



April 2, 2012

Gerd Leers
Minister of Immigration, Integration, and Asylum Policy

Dear Minister Leers,

We, the undersigned 5 human rights organizations, are writing to urge you not to return Abu Kurke Kebato, a 23-year-old Ethiopian, and his 21-year-old wife Seena Tafse Mohammed, also an Ethiopian national, to Italy. We understand that both were detained on March 29, 2012 pending deportation to Italy on April 5, 2012.

Mr. Kurke Kebato and his wife were granted refugee status in Italy in October 2011, but we strongly urge you to grant them leave to remain in the Netherlands on humanitarian grounds.

We believe that Mr. Kurke Kebato's experiences of repeated traumatic crossings of the Mediterranean, ill-treatment in detention in Libya following a push-back by the Italian authorities in 2010, and lack of state support in Italy for asylum seekers and recognized refugees, including crucial psycho-social assistance for someone with Mr. Kurke Kebato's vulnerabilities, require exceptional measures to ensure his full rehabilitation and integration. We call on you to offer him and his wife this chance in the Netherlands.

Mr. Kurke Kebato as a particularly vulnerable person

Mr. Kurke Kebato is one of the nine survivors of a fateful boat crossing in late March/early April 2011 in which 63 people died attempting to flee conflict-torn Libya. This tragic loss of life has been the subject of significant attention because survivor testimonies, including that of Mr. Kurke Kebato, as well as official information indicate that the boat was left to drift for two weeks in the Mediterranean despite distress signals and contact with a military helicopter, a military warship, and two fishing vessels. The boat eventually drifted back to the Libyan coast on April 10, 2011.

On March 29, 2012, the same day Mr. Kurke Kebato was detained in the Netherlands, the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe (PACE) published a report providing a detailed account of the failures of numerous authorities, including the Italian government, to respond appropriately to the boat in distress.ⁱ The Migration Committee has drafted a resolution calling on all Member States to “use their humanitarian discretion to look favourably on any claims for asylum and resettlement” from survivors of the boat tragedy in April 2011.

This was the second time Mr. Kurke Kebato had attempted to cross the Mediterranean. In 2010, the boat he was on was intercepted at sea and pushed back to Libya under the terms of the Italy-Libya immigration cooperation agreement in force at the time. The European Court of Human Rights (ECtHR) ruled in February 2012 that this interdiction policy violated Italy’s nonrefoulement obligations under the European Convention of Human Rights (ECHR).ⁱⁱ

Upon his forced return to Libya in 2010, Mr. Kurke Kebato was detained for eight months during which time he alleges he was subjected to torture and cruel, inhuman and degrading treatment. Numerous authoritative sources, including Human Rights Watch, documented grave ill-treatment of migrants and asylum seekers in Gaddafi-ruled Libya.ⁱⁱⁱ

Inadequate reception conditions for refugees in Italy

Mr. Kurke Kebato and his wife successfully crossed the Mediterranean and arrived in Italy on May 7, 2011. Pending review of their applications for asylum, lodged on May 31, 2011, the couple were provided housing in the southern state of Basilicata. Italy’s decision to grant them refugee status was communicated to the couple in October 2011. At this point they were required to give up their housing arrangement and remained homeless. Mr. Kurke has stated that he suffers from insomnia and trauma, but was unable to obtain specialist help. Without a permanent address, they were unable to acquire national health insurance cards and thus unable to seek necessary physical and mental health care. They therefore left Italy for the Netherlands in December 2011. Mr. Kurke had a referral to a mental health specialist in the Netherlands when he was detained.

Their experience testifies to serious deficiencies in reception conditions for asylum seekers and refugees in Italy documented by human rights organizations. A February 2010 report by the German organization Pro Asyl chronicled the forced destitution of recognized refugees in Italy, left homeless and bereft of essential services in a system wholly inadequate for the numbers of asylum seekers and refugees present in Italy at the time.^{iv} The influx of over 34,000 asylum seekers arriving from Libya in 2011 further overwhelmed the system.

It is also important to note that the ECtHR has issued interim measures in at least five cases since October 2011 to stay removals to Italy under the EU’s Dublin Regulations.^v One of those cases concerns an Eritrean woman who had also been granted refugee status in Italy before traveling to the United Kingdom, where she also applied for asylum.^{vi} In that case, as in the other four, the ECtHR took into consideration the particular vulnerability, including physical and mental health needs, of the individual in issuing the interim measures.

In all of these cases, the Court was asked to rule on whether a return to Italy would violate ECHR Article 3 prohibiting the return of a person to the risk of torture or cruel, inhuman or degrading treatment. The leading case in this area with respect to Dublin returns is *MSS. v. Belgium and Greece*, of 21 January 2011, in which the Court held that the return from Belgium to Greece of an Afghan asylum seeker would have constituted a violation of ECHR Article 3.^{vii}

National tribunals have also blocked returns to Italy due to similar concerns about reception conditions for asylum seekers. For example, between December 2010 and November 2011, German courts blocked at least 41 returns to Italy on these grounds.

Procedure in the Netherlands

Mr. Kurke Kebato and his wife travelled to the Netherlands on December 21, 2011. They applied for asylum on January 16, 2012. Only eight days later, on January 24, 2012, your office rejected the application and ordered their return to Italy. The couple lodged an appeal against this decision with the Regional court of Zwolle, which was rejected on February 22, 2012. Their lawyer filed an appeal with the Supreme Court on March 30, 2012, to suspend execution of the removal order, as well as an appeal on the merits of the decision. The lawyer appealed to the ECtHR on April 2, 2012 for interim measures.

Regardless of the outcome of these appeals, we call on you to order their immediate release from detention and to take all necessary steps to assure their authorization to begin a new life in the Netherlands.

We thank you for your consideration and remain at your disposal if you require further information.

Sincerely,

Human Rights Watch

Amnesty International

Gisti

International Federation for Human Rights

Migreurop

ⁱ Parliamentary Assembly of the Council of Europe, Report of the Committee on Migration, Refugees and Displaced Persons, *Lives Lost in the Mediterranean Sea: who is responsible?*, Rapporteur Ms. Tineke Strik, adopted on March 29, 2012. The report is available at http://reliefweb.int/sites/reliefweb.int/files/resources/20120329_mig_RPT.EN_.pdf (accessed March 30, 2012).

ⁱⁱ ECtHR, Grand Chamber, Judgement of 23 February 2012, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09.

ⁱⁱⁱ Human Rights Watch (HRW), *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, September 2009,

<http://www.hrw.org/reports/2009/09/21/pushed-back-pushed-around-0>; HRW, Libya: Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees, September 2006, <http://www.hrw.org/en/node/11164/section/1>.

^{iv} Maria Bethke and Dominic Bender, "The Living Conditions of Refugees in Italy," Pro Asyl, February 2011, http://www.proasyl.de/fileadmin/fm-dam/q_PUBLIKATIONEN/2011/Italyreport_en_web_ENDVERSION.pdf (accessed March 30, 2012); Doctors Without Borders, Seeking Refuge, Finding Suffering, May 2011, <http://www.msf.org/articles/2011/05/italy-must-drastically-improve-conditions-facing-refugees-asylum-seekers-and-migrants-fleeing-north-africa-including-libya.cfm> (accessed April 2, 2012). See also a series of investigative reports on the situation of asylum seekers and refugees in Italy published in *La Repubblica* newspaper in November 2011, http://inchieste.repubblica.it/it/repubblica/rep-it/2011/11/20/news/profughi_vergogna_italiana-25158583/index.html?ref=HREC1-8 (accessed March 30, 2012).

^v *A.E. v. The United Kingdom*, Application no. 63388/11, interim measures issued on October 27, 2011; *Halimi v. Austria*, Application no. 53852/11, interim measures issued on January 6, 2012; *B.M. and others v. Denmark*, Application no. 4346/12, interim measures issued in January 2012; *H.S. and others v. Belgium*, Application no. 10973/12, interim measures issued in February 24, 2012; *Daytebgova and Magomedova v. Austria*, Application no. 6198/12, interim measures issued February 10, 2012.

^{vi} *A.E. v. The United Kingdom*, Application no. 63388/11.

^{vii} ECtHR, Grand Chamber, Judgement of 21 January 2011, *M.S.S. v. Belgium and Greece*, Application no. 30696/09.