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By email and courier

20 December 2004

Dear Minister,

Open letter to the Government of the Bahamas regarding the Communication to the House of Assembly on the Investigation of Allegations of Abuse and Inhumane Conditions at the Detention Centre on Carmichael Road, 8 December 2004

I am writing in response to the report, *Communication to the Honourable House of Assembly On the Investigation of Allegations of Abuse and Inhumane Conditions at the Detention Centre at Carmichael Rd* (hereafter 'the report'). In the light of this report's findings, and other long-standing concerns, I would like to urge you to establish an independent inquiry into conditions of detention for asylum-seekers and other migrants in the Bahamas in the Carmichael Detention Centre. The inquiry could also help further respect for human rights in the Bahamas, by including within its remit consideration of policies on the use of force and firearms and the investigation of the confrontation of 9 December 2004 at the Carmichael Detention Centre.

Investigation into allegations of cruel, inhuman and degrading treatment

In October 2004, Amnesty International wrote to the Government of the Bahamas presenting reports of cruel, inhuman and degrading treatment and other matters regarding conditions of detention. The organization requested an immediate independent investigation into these reports, ensuring that anyone found responsible is identified and brought to justice and that detainees are protected from any further ill-treatment.

In response to these and other concerns, the authorities established a police investigation into '*allegations of abuse and inhumane conditions*'. Following the investigation, the above report was presented to Parliament on 8 December 2004.

Amnesty International welcomes the fact that a criminal investigation was established so promptly after these allegations were brought to the attention of the authorities. The organization also

acknowledges that the agency conducting the criminal investigation (the police) was independent of the agencies whose members were the subject of the investigation (immigration and defence force).¹

Transparency is a key requirement for investigations of this kind, and Amnesty International therefore acknowledges and welcomes the fact that the findings of the investigation were made public, via reporting to Parliament.

Commitment to instigate a management review of the Carmichael Detention Centre

Amnesty International welcomes the report's announcement that, following the investigation, a management review is to be instigated into the Carmichael Detention Centre.

Amnesty International would urge you, however, to broaden the scope of the review to include, via an independent inquiry, conditions of detention for asylum-seekers and other migrants in the Bahamas and the refugee determination process. The review should have the power to issue findings and make recommendations.

Amnesty International would particularly encourage the Government of the Bahamas to consider incorporation of the following issues:

- **Mandatory detention and procedural safeguards on detention** need to comply with international standards. Special attention should focus on how to end the mandatory detention of “unauthorized” asylum-seekers and migrants and on the continued detention of children in breach of international standards;
- **Asylum procedures** through which asylum-seekers access their rights under the 1951 Refugee Convention (and other international instruments) should also be reviewed to ensure the provisions of the 1999 UNHCR Guidelines on the Detention of Asylum-Seekers and EXCOM Guidelines Conclusion Number 8 are implemented;
- **Policy and practice on the use of force and firearms** – should be reviewed to ensure that these comply fully with the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and the *UN Code of Conduct for Law Enforcement Officials*. Lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons.

The review should consider recent incidents where force has been deployed, including the reported confrontation that occurred at the Carmichael Detention Centre on 9 December 2004 which resulted in the reported deployment of rubber bullets and other weaponry. The review should consider differing accounts of the incidents. It should assess whether, in their operations, law enforcement officials acted with due restraint: applying, as far as possible, alternative measures before resorting to the use of force and firearms; minimizing damage and injury and rendering assistance and medical aid to any injured or affected persons at the earliest possible moment.

- **Systems for the investigation of complaints of ill-treatment** – Amnesty International urges the Government to consider creating a multi-disciplinary Inspectorate Body, independent of Government, with the powers to undertake regular visits to the Carmichael Immigrant

¹ International standards that the Bahamas has voluntarily agreed to uphold state that, in order to fulfil requirements for efficacy, investigations into serious allegations of cruel, inhuman or degrading treatment by law enforcement officials must be prompt, thorough and impartial. In both national and international law, there is well-established precedent that, in order to satisfy the requirement for impartiality in investigations of serious allegations of cruel, inhuman or degrading treatment, the agency conducting the investigation should be independent of the agency under investigation. *Velásquez Rodríguez*, American Court of Human Rights, at paragraph 177; *Jordan v UK*, European Court of Human Rights, Judgement of 4 May 2001, at paragraphs 106 and 120.

Detention Centre with a view to hearing detainee grievances and issuing public reports and recommendations. The body should be granted confidential and individual access to detainees.

- **Policies and practices on detention** should meet provisions of the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and the *1999 UNHCR Guidelines on the Detention of Asylum-Seekers*. In view of continuing and serious allegations of cruel, inhuman and degrading treatment regarding Royal Bahamas Defence Force officers, Amnesty International urges the Government of the Bahamas to ensure that the deployment of soldiers within the external perimeters of the Centre ceases immediately.
- **Training of officials** in international human rights standards.²

Remit of the investigation and witness protection

According to the report, the investigation was *'carried out by trained police detectives using both covert, or undercover, techniques and overt means such as direct interviews of witnesses and other persons concerned and the review of records and relevant information.'*

Amnesty International notes that there is no reference to provisions to protect complainants or witnesses, their families or those conducting the investigation from violence or threats of violence or any other form of intimidation.

In Amnesty International's view, the requirements under international law for a 'thorough' investigation into allegations of cruel, inhuman or degrading treatment of detainees by custodial officers require effective provision to be made for witness protection. Failure to protect witnesses, complainants or others from violence and intimidation with appropriate measures may otherwise render the inquiry process flawed or deficient.

This is particularly vital in a custodial environment, where many of those called as witnesses to an inquiry are likely to give evidence on the actions of the officials who guard them. Witnesses may otherwise refuse to give evidence because of concern about possible reprisals.

Appropriate measures should include for example, treating those reporting allegations of abuse in strict confidence; informing detainees and staff that they have a right to protection from retaliation; and taking disciplinary and/or legal action, as appropriate, against any member of staff who seeks to deter inmates and staff from reporting abuse or who in any manner harasses or intimidates inmates or staff who report abuse.

Alleged incidents of cruel, inhuman or degrading treatment

Amnesty International raised three specific allegations of cruel, inhuman or degrading treatment to the authorities in October 2004, which were raised in the report, but in the opinion of the organization, still remain unclear.

(i) Rene Mendoza Banos and Jorge Luis Conde (Cuban)

Amnesty International received reports that on 1 October, Cuban asylum-seekers Rene Mendoza Banos and Jorge Luis Conde were severely beaten with batons by soldiers, and had a gun held to their heads in a mock execution.

² We urge you to consider implementing the recommendations of the 2003 Amnesty International report, *Forgotten Detainees? Human rights in detention in the Bahamas* in full. (A copy of these recommendations is appended to this letter.)

The report stated that the police investigated allegations that *'two male Cuban nationals were beaten severely and threatened at gunpoint with death by a guard at the Detention Centre'* and that, *'the investigation by the police has revealed this allegation to be both uncorroborated and untrue. ... Detainees and other witnesses who were present could not corroborate any assault as alleged.'* The report further stated that, *'details of the investigation are that one of the said male Cuban nationals threatened to cut the throat of a caretaker at the Centre. Upon being approached by the Guard on duty, the Cuban national wrestled away a baton or 'billy' from the guard, who was then forced to draw his firearm to maintain order.'*

Amnesty International is surprised by the conclusion that the incident could not be corroborated through lack of independent witness accounts. The reports our organization received suggested that the incident happened in a private investigative room, away from the area of other detainees.

(ii) Haitian detainees

Amnesty International also presented reports that a number of Haitians escaped from the Carmichael Detention Centre on 9 October 2004, and that, over the following two days, soldiers beat several adult Haitian detainees, apparently in retaliation for the escape. Some detainees were reportedly seriously injured and did not receive medical attention.

The report gave no information on whether these allegations had been investigated, nor on the outcome of any investigation or whether detainees sent back to Haiti had been located or interviewed as part of any investigation.

(iii) Cuban detainees

The third specific report of cruel, inhuman and degrading treatment concerned several Cuban detainees, including children, who were allegedly forced to stand against a fence inside the camp from 3pm to 5.30pm on 10 October, with no water, in temperatures of around 30 degrees centigrade.

Amnesty International notes that the report repeated the substance of the allegation, but gave no information on whether the allegations had been thoroughly investigated and if so, of the outcome.

Detention of children

Amnesty International is concerned that the report also failed to address reports regarding the indefinite detention of minors. Amnesty International understands that there may be at least five children at the centre, aged between three and nine: at least one of them has reportedly been held at the centre for over six months.

In the organization's view, the detention and treatment of children at the Carmichael Detention Centre breaches the Bahamas' international legal obligations and remains cause for grave concern.

The Bahamas has ratified the UN Convention on the Rights of the Child, which states that children should only be detained as a last resort, and then for the shortest possible time. Amnesty International urges action to address the arbitrary detention of all immigration detainees and asylum-seekers, particularly children.

Amnesty International has repeatedly raised these concerns with the authorities.³ In January 2003, we reported on the treatment of children detained in the Carmichael Detention Centre,

³ See further, *The Bahamas: Forgotten Detainees? Human rights in detention in the Bahamas*, AMR Index 14/005/2003, January 2003, pages 22-28, <http://web.amnesty.org/library/Index/ENGAMR140052003?>

following a visit to the Centre. Key findings regarding the treatment of children included the fact that children's development is adversely affected by the secure nature of the Detention Centre and by the uncertainty surrounding length of stay and that children, detained alongside adults, are at risk of abuse. The organisation also found that families are effectively split up in detention. Children under 14 were detained with female detainees and male children over the age of 14 were reportedly detained with adult men. Several detainees reported that they were prohibited from contacting relatives detained in adjoining huts. Some detainees told Amnesty International that they had been punished for attempting to talk to family members detained elsewhere in the Centre. Children were also denied their right to education, play and leisure. Many parents, in common with other detainees, report difficulty in accessing competent legal advice and are unable to obtain timely information about the reason for their detention or the progress of their cases, heightening insecurity and anxiety. Many detainees also expressed concern about the adequacy of medical care for children.

Amnesty International urged the authorities to introduce comprehensive measures to address this situation, including an immediate review on the use of detention for children with a view to ensuring compliance with the UN Convention on the Rights of the Child and other relevant instruments.

Amnesty International would be grateful to be informed of what steps the Bahamian authorities have taken to ensure that the treatment of child refugees and immigration detainees complies with international obligations.

Amnesty International wishes to reiterate its call for the authorities to initiate such a review, if one has not already been undertaken, and to ensure that, pending the review, children and their families are moved to appropriate facilities with well-trained staff equipped with the skills to meet the unique needs of children. Detained children at the Carmichael Detention Centre should also be granted immediate and unconditional access to both parents (or guardians). Children should have immediate and unconditional access to decent and humane conditions including basic needs, play and recreational facilities and suitable education.

Provision of food and water

Amnesty International notes that the report has concluded that lack of potable water is a problem and that staff shortages resulted in detainees receiving meals twice a day only. We welcome your commitment to address these issues. We urge that provision is made to ensure that adequate nutritional food is served to detainees at appropriate times, along with sufficient drinkable water.

Medical care

Amnesty International notes that the report cites allegations that a female Cuban national detained at the Detention Centre was denied medicine, and that the investigation revealed these to be untrue. The report also states that '*medicine[and other] necessities are supplied as the need arises.*' However the report did not properly address access to medical professionals.

Amnesty International has in the past expressed concern that the medical coverage for the centre, or the responsiveness of immigration staff between medical visits, is less than adequate.⁴ (A doctor and a nurse reportedly attend the centre to see any detainee needing their attention on two days

open&of=ENG-BHS and *The Bahamas: Refugees and immigration detainees – appeals for action*, AMR Index 14/003/2004, pages 2-4, <http://web.amnesty.org/library/Index/ENGAMR140032003?open&of=ENG-BHS>.

⁴ See *The Bahamas: Forgotten Detainees? – human rights in detention*, AI Index AMR 14.003.2003, January 2003, pp. 40-46.

a week.) These reports are of particular concern, given that detention has been shown to have an enormous effect on the physical and psychological wellbeing of asylum seekers. In October, Amnesty International wrote to the authorities to request an investigation into allegations of a TB outbreak amongst detainees, amid continuing concern regarding inadequate medical care.

In the light of these concerns, Amnesty International would be grateful if you would inform us of exactly what provision is currently made for detainees in terms of medical care, including the frequency of visits by qualified medical personnel, and arrangements for access to emergency medical provision outside of these times.

Once again, Amnesty International commends the Government's commitment to reviewing the Carmichael Detention Centre and looks forward to hearing your response to these concerns shortly.

Yours sincerely

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