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A TEXTBOOK EXAMPLE OF ALL THAT IS WRONG WITH EU INSTITUTIONS AND MEMBER STATES' MIGRATION POLICIES IN THE CENTRAL MEDITERRANEAN

This statement, by Nils Muižnieks, Director of Amnesty International's Europe Regional Office, was first published in the EI Hiblu 3 Freedom Commission brochure to mark the third anniversary of the arrest of the EI Hiblu 3.¹

Amnesty International's researchers met Amara and Kader for the first time in September 2019, while they were imprisoned in Malta's juvenile detention facility, in Imtahleb. We caught up with Abdalla, who, being 19 at the time, was detained in a different penitentiary, some months later. They were all teenagers then, thousands of miles from home, struggling to understand their predicament and still coming to terms with more trauma than many of us face in a lifetime: the hardship and violence of Libya, after a gruelling desert crossing; a terrifying sea journey in an overcrowded, rickety rubber boat which soon started to deflate; the shock of discovering that after surviving a shipwreck they were about to be unlawfully returned to Libya, the very place they had risked their life to leave; and once finally in Malta, an arrest followed by months of detention, including in an adult penitentiary.

Amnesty International has documented grave human rights violations and abuses against refugees and migrants in Libya and along the Central Mediterranean route for well over a decade. Based on our research, it is clear to us that Abdalla, Amara and Kader's case epitomises all that has gone wrong with the migration policies of EU member states and institutions in the Central Mediterranean and in Libya. Let us take a step back from their story to situate it in a context that will make it clear how no justice could possibly be served by the pursuit of a court case against these young men.

A chronic lack of safe and legal routes to enter Europe for people fleeing violence, persecution and extreme poverty, which EU member states and institutions have never wanted to address, has meant that for years hundreds of thousands of people like Abdalla, Amara and Kader have had little choice but to travel to Libya, a smugglers' hub, to embark on the perilous sea journey towards Europe. The death toll at sea has been such, over the years, that the Central Mediterranean route has become the world's most dangerous. In 2021, 1,553 people were reported dead or missing at sea along this route.

In Libya, refugees and migrants who enter the country either to find work there or to attempt the journey towards Europe, remain trapped in a cycle of serious human rights violations and abuses, 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 exploitation at the hands of state and non-state actors in a climate of near-total impunity. These violations and abuses have been extensively documented, including by UN bodies.

The risks for refugees and migrants in Libya are such that, as also confirmed by international organisations and several courts (including the European Court of Human Rights in *Hirsi Jamaa and Others v. Italy* and the Italian Court of

¹ For more information about Amnesty International's concerns regarding the case of the EI Hiblu 3, Malta's violations of the rights of refugees and migrants and the situation of refugees and migrants in Libya, see:

Malta: The EI Hiblu 3 case – Update. The Long Wait for Justice, March 26, 2021 Index Number: EUR 33/3884/2021, <https://www.amnesty.org/en/documents/eur33/3884/2021/en/>; *Malta: Waves of impunity. Malta's human rights violations and Europe's responsibilities in the central Mediterranean*, September 7, 2020, Index Number: EUR 33/2967/2020, <https://www.amnesty.org/en/documents/eur33/2967/2020/en/>; *Libya: 'No one will look for you': Forcibly returned from sea to abusive detention in Libya*, July 15, 2021 Index Number: MDE 19/4439/2021, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>

Cassation in the recent ruling in December 2021 on the Vos Thalassa case), Libya cannot be regarded as a ‘place of safety’ where refugees and migrants rescued at sea can be disembarked, in accordance with the requirements of the law of the sea. A ‘place of safety’ must be a place where people are treated humanely and offered a genuine opportunity to seek asylum. More broadly, the UNHCR (the UN refugee agency) considers that no one should be forcibly returned to Libya under any circumstances and that 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). This is the same advice UNHCR had in place when Abdalla, Amara and Kader were there in 2019. While fully aware of the suffering of refugees and migrants in Libya, since 2016 EU institutions and member states have unashamedly prioritised 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 naval assets from the Central Mediterranean to avoid direct involvement in rescue operations that would require them to disembark people in a safe place, generally in Europe. They have obstructed and criminalised non-governmental organisations’ rescue activities, thus removing not just vital resources to save lives at sea but also witnesses to the continuing failure of states to rescue and protect people in the Central Mediterranean. By delaying the timely offer of a safe port for disembarking rescued people and announcing “closed ports” policies to stem immigration, they have discouraged merchant ships from abiding by their duty to save lives at sea. Crucially, they have encouraged, resourced and assisted the Libyan authorities to intercept people and bring them back to Libya, in a clear attempt to circumvent the prohibition of returning people to Libya.

Beyond providing speedboats and training, a key part of this strategy has been the declaration of a Libyan search and rescue (SAR) region in the Central Mediterranean, made by Libya in December 2017, with Italian and EU support, and recognized by the International Maritime Organisation in June 2018. The establishment of the Libyan SAR region has meant that EU member states were able to hand over to Libyan authorities the responsibility for coordinating rescue operations within the area where most shipwrecks happen, because EU and other maritime authorities, when notified of a boat in distress, can now transfer the responsibility to coordinate the rescue to Libya. This is of crucial importance, because the country coordinating a rescue is also responsible for instructing the rescue vessel on where to disembark the rescued people, which generally means directing it to disembark them on its own territory (unless another state voluntarily offers to use one of its ports, which never happens). 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.

The deflating rubber boat in which Abdalla, Amara and Kader were risking their lives with a hundred others on 26 March 2019 was rescued in the newly established Libyan SAR region by the El Hiblu 1, on instructions relayed by an aircraft deployed by the EU Joint Operation EunavforMed Sophia on behalf of the Libyan authorities, who were unable to coordinate the rescue directly. That evening, after the rescue, as people started falling asleep on the deck, the EunavforMed Sophia aircraft again relayed instructions to the El Hiblu 1 on behalf of the Libyan Coast Guard. The instruction was to go to Tripoli.

Amnesty International considers that the role played by European officials, including those operating under EunavforMed Sophia, in relaying instructions to shipmasters to disembark rescued people in Libya, 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.

There is an elephant in the courtroom where the inquiry on Abdalla, Amara and Kader’s case continues: had they not opposed the attempt of the El Hiblu 1 to take them back to Tripoli, they and the over 100 other people who, with them, had survived the horrors of Libya and a shipwreck, would have been the victims of an unlawful pushback. European policies aiming at the externalisation 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 1. Refugees and migrants on the El Hiblu 1 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, a record high of 32,425 people in 2021.

Recent jurisprudence in a very similar case brings hope. Last December, the Italian Court of Cassation overturned the conviction of two African men, who had protested against the attempt of the crew of the Vos Thalassa, the merchant vessel that had rescued them, to return them to abuse in Libya. The court ruled that their behaviour was justified by the need to protect themselves and the other 65 rescued people.

This is why we are calling for Malta’s Attorney General to drop the case against the El Hiblu 3. No-one should have to face life in prison for opposing their return to torture and suffering in Libya. This is why we stand in solidarity with them. In

2020, our worldwide movement included Abdalla, Amara and Kader in Amnesty International's 'Write for Rights' campaign, to show them our support through thousands of personal letters sent to them by our members and activists all over the world and an online action calling for the charges against them to be dropped, which saw 270,000 people engage. We are in this for the long haul, and we are happy to join forces in the El Hiblu 3 Freedom Commission with others who can recognize an injustice when they see one.

For more information about the El Hiblu 3 Freedom Commission see: www.elhiblu3.info/commission