



JUSTICE FOR EL HIBLU 3

A reminder of the second anniversary of the rescue and subsequent detention of young migrants called El Hiblu 3

In Malta, three young migrants risk life imprisonment for having helped fellow asylum seekers to escape and be rescued from the serious risk of torture, inhuman and degrading treatment, rape, exploitation and killings in refugee camps in Libya.

On 28 March 2019 a cargo ship called El Hiblu 1 rescued over 100 migrants, including 20 women and at least 15 children who were fleeing Libya in a crowded dinghy in severe distress in the Mediterranean. However, when the migrants were told they would be shipped back to Libya, despair and panic set in. They made it clear that they risked death on return. Amnesty International has reported that the rescued people never took any violent action against the captain or crew members. Three youths, aged 15, 16 and 19 at the time interpreted for the chief officer of the ship to calm the panicked passengers. At the end of the rescue the ship docked in Malta.

These three teenagers were immediately arrested on disembarkation, and subsequently detained until November 2019, when they were released on bail. They are known as the **El Hiblu 3**. They have been investigated by the Maltese Authorities for several serious offences which carry sentences of up to 30 years in prison, including terrorism. 2 years later the bill of indictment has not yet been presented on Court.

Since November 2019 they must register every day at a police station, they are under a strict curfew and attend a Court hearing every month, as part of the investigation procedure. Police and crew members have already given evidence to the investigation, but it was only on 4 March

2021 that a survivor from the boat was able to give an eye-witness account of events on the day. The next hearing is on 15th April 2021.

Libya is acknowledged both in international and European law as not being a >place of safety< to which migrants can be sent back. International maritime law of the sea requires anyone rescued at sea to be brought to a >place of safety< both by the ships which rescue people, and the government agencies co-ordinating the rescue.

Furthermore, the EU Member States are obliged to comply with the Geneva Refugee Convention (principle of non-refoulment) and the European Convention on Human Rights: protection against torture, inhuman and degrading treatment is an absolute right which cannot be restricted under any circumstances. This also includes not being complicit in enabling human rights violations by bringing people into Libya's sphere of rule. Any instruction by a State to require rescued people to be returned to a state where they are at risk of human rights abuses is unlawful and fails to comply with several international and European Laws.

On the one hand, non-state vessels and captains are obliged to obey orders of the entity coordinating the rescue operation on the other they are bound by international laws of the sea and the national constitution and domestic laws of their state of origin not to become a partner in crime and not to obey unlawful instructions violating international and human rights law. International law over the past decade has established that faced with such a contradiction, international law trumps that of the state where domestic state instructions would violate that law.

“The justification of acts done pursuant to orders does not exist if the order was of such nature that a man of ordinary sense and understanding would know it to be illegal.” (United States v. Keenan, Court of Military Appeals, 39 C.M.R. 108, 110 (1969))

Two of the El Hiblu 3 have been minors at the time of the alleged offence and therefore recognised as vulnerable children with special needs and rights whose best interests should be considered in any ongoing legal proceedings.

The migrants on board El Hiblu 1 ship acted to defend their rights in international law as outlined above, in particular their right to be free from the serious risk of torture, rape, slavery and other inhuman and degrading treatment, should they be forcibly returned to Libya.

On this second anniversary of the rescue and detention of the El Hiblu 3:

The International Association of Democratic Lawyers, the European Democratic Lawyers and the European Association of Lawyers for Democracy & World Human Rights call on the Maltese Authorities to

- Fully implement their obligations under International Law and European Human Rights Law
- Observe the obligations arising under both the UN and the European Conventions on the Rights of the Child
- Respect the right of justified self-defence against unlawful acts subjecting people to torture, rape, slavery and other cruel and inhuman treatment forbidden in international and human rights law
- Ensure that fair trial guarantees are fully upheld. Respect the right to justified self-defence against unlawful acts as defined by Article 3(2) ECHR and against rape and slavery, as forbidden in international and human rights law
- Ensure that the defendants have adequate access to all their rights without any restriction
- Stop any co-operation with Libya to return refugees, ensuring respect for their rights in Malta

Signatories

JUSTICE FOR THE EL HIBLU 3 !

- European Association of Lawyers for Democracy & World Human Rights (ELDH)
- European Democratic Lawyers (AED-EDL)
- International Association of Democratic Lawyers (IADL)
- Progressive Lawyers Association (ÇHD, Turkey)
- Evelyn Durmayer, IADL permanent representative at the United Nations in Vienna (Austria)
- Center of Elaboration and Research on Democracy/Group of International Legal Intervention (CRED/GIGI) (Italy)
- National Association of Democratic Lawyers of South Africa
- Republikanischer Anwältinnen- und Anwälteverein e. V. (RAV, Germany)
- Asociación Libre de Abogadas y Abogados (ALA-Madrid)
- The Catalan Association for the Defense of Human Rights (ACDDH - Catalonia)
- Legal Team Italia
- Syndicat des Avocats Pour la Démocratie (SAD, Belgium)
- National Union of Peoples' Lawyers (NUPL, Philippines)
- Associazione Nazionale Giuristi Democratici (GD, Italy)
- Ukraine Association of Democratic Lawyers (UADL, Ukraine)
- Vereinigung Demokratischer Juristinnen und Juristen e.V. (VDJ, Germany)
- Swiss Democratic Lawyers (DJS, Switzerland)
- "Ένωση Δικηγόρων για την Υπεράσπιση των Θεμελιωδών Δικαιωμάτων" (Lawyers' Association for the Defence of Fundamental Rights) (Greece)
- The National Lawyers Guild International Committee (U.S.)
- Legal Centre Lesvos (Greece)
- Haldane Society of Socialist Lawyers (U.K.)