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Dr Tonio Borg
Minister for Home Affairs and the Environment
Ministry for Home Affairs and the Environment
"Casa Leoni"
476 St. Joseph High Road
Santa Venera
Malta - CMR 02

27 September 2002

Dear Minister,

Amnesty International is seriously concerned about issues surrounding the reception and treatment of recently arrived asylum-seekers in Malta and fears that, unless claims for protection are adequately examined, many could be at risk of serious human rights abuses upon return to their countries of origin.

In order to uphold the principle of *non-refoulement*, a principle of customary international law which is reflected in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to which Malta is a State Party, Amnesty International urges the Maltese government to refrain from returning any of these asylum-seekers to their countries of origin until they have had their claims for refugee status examined in a full, fair and satisfactory asylum procedure. It also urges that any appeals against negative decisions have a suspensive effect on any order to deport them.

We understand that a legal procedure has commenced in the Maltese Constitutional Court wherein 58 claimants (53 Eritreans and five Ethiopians) are calling for a deportation order issued by a Magistrates' Court in March 2002 to be revoked, on the grounds that their enjoyment of human rights would be threatened upon return to their countries of origin. It has been reported that they also argue that they were deprived of a fair hearing in the processing of their application for refugee status and when submitting appeals against initial rejections before the Refugee Appeals Board. We also understand that the Constitutional Court on 25 September 2002 provisionally accepted a warrant of prohibitive injunction submitted by the claimants and that a final decision on that matter will be taken within days.

The human rights situation in Eritrea

As many of the asylum-seekers in Malta are Eritreans, Amnesty International wishes to stress the limited nature of the declaration of cessation of refugee status for Eritrean refugees which was made by UNHCR in May 2002. This declaration of cessation only concerns two specific groups of Eritrean refugees: firstly, those who fled Eritrea as a result of the country's war of independence from Ethiopia that ended in 1991 and, secondly, those who fled the border conflict between Ethiopia and Eritrea in 1998-2000. Eritreans who have fled the country at other times, including since 2001 up to the present, are not affected by the declaration of cessation. These asylum-seekers should have their claims heard in a full and fair procedure without there being any presumption of them not having a valid claim for protection.

As you will note from the attached new Amnesty International document on the human rights situation in Eritrea, *Eritrea: Arbitrary detentions of government critics and journalists* (AI Index: AFR 64/008/2002, 18 September 2002), there has been a pattern of major human rights violations over the past year, which is still continuing. Eritrea cannot be regarded as a “safe” country with regard to Eritrean asylum-seekers. Specific categories of asylum-seekers that would be at risk of serious human rights violations including arbitrary detention, torture or ill-treatment, extrajudicial execution or the death penalty, if returned to Eritrea, directly or through a third country, would include suspected opponents or critics of the government, including suspected supporters of exile opposition groups, conscientious objectors to national military service, and army deserters.

Fair and satisfactory asylum procedures

Amnesty International calls on the Maltese government to ensure that all refugee status determination procedures are guided by the principles of fair and satisfactory asylum procedure. Adherence to these principles is, in Amnesty International’s view, necessary for the effective implementation of the international standards aimed at helping to prevent the forcible return of asylum-seekers at risk of serious human rights abuses. These principles would include the following:

- The decision-makers in refugee status determination procedures must have expertise in international refugee law and international human rights law. Their status and tenure should afford the strongest possible guarantees of their competence, impartiality and independence.
- The decision-makers must be provided with the services of a documentation office whose task should be to collect and provide objective and independent information on the human rights situation in asylum-seekers' countries of origin or any countries to which they might be sent.
- All asylum-seekers, at all stages of the procedure, must benefit from the right to access interpreters.
- All asylum-seekers must receive written reasons if their asylum claim is rejected, and have the right to appeal against a negative decision. The appeal should normally be of a judicial nature and must in all cases have suspensive effect on expulsion. All asylum-seekers should be given, in a language that they fully understand, the necessary guidance about the procedure to be followed and full information about their procedural rights.
- All officials involved in questioning or interviewing asylum-seekers and in making decisions on their applications should be instructed and trained to follow the procedural guidance given in 195-219 of UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status. All such officials, including border officials, should take into consideration the special situation of asylum-seekers, who might experience language or other difficulties in expressing or presenting a request for asylum, who may have had to flee without personal documents, and whose past experience may have caused them to be apprehensive of authority, to be afraid to speak freely, and to have difficulty giving a full and accurate account of their case.

Detention of asylum-seekers/Ta’Kandja

Amnesty International is also most concerned that the Ta’ Kandja Police Complex at Siggiewi is again being used as a detention centre for aliens held under the provisions of the Immigration Act, including a large number of Eritreans.

As you are aware, on 27 August 2002, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a report¹ on the findings of a

¹ CPT/Inf (2002) 17

visit which it carried out to various places of detention in Malta in May 2001, including the Ta' Kandja Police Complex. The report, sent to the Maltese government in December 2001, indicated that, at the time of the CPT's visit there were plans for an imminent transfer of the detainees to the new Hal Far Detention Centre but said that:

“On 15 May 2001, a miserable situation scarcely different from the one observed in 1995 (cf paragraphs 19 to 22 of CPT/Inf (96) 25) was found to prevail: premises - particularly the sanitary facilities - characterised by filth and disrepair, as well as an utter absence of purposeful activities for detainees whose stays at the complex could range from a few days to periods longer than two years.”

The CPT sought confirmation that detainees were no longer being held in the Ta' Kandja complex and that the new detention facility at Hal Far had become operational.

We note that in its interim reply, also published on 27 August 2002, the Maltese government confirmed that the Hal Far Complex was now fully functional and all detainees previously held at Ta Kandja had been transferred there. It added that:

“... the Ta' Kandja Detention Centre was closed down at the end of February 2002. However, in view of an emergency situation created by the landing Malta of 208 illegal immigrants on 4 March 2002, it was temporarily used to house about 50 of these immigrants. By now the number has been reduced to a mere handful.”

However, Amnesty International has received reports that, following the landing of a further group of some 251 asylum-seekers in July 2002, following their rescue from rough seas by the Maltese Armed Forces, over 50 people were being detained in Ta' Kandja and that the number may have increased following the landing of two further large groups of asylum-seekers this week, reportedly totalling over 140 people.

In a letter addressed to you on 2 November 1999², Amnesty International expressed concern about reports it had received about a recurrent overcrowding situation in Ta' Kandja, appalling conditions of detention, the use of police officers from a special intervention group to supervise inmates and use of excessive force by some such officers.

Our letter recalled the findings of a CPT visit to Ta' Kandja in July 1995, contained in the relevant CPT report³ issued in September 1996. The centre had been used to hold illegal immigrants since 17 February 1995 and at the time of the CPT's visit held 26 illegal immigrants, many of whom had been detained there for five months.

The CPT concluded that the Ta' Kandja Detention Centre “provided appalling conditions of detention (filthy and dilapidated living quarters, defective sanitary facilities and nothing which resembled a programme of activities). These difficulties were exacerbated by the fact that the establishment was staffed by police officers from a special intervention group⁴, who recognized that they were not qualified for the task of the care and custody of illegal immigrants.”⁵

The CPT emphasized that “... the administration of a detention centre for foreigners will create particular problems. Firstly, there will inevitably be communication problems due to linguistic barriers. Secondly, many aliens will find the fact that they have been detained, when they are not suspected of any criminal offence, difficult to accept. Thirdly, there is a risk of tension between the different nationalities involved.

² Our Ref: EUR 33/99.02

³ CPT/Inf (96) 25

⁴ Special Assignment Group - SAG (Malta Police Force)

⁵ Paragraph 116, CPT/Inf (96) 25

“It follows that supervisory staff must be carefully selected and receive appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, such staff should be familiarised with the different cultures of the detainees and at least some of them should have appropriate language skills. The S.A.G. officers at Ta’ Kandja were the first to admit that they did not fulfil these criteria; several commented that the care and custody of illegal immigrants was hardly the vocation of a special intervention group.”⁶

The CPT recommended that “as a matter of urgency, the Maltese authorities find better premises in which to accommodate persons detained under the Immigration Act and allocate the task of supervising such detainees to suitably qualified staff. Further, a concerted effort should be made to develop a programme of activities for the detainees concerned (including outdoor exercise, access to radio/television and newspapers/magazines as well as other appropriate means of recreation.”⁷

Pending the implementation of such measures, the CPT recommended that “immediate steps be taken”⁸ to ensure that all detainees held at Ta’ Kandja be offered at least one hour of outdoor exercise every day; the standard of cleanliness at the establishment be improved significantly; the establishment’s sanitary facilities be rendered fully operational and maintained in that condition and that basic cleaning materials and personal hygiene products be provided to detainees, irrespective of their means.”

We noted that the Maltese Government’s Interim Response⁹, issued in September 1996, stated that “At the time of the CPT’s visit in July of 1995, Ta’ Kandja detention centre was used for a short period of time to deal with a particularly urgent and serious situation as a result of overcrowding at the Police Lock-up at Floriana. The material conditions of the centre have now been improved and it will only be used again in emergencies until the works contemplated at Police HQ are finalised. In the meantime, further works at the centre will be taken in hand in order to continue improving the conditions thereat. The recommendations of the CPT as to cleanliness, exercise of detainees and access to communal TV and personal radio are being implemented. Also, as already stated, the project at the Police Lock-Up at Floriana envisages a maximum of up to 54 independent cells with adequate facilities and exercise yards which will ensure that there will not be the need in the future to resort to such solutions, even in emergencies.”

Similarly we noted that the follow-up report of the Maltese Government¹⁰, issued in July 1997, stated that Ta’ Kandja Detention Centre “now hosts only four persons detained under the Immigration Act. The conditions at Ta’ Kandja have also been considerably improved, especially since the overcrowding element has now been removed completely.”

In our November 1999 letter we asked for information about any steps taken or envisaged by the Maltese Government to implement the CPT’s urgent recommendation to allocate supervision of detainees at Ta’ Kandja to suitably trained and qualified staff. We also asked for news of any steps being taken to alleviate or resolve the apparently recurrent overcrowding problem at Ta’ Kandja.

Your response of 26 November 1999¹¹ stated that “the material conditions at Ta’ Kandja” had been “greatly improved” and that until works were completed on alternative accommodation, it was not

⁶ Paragraph 21, CPT/Inf (96) 25

⁷ Paragraph 22, CPT/Inf (96) 25

⁸ Paragraph 22, CPT/Inf (96) 25

⁹ CPT/Inf (96) 26

¹⁰ CPT/Inf (97) 8

¹¹ Your Ref: MHA/239/99

possible to transfer the detainees from Ta' Kandja to another place. Your response did not comment on the use of the SAG officers to supervise the detainees.

Amnesty International's concern about the conditions in which asylum-seekers are currently being held in Ta' Kandja is exacerbated by the apparent conclusion of the Maltese Ombudsman, in a report presented to parliament in May 2002, that the conditions in Ta' Kandja did not meet the relevant established international standards and, recalling the finding contained in his June 2000 report to parliament, that when Ta' Kandja's population exceeded 38, the place became unsuitable for detention. AI has also noted that the Council of Europe's Commission against Racism and Intolerance (ECRI), in its Second report on Malta (CRI (2002) 22), adopted on 14 December 2001 and made public on 23 July 2002, also expressed concern about the conditions of detention in Ta' Kandja and the "lack of specialized staff with appropriate training to deal with the particular needs of non-citizens held in detention."

Amnesty International would welcome, therefore, your comments on the current conditions of detention for asylum-seekers in Ta' Kandja and to be informed of what steps are being taken to ensure that asylum-seekers are not detained conditions which violate international standards and the recommendations of the CPT.

We would also welcome your assurances that the conditions of detention of all asylum-seekers held in detention facilities in Malta are subject to regular review to ensure their compliance with relevant international standards, including Guideline 10 of the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the European Prison Rules of the Council of Europe and the UN Rules for the Protection of Juveniles deprived of their Liberty.

Furthermore, Amnesty International calls on the Maltese government not to impose penalties on asylum-seekers solely for their illegal entry or presence¹² and to ensure that any decision to detain an asylum-seeker is taken on an individual basis, is necessary and proportional and subject to regular and automatic review before a court of law. According to international standards, "detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order".¹³ Detention of children is under all circumstances entirely inappropriate and should only take place as a measure of last resort and for the shortest possible time. UNHCR's February 1999 Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Deliberation No. 5 on the situation of immigrants and asylum-seekers of the Working Group on Arbitrary Detention¹⁴ set out the relevant standards and principles.

Amnesty International seeks your assurances that any asylum-seeker or refugee who is held in circumstances not fulfilling the aforementioned criteria drawn from international standards will be released immediately.

A copy of this letter is being sent, for information, to the UNHCR branch office in Italy.

Yours sincerely,

For Irene Khan, Secretary General

¹² Convention relating to the Status of Refugees, Article 31

¹³ Conclusion No. 44 (XXXVII) of 1986 of the Executive Committee of the UNHCR

¹⁴ E/CN.4/2000/4, annex II, and welcomed to in the UN Sub-Commission on Human Rights resolution 2000/21