human rights abuses – is also violated during interceptions and returns to Libya. As laid out in this Communication, the principle of non-refoulement, a substantive legal principle, is an important element of both international search and rescue law and international refugee law. It is also included in international human rights law¹⁰ and is considered to be customary international law.¹¹ As such, the non-refoulement principle should be regarded as a fundamental rule of international law that is relevant for the assessment of the severe deprivation of physical liberty, including in the context of the interception of migrants and refugees at sea and their return to and detention in Libya.

V. Co-Perpetration as the Mode of Liability

23. In accordance with the OTP's strategic approach, this Communication focuses on high-ranking officials of EU Member States and EU agencies, as well as Libyan actors, that are the “most responsible”¹² and analyses their mode of liability in terms of co-perpetration. In line with the standards set by Article 25(3)(a) of the Rome Statute and ICC jurisprudence, the analysis lays out documentation relevant for establishing the common plan element, as well as the essential contribution and mental elements of specific individuals. The Communication assesses available documentation that indicates the existence of a common plan between EU agencies' and Member States' officials and Libyan actors to intercept migrants and refugees fleeing via the Central Mediterranean route, with the aim of containing them in Libya. The essential contributions provided by the alleged co-perpetrators include, on the one hand, the establishment of frameworks of cooperation between EU officials and internationally

¹⁰ Human Rights Committee, General comment No. 36, CCPR/C/GC/36, 3 September 2019, para. 31, <https://www.refworld.org/docid/5e5e75e04.html>

¹¹ See UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994, <https://www.refworld.org/docid/437b6db64.html>; and European Commission, Migration and Home Affairs, Non-Refoulement, https://home-affairs.ec.europa.eu/pages/glossary/non-refoulement_en

¹² OTP, *Policy Paper on Case Selection and Prioritisation*, 15 September 2016, para. 42, https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf.

recognized Libyan authorities, such as Memoranda of Understanding, and on the other hand, the provision of material, capacity-building, and operational support, including information on the location of migrants and refugees in distress at sea obtained through surveillance activities.

24. The list of alleged co-perpetrators includes former and present Maltese Prime Ministers, the Armed Forces of Malta (AFM) Head of Plans and Intelligence, a former Special Envoy of the Office of the Prime Minister, and members of the Rescue Coordination Center (RCC) Malta and the AFM; Italian former Ministers of the Interior, the former Chief of Staff of the Minister of the Interior, the Commander General of the Italian Coast Guard, the Commander of Maritime Rescue Coordination Center (MRCC) Rome, and members of the Italian MRCC; the Operation Commander and the Force Commander of EUNAVFOR MED Operation Sophia, crew members of EUNAVFOR MED aerial and naval assets; Frontex former Executive Director, former Head of Surveillance Sector, former Head of Situation Center (FSC) and Head of Situational Awareness and Monitoring Division, and officials participating in Joint Operation Themis, the FSC, or Multipurpose Aerial Surveillance (MAS); former High Representative of the Union for Foreign Affairs and Security Policy, former European External Action Service (EEAS) Deputy Secretary General, former Chairperson of the EU Political and Security Committee (PSC); the former Prime Minister of the Libyan Government of National Accord (GNA), the Foreign Minister, the Interior Minister, the Deputy Prime Minister, the former and present Ministers of Defense, former and current Head of the Directorate for Combating Illegal Migration (DCIM), members of the scLCG, and members of militias and armed groups operating nominally under the DCIM, and the crew of Libyan merchant vessels involved in interceptions.
25. The list of alleged perpetrators and the modes of responsibility provided herein are not exhaustive. Due to the opaque nature of European agencies like Frontex, it is crucial that the ICC uses its investigative powers to obtain information and evidence that cannot be gained by civil society actors or by national prosecutors. Annex III contains a detailed list of suggested additional evidence to be gathered by the OTP, and the OTP is urged to conduct further investigation into the identified and unidentified individuals involved in the alleged crimes.

VI. Admissibility and Interests of Justice

26. This Communication further elaborates on the admissibility of the cases included therein, pursuant to Art. 17(1) of the Rome Statute. It is evident that both Libyan and European national authorities have failed to investigate these acts and prosecute those responsible.
27. Libya lacks appropriate legislation regarding international crimes and its justice system has been weakened by a decade of ongoing armed conflict and the absence of unitary and recognized institutions. Regarding crimes against migrants and refugees, the Libyan judiciary has limited

its inquiry strictly to smuggling and trafficking, which fails to address the widespread and systematic nature of these crimes, as well as the gravity of the conduct.

28. As for the European national authorities, ECCHR welcomes the efforts and progress of the Joint Team investigating crimes against migrants, composed of the OTP, Europol, and national authorities in Italy, the Netherlands, United Kingdom, and Spain.¹³ Most recent extraditions of suspects involved in crimes against migrants and refugees in Libya have focused on the crime of trafficking.¹⁴ While an important first step in guaranteeing victims' and survivors' right to justice, investigating and prosecuting these only as transnational crimes does not encompass the grave and systematic context of violence against migrants and refugees as well as the involvement of officials of EU agencies and Member States.
29. For the incidents considered in this Communication, Malta and Italy have been identified as the main relevant domestic fora. In Malta, authorities have only opened one inquiry into an interception at sea since the country's 2002 incorporation of the Rome Statute into its national laws.¹⁵ This inquiry lacked impartiality and a thorough assessment of the facts and of the alleged involvement of Maltese authorities.¹⁶ In general, it has been observed that the "Maltese police and judiciary may have failed to investigate reports of human rights violations deriving from the actions of the government and the AFM [Armed Forces of Malta] to prevent the arrival of refugees and migrants in the past."¹⁷ As such, the Maltese authorities' inability and unwillingness to investigate and prosecute is clear.
30. In Italy, the legal system currently lacks appropriate legislation on crimes against humanity as international crimes that could fully capture the widespread and systematic nature of these crimes. Thus, the effectiveness and appropriateness of prosecution of such crimes against migrants and refugees, including the severe deprivation of physical liberty, is compromised.¹⁸ To date, Italian judicial authorities have received two criminal complaints regarding one of the interceptions included among the incidents in this Communication, which, so far, have resulted in no indictments. For other interceptions at sea that did trigger legal proceedings against Italian officials in Italy, none led to accountability, as the prosecutors in charge either decided not to

¹³ OTP, Twenty-Fourth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011), 9 November 2022, para. 70 ff., <https://www.icc-cpi.int/sites/default/files/2022-11/2022-11-09-otp-report-unsc-libya-eng.pdf>.

¹⁴ OTP. Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya, 7 September 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint-0>

¹⁵ Amnesty International, *Malta: Waves of impunity - Malta's human rights violations and Europe's responsibilities in the central Mediterranean*, September 2020, p. 16, <https://www.amnesty.org/en/documents/eur33/2967/2020/en/>.

¹⁶ InfoMigrants, *Maltese prime minister cleared of migrant death-related homicide charges*, 1 June 2020, <https://www.infomigrants.net/en/post/25109/maltese-prime-minister-cleared-of-migrant-deathrelated-homicide-charges>.

¹⁷ Amnesty International, *Malta: Waves of impunity – Malta's human rights violations and Europe's responsibilities in the central Mediterranean*, September 2020, p. 16, <https://www.amnesty.org/en/documents/eur33/2967/2020/en/>.

¹⁸ See Italian Penal Code, Articles 605 and 606.

proceed with indictments or requested dismissals, despite abundant evidence indicating criminal responsibility. This shows the Italian authorities' inability and unwillingness to investigate and prosecute.

31. In addition, this Communication assesses the scale, nature, and manner of commission of the crimes, as well as their impact, concluding that the gravity criterion under the Rome Statute has been fulfilled.
32. Finally, there is no reason to believe that opening an investigation and prosecuting officials of EU Member States and EU agencies for the crimes committed against migrants and refugees at sea would not serve the interests of justice. On the contrary, the involvement of the Maltese and Italian authorities, as well as officers of the EU agencies, including the EU Commission, EUNAVFOR MED, and Frontex, in the commission of grave crimes against migrants and refugees speaks to the paramount importance of investigating and prosecuting the individuals within these entities. The assessment of these responsibilities is a fundamental part of the pursuit of justice for the victims of crimes against humanity. Not addressing the responsibilities of these actors for the crimes perpetrated would not only encourage impunity, but also raise suspicion of the double standards applied to Western leaders vis-à-vis those from Global South countries. The lack of investigation and prosecution, rather than the contrary, would clearly be against the interests of justice.
33. These cases must be addressed by the ICC, as it is the best placed institution to conduct a thorough and complete investigation into the complex network of collaboration between European and Libyan actors and the resulting unlawful practices, including the commission of crimes against humanity. Besides the commendable efforts of national prosecutors and the Joint Team in investigating crimes against migrants, only the ICC can properly deal with the structural dimension of the crimes committed beyond the responsibility of low-level perpetrators and hold accountable those at higher echelons, whose potential immunity could bar prosecution in domestic courts. In this respect, the ICC is the only possible avenue for breaking the cycle of impunity and assessing the individual criminal responsibility of high-level perpetrators.
34. In light of the documentation submitted with this Communication and upon thorough analysis, ECCHR respectfully requests the Prosecutor to urgently proceed with the investigation and prosecution of those responsible for the grave crimes, under the ICC jurisdiction, committed against migrants and refugees in Libya, in particular during and after their interceptions at sea.