

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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MALTA: THE EL HIBLU 3 CASE – UPDATE THE LONG WAIT FOR JUSTICE

“The judicial process is affecting me so badly, ‘cause it stops me from being happy whenever I try to be happy. I feel like they are ruling my life just because I used my language skills to avoid problems”

“Life is not easy. We can do nothing. Because of who we are, we do not have power; we are just migrants without nothing. With this long trial we see that our life is delaying, because there are many things we can’t do. This trial robs us of lot of things and opportunities.”

“I am discouraged and desperate... this judicial process drags on... it’s like they refuse to see the truth before their eyes.”

The El Hiblu 3, March 2021¹

In March 2019, in the central Mediterranean, two teenage children and one teenage adult, from Ivory Coast and Guinea, were rescued from a deflating rubber boat by the *El Hiblu*, an oil tanker.² They were trying to reach Europe, with over 100 other people. Just when they thought they were safe from drowning and from the suffering they had experienced in Libya, the captain of the *El Hiblu* tried to take them back there. This would have been unlawful, because Libya is not a place of safety. The desperate protests of the rescued people led the captain to take them to Malta instead. Upon arrival there, on 28 March 2019, Maltese authorities arrested the three teenagers on suspicion of having hijacked the *El Hiblu*. They were charged with grave offences, including under counter-terrorism legislation, although no evidence has emerged of any injury to people or damage to the ship in connection with the protest.³

Two years on, the lives of the ‘El Hiblu 3’ remain on hold as they await their trial in Malta. If found guilty, they face life in prison.

Amnesty International is concerned that after surviving the unlawful attempt to return them to Libya, they are being unjustly criminalized for opposing that attempt, which if successful, would have exposed them and over 100 other people to grave risks to their lives.

Amnesty International calls on the Maltese authorities to drop the case against the El Hiblu 3 so they can get on with their lives. No-one should have to face life in prison for opposing their return to torture and suffering in Libya.

Amnesty International stands in solidarity with the El Hiblu 3.

Everyone can demand justice for the El Hiblu 3 at <https://www.amnesty.org/en/get-involved/take-action/w4r-2020-malta-el-hiblu-3/>

The El Hiblu 3 are grateful to all the people around the world who have sent them thousands of messages of solidarity:

“The support makes me happy. All I can say is thank you for all you are doing for us. Without you and the solidarity of others we may be still in jail. For those who send us messages all we can say is thank you because these messages give us hope and courage to overcome this problem. Thank you for the words of encouragement”.

“I highly appreciate all the messages. I feel with this support we can do something”.

¹ Amnesty International has chosen not to disclose their identity for the moment to protect their privacy and because the youngest is still under 18

² The tanker’s full name is *El Hiblu 1*. However, in the text we refer to it as *El Hiblu*, and to the three teenagers as the ‘El Hiblu 3’

³ For more information see Amnesty International, *Malta: The El Hiblu 1 case - Three teenagers in the dock for daring to oppose their return to suffering in Libya*, 1 October 23, 2019 (Index: EUR 33/1270/2019) <https://www.amnesty.org/en/documents/eur33/1270/2019/en/>

"I say a big thank you to the senders around the world, their support make us stronger than ever... this is the only thing that gives me hope, without forgetting the institutions, NGOs and lawyers who fight to illuminate the truth, to give us freedom".

THE RESCUE AND THE EVENTS ON THE EL HIBLU

The El Hiblu 3 – aged 15, 16 and 19 at the time – left Garabulli, Libya, on 25 March 2019. The two youngest were travelling alone and the 19-year-old was travelling with his wife. The rubber boat they were travelling in started deflating after a few hours of navigation. Fortunately, they were spotted by an aircraft.

On 26 March 2019 an aircraft deployed by the EU Joint Operation EunavforMed Sophia⁴ instructed the *El Hiblu*, an oil tanker, to assist the refugees and migrants in distress. EunavforMed Sophia was relaying instructions on behalf of the Libyan authorities, who were unable to coordinate the rescue directly and had a boat out of service.

The *El Hiblu*, en route from Istanbul to Tripoli, with a small crew of six, reached the rubber boat and took the people on board.

That evening, after the rescue, as people started falling asleep on the deck, the EunavforMed Sophia aircraft again relayed instructions to the *El Hiblu* on behalf of the Libyan Coast Guard. The instruction was to go to Tripoli. The *El Hiblu* proceeded towards Libya, without informing the rescued people about their destination.

At dawn, when they began to wake up, the refugees and migrants realized that they were in front of the Libyan coastline. Scenes of despair and panic started, as people knew that their disembarkation in Libya would be followed by prolonged arbitrary detention in Libya's detention centres, notorious for their horrific conditions, and the torture and other ill-treatment of detainees. The *El Hiblu* was already in Libyan territorial waters. Many of the people on board shouted that they would refuse to be transferred onto Libyan Coast Guard's boats and would rather jump in the water or be shot on the spot. They banged their fists and objects they could find on the deck against the sides of the ship.

Concerned at their reaction, the chief officer of the *El Hiblu* needed to reassure the rescued people and maintain calm onboard. He decided to change the ship's course and everybody calmed down. The *El Hiblu* started heading for Malta. As the Maltese and Italian governments and commentators rushed to speak of "hijacking" and "an act of piracy", Maltese authorities dispatched an Armed Forces of Malta (AFM) special operations unit, on board several speedboats and a helicopter, to intercept the *El Hiblu*. They escorted the ship to Malta, while conducting investigations onboard. As the ship docked in Boiler Wharf, Malta, the authorities arrested five people and took four of them to a police station and one to a hospital under arrest. While two men were released shortly afterwards without charges, the three youths were charged with a number of serious offences, including under counter-terrorism legislation, and transferred to the Corradino Prison, an adult detention facility. As two of them were children, they were subsequently transferred to a correctional facility for minors. The El Hiblu 3 deny any wrongdoing. They believe they have been criminalized because the chief officer relied on them to communicate with the other rescued people and maintain calm on board.

*"We suffered a lot. I haven't had any peace of mind since I arrived in Malta... We did nothing wrong. We just tried to help... I saved the lives of many people; there were women and children. And for this I feel proud."*⁵

THE STATE OF THE COURT CASE

The El Hiblu 3 remain under investigation for a series of offences ranging from 'acts of terrorism', to 'illegal arrest, detention and confinement of persons', 'private violence' against persons and property and threatening behaviour. Some of these offences carry life in prison as a punishment.

Following their arrest, as required by Maltese criminal procedure, an inquiry led by a magistrate was opened and is ongoing. The purpose of the magisterial inquiry is the collation of evidence, both in favour and against the accused, to put before a court. Once the magisterial inquiry is closed, it is up to the attorney-general, upon receiving the magistrate's final report, to decide whether the case should go to trial and to determine which offences will be in the indictment. Media

⁴ It is unclear from the available information reviewed by Amnesty International whether this was the same aircraft that spotted them initially

⁵ One of the El Hiblu 3, August 2020

reports of the evidence given by the crew, the AFM officers and the Maltese police at the magisterial inquiry's hearings in 2019 confirmed that no crew member or rescued individual had reported any injuries, and that the situation on the ship appeared quiet and under control. The inquiry heard the first testimony from one of the rescued people in March 2021, who described the desperation of the refugees and migrants at the sight of the Libyan coastline and the discussions between the men and the chief officer. The police are expected to call more of the rescued people to give their accounts at future hearings.

After numerous denials, the El Hiblu 3 were granted bail in November 2019. Upon release from detention, the youngest two were placed in a reception accommodation for unaccompanied minors, while the oldest was reunited with his wife and offered accommodation by a local charity. They have filed asylum applications in Malta.

CONCERNS ABOUT THE TREATMENT OF THE EL HIBLU 3 IN MALTA, THEIR ACCESS TO A FAIR TRIAL AND THE CHARGES BROUGHT AGAINST THEM

Since being released on bail, the El Hiblu 3 have managed to regain some normalcy in their lives, but their future remains uncertain, pending the outcome of criminal proceedings against them. Furthermore, the way they were treated by the Maltese authorities from the start has taken its toll.

Amnesty International considers that the treatment for the El Hiblu 3 was in violation of Malta's obligations under international human rights law, a view that is supported by the UN Office of the High Commissioner for Human Rights (OHCHR) and by the UN Committee on the Rights of the Child, in particular with regard to the detention of the two children in a high-security section of an adult facility until an age assessment confirmed their declared age; the failure to promptly appoint legal guardians for them before their interrogation; and the charging of the two children before an adult court rather than a juvenile one.⁶

Furthermore, the application of the measure of detention to the three teenagers who had spent months in Libya, including in arbitrary detention, and had nearly escaped a shipwreck after a terrifying journey, may well have been excessive in the circumstances. International standards require that deprivation of liberty be used only as a last resort and for the shortest possible time. Standards on the use of detention in criminal proceedings are even more stringent for children.

Amnesty International is also concerned that the El Hiblu 3's right to a fair trial may have been compromised by the repeated refusal by the police to call the rescued people who had been on board the *El Hiblu* to give testimony at the magisterial inquiry, which was only broken in March 2021; and by the mentioned treatment of the children in the early stages of the process.

In addition, Amnesty International is concerned about the severity of the charges laid against the El Hiblu 3. The use of counter-terrorism legislation is especially problematic, as noted also by the UN OHCHR⁷. Amnesty International emphasizes that grounds for excluding criminal responsibility should be considered in any assessment of the reasonableness and proportionality of actions taken by the El Hiblu 3, in light of the primacy of the rights that were being put at risk by the threatened disembarkation in Libya. It needs to be remembered that at the time of the alleged offences they were seeking to avoid refolement to Libya where they would almost certainly face arbitrary detention and torture or other ill-treatment.

THE ELEPHANT IN THE (COURT)ROOM: AN AVERTED UNLAWFUL RETURN TO LIBYA

What happened on the *El Hiblu* must be understood in the context of the cycle of serious human rights violations and abuses in which refugees and migrants are trapped in Libya, including prolonged arbitrary detention and other unlawful deprivation of liberty, torture and other ill-treatment, unlawful killings, rape and other sexual violence, forced labour and

⁶ See OHCHR, Press briefing note on Malta, Geneva, 7 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24569&LangID=E>; and Committee on the Rights of the Child, Concluding Observations on the combined third to sixth periodic reports of Malta, June 2019 <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/MTIndex.aspx>

⁷ OHCHR, Press briefing note on Malta, Geneva, 7 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24569&LangID=E>

exploitation at the hands of state and non-state actors in a climate of near-total impunity.⁸

The risks for refugees and migrants in Libya are such that UNHCR and IOM do not regard the country as a place of safety where rescued people can be disembarked in accordance with the requirements of the law of the sea.

Since 2016 EU institutions and member states have unashamedly prioritized the reduction of the number of people arriving to Europe over the protection of their human rights. To achieve this, they have largely withdrawn their assets from the central Mediterranean and have instead resourced and assisted the Libyan authorities to intercept people and bring them back to Libya.

Although Libya cannot be considered a place of safety for disembarkation and returning people to Libya constitutes a breach of the principle of non-refoulement (whereby people cannot under any circumstances be returned to a place where their safety would be at risk), EU member states cooperate with the Libyan Coast Guard to enable the latter to intercept people at sea and return them to Libya. A key part of this strategy has been the declaration of a Libyan search and rescue region in the central Mediterranean, made by Libya in December 2017, with Italian and EU support, and recognized by the International Maritime Organization in June 2018. This meant handing over to Libyan authorities the responsibility for coordinating rescue operations within the area where most shipwrecks happen and for instructing rescue vessels on where to disembark people. This has put private shipmasters in an impossible situation, where they are forbidden to disembark people in Libya but nonetheless receive instructions to do so from Libyan authorities, sometimes even relayed by European authorities.

Amnesty International notes with concern the role played by European officials, including those operating under EunavforMed Sophia, in relaying instructions to shipmasters to disembark rescued people in Libya. Amnesty International considers that such actions, and the wider assistance offered by EU Member States to Libya with the objective of containing refugees and migrants in Libya, despite the widespread human rights violations in the country, may invoke responsibility under international law for assisting Libya in the commission of human rights violations.

In the past year alone, to reduce the number of people arriving to the island, Malta has adopted several unlawful tactics at sea including pushbacks towards Libya (one, in April 2020, resulted in the return to arbitrary detention of 51 people, while five arrived dead in Tripoli and seven were reported missing at sea), delayed or refused rescues, diversions of refugees and migrants' boats towards Italy, and the arbitrary detention of refugees and migrants on ferries with inadequate conditions outside Maltese territorial waters.⁹ Maltese authorities have also breached international standards on land by arbitrarily detaining asylum-seekers in appalling conditions, as described in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published in March 2021. The CPT found "poor conditions of detention and regimes which verged on institutional mass neglect by the authorities" and noted that "Indeed, the living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific Covid-19 measures were found to be so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights".¹⁰

European policies aiming at the externalization of border control activities to Libya and at the containment of refugees and migrants in Libya have been a direct contributing factor to what happened on the *El Hiblu*. Refugees and migrants on the *El Hiblu* had no good choices to avoid being unlawfully returned to arbitrary detention, torture and exploitation in Libya. Had they not protested, they would have been among the thousands that continue to be unlawfully disembarked in Libya.

⁸ Amnesty International, *Libya: Between life and death: Refugees and migrants trapped in Libya's cycle of abuse*, 24 September 2020 (Index : MDE 19/3084/2020) <https://www.amnesty.org/en/documents/mde19/3084/2020/en/>

⁹ Amnesty International, *Malta: Waves of impunity - Malta's human rights violations and Europe's responsibilities in the central Mediterranean*, 7 September 2020 (Index: EUR 33/2967/2020) <https://www.amnesty.org/en/documents/eur33/2967/2020/en/>

¹⁰ Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, <https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-malta-to-improve-the-treatment-of-detained-migrants>