

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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MALTA: THE EL HIBLU 1 CASE- THREE TEENAGERS IN THE DOCK FOR DARING TO OPPOSE THEIR RETURN TO SUFFERING IN LIBYA

On 28 March 2019, three teenage asylum-seekers – one from Ivory Coast, aged 15, and two from Guinea, aged 16 and 19 – were arrested upon their arrival in Malta. They were suspected of having hijacked the *El Hiblu 1*, the merchant vessel which had rescued them in the central Mediterranean along with over a hundred other refugees and migrants, to prevent the captain from taking them back to Libya and handing them over to Libyan authorities. Maltese authorities charged the three youths with a series of grave offences, including under counter-terrorism legislation, some punishable with life imprisonment. They have denied any wrongdoing.

In the course of a visit to Malta, in September 2019, Amnesty International visited and interviewed the two youngest youths in the juvenile detention facility of Mtaħleb. Amnesty International discussed the case also with the youths' lawyers, as well as with representatives of the Office of the Attorney General, the Office of the Prime Minister, and the Armed Forces of Malta (AFM).

Amnesty International is concerned about the severity of the charges laid against the three teenagers, without consideration of grounds for excluding or mitigating criminal responsibility. The crimes they are accused of appear to be disproportionate to the acts imputed to them and do not reflect the risks to their lives they would have faced if returned to Libya. Amnesty International is also concerned about their treatment and access to a fair trial in Malta.

THE EVENTS ON THE *EL HIBLU 1*

A magisterial inquiry is ongoing in Malta to gather evidence which will be submitted to the court once the Attorney General issues a formal indictment against the youth. Several hearings have taken place between April and September 2019. Key witnesses have already given evidence, including the captain, chief officer and some of the crewmen of the *El Hiblu 1*; AFM officials who participated in the operation to take the *El Hiblu 1*; and Maltese police officials who boarded the vessel as soon as it docked to investigate the events. Media reports are available detailing the questions asked by prosecutors and defence lawyers and the answers provided by the witnesses.¹

While the precise circumstances of the events on the *El Hiblu 1* will be eventually established in the course of the magisterial inquiry and the subsequent criminal trial, on the basis of the information examined and of the interviews conducted so far, Amnesty International is able to offer the following account.

The three youths left Garabulli, Libya, on board of a rubber boat in the early morning of 25 March 2019. It is estimated that there were approximately 114 people on board, including 20 women and at least 15 children. The rubber boat showed signs of deflating already at the point of departure and, after a few hours of navigation, it started swaying,

¹ Media accounts from the hearings: 9 April, <https://newsbook.com.mt/en/please-please-we-cannot-go-back-el-hiblu-1-hearing/>, 11 April, <https://newsbook.com.mt/en/el-hiblu-1-age-assessment-confirmed-two-are-minors-submissions-in-court-made/>, 24 June, <https://newsbook.com.mt/en/live-more-witnesses-take-the-stand-in-the-compilation-of-evidence-in-el-hiblu-case/>, 12 September <https://newsbook.com.mt/en/live-el-hiblu-compilation-of-evidence-underway/>; account of the events before docking in Malta: <https://newsbook.com.mt/en/salvini-claims-vessel-hijacked-by-rescued-asylum-seekers-heading-to-malta-or-italy/>

resulting in people becoming very afraid. They saw a helicopter overhead, which came back a second time and eventually a third time, in the latter instance together with the *El Hiblu 1*.²

It appears that the rescue happened on the high seas, in the Libyan search and rescue region. It is not clear which maritime rescue centre coordinated the rescue, however according to radio transcripts recently published in the media, an aircraft deployed by the EU Joint Operation EunavforMed Sophia contacted the *El Hiblu 1* via radio and instructed it to approach and assist the refugees and migrants in distress. The aircraft officer reportedly said: “We are coordinating with the Libyan Coast Guard. Sir, you need to rescue those people, because the Libyan Coast Guard boat is out of service.”³

The *El Hiblu 1*, an oil tanker owned by Turkish nationals and flying a Palau flag, en route from Istanbul to Tripoli, had a small crew of a Turkish captain, a Libyan chief officer and four crewmen, possibly of Asian origin. Upon reaching the rubber boat as instructed, the *El Hiblu 1* crewmen told the people on the rubber boat to stop the engine and climb up the net along the side of the vessel. Realizing that the *El Hiblu 1* was not a rescue ship, the refugees and migrants on the rubber boat asked where the ship was headed. One member of the crew said that the vessel was headed to Tripoli. There was uncertainty and fear on board the rubber boat. Most, scared of the immediate danger of drowning, decided to climb onboard; however, two men from Guinea, two from Ivory Coast, one from Mali and one from Sudan were too scared at the prospect of being taken back to Libya, and decided to remain in the damaged rubber boat. Their fate is unknown.

On board the *El Hiblu 1*, following more communications with authorities, the chief officer told the rescued people that he had received instructions to go to a meeting point where two European boats would be taking on board the refugees and migrants, allowing him to proceed to Tripoli, his intended destination. Because the Turkish captain could not speak English, the chief officer maintained all communications with the rescued people. During these conversations, the chief officer realized that the 15-year-old boy from Ivory Coast spoke English well and could be relied upon to translate information for other people.

One of the youths interviewed by Amnesty International said: *“I do not know what happened to the six who stayed in the rubber boat... We were very happy when we saw the helicopter and the petrol vessel came and saved us, because the rubber boat was deflating, we would have died in that boat. When we got near the petrol vessel, the Indian crewmen said they were going to Libya, but then the chief officer came and said: ‘good news!’. He said it like that: ‘good news, the helicopter gave me a rendezvous point’. He swore on the Koran that he would never take us back to Libya. He said that two boats will come and take us to Europe. We were so happy. The way he spoke – people felt they were in Europe already...”*

Amnesty International has not been able to verify whether the *El Hiblu 1* was indeed told initially by the authorities coordinating the rescue to wait at a meeting point for two European rescue boats which would have taken the rescued people to Europe, nor, if so, whether it did wait for them. Whatever the case may be, that evening, after the rescue, as people started falling asleep on the deck, according to radio transcripts published in the media, the EunavforMed Sophia aircraft told the *El Hiblu 1* to go to Libya: “Sir, we are cooperating with the Libyan Coast Guard. They tell us to say to you that you can move those people to Tripoli.”⁴

² According to media reports, a Maltese helicopter with registration number AS1428 could have been in the zone when the rubber boat was in distress and while the rescue was taking place. A police inspector testifying at the magisterial inquiry related that the captain told the police to have received information about a boat in distress from an aircraft. Another police inspector gave testimony that the chief officer told him that an army helicopter guided them to the boat in distress and that, according to instructions, the vessel was to take those rescued to Libya. The *El Hiblu 1* crew also told the inspector that they could not contact the Libyan Coast Guard and that at that point it was decided to head towards Libya. It appears that two aircrafts were also flying in the area at the time of the incident. <https://newsbook.com.mt/en/salvini-claims-vessel-hijacked-by-rescued-asylum-seekers-heading-to-malta-or-italy/>

³ See article by Zach Campbell, *The Rescue. A Flimsy raft, more than 100 souls, and three teenage heroes – or are they pirates?* <https://magazine.atavist.com/the-rescue-mediterranean-migrants-malta-europe-crisis>

⁴ Zach Campbell, *The Rescue. A Flimsy raft, more than 100 souls, and three teenage heroes – or are they pirates?* <https://magazine.atavist.com/the-rescue-mediterranean-migrants-malta-europe-crisis>

At about 6am the following day, 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, with many shouting that they would rather die at sea than be returned to Libya. The *El Hiblu 1* was at this point at six nautical miles from the Libyan coastline, in Libyan territorial waters. The chief officer called the Libyan Coast Guard and gave them the number of the people he had on board. 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. Many banged their fists against the sides of the ship.

One of the youths interviewed by Amnesty International recounted: *"People started crying and shouting because they were afraid to go back, and some had children. They shouted: 'We don't want to go to Libya', 'We prefer to die', because if they take you back to Libya they put you in a room, they torture you, you eat only once per day. When they take women to prison, the Libyans choose the ones they like and take them by force. And some people put you in the private prison and call your family and ask to bring money to give freedom."*

Concerned at the reaction of the people on board, who felt betrayed because the chief officer had apparently sworn upon rescuing them that he would never have taken them back to Libya, the chief officer called into the cabin the 15-year-old boy from Ivory Coast, as he knew he could speak English, and asked him: "What can I do to get them to calm down?". The child replied: "What can I tell you, the only thing is not to take them back to Libya". According to the youth's account, the chief officer at this point agreed to turn the vessel towards north and said that although he did not have enough fuel to go to Italy, he could take them to Valletta. When the boy asked what Valletta was, he apparently joked that the boy wanted to go to Europe but did not know that Valletta was a European capital.

The rescued people were now afraid that the chief officer would break his promise to take them to Europe again, thus in order to reassure them that they would not be returned to Libya anymore, the chief officer told the boy that he could remain in the cabin to check the direction of navigation on the screens, together with the other two teenagers now under investigation. According to the boys, the climate in the cabin was relaxed, there was chatting and at times even laughing with the chief officer, and the crewmen were occasionally bringing coffee and peanuts for them. The cabin was kept locked by the chief officer, but the teenagers were allowed to go out when they wanted to, and the chief officer would open the door for them.

There were many children on the deck, cold and hungry, after three days at sea. The children were crying for food and some of the women went to ask the captain if they could go undercover, because water was flooding the deck, and for food and blankets for the children, but both requests were reportedly denied.

According to the information gathered by Amnesty International, at no point during the journey the rescued people engaged in any violent action against the captain, the chief officer or any other members of the crew. The only time when there was shouting and protesting occurred when people realized they were being returned to Libya. After the chief officer promised not to go to Libya and to change course, rescued people calmed down. Media reports of the evidence given by the crew, the AFM officers and the Maltese police at the magisterial inquiry confirmed that there was no violence against people during the journey, although some of the refugees and migrants may have banged in protest against the sides of the ship when they were in Libyan waters in fear for their life at the prospect of being returned to Libya. According to the media reports of the evidence given at the magisterial inquiry, the banging may have occurred with metal tools the people found on the ship and with their hands, but no significant damage to the ship was reported.

Despite this, *the El Hiblu 1* communicated to Maltese authorities that rescued people had taken control of the ship and had forced the crew to proceed towards Malta, despite instructions by the Maltese authorities not to do so.⁵ As the Maltese and Italian government and commentators rushed to speak of "hijacking" and "an act of piracy"⁶, Maltese

⁵ Armed Forces of Malta, Press release, 28 March 2019, <https://twitter.com/MaltaGov/status/1111164298154389504?s=20>

⁶ See the article *Stava tornando in Libia, 108 migranti dirottano mercantile* https://www.repubblica.it/cronaca/2019/03/27/news/sea_watch_nei_confronti_dei_migranti_sequestro_di_persona_procura_roma_invia_atti_a_sirac

authorities dispatched an AFM special operations unit, on board several speedboats and a helicopter, to intercept the *EI Hibleu 1* as soon as it entered Maltese waters.

The two boys interviewed by Amnesty International reported that the boarding by armed military officers scared them, but that the Maltese soldiers treated them well. Upon boarding, the Maltese soldiers verified that no crew member or rescued individual had reported any injuries, and that the situation on the ship was quiet and under control, circumstances which were confirmed during the magisterial inquiry. They escorted the ship to Malta, while conducting investigations onboard that led to the identification of five people, including the three youths, as potentially responsible for criminal activities. As the ship docked in Boiler Wharf, Malta, the authorities arrested the five and took four of them to a police station and one to a hospital under arrest. While two men were released shortly afterwards and were not charged with any crime, the three youth 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 minors, they were subsequently transferred to a correctional facility for minors.

CONCERNS REGARDING THE CHARGES BROUGHT AGAINST THE THREE YOUTH

Pending a formal indictment, the three teenagers have been charged with:

- Act of terrorism, involving the seizure of a ship (Art.328A(1)(b), (2)(e), Criminal Code).
- Act of terrorism, involving the extensive destruction of private property (Art.328A(1)(b), (2)(d), (k) Criminal Code).
- “terrorist activities”, involving the unlawful seizure or the control of a ship by force or threat (Art.328A(4)(i) Criminal Code).
- Illegal arrest, detention or confinement of persons and threats (Artt.86 and 87(2) Criminal Code).
- Illegal arrest, detention or confinement of persons for the purpose of forcing another person to do or omit an act which if voluntary done, would be a crime (Art. 87(1)(f) Criminal Code).
- Unlawful removal of persons to a foreign country (Art.90 Criminal Code).
- Private violence against persons (Art. 251(1) and (2) Criminal Code).
- Private violence against property (Art.251(3) Criminal Code).
- Causing others to fear that violence will be used against them or their property (Art.251B Criminal Code).

Amnesty International is concerned about the severity of the nine charges laid against the three youth, some of which relate to extremely serious offences, including under counter-terrorism legislation, and which can carry life in prison. The charges appear disproportionate to the acts imputed to the defendants, as no evidence has been disclosed so far of any violent or dangerous behaviour against people. The use of counter-terrorism legislation is especially problematic, as noted also by the UN Office of the High Commissioner for Human Rights (OHCHR), who has also expressed deep concern at the exaggerated severity of the charges and urged Maltese authorities to reconsider them.⁷

Amnesty International emphasizes that grounds for excluding criminal responsibility should be borne in mind by the Office of the Attorney General, since the youths appear to have acted reasonably to defend themselves and the other refugees and migrants in a manner proportionate to the degree of danger that the youths and indeed the rest of the refugees and migrants would have faced if returned to Libya. The organization has repeatedly criticized EU states and institutions' cooperation with Libya to reduce migration towards Europe, due to the extreme suffering routinely inflicted on refugees and migrants intercepted at sea and disembarked in Libya – where they are systematically held in arbitrary

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⁷ See the OHCHR press briefing note on Malta, 7 May 2019,

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24569&LangID=E>

detention in horrific conditions and exposed to torture, rape and various forms of exploitation.⁸ There is international agreement, including by the EU,⁹ over the fact that Libya is not a place of safety for the disembarkation of refugees and migrants rescued at sea.¹⁰ The recent death of a Sudanese man, killed shortly after he was returned to Libya by the Libyan Coast Guard, is an excruciating example of the dangers faced by people disembarked in Libya.¹¹

Having departed from Libya, the people rescued by *the El Hiblu 1* had first-hand knowledge of the dangerous situation faced by refugees and migrants in the country. One of the youths, interviewed by Amnesty International, said: “*Libya is not good for black people. I was there for 10 months. In Libya, they lock you in a room, not a real prison, with no food and bad water. If you die, they throw you in the sea... I ran away from a ‘private prison’ because I knew my family did not have any money to pay.*”

Amnesty International considers that the case of the three youths charged with the alleged hijacking of the *El Hiblu 1* needs to be assessed in this context. Indeed, even if at trial it emerged that the three had committed an action constituting a crime – which the three deny – prosecuting authorities should consider whether there are grounds for excluding criminal responsibility, causes of justification or even mitigating circumstances for such acts. Indeed, such acts would have been committed with the sole purpose of protecting themselves and others from the immediate danger of being disembarked in Libya and submitted to arbitrary and indefinite detention in centres where torture and other ill-treatment are endemic. In assessing the proportionality of actions taken, attention should be focused on the primacy of the rights that were being put at risk by the threatened disembarkation in Libya. Amnesty International wishes to emphasize that this line of reasoning has already been applied in a very similar case by the Criminal Court of Trapani, in Italy, which in May 2019 declared two defendants not guilty of any offence as they had acted in self-defence when they forced a rescue crew not to take them to Libya.¹²

In addition, Amnesty International notes that questions remain as to the jurisdiction of Maltese courts over events occurred on a Palau-flagged vessel within Libya’s territorial waters and on the high seas.

CONCERNS ABOUT THE TREATMENT OF THE THREE TEENAGERS IN MALTA AND THEIR ACCESS TO A FAIR TRIAL

After the refugees and migrants were disembarked from the *El Hiblu 1*, the three youths were initially detained in the high-security section of Corradino prison, an adult detention facility. They were only transferred to a correctional facility for children after an official age assessment confirmed their declared age. They have remained in pre-trial detention since their disembarkation, as Maltese authorities repeatedly refused to release them on bail.¹³

In May, OHCHR expressed concern about the youths’ initial detention in a high-security section of an adult prison and the failure to appoint legal guardians for the two children before their interrogation.¹⁴ In June, the UN Committee on the

⁸ See the reports of the United Nations Support Mission in Libya, *Report of the Secretary-General*, August 2019 https://unsmil.unmissions.org/sites/default/files/sg_report_on_unsmil_s_2019_628e.pdf; OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, December 2018 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24037&LangID=E>; Amnesty International, *Between the Devil and the Deep Blue Sea*, August 2018, <https://www.amnesty.org/en/documents/eur30/8906/2018/en/>; *Libya’s Dark Web of Collusion*, December 2017 <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

⁹ See the response by the EU spokesperson, March 2019 <https://audiovisual.ec.europa.eu/en/video/I-170481>

¹⁰ UN High Commissioner for Refugees (UNHCR), *UNHCR Position on Returns to Libya - Update II*, September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>

¹¹ <https://www.iom.int/news/iom-deplores-death-migrant-killed-thursday-upon-disembarkation-tripoli>

¹² Tribunale di Trapani, Ufficio del Giudice per le Indagini Preliminari, *Sentenza a seguito di giudizio abbreviato*, 23 May 2019, <https://dirittopenaleuomo.org/wp-content/uploads/2019/06/GIP-Trapani.pdf>

¹³ *Three teenagers arraigned over hijacked ship*, 30 March 2019 <https://www.independent.com.mt/articles/2019-03-30/local-news/Three-teenagers-arraigned-over-hijacked-ship-6736205893>

El Hiblu 1 hijackers’ bail request runs aground on procedural point, 18 April 2019, https://www.maltatoday.com.mt/news/court_and_police/94433/el_hiblu_1_hijackers_bail_request_runs_aground_on_procedural_point#.Xa2_GehKi70

¹⁴ OHCHR press briefing note on Malta, 7 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24569&LangID=E>

Rights of the Child (CRC) also expressed concern that the two children were being charged before an adult court rather than a juvenile one.¹⁵ Amnesty International shares the concerns raised by OHCHR and CRC.

Amnesty International is also concerned that the application of the measure of detention to the three teenagers who were rescued after having spent months in Libya, including in arbitrary detention and had nearly escaped a shipwreck after a terrifying journey, may be excessive in the circumstances and not in line with international standards. Deprivation of liberty should be used only as a last resort, for the shortest possible period of time, and be reviewed on a regular basis with a view to its withdrawal. Standards on the use of detention are even more stringent for children in criminal proceedings.

Amnesty International is also concerned that Maltese authorities have ordered a supplementary age assessment of the two defendants who were already declared to be children following an official age assessment by the competent Maltese authorities, whose results are pending. No clear answer as to why this second assessment has been requested has been provided to Amnesty International notwithstanding the organization having raised the matter. Amnesty International is further concerned that the defendants' lawyers were not authorized to visit their clients together with interpreters of their choice; and that defendants were brought to court through the main door, putting at risk their right to privacy by being exposed to journalists and cameras, despite a court order instructing for their identity to be protected in line with the best interest of the child undergoing a criminal trial (art 40 CRC).¹⁶

During the visit to the two teenage boys in the children detention facility, Amnesty International was concerned to learn that the youngest had been able to phone his mother only once in six months, due to technical difficulties experienced by the provider used by the correctional facility, which was confirmed by the facility's management. Amnesty International was also concerned to learn that the provision of essential items to detained children, including clothing and basic toiletries depends on donations or on what families provide, rendering it unpredictable and placing foreign nationals who cannot rely on a family to bring them basic necessities at a disadvantage.

BROADER MALTESE AND EUROPEAN RESPONSIBILITY FOR THE SITUATION IN THE CENTRAL MEDITERRANEAN

European policies aiming at the externalization of border control activities to Libya and at the containment of refugees and migrants in Libya, in disregard of the dramatic situation they face in the conflict-ridden country, are a direct contributing factor of what has happened on the *El Hiblu 1*.¹⁷ Refugees and migrants on the *El Hiblu 1* had no good choices to avoid being returned to arbitrary detention, torture and exploitation. Although Libya cannot be considered a place of safety for disembarkation and returning refugees and migrants to Libya constitutes a breach of the principle of *non-refoulement*, 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 was the declaration of a Libyan search and rescue region in the central Mediterranean in June 2018 – which 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 put private shipmasters in a “catch 22” situation, where they are forbidden to disembark people in Libya but nonetheless receive instructions to do so from Libyan authorities – and may face considerable delays and even legal cases if they

¹⁵ 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>

¹⁶ Article 40, 2(vii). State parties shall ensure that every child alleged as or accused of having infringed the penal law has his or her privacy fully respected at all stages of the proceedings.

¹⁷ Amnesty International, *Libya's relentless militia war. Civilians harmed in the battle for Tripoli, April-August 2019*, October 2019, <https://www.amnesty.org/en/documents/mde19/1201/2019/en/>

See as well Amnesty International, *Libya: Abhorrent attack on migrant detention centre must be investigated as a war crime* <https://www.amnesty.org/en/latest/news/2019/07/libya-investigate-abhorrent-attack-on-migrant-detention-centre/>

refuse to comply with such instructions. As a result, shipmasters are inevitably discouraged from upholding their obligation to rescue people in peril at sea and to bring them to a place of safety.¹⁸

In highlighting these issues, and the dramatic consequences refugees and migrants face, 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 and the conflict raging in the country, may involve responsibility under international law for assisting Libya in the commission of human rights violations.¹⁹

Beyond the current situation of the three youths facing charges in Libya, Amnesty International deeply regrets that six people who were fleeing Libya together with them appear to have been lost at sea. Their decision to remain on a sinking rubber boat rather than being taken back to Libya is a testament to the horrors they expected to face if returned to the country, but also to the dramatic dilemmas people stranded at sea are forced to face, as a result of Europe's migration policies prioritizing border protection over human lives.

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International is deeply concerned about the criminal prosecution brought against the three youths currently detained in Malta in connection with the *El Hiblu 1* incident. The organization considers that the charges brought against them appear to be disproportionate to any acts imputed to the defendants, and recommends that the Attorney General's Office duly considers the context in which they took place – one where people, including children and parents with small children, were exposed to the immediate danger of being returned to Libya to face horrific human rights abuse there – and therefore the potential application of grounds for excluding or mitigating criminal responsibility for any such acts, if proven in court.

Amnesty International also calls on relevant Maltese authorities to ensure that fair trial guarantees are upheld in the case, including as to the use of detention, and that defendants have adequate access to their rights.

Amnesty International also calls on EU Member States and Institutions to reset their cooperation with Libya on migration, ensuring the respect of the rights of refugees and migrants in the country.

Finally, Amnesty International calls on countries with diplomatic representations in Malta to consider monitoring the trial with a view to supporting Malta in upholding relevant international law obligations and standards.

AMNESTY INTERNATIONAL RECOMMENDATIONS:

To the Office of the Attorney General:

- To consider dropping the charges against the teenagers involved in the *El Hiblu 1* incident which are disproportionate to the acts imputed to them and to consider the application of grounds for excluding or mitigating criminal responsibility for any criminal acts, if proven in court.

To Malta's judicial and police authorities:

- To ensure that detention is only used as a measure of last resort, for the shortest possible period of time, and is

¹⁸ Amnesty International, *Cut Adrift in the Med*, September 2019 <https://www.amnesty.org/en/latest/campaigns/2019/01/cut-adrift-in-the-med/>

¹⁹ Art.16, *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission 2001, vol. II (Part 2). For a detailed legal reasoning about the responsibility of EU Member States for assisting Libya in the commission of human rights violations see *Libya's Dark Web of Collusion*, December 2017 <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

reviewed on a regular basis with a view to its withdrawal; and that defendants have adequate access to their rights, including to speak with their lawyer through an interpreter of their choice, to communicate with their families, and to be provided with basic necessities in line with international standards for the treatment of detained persons and for the treatment of children in detention.

- With regard to the two children being prosecuted, to ensure that the best interest of the child is upheld and that their treatment throughout all parts of the proceedings is in line with Malta's obligations under the UN Convention on the Rights of the Child (CRC)

To EU Member States and Institutions:

- To reset their cooperation with Libya, focusing on the need to protect the human rights of the civilian population, including refugees and migrants, and making continuing assistance on border control conditional on concrete and verifiable steps towards ensuring the respect of the rights of refugees and migrants in the country
- To refrain from any action that may lead to the containment in or return to Libya of refugees and migrants and establish a predictable mechanism for the disembarkation and relocation in Europe of people rescued at sea.²⁰
- To issue guidelines clearly stating that shipmasters must not return refugees and migrants to Libya, in light of the fact that Libya is not a place of safety for disembarkation and that the risks to the life of refugees and migrants are well known and established.

To all countries with diplomatic representations in Malta:

- To consider monitoring the trial with a view to supporting Malta in upholding relevant international law obligations and standards

END/

²⁰ Amnesty International and Human Rights Watch *Plan of action: Twenty steps for a fair and predictable rescue system in the Mediterranean Sea*
<https://www.amnesty.org/en/documents/eur01/9961/2019/en/>