

FREE THE EL HIBLU 3



**The rights of the most vulnerable
should not be weak rights!**

Father Mussie Zerai

VICTIMS WITHOUT JUSTICE, GRAVES WITHOUT NAMES, POLICIES THAT KILL

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On a sunny Sunday morning in early February 2022, people gathered in Gardjola Gardens at the tip of Isla's peninsula, perched high above Malta's Grand Harbour. They came to commemorate the dead, the missing and the forcibly disappeared in one of the world's deadliest border regions – as others similarly gathered in protest and mourning around the world on that Global Day of Commemoration. In 2021, 1,972 people died in the Mediterranean, adding to the death toll of at least 23,000 people in the last decade – official statistics that remain gross underesti-

mates. The protesters' charge, and ours, is that successive Maltese governments have pursued policies that cause death and suffering. Across both sides of the political aisle, politicians have spent the 21st century constructing a permanent crisis around migration and shirking their human rights obligations: abandoning people at sea and marginalising and criminalising them if they manage to arrive on the Maltese islands. In line with wider EU policies, rhetoric and practices, Malta has chosen racist policies that kill.

These deadly policies and practices, and the associated criminalisation of migrants and their allies, have certainly intensified in the last few years – an intensification illustrated by the outrageous charges levied against Abdalla, Amara and Kader, three young men who used their language skills to translate, and thus helped to bring about the peaceful resolution of a tense situation. However, Malta has a longer shameful history of violent practices towards people categorised as 'migrants', 'asylum seekers' and 'refugees'. In 2002, two years before Malta's accession to the EU, the Maltese authorities forcibly deported 220 Eritreans. Once back in Eritrea, they were detained in the Adi Abeto military detention centre and kept incommunicado. Many were tortured, maimed, and sentenced to forced labour. Some were shot and killed.

Since then, we have witnessed the continued systemic subjugation of people in the Mediterranean. In Malta, successive governments have prioritised policies aimed at deterring arrivals. Yet such policies fail to deter while continuing to marginalise and oppress. For example, international human rights organisations regularly lambast Malta's punitive detention system. In three key legal cases, the European Court of Human Rights found that Malta's detention practices violated people's right to liberty and security, as well as the prohibition

against inhuman and degrading treatment. Echoing these judgements, the Committee for the Prevention of Torture found conditions that 'border[ed] on inhuman and degrading treatment as a consequence of institutional neglect' in 2020. That same year, the government also detained over 400 people on tourist ferry boats, on the high seas outside Malta's territorial waters, some for nearly six weeks. The Maltese authorities barred access to lawyers and advocacy organisations, and effectively blocked the detainees' right to asylum. The case is currently being challenged in court. In addition, thousands of people have been forcibly detained in sub-standard conditions over the past years, although they have not committed any crime.

Once out of detention, people remain at the whim of changing and punitive policies – often under the continued threat of deportation – that undermine attempts to secure a livelihood and live in peace. In 2013, for example, the authorities attempted to deport 45 Somali men to Libya on the day they arrived in Malta, before their asylum claims could be considered. The government was only stopped due to the efforts of local advocacy groups and activists who physically blocked police headquarters to prevent the men's deportation until they obtained an emergency interim order from the European Court of Human Rights. Marginalised and criminalised, people who

arrive by sea face a hostile asylum system riddled with delays and deficiencies. They face poverty, homelessness and substandard housing. Relegated by government policies to the margins, they face precarious work conditions in poorly regulated sectors. Last year, in 2021, Lamin Jaiteh, a 32-year-old from Gambia, was seriously injured while working on a construction site and then dumped by the side of the road by his employer. Yet he survived. That same year, a 38-year-old Malian man and a 50-year-old Bulgarian man died after falling several storeys at different construction sites.

At sea, Maltese politicians have decided to regularly abandon people in need of rescue. In May 2007, 27 people spent days hanging onto a fishing pen being pulled by a Maltese trawler as Malta and Italy squabbled over responsibility for rescue and disembarkation. On 11 October 2013, the Maltese authorities did little to help nearly five hundred people in distress within their search and rescue area. After hours of ignoring their clear and repeated calls for help – the recordings of which were later leaked to the Italian press – Malta and Italy effectively stood by while 268 people, including 60 children, drowned. In Italy, two Italian officers stand trial for manslaughter in the case that continues today, with Malta's culpability not under examination in the courts. This practice of abandoning

people in distress at sea, adopted by Malta and Italy in part to shift responsibility for rescue to each other, has been commonplace throughout much of the 21st century. Many of these accounts from the sea only emerge due to the tenacity of people making the journey and their allies: organisers, activists, lawyers and others who resist the state's attempt to silence and work instead to shine a light on injustice.

Since 2015, the Maltese government has not only refused to carry out its legal obligation to rescue people in distress, but it has also actively discouraged merchant ships and the civil fleet from rescuing people in the central Mediterranean, exacerbating the death and suffering at sea. Malta shut its ports to both merchant ships and search and rescue NGOs in need of a safe place to disembark people, criminalising those that continue this vital work. In 2020, on Easter Sunday, the government went a step further and illegally returned people from its search and rescue area to Libya – by all accounts an unsafe, war-torn country where migrants regularly face violence, rape and torture. The authorities did so by contracting a privately-owned vessel to push people in distress back to Libya. Twelve people died and the survivors were returned to Tripoli's Tariq al-Sikka, one of Libya's notorious detention centres. Fifty-two of the survivors, along with relatives of the deceased, filed

a Constitutional case against the Maltese government, alleging a breach of their rights and a violation of the right to life. Containing people in and returning people to Libya, despite well documented and widespread human rights abuses, is now official policy in Malta and the EU more widely. As a result of the EU's support for the so-called Libyan coastguard, more than 32,000 people were intercepted at sea and returned to certain torture and violence in Libya in 2021.

As Ruth Wilson Gilmore reminds us, structural racism exposes people to premature death, whether at sea or on land. At sea and on land, this violent politics of neglect dehumanises, fuelling racism and hostility in Malta. In March 2019, only nine days after the El Hiblu survivors arrived on the island, Lassana Cisse, a father of three from the Ivory Coast, was murdered in a racially motivated drive-by shooting. Two members of the armed forces are charged with his murder.

Nevertheless, in Malta and in the wider Mediterranean, people continue to resist these violent policies and practices. People continue to arrive in Malta and other European states despite the violent attempts to stop them. In 2014, a civil fleet emerged to counter state violence and abandonment at sea. The WatchTheMed Alarm Phone connects people across seas and continents, and runs a hotline for those on the

move, providing both practical support and political leadership on migration. Through legal cases, migrants, activists and lawyers hold governments to account for their misdeeds. In Malta, those detained regularly resist their incarceration through protest and escape. Those newly arrived in Malta, as well as those who have been there longer, have formed organisations to support migrants and refugees and resist their incarceration and marginalisation. In different ways, both visible and less visible, NGOs and individuals in Malta have supported and accompanied people in their quest for justice. Demonstrations, like the one at Gardjola Gardens, continue to shine a light on injustice and signal the wide range of voices of dissent, united in their commitment to build more peaceful and just societies. Likewise, the varied voices in this collection, including those of Abdalla, Amara and Kader, come together in a powerful demand for justice.

The case of the El Hiblu 3 is tragic, unjust and cruel. The initial attempt at a push-back to Libya, the nature of the charges, the young men's imprisonment, including placing them as minors in an adult prison, the ongoing case and the Prosecution's collection of evidence all point towards a colossal misuse of power by the authorities. No human being should be subjected to such treatment. Movement should not be a privilege of the rich. Free the El Hiblu 3 now!

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Unfolding the criminal case against the El Hibli 3 in Malta.

An introduction to a complex case of arbitrary criminalisation and a farcical trial.

THE EL HIBLU 3 CASE: IN THE DOCK OF FORTRESS EUROPE

Jelka Kretschmar

Free the El Hiblu 3 Campaign

The El Hiblu 3 live in Malta. Every day they have to sign in with the police. Every month they go to hearings in the Maltese court, hoping to leave as free men. They have jobs, they have flatmates, one has children, but they are not free.

Their names are Abdalla, Amara and Kader and together we call them the 'El Hiblu 3'. The El Hiblu 3 are three young men stuck in the limbo of 'lawfare' against migrants. Their lives are put on hold as they await trial in Malta.

The three arrived in Europe in March 2019 aboard the merchant vessel the *El Hiblu 1*. The tanker had rescued them from a sinking rubber boat two days prior, following instructions of a European patrol aircraft. During the rescue operation, six people decided to stay on the deflating rubber boat instead of boarding the large ship. After being sighted one last time by a European patrol aircraft, those six people disappeared and are presumed dead.

Despite telling the shipwrecked that they would be brought to Europe, the tanker steered south towards Libyan shores. At dawn, when the survivors realised where they were heading, they protested. Some even threatened to jump overboard out of desperation. The conditions in Libyan camps are well known: confinement, blackmail, rape, torture, slavery and arbitrary killings define daily realities.

The international law of the sea says: "People rescued from distress at sea have to be taken to a place of safety". Under no circumstances can Libya be considered a safe port for people on the move. Even the United Nations and the European Commission agree on that. In January 2017, an internal report of the German embassy in Niger described 'concentration-camp-like' conditions in Libya's detention prisons.

So the people on board the *El Hiblu 1* protested. Many of them spoke Bambara, Malinke, Fula, West African languages. Some spoke French. Only one or two young people spoke enough English to converse with the captain. One tried to translate, others to mediate between a scared crew and scared passengers.

Eventually, the ship steered towards Malta, where it was stormed by the military and three young men, then 15, 16 and 19 years old, were arrested immediately. These young people, two still children, were thrown in jail and accused of terrorism, of hijacking the ship, of wilful destruction of property. They were the same three young men who acted as translators and mediators, who tried to calm people on board and converse with the crew in order not to be forced back into the hell of Libyan detention camps: Abdalla, Amara and Kader.

The legal principle of self-defence describes the right to prevent suffering, violence and imminent danger to one's life or the life of a fellow human being, using force if necessary. If they are to be judged, the actions of the El Hiblu 3 must be seen as an act of self-defence – in conversing with the crew they resisted having their human rights trampled on and righteously protested against an illegal pushback. No person on the ship was harmed and, thanks to their actions, they and their 105 fellow travellers reached a place of safety in Malta. Even with their own lives at stake, they sought to protect their own human rights and freedom, as well those of the people they travelled with. This must be seen as a tremendously courageous act. But instead of being celebrated, the El Hiblu 3 are prosecuted.

Immediately thrown into a high security wing in Malta's prison, they were only moved to regular facilities for juvenile offenders and adults two weeks later. Months passed. Almost eight months after their arrival, the three young men were finally released on bail in November 2019. Today, Abdalla, Amara and Kader have been released for over two and a half years, awaiting a trial that could lead to their imprisonment for life. They are allowed to work and pay taxes, but they are not

allowed to go for a swim on Malta's beaches as their bail conditions dictate that they must stay 50 metres away from the coastline. If they miss signing in with the police one day, they risk going back to jail. In 2020, most of their hearings were postponed, after they were left to wait for hours in the Courts of Justice in Valletta. The prosecution only began to invite *El Hiblu 1* survivors as witnesses in March 2021, two years after they had arrived in Malta and too late for many to be located.

In early 2020, we started to campaign collectively with survivors from the *El Hiblu 1* rescue as the farcical proceedings against the El Hiblu 3 dragged on. On the first anniversary of their arrival in Malta, we released a documentary, where several survivors of the journey expressed their frustration about the proceedings against their three friends. In 2021, among many others *Der Spiegel*, the *BBC* and the *Times of Malta* reported on the case and its absurdity. Founding the El Hiblu 3 Freedom Commission, we took another step towards a transnational mobilisation to keep our promise to Abdalla, Amara and Kader: to leave nothing undone until we achieve justice and their freedom.

Resisting human rights abuses is not only ethically and morally justified but also protected by law. This resistance deserves not only our attention but our celebration. We bear collective responsibility to oppose the dismantling of all human rights achievements: to guarantee that human rights are the same for everyone, to guarantee that people do not drown or disappear in their attempt to reach Europe. Regardless of origin, economic status, personal belief or skin colour. Human rights belong to everyone. That is not negotiable.

Free the El Hiblu 3.

PRELIMINARY CHARGES AGAINST THE EL HIBLU 3

Criminal Code Article	Text	Punishment
328A(1)(b), (2)(e)	Act of terrorism: wilfully seized a ship, which seizure may seriously damage Malta, committed with the aim of unduly compelling Malta to perform or abstain from performing any act	Seven years to life
328A(1)(b), (2)(d),(k)	Act of terrorism: wilfully caused extensive destruction to private property likely to endanger the life or to cause serious injury to the property of any other person, which act may seriously damage Malta, committed with the aim of unduly compelling Malta to perform or abstain from any act	Seven years to life
328A(4)(i)(i)	For the purpose of this sub-title, 'terrorist activities' means any of the following acts, whenever or wherever carried out: the unlawful seizure or the exercise of control over a ship by the use of force or threat thereof	Invalid charge
86,	Arrests, detains or confines any person against the will of the same ...	Seven months to two years
87(2)	... and threatens to kill, to injure or to continue to detain or confine the person arrested, detained or confined, with the object of compelling Malta or a person to do or to abstain from doing an act	Life
87(1)(f)	Arrests, detains or confines any person against the will of the same ... for the purpose of forcing another person to do or to omit an act, which, if voluntarily done or omitted, would be a crime	Thirteen months to three years
90	Unlawfully and forcibly removes any person to another country	Thirteen months to three years
251(1)	Use violence, including moral and, or, psychological violence, and, or coercion, in order to compel another person to do, suffer or omit anything or to diminish such other person's abilities or to isolate that person	One to four years
(2)	... if the offender attains his end ...	Eighteen months to five years
251(3)	Cause another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters	One to four years decreased by one or two degrees
251B	Whose course of conduct causes another to fear that violence will be used against him or his property... if he knows or ought to know that his course of conduct will cause the other so to fear	Three to six months or a fine

THE EL HIBLU 1 RESCUE

In the early morning of 26 March 2019, a rubber boat with about 114 people on board left the coast of Libya, near Tripoli. An EunavforMed military aircraft sighted the boat and identified it as a distress case the following day. The aircraft requested the nearby tanker *El Hiblu 1* to intervene and rescue the people.

1) 26.03.2019

33°37'N 014°21'E – Position of the sighted rubber boat in distress provided to the tanker *El Hiblu 1*.

2) 26.03.2019

33°41'N 014°24'E – Sighting of the same boat with remaining six people on board later in the day by a military aircraft. The six people disappeared and are presumed to have died.

3) 27.03.2019

Protest against push back on the *El Hiblu 1*. Shipwreck survivors protest against an illegal pushback to Libya when they recognise the coastline at dawn.

4) 28.03.2019

The tanker *El Hiblu 1* with 108 survivors on board is stormed by the Armed Forces of Malta during the night after the captain notifies the authorities that he is not in control of his ship.

* SAR – search and rescue

Note: This visualisation is an approximation



JUSTICE DEMANDS THAT WE DO NOT IGNORE THE STORIES: COMMENTS FROM MALTA

Neil Falzon

*Defence team El Hiblu 3,
Director of aditus foundation*

Before the *El Hiblu 1* reached Malta's territorial waters, and long before we got the phone call that started our relationship with Abdalla, Amara and Kader, it was clear that this was going to be a rough ride. A dramatic series of events, intense human stories and backstories, one of Europe's most problematic – and certainly its most dangerous – borders, and a heavily politicised context. We knew that defending the three would be strenuous and challenging, yet we were not expecting the transformation into a veritable battle for justice to be so quick and relentless.

To date, almost three years after their arrest, our clients' age remains an unresolved issue. Despite their statements that they were children and notwithstanding clear recommendations from the Court to the authorities to protect their

rights as such, Amara and Kader have from the outset been treated as adults. Following their arrest, they were placed in Division 6, the high security division of Malta's prison. At a minimum, they should have benefitted from the age-sensitive protective clauses in the Prisons Regulations, although it is clear that any time they spent in prison should have been spent in Malta's specialised facility for children. For their first hearing, they were escorted into and out of the Laws Courts via the building's main entrance on one of Malta's busiest pedestrian streets, instead of via the back entrance as is standard practice. It was only after several rather aggressive communications and the involvement of Malta's Commissioner for Children, that the three were finally moved out of Division 6: Abdalla moving into a regular division, Amara and Kader to the youth facility.

The Prosecution was – and remains – not happy with the conclusion that Amara and Kader were children at the time of the incident. This despite an in-depth assessment made by professionals within the State's own entity responsible for age assessments, and the Care Order placing the two under the State's wing as unaccompanied children in need of care. Nevertheless, the prosecution requested that the Court appoint an independent expert to reassess their age, a request that was upheld by the Court. Ignoring international and European good practice for age assessment procedures, the expert conducted a simple wrist X-ray and concluded that Amara and Kader were adults, a conclusion that impinges on our clients' credibility.

As in most jurisdictions, the age of the accused is a very relevant consideration for issues such as privacy, bail, criminal responsibility and punishment. Throughout the proceedings, we have been required to repeatedly remind the Prosecution that, until revoked, the Care Orders remain in force and require Amara and Kader to be treated and have their rights recognised as children.

Another key challenge our clients have faced is an apparent reluctance on the part of the Prosecution to call up to testify around 100 eyewitnesses who were on the *El Hiblu 1* with Abdalla, Amara and Kader, living every moment with them. In the first days of the proceedings, we heard testimonies from key witnesses, including the Captain, the crew, officials from the Armed Forces of Malta and from the team that had boarded the vessel after it had entered Malta's territorial waters. The first witness from amongst the group of rescued people was only summoned in March 2021 – almost two years into the proceedings. This only occurred after our repeated complaints to the Court, including formal applications urging the Court to ensure the Prosecution fulfils its legal obligation of impartiality by bringing all evidence at its disposal: that against the accused as well as that in their favour.

We knew what anyone who works with migrants and refugees in Malta knows: once out of the open reception centres, most people do their utmost to get on with their lives here or elsewhere. No efforts were made by the Prosecution to keep track of this group of valuable witnesses. So today, nearly three years after the incident, our fears have been proven correct: the Prosecution is only able to locate a handful of the people rescued by the *El Hiblu 1*. With them, we have forever lost their precious stories of what really happened during those crucial hours. The price for Abdalla, Amara and Kader is simply staggering.

In terms of stories, so far all we have heard is a story of three young terrorists fuelling and leading a group of violent people to turn their anger onto the ship and its fearful crew. As the case started to unfold, the Prosecution attempted to stifle the stories that were emerging outside the Court's confines. An application was submitted lamenting the voices of Amnesty International and a group of local NGOs, amongst them Integra Foundation, African Media Association, Jesuit Refugee Service, Kopin, Migrants Commission, Malta LGBTIQ Rights Movement and Moviment Graffiti. Through the application, the Prosecution requested that the Court silence the media and thereby prevent the publication of opinions similar to those expressed by these organisations. The level of our shock at this attack on press freedom was only matched by the intensity of our response, on paper and in open Court. We welcomed the Court's decision, finding no reason to repress the media's publication of case proceedings as well as of expressed views and opinions.

The few stories the Court has so far managed to hear from the rescued persons add indispensable dimensions to the Captain's narrative. They underline the Captain's betrayal of their trust. They evoke harrowing screams of panic and desperation. They position Abdalla, Amara and Kader as calming influences, trusted mediators, and unsuspecting heroes.

Importantly, they remind us of the bigger story that was unfolding, the one that we are all too familiar with yet will keep on recounting for as long as it is relevant and needed. It speaks of rules and policies made far from the Mediterranean, yet setting it up to be one of Europe's mass graves. But, for now, our priority is to ensure justice for the *El Hiblu 3* – one story at a time.

PUTTING THE TRIAL ON TRIAL ~ GLOBAL SOLIDARITY AGAINST THE ABUSE OF THE LAW

Wolfgang Kaleck

General Secretary,

European Centre for Constitutional and Human Rights

There are rare moments of historical dimension, in which criminal court cases, politically orchestrated by zealous prosecutors, embody so visibly the traits of an unjust system, that they are viewed as a crime in and of themselves, much more severe and of greater magnitude than the professed indictment. Such miscarriages of justice, when put in the public eye, have the ability to mobilise activists, artists and intellectuals to take a stand and put the procedural act, and the institutions who lead it, on public trial, turning the tables and making the accusers become the accused.

Such was the Dreyfus Affair in the last decade of the 19th century in France, where the prosecution of a Jewish officer on false charges of betrayal unmasked the rooted antisemitism in the French military and rallied the leading public intellectuals of the time, such as Emile Zola, to fight for 'the great liberal France of humans rights', even against threats of violence and defamation law-suits. The

League for the Defence of Human Rights, which was founded as part of the Dreyfus defence efforts, showcases how the indignation against that legal scandal resonates till today, as the league, while under a slightly different name, continues its defence of victims of state arbitrariness and racism.

Another example of such massive mobilisations, even of international scope, were the defence committees in solidarity with the Italian-American anarchist workers Nicola Sacco and Bartolomeo Vanzetti, who were accused of murder in 1920. They were ultimately executed seven years later following a blatantly biased procedure, fuelled by xenophobic resentment and red-baiting. The unvarnished brutality of class injustice demonstrated by the prosecution brought hundreds of thousands of people to the streets, not only in the USA but also in many European countries, to demand their release. Even some of the old Dreyfusards such as Anatole France and even Dreyfus himself lent their voice to an open call for a retrial.

More successful in its outcome was the campaign to release the Scottsboro Boys, nine young black men and children, falsely accused of raping two white women in Alabama in 1931. Convicted and facing execution, their case sparked international demonstrations, mainly led by members of the communist party, and succeeded in both highlighting the racism of the American legal system and in overturning the conviction, successfully beating the Jim Crow legal system.

Following the rich tradition of defence committees which was taken up and differentiated by thematically and regionally focused social movements, the campaign to release the El Hiblu 3 shares resemblance with these past mobilisations. Triggered by the shameless terrorism charges of the Maltese authorities against Abdalla, Amara, and Kader, the three young men who together with other survivors of a sinking dinghy non-violently resisted their deportation to war torn Libya, the individual fate of the three accused was and still is in the focus of the campaign. It should stir outrage, that those who escaped horrible conditions to reach the self-proclaimed 'area of freedom, security and justice', namely Europe, can be put on trial for wanting to save their lives from the threat of torture, slavery and death. The practical help of a legal team and many devoted activists in Malta and beyond to support the three men while they are being threatened in court with absurdly serious charges and long prison sentences, is also a strong signal of cross-national and anti-racist solidarity.

But the coming together of human rights advocates, scholars, and activists from all over the world in a diverse alliance transcends this more than honourable plight of direct solidarity. What unites this enterprise is not just the assurance that saving lives cannot and must not be made criminal, but the understanding that a border regime that pushes asylum seekers back to unsafe environments,



Abdalla, Amara and Kader carry hundreds of letters filled with words of encouragement and solidarity from hundreds of supporters all over the world.

that prevents safe migration routes and leads yearly to thousands of deaths, is the criminal actor which should be put on trial. By standing together with those accused and celebrating their heroic act, we transform ourselves to an alternative prosecuting party, denouncing those who dare to penalise dissent and solidarity in the face of the war against refugees, organised or aided and abetted by the European Union, and which constitutes manifold a crime against humanity. And as such, we will prevail, because, as Martin Luther King Jr so aptly said: “the arc of the moral universe is long, but it bends toward justice”.

I AM NOT A TERRORIST!

AMARA KROMAH

As a kid, I always dreamed of living a better life. Due to the poor financial situation of my parents and many other reasons, I decided to explore options that would allow me to change this condition and live the better life I had always dreamed of living. I wanted to have the opportunity to work and make money to ensure a decent life for my family and me. Inspired by the success stories of people who had left my country to work in northern Africa, I left my home country Guinea to follow in their footsteps and ended up in Libya. While leaving my country as an innocent but motivated teenager, I had no initial plan to come to Europe. All I wanted was to migrate to a peaceful country and live a decent life.

My problems started when I embarked on the journey to Northern Africa. Along with other migrants, I slept in dangerous places and ate unhealthy food. Travel agents regularly robbed me of my little money in the Sahara desert. I spent days without eating and without drinking enough water, but my motivation to seek a better life kept me going. Without knowing what was ahead of me, I held onto the hope that I was heading for a land of opportunity. Instead, I found myself in a horrific situation in Libya. My dream became a nightmare as armed men regularly exploited me for unpaid labour.

I would work for the whole day, and instead of getting paid after a long day of work, they would point guns at us and chase us away. My life became characterised by fear and hopelessness in Libya, as lawlessness, kidnapping and rape became normal. Armed Libyan civilians would commit gruesome crimes like rape, shooting and even stabbing black african immigrants, like me, without being questioned by anyone. Seeing this situation only getting worse and knowing that any of us could be killed at any time without any respect for our fundamental right to life, I was left with no other choice but to migrate to Europe for safety and peace.

I saw Europe as heaven, a place where I would be safe and which would allow me to achieve the big dreams that pushed me to leave my family as a teenager. I came to Europe searching for this peace and a decent life that I could not have in my country, certainly not to be a threat to anyone. As a young man with big dreams, I only came to Europe for the opportunities I would not have in Africa. My whole life has been defined by my quest to live a better and decent life away from home, and despite all the challenges and traumatising experiences I have had during the course of this journey, I have always remained peaceful and law-abiding. I am neither a terrorist nor do I encourage any act of terrorism in any given circumstance.

Despite the current situation, I feel protected here in Malta. I am able to work to feed myself and pay bills; to refresh my mind and reduce the stress of being prosecuted for years now, I engage in activities such as going to the gym or playing football with my friends. The activities really help my mental health and the friendliness and support of the ordinary Maltese people really give me a sense of hope and reassurance in humanity. On days that I have to appear in court, I wake from my bed believing that I am going to be acquitted. I know and believe that truth will always prevail. That I can neither be a terrorist nor encourage any act of terrorism under any condition. All I want now is freedom and the opportunity to be a lawful and productive member of society. I want to live here peacefully and respect the rules and regulations of the country.

NO TO A EUROPE OF WALLS

Father Mussie Zerai
Chairman of Habeshia Agency

Everyone is now aware of the fate of thousands of migrants stranded in Libya. It is a situation brought about by indifference and, indeed, very often with the substantial complicity of European policies which have been in place for years. In recent months, we have seen a further escalation of violence, horror and systematic violations of human rights. As confirmed by UNHCR, IOM and other respectable NGOs, the Libyan reality is a real hell (certainly in the detention centres, but even outside) for a growing number of young people, guilty only of having been forced to abandon their homeland in order to seek freedom, security and survival itself elsewhere. They are all driven by hope for a better and more dignified life.

The Holy Father, on the 24 October 2021, said, “We must put an end to the return of migrants to unsafe countries”. Specifying that priority be given “to saving lives at sea, with predictable rescue and disembarkation devices, guaranteeing them decent living conditions, alternatives to detention, regular migration routes and access to asylum procedures.” The Pope laments “And how those who

are turned away suffer! There are real ‘lagers’ (concentration camps) there.” In unequivocal terms, Pope Francis is both highlighting the gravity of human rights violations in Libya, as well as the responsibility of those who order pushbacks to unsafe ports. This is just some of the evidence that backs up these claims.

- ▶ Between 1 and 4 October 2021, starting from the suburb of Gargaresh and then extending the operation to all of Tripoli, the Libyan police forces arrested over 5,000 people, women and men, as ‘illegal immigrants’ – an accusation that, for the Libyan state, which is not a signatory to the 1951 Refugee Convention, is not a simple administrative violation but a serious criminal offence. This involves months and years of imprisonment, in detention. And these mass arrests – as reported by various news sources and the UNHCR – were carried out with methods that were often characterised by severe violence, so much so that one survivor claimed that at least one young man was shot dead while trying to avoid capture.

- ▶ On 8 October 2021, the guards of the Ghout Al-Shaal camp, on the outskirts of Tripoli, did not hesitate to open fire against migrants, in bursts and at eye level, in an apparent attempt to foil a mass escape. UNHCR reports that at least six people died and about 25 were injured, some of whom suffered very grievous injuries.

- ▶ In 2021, the Libyan Coast Guard blocked – note the terminology, ‘blocked’ and not ‘saved and rescued’ – 27,041 migrants at sea who had managed to escape from Libya. Most were taken back to the suffering in detention centres. Another 7,865 people were arrested on land prior to boarding a boat or at the border along the roads leading to the coast. And 353 people were forcibly returned back to Libya, at the request of Tripoli, by commercial ships that intercepted them at sea.

All in all, in 2021, 35,259 people were prevented from seeking help and asylum in Europe, an inalienable right enshrined in human rights law – a right which is repeatedly upheld and was just recently reconfirmed by a significant decision of the Italian Constitutional Court. The case was brought forward by a young Senegalese man who had been detained and tortured in Libya for a long time. The Court established that migrants who passed through Libyan prisons must be granted protection. Just like this Senegalese man, all those who lost their lives in the Mediterranean Sea also had a right to protection. Yet, more and more, the use of visible or invisible walls combined with indifference has denied victims their rights and contributed towards making the Mediterranean an open cemetery and the deadliest border on earth. The Mediterranean Sea is becoming ‘Mare Vostrum’ (your sea), filled with ‘Sanguine Nostrum’ (our blood).

As a response to all this, on Friday 22 October 2021, a protest organised by refugees, migrants and asylum seekers took place in Rome in front of the Libyan embassy. Leaving aside Libya’s specific responsibilities, which I don’t

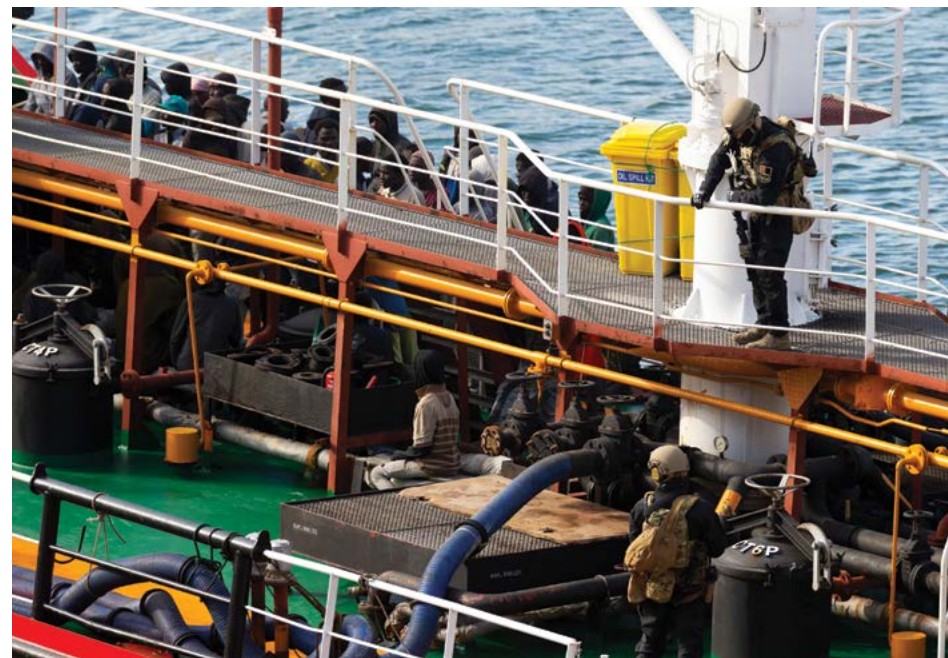
want to minimise, all this is the direct result of the policies of closure and pushbacks established through a series of bilateral treaties and agreements signed with Libya, particularly by Italy, but with the full support of the European Union. Brussels as well as Rome bear responsibility for these atrocities. An example of this is the latest Italy-Libya Memorandum signed in February 2017, or the supply of funds, vehicles, ships, training and assistance to the Libyan Coast Guard and the Government of Tripoli by the Italian government. Yet another example are the Italian ‘guarantees’ for the establishment of the Libyan search and rescue (SAR) zone, formally recognised since June 2018 despite the fact that Tripoli does not have any of the requisites necessary to manage, coordinate and conduct search and rescue operations at sea. To the extent that one harbours the suspicion that the directives and operational provisions are, in reality, issued by the Italian Navy and the Frontex agency.

A radical revision of the policy so far adopted by the European Union in general and by individual states in particular is all the more necessary. It is good that, in October 2021, the European Commission rejected the funding request of as many as twelve member states to build physical walls at borders, even though one cannot forget that since the fall of the Berlin Wall, Europe has built over 1,200 kilometres of concrete walls and barbed wire at its external borders. However, the ‘walls’ built by policies of rigid closure are just as cruel and lethal as physical ones made of sharp steel blades, if not more.

For change to happen, the first step must be a strong warning to Libya to put an end to the violence and call those responsible to answer for it. Above all, Libya must start respecting the fundamental human rights of migrants on their territory. This is even more pertinent because the recent wave of arrests appears to constitute an attempt at a forced mass repatriation, without considering that for many this will mean returning to situations of danger and severe crisis from which they had originally fled. The real and definitive solution, however, is the abandonment of the policies of closure and pushbacks pursued for years by the European Union and particularly by Italy, Malta, Greece and Spain. A European policy that from the 2014 Khartoum Process onwards elevated Libya to the ‘gendarme of the Mediterranean’, tasked with blocking migrants who would like to seek asylum from Europe’s democratic countries. This blockade is to be implemented at all costs, often conducted with indiscriminate collective violence and pushbacks and, in any case, with little regard for the fate that awaits thousands of desperate people confined behind the walls of Fortress Europe, in direct contradiction to obligations under international law, the ‘law of the sea’ and the EU’s own Charter of Fundamental Rights.

The Government of Malta has even accused three young men, the El Hiblu 3, of hijacking and terrorism. But they did not threaten anyone, their resistance was an exercise of a sacrosanct right. It is a right that has been just recently recognised by the Italian Court of Cassation, on 16 December 2021, when in a similar case, known as the Vos Thalassa case, the Italian Court recognised the ‘right’ of people to resist being returned to Libya. The Court claimed that this was legitimate defence, therefore introducing the idea of a ‘right to stop their return’. The three young men were only exercising their ‘right to stop their return’ to Libya, to stop their return to the place where their fundamental rights had been trampled upon, where they endured violence and suffering. By resisting, the El Hiblu 3 defended what was their own right – the right not to be sent back.

The rights of the most vulnerable should not be weak rights!



The El Hiblu 1 docked in Bailer Wharf, Senglea. March 2019

AFRICA IS NOT POOR BUT IMPOVERISHED

Aminata Traoré

*Coordinator of Forum pour un Autre Mali
– in conversation with Jelka Kretzschmar*

J: Since 2006, together with the Initiative of the Centre Amadou Hampaté BA (CAHBA), the Forum pour un Autre Mali (FORAM) organises the conference Migrations in Bamako, Mali. Every year, the conference brings together intellectuals, political, social and cultural actors committed to defending the rights of migrants who are forced to travel and live clandestinely. The El Hiblu 3 shared their story during the last Migrations conference, which took place from 16-18 December 2021. What was the focus and how did people react to the story of the El Hiblu 3?

A: Why should manhunts and house arrest be the lot of some, while others, the very ones who practice xenophobic and repressive policies, take the world by storm? This is the question we keep asking in the framework of the Migrations conference every year since 2006.

The 2021 edition of Migrations took place in the particular national context of Mali, marked by a worsening security situation and a tug of war between the ‘international community’ and the transitional authority born of the coups d’état on 18 August 2020 and 24 May 2021.

The story shared by Abdalla and Kader, two young men from the El Hiblu 3, was very enlightening for the participants. Their situation is a perfect illustration of the criminalisation of migrants and the risks that these young people may have to take due to the tightening of migration policies in Europe.

Can you tell us a bit about the Forum pour un Autre Mali? When and why was it founded, what does it do?

The Forum for Another Mali (FORAM) is the national branch of the African Social Forum (ASF), which itself is an extension of the World Social Forum (WSF) started in Porto Alegre, Brazil, in 2001. FORAM aims to continue and deepen the debate on neo-liberal globalisation and to initiate activities in different areas that are alternatives and in line with people’s needs.

When, on 29 September and 6 October 2005, hundreds of African migrants climbed the barbed wire fences of the Spanish enclaves of Ceuta and Melilla in Morocco, it was in response to their lack of mobility, as well as a call for help. At least four people were shot dead, dozens of others were injured but, because of a lack of interlocutors and genuine dialogue, they were not heard: neither by Africa, where they are deprived of decent jobs and income, nor by Europe, where they are denied legal entry.

On the contrary, in fact, these dramatic events in Ceuta and Melilla were used to justify the tightening of Europe’s migra-

tion policies to the point of criminalising migrants, who are forced to travel and live clandestinely.

After these events, we started the initiative FORAM and the respective conference Migrations to establish commemoration, education and regular discussion about the discrimination of migrants.

How does the EU border regime and the externalisation of EU borders affect the movement of people and infrastructure in the Sahel and Sub-Saharan Africa? Who benefits from militarisation and border controls? What is needed for better transnational networking between North Africa and Europe?

We understand the externalisation of Europe’s borders as comparable to what they call ‘jihadism’. There is an externalisation of the military solution and a subcontracting of police violence. The migration issue is included by the far right – which is on the rise – in the same register as terrorism. The tracking down and repression, whether by police or military, is outsourced to states bankrupted by structural adjustment programmes (SAPs) and cruelly dependent on foreign aid.

We must ourselves become aware of the difficulties faced by young people and make our voices heard in order to deconstruct the dominant discourse which consists of saying that it is only poverty and corruption which cause young people to depart and

some to be recruited by jihadist leaders: because Africa is not poor, but impoverished. If there is poverty, it is the result of globalised and financial capitalism, which is a source of inequality and corruption throughout the world.

There is a willingness to plunder Africa further in an attempt to solve the systemic crises of capitalism in the Occident. It is the shareholders of the multinationals who benefit from this conduct of world affairs. So, unless we look at the problem from the perspective of the global expansion of this odious system of plundering natural resources and exploiting human beings, there will be no way out. This systemic approach is at the heart of what we do here at FORAM and the Migrances conferences’.

A radical paradigm shift in development and global partnership is the only answer to this question. Unfortunately, this is only being paid lip service as more money is spent on arms purchases. Africans should be able to live with dignity and decency here, as well as being afforded freedom of movement.

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

Nils Muižnieks

*Director, Europe Regional Office,
Amnesty International*

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 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 EUNAVFOR Med 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 EUNAVFOR Med 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.

¹ For more information about Amnesty International's concerns regarding the case of the *El Hiblu 3*, Malta's violations of the rights of refugees and migrants and the situation of refugees and migrants in Libya, see the references (page 118)

MY TRUE STORY

ABDUL KADER

First of all, my name is Kone Tiemoko Abdul Kader. I come from the Ivory Coast. It all started in my home country: Ivory Coast. Life was not really easy for me in Ivory Coast, so I decided to leave my country to look for a better future. I was only 15 years old when I ended up in Mali. I didn't know anyone, I had no idea where to sleep or work. I arrived at a train station in Mali. I started to sleep outside this station. Soon, I made a friend who was about the same age as me and who worked with wheelbarrows to help passengers carry their luggage to the taxi station. I started to work with him in that station. One day, he asked me if I wanted to go with him to Algeria to live with his older brother. At first I refused, but my friend was a bit older than me and he always tried to convince me to go with him under the pretext that we would have a better future there, that life would be good for us. He even promised to pay for my transport. After some time I decided to take up his offer and go with him.



We left Bamako and ended up in Gao, a town in the north of Mali. Then we crossed the desert with other people we met in Gao. When we arrived in Algeria at his older brother's house, I had to work and pay back the transport that his brother had paid for me – after he had promised to pay for me and I felt betrayed. So we stayed there for a while. But in 2018 Algerian soldiers were hunting black people to deport them. Just picking you up and dropping you off in the desert! What kind of repatriation is that? If it had been a repatriation to your own country, we could have understood... My friend's older brother decided that we would travel to a small village called Debdeb, close to the Libyan border, to hide from the soldiers. We planned to return to Algiers, when they would stop looking for black people. While we were in this village, the deportations got more serious and soldiers also started looking in smaller villages. At one point, they even went to the villages to look for black people. My friend and his older brother decided to leave Algeria for Libya, since the village was already near the border. We felt there was no other choice, so we crossed the border into Libya.

The very first village we arrived in, we got arrested and were locked up in a private prison. From this prison, they decide how much you have to pay in order to be released. I didn't have any money so my friend and his older brother left me there as they only paid for themselves. Those who didn't pay, were beaten so that they would call their parents to pay. There was another option: to work in the fields to get your freedom. I spent about nine months in prisons working in the fields without being paid. Eventually, with the grace of God, together with some other people I managed to escape from there. We found ourselves in Tripoli, the capital of Libya. While in Tripoli, we stood on big roundabouts to be able to find work. One day, an Arabic speaking guy drove by and pointed at me and another young man to come with him. So we got into his car. He drove out of Tripoli and went to a village not far. When we got there, we worked for him, but after finishing the work he refused to pay us and to take us back to where he had picked us up in the morning. He said that from now on we would always work for him. So we worked for him, we were always watched. Some days, he gave us food, some days he didn't. This went on for a while.

One day he said he was going to help us go to Europe, that he had friends who take people to Europe in zodiacs (inflatable boats). Deep down, I didn't want to and I told him, but between choosing to go to Europe or staying with him to work for free forever... I didn't have much choice but to go. One night, he put us in his car to take us to his friends. It was there that I saw all kinds of people of different nationalities, coming from subsaharan Africa. In the same night, we were transported like objects to a place near the sea.

At this point I did not want to get into the boat because I had no faith that the boat would make it to Europe, and feared that we would all die at sea. And my dream was never to go to Europe anyway. But I was forced to get in the boat – other people were also forced to get into it and that's how we left. During the following day, we had no idea where we were and our zodiac was losing speed. Later we saw a helicopter above us. A few hours later we saw a big boat coming towards us. When the boat arrived they asked us where we came from. We said: "Libya". Someone from the ship told us that the helicopter personnel had given him the order to come and rescue us. So we stayed calm and got onto the big boat. It was that same boat that we got arrested on when we arrived in Malta; we were just trying to calm people down. Because of that we spent seven months and twenty days in prison and we are still in legal proceedings.

Since I'm out of the prison I try to find work and live my life. In June 2020, I was working with a construction company and I fell off the third floor. Luckily, I only broke my leg. I feel lucky and I thank God that I am still alive. For months I was walking on crutches and couldn't work. I am still in pain every day. I've got some long metal plates in my hips and leg and am waiting for another operation for them to be taken out. That scares me, because I'm afraid I will again miss work and lose my job.

THE NIVIN AND EL HIBLU 1 CASES: MIGRANT RESISTANCE AGAINST PRIVATISED PUSHBACKS

Charles Heller and Lorenzo Pezzani

Forensic Oceanography/Border Forensics

During the night between the 6 and 7 November 2018, a group of 93 migrants left the coast of Zlitan, seeking to escape Libya and travel to Europe by boat. In the afternoon of 7 November, a Spanish aircraft part of the EU anti-smuggling operation EUNAVFOR MED Sophia (ENFM) sighted them and relayed their sighting to the Italian Maritime Rescue Coordination Centre (MRCC) in Rome which, in turn, informed the Libyan Coastguard. As the Libyan forces were already engaged in the interception of another migrant boat, the 93 migrants continued to navigate north. The precarious passengers alerted activists of the emergency hotline Alarm Phone who remained in contact with them, gathering information and GPS positions and passing them on to the Italian authorities. In the meantime, the Libyan authorities identified a vessel transiting the area of distress, the 88-metre-long vehicle carrier *Nivin*, flying the Panama flag. Lacking the communication equipment to contact the *Nivin* captain, the Libyan authorities requested MRCC

Rome to alert the *Nivin* on their behalf and instruct the vehicle carrier to conduct a rescue operation. In the early hours of 8 November, the *Nivin* reached the boat in distress and rescued the 93 distressed migrants. According to the rescued people, the *Nivin* crew informed them that they would be brought to Italy. In reality, however, the vehicle carrier proceeded toward Misrata, as instructed by the Libyan authorities.

When the Libyan authorities approached the *Nivin* in the open sea to transfer the passengers, the rescued people realised they had been lied to. Fearing for their lives if returned, they refused to be transferred to the Libyan Coastguard. In an act of resistance, they locked themselves up in the hold of the ship to protect themselves from Libyan officials threatening them. The migrants later refused to disembark in the port of Misrata, where the boat arrived in the morning of 10 November, and remained confined inside the vessel. Thanks to a mobile phone, they were able to communicate their plight and refusal to disembark to the outside world. The stand-off lasted for ten days. On 20 November, Libyan security forces violently removed the passengers from the ship. The migrants describe suffering serious wounds during the attack, including as a result of being shot at with both rubber and standard bullets. After the forced disembarkation, they faced detention and ill-treatment, including torture and forced labour.

Just like the El Hiblu case, the *Nivin* exemplifies the practice of privatised pushback – when EU actors use merchant ships to rescue and bring back migrants to a country in which their lives are at risk – that emerged immediately after Italian Interior minister Matteo Salvini implemented his ‘closed ports’ policy in June 2018. As rescue NGOs were further criminalised, and European state actors further withdrew from operating rescue, this policy created a rescue gap that the Libyan coast guard were unable to fill. The Italian and Libyan coast guard increasingly called upon merchant ships transiting in the area to carry out rescue and refolement by proxy. It is this practice and policy that we have documented in our report on the *Nivin* case. Our report has served as the basis for a legal case brought on 18 December 2019 by Global Legal Action Network (GLAN) to the United Nations Human Rights Committee on behalf of one of the survivors who was shot and removed from the *Nivin*.

The *Nivin* and the El Hiblu case also demonstrate the same pattern of migrant resistance. They exemplify the tremendous courage, collective intelligence and solidarity enacted by the passengers as they resisted the violation of their rights. This too is a pattern that has emerged strongly since June 2018: in the face of radicalised border violence, migrants’ radicalised their practises of resistance. We stand in solidarity with migrants exercising their right to resistance.

SCALES OF VULNERABILITY

Jean Ziegler

Former Vice-President of the Advisory Committee to the United Nations Human Rights Council

Never before in recent history have so many people been displaced. People flee from violence, insecurity, from the consequences of climate change and economic exploitation. The United Nations High Commissioner for Refugees (UNHCR) estimates that there were more than 84 million forcibly displaced people worldwide in 2021. Next to about 51 million so-called ‘internally displaced people’ some 21 million are recognised as ‘refugees’.

Every day, the UN World Food Programme headquarter in Rome takes executive decisions on the lives of tens of thousands of people. Vulnerable groups on the five continents are identified here in processes that essentially decide who gets to live and who gets to die. Some are unfortunate to find themselves classified as less vulnerable than others and therefore less deserving of help. While in Syria entire families are mutilated, burned, and murdered in a war that isn’t theirs, people in South Sudan suffer from terrible famines. In Juba tens of thousands of children, men and women have died from hunger, dehydration, and cholera since

2017. People who manage to escape from such conditions often fall through the protection net of the 1951 Geneva Refugee Convention. They are refused international protection because they are viewed as so-called economic migrants, and at other times they are forced into miserable camps.

In November 2019, the United Nations was celebrating the 30th anniversary of the Convention on the Rights of the Child (CRC) which has been signed and ratified by 196 states. Preparations for the celebration were in full swing while Abdalla, Amara and Kader were sitting in Maltese prison cells. Two of them were under the age of 18 and therefore recognised as minors under the Convention and Maltese national law. Both had their children's rights, as seen in Article 2 of the CRC, violated when they were thrown into a high security prison:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
(Article 2(1), UN Convention on the Rights of the Child)

The arbitrary removal of rights is a known characteristic of the European border regime. When the migrant boat carrying Abdalla, Amara and Kader and more than a 100 other people set off from Libya, on the 26th of March 2019, European authorities instructed the merchant vessel, the *El Hiblu 1*, to return the survivors to Libya, in full knowledge that they had an obligation to identify a place of safety for disembarkation.

Every attempted or executed pushback operation, even if 'by proxy', represents a blatant violation of human rights and international law – disenfranchising people in need of protection from their right to apply for asylum and violating other fundamental human rights, such as the right to life. While this crime at sea was luckily averted with the help of the *El Hiblu 3*, their suffering continued after arrival in Malta. Instead of protecting the most vulnerable, they were criminalised and accused of terrorist activities, hijacking a ship and steering it toward Malta – a place, they didn't even know existed.

Standing up for the *El Hiblu 3* is necessary. The European Union is a democratic construct: we, the citizens, must mobilise public opinion and organise our struggle. We must declare war on the EU's deterrence strategy, which is resulting in deaths, forcible disappearances and the destruction of lives. We cannot allow Europe to continue to punish people who are in need of protection!

DO THE RIGHT THING: DROP THE CHARGES AGAINST THE EL HIBLU 3

Maria Pisani

Founder of Integra Foundation

It has now been three years since the Government of Malta pressed charges against Abdalla, Amara and Kader. The consequences of the accusations brought against the three young men are devastating: their imprisonment, the drawn-out legal process, the prospect of years in court, the stigma associated with such accusations, and the fear of life imprisonment all amount to cruelty. Three long years of uncertainty and fear reach into the future with no end in sight, a living nightmare from which there seems to be no reprieve. The *El Hiblu 3*, as they came to be known, might as well still be adrift in the Mediterranean, or lying in their prison cell, for they remain shackled for a crime that they did not commit. The waiting is devastating, destructive and frightening.

Three years have passed since Abdalla, Amara and Kader fled the shores of war-torn Libya in the hope of reaching security, a safe destination and an opportunity to pursue the kind of dreams any teenager hopes for. Their aspirations suggest nothing out of the ordinary: to pursue an education, play football, find peace of mind, and make their families proud.

Over the past two decades, the headlines in Malta have been dominated by the stories of asylum seekers fleeing the coast of Libya in an attempt to reach safety and protection in Europe. The complexities of this context go beyond the scope of this article, but the events that ensued on the decks of the *El Hiblu 1* must be framed within the broader context of political theatre, and the menace of border politics within the Mediterranean and EU context. Malta, as the smallest Member State, wields little political power within the broader EU context and the script provides little opportunity to protect what is perceived as the nation's best interests. The issue of asylum seekers has been positioned within a political narrative that insists that Malta is too small to cope with the number of arrivals and that other EU Member States must do more in the way of 'burden sharing'. The Government of Malta has resorted to secret deals with the Libyan government, illegal pushbacks and unlawful detention at sea and on land in their efforts to prevent arrivals and to assert political power on the international stage. On a national level, two decades of racialisation and criminalising discourse have successfully generated enough fear in the minds of the general public to apparently justify inhumane and illegal reception policies and social exclusion. Unbeknown to the three teenagers then, the events that unfolded on the decks of the *El Hiblu 1* were not occurring in a vacuum, but were part of a far more complex political game of chess, in which they were subsequently positioned as pawns.

As they translated for the captain and the other passengers, the three teenagers entered a broader political context – a context marked by tension, political bluster and abuse of power, violence, human rights violations and deaths, with little end in sight. Punishing refugees has become normalised, a collateral damage of border politics.

A law that was written to protect the nation-state is being used to terrorise three individuals. These are spectacular accusations that represent no less than public acts of cruelty against three young men, two of them who were still minors when they arrived in Malta. The charges brought against the three young men are unnecessary. They cannot be justified.

The lives of Abdalla, Amara and Kader must be put first. There can be no space for negotiation or justification for such acts of cruelty, especially when they involve a minor. It is not right, and it is not fair.

When Amara was first placed in prison, he recalls not feeling afraid. He believed that what was happening was simply a result of a misunderstanding, how could it not be? His innocence, reflected in his young age, allowed him to believe – to really have faith – in human understanding and decency. I believe it was this same virtue, coupled with immense courage, that spurred the three teenagers to mediate between the crew and the other passengers. The painful paradox is that it is this very act of courage, a noble quality in and of itself, that has exposed them to new dangers, that made them more vulnerable to cruelty. Three years on, this ordeal has stripped all of the young men of their innocence. Today, they understand first hand that the world can be very cruel, cowardly and unjust, and as a result, they live in perpetual fear. Every waking moment, the young men live with anxiety. Their youth and their future have been taken from them. They cling to hope, but they cannot afford to dream. Their smiles are guarded, moments of joy are restrained. Three years on, they are more aware of the political context (national and international) that shapes forced migration and asylum in the Mediterranean Sea and the forces beyond their control that continue to affect and manipulate their very existence. The faith and trust in what is right, that placed them on the decks of the *El Hiblu 1* and at the centre of this trial, have been replaced with an erudite wisdom beyond their years. Today, they believe that they have been weaponised, used as pawns to fight political battles, their rights easily abused as a result of their status. Sadly, they're not wrong.

Deep down, most of us are able to recognise an act of cruelty, and we are equally aware of the fear that it generates. The accusations brought against Abdalla, Amara and Kader, and the ongoing court procedures, are harmful and cruel. This injustice cannot continue to be ignored, justified or dismissed. We call upon the Attorney General to drop all charges with immediate effect, and to close the case before it goes to trial. It is the just thing to do.



SHATTERED DREAMS

ABDALLA BARI

My name is Abdalla Bari. I am 22 years old, married and father of two daughters. I come from Guinea, Conakry and I am from a peasant family. I am telling this short story about myself to give you some idea of who I am, how and why I ended up in Europe.

When my father was still alive, everything was going well: I went to school, and he supported my family and I through farming and ranching. It all started when there was a land quarrel between my father and my paternal uncles. My uncles were not satisfied with their share of my grandfather's inheritance, so they tried to obtain what was rightfully my father's heritage. They bewitched my father and for one and a half years he suffered from an incurable disease. Fear of facing the same fate led me to leave.

After the death of my father between 2017-2018, I travelled to Libya to reach Europe because I told myself there I would be safe and have a better life. How I ended up with my wife on the suicide route to Libya is another very long story. Once we were in Libya, we were always scared of being kidnapped and enslaved for work. Leaving the house means risking your life if you're a black person.

After being in Libya for some weeks, we were put on a dinghy on the 26 of March 2019, around 5 a.m. When we were on the coast the weather was getting worse but the Libyan people decided it's our time to go. We were in the inflatable boat with about 110 people, including women, children and men. In the afternoon, floating in the middle of the Mediterranean Sea, we saw an aeroplane high in the sky, circling above us. Shortly after, we spotted a boat in front of us and thought it was a rescue boat. When we got closer, we saw that it was an oil tanker. A man introduced himself as the captain; he asked us where we came from? From Libya? He asked us to come on board as he had received instructions from the plane to come and rescue us. A few hours after the rescue, he came out of his cabin and told us that he had received further instructions. There would be two boats coming from Europe; he must reach a meeting point to transfer us so he can continue his journey. He spoke only in English, but one of us understood and translated for the rest.

When night fell, the captain started his engine, and we thought that he was going to the transfer point to meet the two boats. To the great surprise of everyone we found ourselves near Libya. The first people who saw the Libyan coast could not help shouting "Libya! Libya!", their voices filled with disappointment. This alerted everyone that we were going to Libya. It was around 5 or 6 a.m. I think. The ship stopped, people were shouting, others were trying to jump into the water, some were falling, and some women on the other side of the boat were fainting. This spectacle took place with the captain and his crew closed in the cabin, only hours after he had sworn on the Quran not to bring us back to Libya. It almost seemed as if this was premeditated.

I was upset at the captain's deceit, but I overcame my anger to calm the others, and to join those who were trying to restore calm on the boat. As the situation calmed down, the captain came out of his cabin to talk to the person who understood and spoke English while we were in front of the crowd explaining and helping.

He asked for the translator and us mediators to come with him to the cabin to show us his new direction, confirming that he would not continue towards Libya. He requested that we help him communicate with the upset crowd and that we stay with him in the cabin. He showed us on the map that he was going to head for Malta now – but that he wanted peace and quiet on his boat and for people to stay on the main deck. He didn't want to see anyone near the bridge. The translator went out to inform the survivors and then returned to the cabin.

When we wanted to go back to join the others, he asked us to stay in his cabin to watch the surroundings. We were exhausted, starving and sick. Despite this, the captain didn't allow us to lie down. We had to stay seated to keep watch because he didn't want to see any person near his cabin and on the bridge.

When we arrived in Malta, he asked us to get out of the cabin and join the others, so that we would not have any problems. We listened to his advice and soon after the military came on board. They separated us from the other people we came with – and I was separated from my wife – in order to put us in jail. This was on the 28 of March 2019.

The Maltese state accused us of being pirates, terrorists and all kinds of things, which I still don't understand. After spending seven months and some days in prison, thank God, today we are out on parole.

To know that NGOs, associations, human rights bodies and journalists support us in our struggle for freedom gives me hope and strength. This situation has affected my life, as if I am lost in the dark without knowing where to go. My dream was to become a social worker in the health field, but sometimes I feel like all my dreams are shattered. But my little family beside me gives me a smile every day.

OUR PRISON IS FULL OF ASYLUM SEEKERS WHO DROVE BOATS

Karl Kopp

*Director of European Affairs,
Pro Asyl*

In Greece, serious and well-documented crimes are being committed against refugees. The perpetrators in uniform can lull themselves into a false sense of security despite pushbacks that violate international law, serious mistreatment, and the refusal to save lives. These human rights violations go unpunished. At the same time, detention centres are filling up: people seeking life and refuge in Europe are sentenced to draconian punishments as ‘captains’, and thus as alleged traffickers, despite the fact that smugglers remain in Turkey and are not on board.

As in the case of the El Hiblu 3, victims of the brutal EU border regime in the Aegean are criminalised and imprisoned. Just like the three teenagers, a father from Somalia sits in the dock, even though he saved lives. When H. M. took the helm of a sinking boat off the island of Lesbos in December 2020, he said he was terrified but determined to save himself and the other 33 people on board. In May 2021, the criminal court in Mytilene sentenced him at first instance to a total of 142 years in prison for smuggling.

The Greek Coast Guard and the European border agency Frontex arrest people piloting rickety boats across the Aegean Sea. The so-called ‘captains’ are given short shrift. In proceedings that violate the rule of law, they are sentenced to draconian punishments. One of the few studies on this process, entitled ‘Incarcerating the Marginalized. The fight against alleged ‘smugglers’ on the Greek hotspot islands’,¹ comes to a shocking conclusion: the analysed court proceedings only lasted between 15 and 75 minutes. As of 1 January 2019, the total number of people detained in Greek prisons was 10,654 – just under 2,000 people were convicted of aiding and abetting ‘illegal entry’.

Lawyer Dimitris Choulis, working on Samos, describes the consequences of this policy of criminalising and deterring refugees as follows: “Our prison is full of asylum seekers who drove boats.”

Farmakonisi Island: In January 2014, three women and eight children from Afghanistan died in a pushback operation by the Greek coast guard. The refugee boat was towed by the coast guard towards Turkey in stormy seas. The outcry in Europe was great. The deaths near Farmakonisi certainly led to the Syriza government ending its policy of forcible refoulement, at least at sea, after its election victory in January 2015. However, in Greece, all lawsuits against the coast guard were dismissed. After their own case against the Greek coast guard was dismissed, the survivors filed a complaint with the European Court of Human Rights in January 2015. They are still waiting for justice. A judgement from Strasbourg is pending. A young Syrian refugee, the 16th survivor, had to pay bitterly. The Greek authorities claim that he was the captain of the boat. The other survivors insist: “He is like us. A refugee. There was no smuggler on board at all.” Nevertheless, in 2015, the youth was sentenced at first instance to a total of 145 years and three months imprisonment and fined €570,500 for being the ‘captain’ of the boat and thus responsible for the deaths. The years sentenced is multiplied by the number of ‘smuggled persons’. If deaths occur, the sentence is more severe. An appeal court in Rhodes acquitted the young Syrian of responsibility for the deaths of the eleven victims. According to the verdict, the fatal boat disaster was caused by the deployment of the Greek coast guard. The sentence was reduced to ten years with the boat driving charge remaining despite the fact that the court accepted that he was a refugee himself, fleeing to find protection. In accordance with Greek law, the young man was released after almost three and a half years of juvenile detention.

Samos Island: On the night of 7 November 2020, N. and H., together with 23 other refugees, tried to reach Greece from Turkey on an inflatable boat. Also on board were N.’s 6-year-old son and H.’s sister, brother and disabled mother.

The families had fled Afghanistan and were seeking protection in Europe. Off the Greek island of Samos, the boat got into distress and capsized. Although the Greek coast guard was informed about the emergency, it took several hours before they arrived on the scene. The survivors testified that they saw a coast guard boat approaching twice, but it did not rescue them. N.s son died. The distraught N. did not receive psychological treatment but was instead remanded in custody. He is facing up to ten years in prison for endangering his child. N. says, “I lost my son. He drowned in the water. On top of that, they arrested me in that horrible situation and put me in prison. They say it is the law. This cannot be the law. This is inhumane. This must be illegal. Are they really going to blame me for the death of my son? He was everything I had. I essentially came here for my son.”

H., the second occupant of the boat, is charged as ‘captain’ with the ‘unauthorised transport of 24 third-country nationals into Greek territory’. He faces a life sentence.²

It is a blatant injustice that people, who are not afforded regular forms of mobility in their search for protection and a dignified life, are locked away just because circumstances forced them to take the helm of a boat. Seeking protection deserves legal security, respect and immunity from prosecution. Instead, smuggled refugees and migrants face punishment due to restrictive and inhumane EU legislation. Unfortunately, these forms of criminalisation have not yet received the public outcry they deserve. This means that we must speak up and do everything to end these shameful policies. We owe this to the El Hiblu 3, as well as the ‘captains’ in Greek prisons and elsewhere.

¹ Report: https://bordermonitoring.eu/wp-content/uploads/2020/12/report-2020-smuggling-en_web.pdf

² Free The Samos2 Campaign: <https://freethesamostwo.com/>

WHAT IS SOLIDARITY WHEN IT COMES TO FLIGHT AND MIGRATION TO EUROPE?

Ramona Lenz

Spokesperson, Foundation Medico International

In the middle of the forest, but outside the exclusion zone – the area along the border with Belarus where Poland declared a state of emergency in autumn 2021 – we visited a base camp set up by young people from Warsaw in November. From here they organised support for people in need after illegalised border crossings from Belarus to Poland. The cupboards and shelves were well stocked with jackets, shoes, hats, socks, sleeping bags, hygiene items, toys and food. Dozens of thermos flasks of tea were ready in the kitchen. There was a concentrated atmosphere accompanied by lively activity. In one corner, a group was consulting, another was preparing for an operation. During our stay, several emergency calls came in. Three young men had just returned from a mission and told us about it. A group of eight people from Syria had called in the afternoon via the emergency number that is circulated among refugees. The three activists had then set off with tea and soup to warm them up, as well as other things they needed.

In November 2021, there were hundreds of people a day trying to reach Poland from Belarus. Now, in early 2022, there are said to be 20 to 40 a day. In wintry temperatures and early darkness, they sometimes walk for weeks through the dense forest area without food or warm clothing, always in fear of being discovered and sent back. Many have experienced numerous pushbacks between Poland and Belarus. “They are hunted like animals,” said one of the Polish activists. Most people are in a very bad condition when they call them, he added. The most common health complaints are blisters on the feet, stomach problems because of polluted water and inedible forest fruits, diarrhoea, muscle cramps and headaches. As far as mental injuries are concerned, the activists know that there is little they can do during their short encounters in the forest, and yet they take the opportunity to cheer people up a little – even if it is only a kind word or a careful touch.

The activists usually only come to the border area for a few days. Then they are replaced by others so that they can return to their paid work or their studies in Warsaw. They are just as much a part of Grupa Granica as others who try to legally pursue the injustice that happens to people at the border. The group, for example, prevented the burial of a young man from Syria whose body had been found in the border area so that an independent autopsy could be carried out beforehand. In another case, they are trying to challenge the death of a young, chronically ill Iraqi who, despite his precarious health condition, was dragged back from Poland to the Belarusian side of the border and died there. They also provide psychological and legal assistance to people in detention centres. Those who ask for asylum in Poland are often interned for months or even years, including children.

Supporting people in the forests as well as in Poland’s closed camps happens in an increasingly repressive environment. Since taking office in 2015, the PiS-led Polish government has undermined the rule of law and the separation of powers and abused its position to eliminate critics. It has adopted a hard line towards refugees, which culminated in the erection of a steel fence on Poland’s border with Belarus at the end of 2021. Those who support refugees risk criminal liability. However, there is hardly any criticism of Poland’s repressive policy from the EU and other European governments. On the contrary, despite the repression of critical civil society in the country and despite illegal pushbacks, as well as inadequate care and accommodation for refugees, EU governments never tire of emphasising their full solidarity with the Polish government in protecting the EU’s external border.

In view of the dramatic situation of people abandoned in the freezing cold on the Polish-Belarusian border area, the attitude of European decision-makers was particularly shocking. But in the end, the explicit lack of solidarity with

refugees has long been apparent, for example when Turkish President Erdoğan unilaterally opened the borders to Greece for refugees at the beginning of 2020. EU Commission President Ursula von der Leyen then quickly and concretely offered her ‘full support’ to the Greek government – not in terms of refugee protection, however, but in terms of border protection, which in Greece, as elsewhere, is known to involve the use of tear gas and life-threatening pushbacks. Along with Greece, the border states of Italy, Spain, Croatia, Bulgaria, Hungary, Cyprus and Malta also receive extensive financial and operational support in border management from EU agencies – a list that now has to be extended to the states at the Belarussian border. Since 2021, Poland, Lithuania and Latvia can also count on full support in their violent policy against those seeking protection.

The EU has abandoned the idea of taking in refugees in a spirit of solidarity, in which all EU countries are obliged to make an appropriate contribution. For European governments, solidarity is not conceivable with, but only at the expense of the weakest. In the European Asylum and Migration Pact draft introduced in September 2020, EU states would be given the opportunity to show solidarity with other EU states by supporting their deportations. Despite the Pact not being in effect, we can already see its measure being applied at times. Within the framework of ‘return sponsorships’, states that do not want to take in refugees would assume the costs for deportations in other states and thus buy themselves free from having to accommodate refugees and carry out asylum procedures in accordance with the rule of law.

In contrast to the EU’s so-called ‘solidarity measures’ in combating refugees, individuals, initiatives and organisations, such as the aforementioned Grupa Granica, have for many years been acting in solidarity with people on the move, demonstrating a commitment to the responsibility people have for each other – no matter where they come from and where they want to go. This is not only true for activist structures and networks but also for people who live in border regions and are not willing to ignore the fact that people are starving or freezing in their immediate vicinity, like the residents of Michalowo, a small Polish town on the border with Belarus, who put green lights in their windows to signal their willingness to help. First and foremost, however, it is always the refugees themselves who risk their lives and at the same time assist others. In doing so, they not only run the risk of being despised and criminalised by those who have made themselves comfortable in their defensive attitude – ‘we can’t take them all in’ – they also risk putting themselves in situations where they cannot rescue or help and are themselves dependent on solidarity.

In an article in the Guardian, an activist from Poland sums up the madness and brutalisation that the border regime produces and that activists alongside refugees everywhere have to contend with: “We cannot take people with us or drive them to a safe place. That would be a criminal act. But it is not a crime to leave these people to their slow death.” The pressure on people who stand by refugees is growing, especially in Poland. The base camp of the activists from Warsaw was raided a few weeks ago and some people in Michalowo now prefer to put green light in windows that do not face the street.

However, every attempt to intimidate or criminalise people who refuse to let others suffer and die leads to new strategies of solidarity. This is true for the borders in the Polish forest as well as for the borders in the Mediterranean, where the El Hiblu 3 prevented over a hundred people from being returned to Libya’s torture camps. The fact that they now face prosecution shows once again the ‘shipwreck of civilisation’ (Pope Francis) that the EU is responsible for when it comes to refugees. The #ElHiblu3 campaign is therefore not only a campaign fighting for the release of three young men who did the only right thing in a desperate situation, it is also a campaign against the EU’s lack of solidarity with people halted at its borders, against their criminalisation and against the criminalisation of those who stand by them.

THREE HEROES!

Kamissoko

Passenger saved on the El Hiblu 1

Bismillah-ir-Rahman-ir-Rahim (In the name of God, the Merciful and Compassionate), my name is Kamissoko. I come from Mali and I now live in Malta. I will explain to you how I arrived in Malta. Everyone knows what Mali was and still is going through. In 2016, I left my country to go and live in Libya. I have been suffering for two years. Two years of abuse in Libya. When I say abuse, you have to experience it to understand, it is not something you can explain. I thank God for saving me and helping me to survive all this. In the end, I decided to look for the road to Europe.

To get to Libya was already a problem – just imagine that you pay two or three times for the same journey without knowing if you will arrive. This would not cover the journey across the Mediterranean. All this because of the criminals. It was not easy at all. In 2019, God allowed me to travel and that is how I found myself in the boat that departed from Tripoli, Libya. I was happy because I could

finally leave Libya. I made all the blessings, even though I knew that the journey was not finished. The boat was a rubber boat and we were so many that it was not easy at all. I remember, at that time there were a lot of children and women. It was difficult. At one point, people started panicking when we saw a helicopter coming towards us. Then we saw a big boat coming closer and we said ‘thank God’ because the boat came to take us to be safe and sound – no one fell down, no one was hurt except those who refused to get on. We stayed in the same location until the evening and when the boat started moving nobody went to ask where it was headed, because we had already been told that two boats were on the way to take us to Europe. So we all stayed calm until the next morning, when we realised that the captain had lied to us. He was taking us back to Libya. We got up to protest and to ask the captain the reason why he was taking us back to Libya. That is why the protest started on the boat. But the captain did not understand what we were saying. Personally, I did not understand Arabic or English, the only language I understood was a little French, but the captain did not understand French. There were many men among us who did not understand English, French or Arabic – and so we faced a real challenge in trying to find a way to understand each other.

When we arrived in Malta, we did not feel welcome after we realised that the Maltese authorities called us names that nobody wants to be called. Only God knows the truth, but we always ask the authorities to listen to us, to be given the opportunity to express what really happened between us and the captain on the boat. We were the ones present, there, on the scene. I really do not understand why they chose to torture three of us. We all ask for justice for these three young men who helped us a lot during our journey across the Mediterranean Sea. We also ask all those willing to help us to demand from the Maltese authorities to give our three heroes their total freedom.

SOLIDARITY IS UNITY



The singer Young G Kay faced a similar situation to the one experienced by the El Hiblu passengers. He was returned to Libya and again experienced violence and torture. In 2019, Young G Kay finally escaped the Libyan hell and reached Malta, where he now lives. His song 'Solidarity is Unity' is dedicated to those who have struggled against being illegally pushed back to Libya.

“All of us, this time we will walk together
without anyone saying I'm in a different country
or a county in Africa – we're one people.
Peace and unity, solidarity, equality!
My people, let us live together.
Let us unite ourselves to give big thanks to European people,
coz they rescue us for love and supporting they're showing us.
Please show love and respect to them,
think better to make changes for your future.
We know we face difficulties, we have been in prisons,
we're suffering, we're so tired, and some of us they died at sea.
But now let us give thanks, coz we've arrived in peace.
Peace and unity, solidarity, equality!
Solidarity for peace and unity.
El Hiblu, Nivin let us give thanks to solidarity together,
stronger we can win any fights coz the past is all gone,
we feel so good to be alive you're just too good to be true,
just do your best, try to do your best, peace and love.
Peace and unity, solidarity!”

THE POLITICS OF SOLIDARITY: THE EL HIBLU 3 AND OTHER TALES OF RESISTANCE

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It was March 2019 when over one hundred people on a sinking dinghy were rescued by the Palau-flagged tanker, the *El Hiblu 1*. At the time, the European maritime border regime was still under the spell of the policy of ‘closed ports’ inaugurated by the Italian government the previous year. Interceptions by the so-called Libyan coastguard abounded, national authorities (particularly in Italy and Malta) refused to take responsibility in ‘search and rescue’ operations and the role of Frontex was one of militarisation and control. Meanwhile, few civil society ships were able to operate in the Central Mediterranean in light of criminalisation and administrative obstacles. Confronted with such a situation, migrants continued to challenge the border regime, through their movement and the self-organisation that sustained and enabled it. The people on board the *El Hiblu*, and in particular those referred to as the *El Hiblu 3*, openly defied the border regime with their refusal to be brought back to Libya. They deployed practices of translation, communication and solidarity that ultimately led the captain of

the vessel to reverse course and head to Malta. This is what we owe the El Hiblu 3 and what connects them with a longer history of migrant struggles and resistance at sea and on land.

We will return in a moment to this point. Before doing that, we need to say something more about the conjuncture in which the case happened. The 'long summer of migration' in 2015 is an important point of reference in this regard. The movement of hundreds of thousands of people across the Aegean Sea and along the Balkan route disrupted the European border regime and provided an opportunity to rethink border and migration policies as well as Europe's relationship with neighbouring and even distant regions of the world. We know that such a rethinking did not take place. On the contrary, walls and fences proliferated in many parts of Europe, while free movement within the Schengen zone continued to be restricted to contain so-called 'secondary movements' of migrants and refugees. In the Mediterranean, there was an intensification of practices of externalisation and outsourcing of border control, with national authorities competing with European agencies for border control. The end of the Italian Mare Nostrum operation in October 2014 signalled a crucial shift in this respect. While humanitarian language and concerns shaped Mare Nostrum, the subsequent Triton operation, coordinated by Frontex, was characterised by a focus on border controls. A process of 'de-humanitarisation' of Mediterranean migration intensified, turning enactments of freedom of movement even more into an issue of life or death.

This is not the place to provide a full-fledged analysis of the hardening of the border regime in the Mediterranean that followed, of its contradictions, of the intolerable toll in human lives and suffering that it caused, and of the multifarious forms of contestations and struggles that surrounded it. Suffice it to say that after the El Hiblu case, the outbreak of the COVID pandemic has prompted a further hardening of the border regime, with a hygienic-sanitary twist that facilitated the spread of detention even at sea, for example on 'quarantine ships'. At the same time, over the last months, the civil fleet has multiplied its assets and interventions, struggling to turn the Mediterranean into a sea of activism and solidarity. It is in this contradictory conjuncture that we fight for the freedom of the El Hiblu 3 and continue to connect our solidarity practices to migratory movements and struggles.

When we talk about solidarity, we distance ourselves from national and European rhetoric that obsessively stresses the issue of 'relocations'. In such rhetoric, solidarity is reduced to sharing the 'burden' of migrant travellers among states, while the preferences of these individuals regarding where and how to

live are ignored, and their freedom of movement across Europe is denied. There is instead a need to take seriously the proposal of granting free circulation to those often referred to as 'migrants', 'asylum seekers', or 'refugees' within the EU. For us, solidarity consists of multifarious practices of support and assistance, towards as well as among migrants, that aim at facilitating passage and at circumventing borders. Examples abound here, and we know too well that both at sea and on land acts of solidarity with migrants have been increasingly criminalised in recent years. Just think of captains of civil rescue ships like Pia Kemp and Carola Rakete, or of the activists that have been charged with 'solidarity crimes' in Italy and France for supporting people along the European Union's internal borders. While we need to stand up against such criminalisation and to further develop those solidarity practices, what is really important for us is to connect them with the movements and struggles of migrants. It is through this connection that solidarity holds the potential to become more effective and even more radical, nurturing practices that point to the abolition of specific border regimes and related systems of domination.

For us, this is the political meaning of the El Hiblu 3 campaign. It is of course necessary to fight in court. And as the recent legal decision on the Vos Thalassa case¹ in Italy demonstrates, it is possible to win: the resistance against repatriation to Libya of two rescued migrants in 2018 has been recognized as an act of self-defence. Nonetheless, migrant networks of solidarity continue to be the target of criminalisation in countless investigations and court decisions. For example, in Italy, four Eritreans are still waiting for the court's final decision, after spending two years in pre-trial detention.² The prosecutor initially sought a fourteen-year prison sentence for international smuggling, based on mundane practices of solidarity like hosting fellow Eritreans in transit, or buying train tickets to Italian destinations on their behalf. Although most charges were dropped during the first trial, the court of appeal refused to acknowledge the humanitarian character of these acts of solidarity among migrants, sentencing them to up to four years in prison. It is important to stress that in such trials the real aim seems to be the disruption of the networks that enable migrants' mobility.

The El Hiblu 3-campaign provides us with a great opportunity to raise public consciousness regarding such instances of migrants' solidarity, which too often remain invisible. This is again something we owe to Abdalla, Amara and Kader.

¹ <https://mediterranearescue.org/en/news-en/vos-thalassa-case-historic-sentence-by-italian-high-court/>

² <https://ilmanifesto.it/processo-alla-solidarieta/>

FROM HOSTILE TO HOSPITABLE: THE STRANGER IS NO ENEMY

Anton D'Amato

Archbishop's Delegate for Migrants in Malta

Common to all Abrahamic religions, which incidentally were all born around the Mediterranean basin, is one important value: hospitality towards the stranger and those on the move. Yet nowadays, this same geographical region has become inhospitable and a place of death. This sea, an epicentre of contact between continents, cultures and creativity, is today a stretch of water which has become the final stop for many: a cemetery where far too many have lost their lives.

Hospitality does not emphasise our differences but our common humanity. It is not a concept which finds its starting point in religion. It is first and foremost a human value which uplifts the best qualities of humanity – and thus held in high regard by different faiths and cultures.

Yet, rather than hospitality, people arriving on our shores, like the El Hiblu 3, are often met with hostility. Hostility finds its roots in the Latin term *hostis*, meaning both stranger and enemy. The stranger brings a situation of uncertainty, which in particular political contexts can lead to fear. When this fear is exploited hostility, fundamentalism and even terror are fuelled and the stranger becomes 'the enemy'.

A shift from hostility towards hospitality is required. But hospitality towards the migrant should not be based on charity.

*When a foreigner resides among you in your land, do not mistreat them. The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God.
(Leviticus 19: 33-34)*

Rooted in our common humanity, hospitality is about welcoming and making another feel valued; it is also about curing, caring and restoring. Hospitality allows for the adequate time and space to gain energy and continue the journey or stay in better shape. Yet journeying is not simply a voyage from one country to another. Our lives are a journey and on this journey we are called to encounter the other and be challenged and changed.

Many fear that this change will result in the erosion of our identities. Yet it is not realistic to think that our identities are static and immutable. They change or rather develop over time and every experience or circumstance can be an opportunity for our identities to bloom, grafted with the gifts the stranger brings.

In ancient – but also many non-westernised – cultures, food, shelter and safety were and are provided to the journeying stranger. Rather than through nationalistic framing of security and protection, migration needs to be understood as a basic human value.

Migrants should be met with empathy, welcoming and sharing. From focusing on protecting our borders and our wealth, we need to shift towards sharing it with others. Otherwise, the borders that we seek to protect would have closed us in an egoistic jail, unwilling to share with the stranger, threatening one as an enemy and a thief to be stopped rather than a stranger who is to be offered hospitality. The Maltese shores have witnessed the departure and arrival of many who journey in search of a better life. For the past centuries and millennia, our shores have been a departure point for Maltese people and a safe port and haven for those who arrive. Our harbours have sheltered numerous vessels and our lands have welcomed and safeguarded thousands. We need to recuperate this sense of hospitality as a society.

Ultimately, we are all on a journey. Whether from one place to another; whether from one country to another; whether on our life journeys. We are all migrants. When we seek to secure our borders more than our humanity we forget that hospitality is a value far more ancient, far more sacred than our confines. Hospitality is a sacred value without borders.

THE EL HIBLU TEENAGERS WHO WOULD BE HEROES

Judith Sunderland

*Associate Europe and Central Asia Director,
Human Rights Watch*

Amara is shy. When I met him, Kader and Abdalla for the first time on a video call, Amara seemed reluctant, even slightly bothered, to be there. So I was surprised when he was the first one to answer my message afterwards to set up a time to talk separately. When we spoke the next day, Amara was serious and conscientious as he answered my questions. I got the sense he does everything with care.

I shouldn't have been surprised. Amara is the youngest of the three – he is only 18 – but he can seem old beyond his years. After all, he set out on his own from Guinea Conakry when he was just 14. He was only 15 when he stepped in to translate in a tense, terrifying situation at sea. He has spent almost eight months of his short life in prison. Still a child in the eyes of the law at the time of the incident, far from his friends and family and everything he'd ever known, Amara is facing terrorism and hijacking charges together with Abdalla and Kader.

Though, really, Amara's just a kid. He loves guitar music, playing football, listening to Ed Sheeran. He misses his mother.

They are all so young. Kader, now 19, was only 16 when he got on that rubber dinghy, fated to sink in the cold Mediterranean waters. Abdalla, the oldest, was only 19 when he and his even younger wife had the courage to risk their lives to get out of Libya and seek opportunity and a future in Europe.

These young men are not far in age from my three sons, so it is difficult for me to not feel motherly towards them or to shake my head in bemusement when I imagine my children facing the challenges Abdalla, Amara and Kader have endured.

Each has his own story, of course, but they share these fundamentals. As teenagers they left their countries, experienced all manner of hardship on their journeys, and almost drowned at sea. After being rescued, all three played a role in calming others who were panicking and explaining to the captain of the ship that rescued them that they couldn't go back to Libya, where they feared being locked up, tortured and abused.

They are so young. And yet to the other people on that fated boat they are heroes. One of the men on the boat, who had never met them before, said in a documentary¹ about the case released by the Free El Hiblu 3 campaign, "These are the people who calmed us down, because they understood the situation, they understood English... It is thanks to them that we have escaped death. It is thanks to them that we have escaped all that torture by the Libyans."

By all accounts, Amara was a key interpreter that day. Back home, his mother had worked hard to send him to an English school. He told me he hadn't wanted to go at the time, but that now he saw the benefits. He's proud of the role he played in preventing over 100 people from being returned to Libya. "I saved them with the little English that I could speak. With my English. Not with my force, not with my strength, but I saved them with the little words from my mouth."

Amara's dream is to become a translator. Which is remarkable if you consider that his act of courageous translation on that ship in the middle of the Mediterranean Sea cost him months behind bars and outrageous criminal charges.

For now, he, Abdalla and Kader live in an anxious limbo. All three abide by strict bail conditions requiring them to register once a day at a police station, be at home by 10pm and stay far from sea. All three work. Abdalla and Amara play football on the weekends. Kader cannot play anymore since he fell from the third floor at a construction site in Valletta in June 2020, crushing his dreams to follow in the footsteps of Manchester United's star, Marcus Rashford – not just to become a football player but to remain humble and fight for the most vulnerable in society.

Abdalla told me he is grateful to be with his wife and young daughter and can enjoy “drinking coffee, seeing people, laughing,” if he avoids focusing too much on his predicament. He doesn’t speak with his family about the case, to protect them from the pain it causes him. If he is given the chance, he wants to continue his studies in sociology and to become a social worker. Kader said he tries to “take all this trouble patiently and live my life the normal way” while hoping to get accepted for an IT introduction course soon.

Amara doesn’t like to talk about why he left Guinea, but he told me that he didn’t tell his mother before he took off – she wouldn’t have let him go. He calls, they talk regularly. She worries about him and prays every day, he says, though he’s tried to hide from her the gravity of his situation. She must long for the day when she hears news that he is finally, truly safe.

I like to imagine Amara listening to that Ed Sheeran song Castle on the Hill about carefree youth – something he, Abdalla and Kader haven’t had. It’s time for them to be free to live their lives, pursue their goals, and find joy where they can, unburdened by unjust charges.



Protest led by the Republikanischer Anwältinnen- und Anwälteverein e.V. (RAV) at the Maltese Embassy in Berlin, Germany, March 2021.



Dozens gathered outside the Maltese embassy in London calling for the Maltese authorities to drop charges against the El Hiblu 3 and to stop coordinating illegal pushbacks. London, UK, October 2021.



1 See landing page: <https://elhiblu3.info/>

STOP ATTACKS ON SOLIDARITY, SUPPORT THE RIGHT TO SELF-DEFENCE!

Carola Rackete

Environmental and Sea Rescue Activist

Following a sea rescue mission in June 2019, two investigations were launched against me, the ship's captain at that time, and Sea-Watch e.V. in Italy. I had steered the Sea-Watch 3 without authorisation into the port of Lampedusa, with a crew of 22 and 40 rescued survivors on board. The neo-fascist Italian Minister of Interior, Matteo Salvini, had just introduced a new security law, criminalising and thus preventing rescue ships from entering Italian ports. For two weeks, we were abandoned off Lampedusa, not allowed to enter territorial waters. During this time the individual suffering and the medical risk for the survivors on board was cruelly prolonged.

After entering the port of Lampedusa, I was briefly arrested and the investigations into the incident were opened. It took over two years until the investigations were finally closed by the court in Agrigento in December 2021. No charges were brought forward against me or Sea-Watch.

I had not done anything unlawful. In fact, as the closing remarks of the judge lay out I had upheld the laws of the sea. The El Hiblu 3 have also not done anything unlawful. In fact, they have upheld the right to defend themselves against a cruel and illegal forced return to Libya, a place courts have declared countless times as unsafe. They have upheld the right to life, not only for themselves, but for over one hundred persons who had tried to escape from Libya.

The investigations into my actions and the actions of the El Hiblu 3 demonstrate the ruthless attacks on solidarity and the freedom of movement. European authorities are criminalising people on the move and those who stand in solidarity with them whilst committing systematic human rights violations, such as the facilitation of violent pushbacks, delay and prevention of arrivals and respective asylum applications, and letting people drown, freeze to death, or disappear.

While my story travelled around the world, the unjust treatment of the El Hiblu 3 received little international attention. Unfortunately, it is very common that cases of white sea rescue activists receive much more recognition than cases against people on the move who are criminalised as smugglers or, in this case, as terrorists. Often enough, people are prosecuted and convicted to horrendous prison sentences without the public knowing, or caring.

I am part of the El Hiblu 3 Freedom Commission and stand in solidarity with the three accused. They have told their powerful story many times and it is time that they are heard. If we want to overcome structural racism, we should start by listening to the individuals who the European Union would rather see drown than to allow them a safe arrival on its shores.

Free the El Hiblu 3 and tear down Fortress Europe!

FROM SEA TO CITY: SOLIDARITY IN CONTESTED SPACES

Hagen Kopp and Maurice Stierl

*WatchTheMed Alarm Phone,
Free the El Hiblu 3 Campaign*

When 108 people were rescued by the tanker, the *El Hiblu 1*, in March 2019, the Alarm Phone, our hotline project in support of migrants in distress at sea, was not directly involved. Still, we followed the unfolding situation in the media and soon learned about the incredible injustice that the *El Hiblu 3* experienced when reaching Malta. Abdalla, Amara and Kader were deprived of their freedom and imprisoned.

It was on 7 November 2019 when we met the three for the first time, in a courtroom in Valletta. We were only able to speak briefly during a break, whispering to each other. Abdalla confirmed that he had received a postcard in his prison cell that we had sent a few weeks earlier in order to express our solidarity and to tell him and the other two that they were not alone. It was difficult to see the three handcuffed and returned to prison after the hearing. While the impending charges were severe, there was hope that they would soon be released on bail – which finally happened at the end of November 2019.

Together with a small group of activists working on the case, we returned to Malta in January 2020 to get to know each other. In our first real encounter, we promised that we would not leave anything undone to secure their freedom and to have the outrageous accusations against them dropped. Over the next months, mutual trust developed into friendship. Together with a group of *El Hiblu* survivors who worried about the fate of their three friends, we drafted the outlines of a solidarity campaign that would have the voices of survivors at its heart.

During this visit to Malta, the Alarm Phone received many calls from distressed people at sea. Walking to the harbour in Valletta, we witnessed how some of them were disembarked, visibly relieved to have reached land.

On 28 March 2020, on the first anniversary of the arrival of the *El Hiblu 1* in Malta, we started the campaign to free the *El Hiblu 3* together with individual human rights defenders and other human rights organisations, including the African Media Association Malta, Sea-Watch, Mediterraneana and Kopin. In a campaign video, several survivors of the journey bore testimony of the events that had occurred a year before, stating again and again that the *El Hiblu 3* had saved their lives by mediating between the migrant group and the crew.

The Alarm Phone supported and promoted the launch of the campaign while, at the same time, facing disastrous developments at sea. During Easter 2020, shortly after the Covid pandemic had reached Europe, the Maltese government and armed forces not only failed to engage in rescue operations of boats that were in contact with Alarm Phone, but they actively orchestrated a deadly push-back operation. Between 10 and 15 April 2020, twelve individuals from Eritrea and Ethiopia died when Malta organised a ‘secret fleet’ to violently push a group of people from the Maltese search and rescue zone back to Libya – an incident that has been referred to as the ‘Easter massacre’.

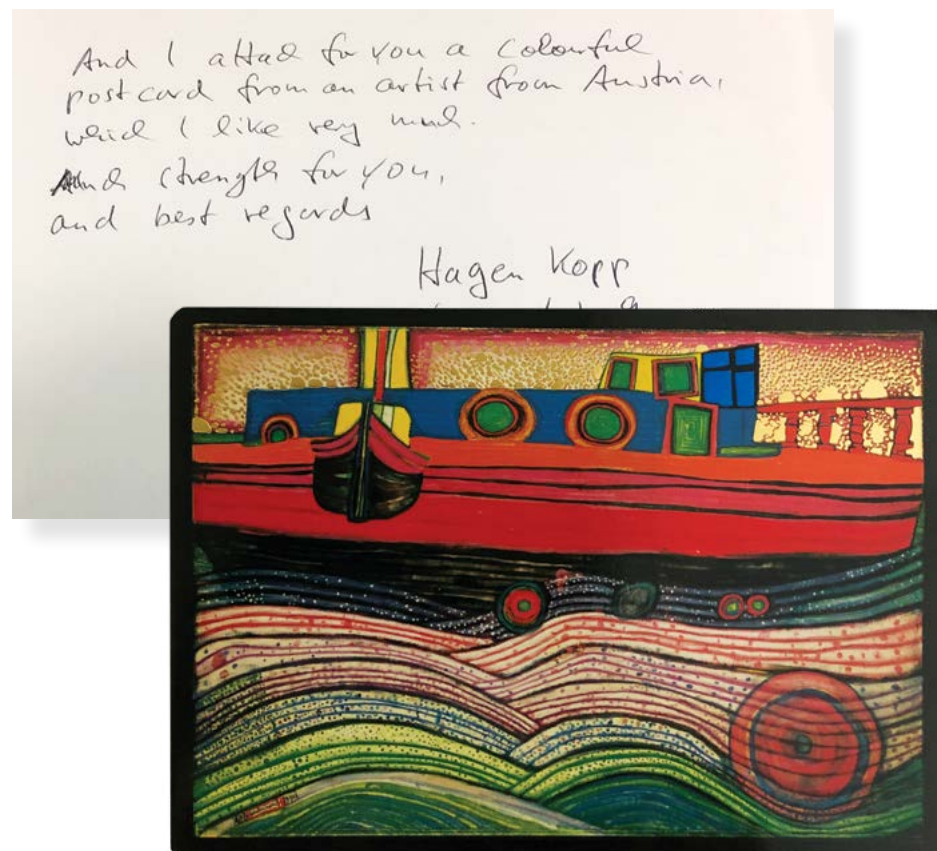
Since these horrible events, the Central Mediterranean Sea has remained a contested space. On the one hand, EU member states and institutions have reinforced a deterrence and pushback regime at sea, through agreements between Italy, Malta and Libya, as well as through EU support of systematic interceptions of boats trying to flee Libya. We have seen how EU naval assets have withdrawn to avoid rescue operations and how, instead, the EU’s aerial presence through Frontex aircraft and drones has increased in order to direct the so-called Libyan coastguard to escaping boats.

On the other hand, we have witnessed how sea arrivals in Europe could not be stopped over the past years, how people continue to subvert the EU’s violent borders and find paths of escape. We have also seen how a chain of solidarity, ‘from the sea to the city’, has become stronger, with a range of actors intervening

in real time to prevent deaths at sea and forced returns to Libya. Together with the civil fleet, as well as solidarity groups on land, including activists, NGOs and churches, the Alarm Phone fostered a coalition that stands opposed to Europe's permanent violations of human rights. In addition, many journalists and researchers continuously report on and denounce these border crimes.

In this contested space, and during our contested times, the case of the El Hiblu 3 is a powerful example of how three young men fought, and continue to fight for their freedom and the freedom of others. It is also an example of how their criminalisation was not accepted but protested and countered. As part of the 'Free the El Hiblu 3' campaign, we will keep to its initial promise: to leave nothing undone to achieve justice and freedom for Abdalla, Amara and Kader.

Solidarity will win!



Postcard sent to Abdalla in prison, October 2019.



First ever CommemorAction in Malta with around 120 people. 39 groups and organisations signed the statement demanding appropriate rescue interventions at sea and acknowledgement of human rights by Malta. Gardjola Gardens, February 2022.





Stills from the Free El Hiblu 3 solidarity video directed by Lennaart van Oldenburg and filmed by Natascha Sturny for the campaign kick-off in 2020. Survivors from the El Hiblu 1 rescue share their experiences on the ship and in Libya, as well as their bewilderment and horror at the arrest of the El Hiblu 3.





Reading solidarity messages from all over the globe after picking up three large bags with hundreds of letters from the Amnesty International 'write4rights' campaign.



Amara in an interview with the BBC in Gardjola Gardens, Senglea, June 2021.

Defending everyone's right not to be pushed back to a country where there is a risk of torture and inhuman and degrading treatment cannot be considered a crime by any legal system. Even if this should be a widely accepted principle by every democratic legal system, today it could be very difficult to put it in practice. In December 2021, the Court of Cassation (the Italian supreme court) ruled in the Vos Thalassa case that using force against the shipmaster in order to prevent a refoulement to Libya is not a crime: *it is self-defence*. I hope this judgement will have a positive impact both on the El Hiblu 3 case and on the European debate on migrants' criminalisation.

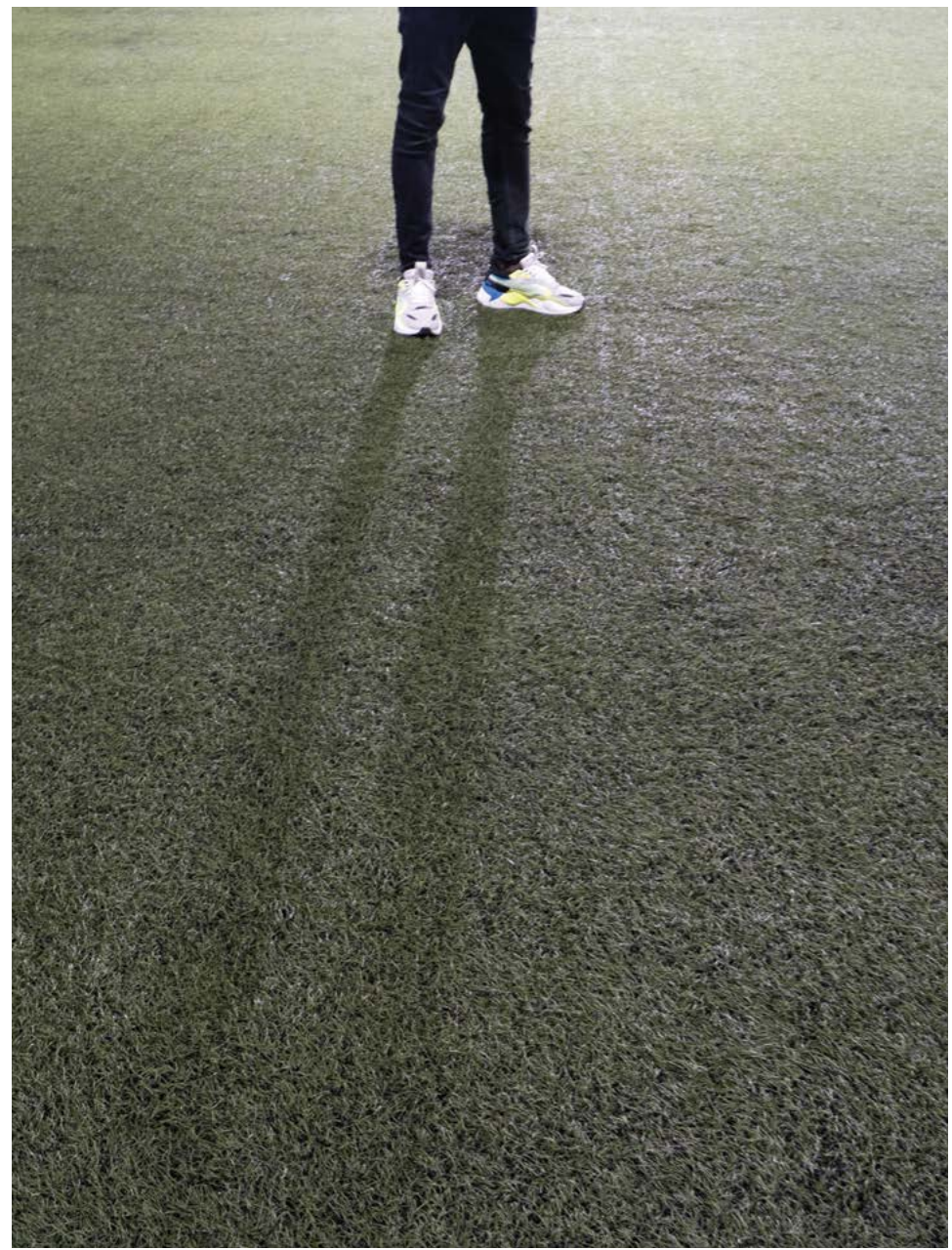


Gardjola Gardens in Senglea: On one side the harbour entrance, on the other where the *El Hiblu 1* was docked after disembarking the 108 rescued people on March, 28 2019.

Francesca Cancellaro

Lawyer at Studio Legale Gamberini, Partner Lawyer at ECCHR





Becoming famous as a football player has been a dream for Kader. Becoming famous for being criminalised was not. Since his injury he cannot play anymore – a bittersweet moment on a soccer field.



There are realities that are difficult to imagine when one hears the speeches of European leaders concerning their commitment to the maintenance and respect of human rights. And then, we read stories, like that of the so-called El Hiblu 3. The story of three African teenagers caught in a stranglehold of discriminatory European migration laws that quietly dispose of human beings. They are accused of 'terrorism' for having resisted an illegal push-back to Libya. Their lives have been on hold since March 2019, the date of their indictment. Their future is mortgaged by an endless trial in hostile territory, their dreams are regularly shattered on the rocks of the uncertainties that mark them.

This is happening in Malta, a member state of the European Union. How is that possible? This trial must end! The charges against these young people must be dropped! Their dignity must be restored to them!

Regine Psaila

Director of African Media Association Malta





Recovering memories from the disembarkation in 2019. Thinking about the moment of arrival in Malta.

*Prior page: Abdalla is processing a long hearing in June 2021. One witness testified for four hours that day. He repeatedly asked to testify in his mother tongue, expressing his exhaustion and was denied that request. Every hearing summons memories of experiences on the **El Hiblu 1**, of Libya, of prison. Each hearing evokes fears of being incarcerated once again.*



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For individual Christians and Christian churches, it is clear: you don't let anyone drown, you bring him or her to safety. That principle is also enshrined in maritime law – and it is evident that Libya is not a safe place. The El Hiblu 3 therefore only did what was right, necessary and justified. This deserves our compassion and solidarity rather than punishment. Our demand is clear: drop the charges and end this politically motivated trial.



Kader is looking at the building from which he fell in 2020. The three-storey house in the centre of Valletta is still under construction. So is his leg.



Looking smart for court is essential: Abdalla after a hearing in February 2022. He carries yet another package of solidarity messages – they keep arriving.



top: Amara braids the hair of Abdalla's daughter.

left: Waiting in Floriana to be picked up by his supervisor for work.



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We are all born the same but not respected as equals. No human being should have power over anyone else's existence. Every person should have freedom of expression, freedom of movement and most importantly the right to a fair trial, including the right to defend themselves in a language they understand and choose.

Sarah Mardini

Rescue Swimmer and Human Rights Activist



San Anton Gardens, Attard, 2021



Fgura, 2019

Flashback: Abdalla, Amara and Kader try to protect their faces from the cameras when escorted by Maltese authorities to the Court in 2019. Nobody asks the three teenagers if they want their faces to be shown in the international media. Nobody informs them that they have the sole right to their personal image and that photographers should get their approval to publish their images.

Abdalla, Amara and Kader are still working out how much they can and want to share about their lives and personalities. The scarring experiences of discrimination and racism doesn't leave them with a lot of trust. For now, they want to remain anonymous and not show their faces to the public.







Kader and Abdalla discuss something on their phones while Amara calls his mom. The TV is running in the background, a Malian politician talks about the current situation in the country. Another flatmate from Mali watches silently.

GLOSSARY

Civil Fleet

The term describes the fleet of civilian maritime assets conducting search and rescue operations in the Central Mediterranean Sea.

CommemorAction

Merging the terms 'commemoration' and 'action', commemorations are public protests that commemorate people who have died or disappeared at borders and that denounce ongoing forms of border violence.

Duty to render assistance

The duty to render assistance is the positive obligation of masters of any vessel to render assistance to those in distress at sea. The only circumstance under which they are not obliged to assist is if doing so would endanger their own crew and vessel. The duty is part of customary international law and is also enshrined in the UN's Convention on the Laws of the Sea, among other treaties.

El Hiblu 1

Name of the tanker that rescued 108 persons on 27 March 2019 and attempted an illegal return to Libya following orders from European authorities. Today the ship is named *Nehir*.

El Hiblu 3

Collective name for the three accused young men, Abdalla, Amara and Kader.

EUNAVFOR Med Sophia

European Union Naval Force – Mediterranean EU military operation launched in June 2015 to fight 'human trafficking' in the Mediterranean Sea. In 2019, its mandate was reduced to aerial surveillance, largely to train the scLCCG and Navy and to provide positions of boats to the Libyan militias to intercept them. In 2020 SOPHIA was replaced by OPERATION IRINI.

Freedom Commission

An independent alliance of human rights advocates demanding freedom of the El Hiblu 3 founded in October 2021.

Frontex

European Border and Coast Guard Agency founded in 2004, based in Warsaw. Main tasks are the coordination of national border policies and the 'protection' of EU borders against 'irregular' migration. Symbol and main actor of Fortress Europe.

Interception

Stopping migrants at sea followed by a forceful return (pullback) to the state of departure, mostly by border police.

IOM

International Organisation for Migration. Intergovernmental organisation for migration management founded in 1951. Cooperates closely with (especially Western) governments, for example in the 'voluntary' return of migrants to home countries.

Khartoum Process

A platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe, focussing on the externalisation of EU borders and the deterrence of migrant movements.

Mare Nostrum

Air and naval operation of the Italian navy to conduct large-scale SAR operations in the Central Mediterranean. Initiated in October 2013 the mission terminated after only one year. During this time 150,000 people were rescued from distress at sea.

(M)RCC

(Maritime) Rescue Coordination Centre. Primary search and rescue agency of states, coordinating and controlling search and rescue operations.

Non-refoulement

The prohibition to return a person to a country of armed conflict or in which they fear persecution. First established in the UN's 1951 Refugee Convention, this prohibition is a cornerstone of migration law and it is now codified in several other human rights treaties. It forbids states from returning migrants to places where they would be in danger of persecution based on 'race, religion, nationality, membership of a particular social group or political opinion'.

Place of Safety / Port of Safety

A location where rescue operations are considered to terminate, where the survivors' safety of life is no longer threatened and where basic human needs can be met.

Pact on Migration and Asylum

The latest attempt at a political agreement on migration within the European Union is a pact published by the European Commission in September 2020. It contains a package of recommendations and legislative proposals. The recommendations were adopted by the Commission but are not binding for any Member State. The Pact's proposals have not been adopted and remain highly controversial amongst the Member States. Altogether, the proposal focuses on migration control at the external border, as well as prioritising deportations and 'partnerships' with countries outside of the EU. It envisions a new 'solidarity' mechanism, where Member States can support deportations from other states, rather than engage in relocation.

Pullback

Forceful intervention to prevent migrants from reaching their destination by pulling them back.

Pushback

Forceful intervention to prevent migrants from reaching their destination by pushing them back. Carried out by military and authorities of the state of destination. Constitutes a breach of international law, the right to apply for asylum and non-refoulement.

Relocation

In the EU context, relocation refers to moving asylum seekers from one EU country to another where they will undergo the asylum process.

Right of Self-Defence

The right of people to use reasonable force for the purpose of defending one's own life or the lives of others, including – in certain circumstances – the use of deadly force. Part of common law, it is enshrined in different national legislation and was notably used in the *Vos Thalassa* case.

Right to apply for asylum

Applying for asylum is a fundamental human right, enshrined in the UN's Declaration of Human Rights. Any person who leaves their country of origin because they fear persecution, serious human rights violations or armed conflict can apply for asylum. This right is supported by the UN's 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees.

Schengen Area

Area of European countries with a common visa policy and no general controls at their common borders. Nevertheless, police checks are allowed at internal borders and in border areas. 'Temporary' border controls may also be introduced in 'exceptional' circumstances, a widely used mechanism by Member States.

SAR Operation

Search and Rescue operation. In case of a boat in distress, an immediate SAR operation has to be initiated. The responsible RCC is obliged to coordinate such a SAR operation in order to rescue people in danger.

SAR zone

Search and Rescue zone. Colloquial use for Search and Rescue Region.

so-called Libyan Coast Guard (scLCCG)

Expression used to describe the EU-supported Libyan coastguard, which performs pull backs to Libya. The scLCCG has been accused of repeatedly violating the law of the sea and international law.

SRR

Search and Rescue Region. An area of defined dimensions associated with a Rescue Coordination Centre acknowledged by the International Maritime Organisation.

Vos Thalassa

In 2018, 60 people in distress were rescued by a tug boat, the *Vos Thalassa*. The migrants protested when the boat attempted to return them to Libya. In response to requests by the crew to guarantee their safety, the MRCC sent a naval unit which took the migrants onboard and brought them to Italy. Two of the group were accused of 'leading the rebellion' and charged. In 2021, Italy's Supreme court acquitted the two, overturning a lower court's decision, based on their right to self-defence, especially in the context of Libya not being a safe place. The court found that their return to the country would have been in conflict with international law.

Zodiac

Common term for an inflatable rubber boat. The French company Zodiac is the main producer of that type of boat which is often used to cross the Mediterranean. Other terms are rubber boat or dinghy.

REFERENCES

Free the El Hiblu 3 Campaign Website:

Collection of press coverage, timeline of proceedings and information about the El Hiblu 3 Freedom Commission
<https://elhiblu3.info/index>

OHCHR urges Malta to reconsider charges:

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

UN Conventions on the right of the child:

https://tbinetnet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMLT%2FCO%2F3-6&Lang=en

Amnesty International The El Hiblu 3 case – Blog:

<https://www.amnesty.org/en/latest/campaigns/2022/03/the-el-hiblu-3-three-years-waiting-for-justice-in-malta/>

The El Hiblu 3 case – Update. The Long Wait for Justice

Amnesty International's concerns regarding the case of the El Hiblu 3:
 March 26, 2021 Index Number: EUR 33/3884/2021,
<https://www.amnesty.org/en/documents/eur33/3884/2021/en/>

Waves of impunity. Malta's human rights violations and Europe's responsibilities in the central Mediterranean

Amnesty International, Malta's violations of the rights of refugees and migrants:
 September 7, 2020, Index Number: EUR 33/2967/2020
<https://www.amnesty.org/en/documents/eur33/2967/2020/en/>

'No one will look for you': Forcibly returned from sea to abusive detention in Libya

Amnesty International, Situation of refugees and migrants in Libya:
 July 15, 2021 Index Number: MDE 19/4439/2021
<https://www.amnesty.org/en/documents/mde19/4439/2021/en/>

Privatised push-back of the NIVIN

Forensic Oceanography investigation:
<https://forensic-architecture.org/investigation/nivin>

Remote Control report: EU-Libya collaboration

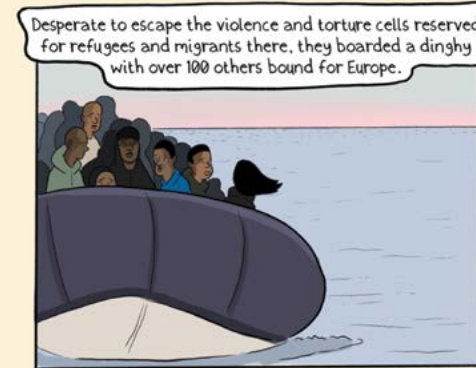
AlarmPhone, Borderline Europe, Mediterranean, Sea-Watch
<https://eu-libya.info/>

From the Sea to Prison: The Criminalization of Boat Drivers in Italy

ARCI Porco Rosso, AlarmPhone
<https://fromseatojail.info/>

Free the Samos 2 Campaign: The real crime is the border regime

Campaign for two young men criminalised on Samos, Greece, for reaching EU territory
<https://freethesamostwo.com/>



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