

OPEN LETTER TO THE MALTESE MINISTER FOR JUSTICE AND HOME AFFAIRS

Ref.: TG EUR 33/04.03

The Hon Tonio Borg
Deputy Prime Minister and Minister for Justice and Home Affairs
Ministry for Justice and Home Affairs
Auberge d' Aragon
Independence Square
Valletta CMR 02
Malta

07 June 2004

Dear Minister,

We are writing in connection with the inquiry currently under way in Malta into circumstances surrounding the deportation of 220 Eritrean citizens from Malta to Eritrea on 30 September and 3 October 2002. We understand from the government's press statement of 25 May 2004 that the government ordered the opening of the inquiry, following Amnesty International's publication, on 19 May 2004, of a report entitled *Eritrea: "You have no right to ask" – Government resists scrutiny on human rights* (AI Index: AFR 64/003/2004), and that it nominated a magistrate to examine whether the process leading to the deportations was regular and legal and whether any individuals or authorities exerted undue pressure for the deportations to be carried out.

As you are aware, the 49-page Amnesty International report in question (see attachment one) describes the organization's grave concerns about the human rights situation in Eritrea, including its concerns relating to political imprisonment, religious persecution, abuses of military conscripts and the torture and ill-treatment of prisoners. One chapter of the report is devoted to the situation and treatment in Eritrea of Eritrean returnees and refugees: a sub-section concerns the fate of those Eritreans returned from Malta in 2002 and about whom we corresponded with you in 2002 and 2003. That exchange of correspondence is summarized in two Amnesty International public documents: *Amnesty International Concerns in Europe and Central Asia: July – December 2002, Malta* (AI Index: EUR 01/002/2003) and *Amnesty International Concerns in Europe and Central Asia: July – December 2003, Malta* (AI Index: EUR 01/001/2004) – see attachments two and three. According to Amnesty International's information, as described in its May 2004 report, the Eritreans returned by Malta were all "detained on arrival in Asmara and sent to the nearby Adi Abeto military detention centre. Most had apparently refused to apply for asylum in Malta, hoping to travel on to Italy ... As Amnesty International learned later, women, children, and those over the conscription age limit of 40 years were released after some weeks in Adi Abeto prison but the rest of the Malta deportees – mostly army deserters – were kept in incommunicado detention and tortured ...".

You will recall that our letter to you of 27 September 2002 (see attachment four) raised a number of issues relating to asylum. Amongst other things, Amnesty International said it was “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”. Amnesty International outlined the principles of fair and satisfactory asylum procedure.

Amnesty International’s 27 September 2002 letter was written just after the organization had received reports that deportations of Eritreans from Malta might be imminent. Amnesty International was not in possession of the names of all the Eritreans detained in Malta and threatened with deportation, nor aware of the grounds which those individuals who were claiming asylum were putting forward in their asylum applications to the relevant Maltese authorities.

In its letter Amnesty International stressed the limited nature of the declaration of a cessation of refugee status for certain Eritrean refugees which had been made by the United Nations High Commissioner for Refugees (UNHCR) in May 2002. We explained that “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”.

Amnesty International stated that “Eritrea cannot be regarded as a “safe” country with regard to Eritrean asylum-seekers” and pointed out the specific categories of Eritreans who “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”. We said that those at risk “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”.

Amnesty International also enclosed a 24-page report (see attachment five) which it had published on 18 September 2002 on the human rights situation in Eritrea, noting that there had been a pattern of major human rights violations over the preceding year which was still continuing. Amongst other things, the report indicated that Eritrean national service regulations require all men and women aged between 18 and 40 to perform military service; that there is no recognition of, or provision for conscientious objection to military service and that those refusing national service are subject to forcible conscription, detention, and ill-treatment as punishment. The organization said that there had been “reports over the past year of defections of soldiers and young people fleeing the country to avoid military service. Desertion is harshly punished. Those liable to conscription caught fleeing the country or forcibly returned to Eritrea after seeking to avoid conscription would be detained and punished for refusing conscription and leaving the country illegally without an exit visa”.

Upon receipt of reports that dozens of Eritreans had been deported from Malta and forcibly returned to Eritrea early on 30 September 2002, Amnesty International wrote to the President of the State of Eritrea that same day, expressing concern about their possible treatment on return. A copy of the letter was sent to you, for information, on 1 October 2002.

On 9 October 2002, following the forcible return of more Eritrean citizens from Malta to Eritrea on 3 October, Amnesty International wrote to you stating that it had received reports that those returned by Malta over September-October 2002 had been immediately arrested on arrival in Asmara, taken to a military prison in Adi Abeto, and detained incommunicado. (A copy of the letter is attached - see attachment six). Amnesty International pointed out that the Eritrean authorities had “neither acknowledged the detentions nor revealed the whereabouts of the detainees to their families or the public.” In light of that information Amnesty International urged the Maltese government “to suspend all forcible returns until a thorough, independent investigation has been made as to their legal status and treatment on return and an assessment has been made as to whether Eritreans found not to be in need of protection can be forcibly returned in safety and dignity with full respect for their human rights”.

In October 2003 Amnesty International wrote to you again concerning new and more detailed information it had received about the Eritreans deported from Malta in 2002 – information which was incorporated into Amnesty International’s May 2004 report on Eritrea. In that letter (see attachment seven) we called on the Maltese government to look more closely at the human rights situation in Eritrea and not to deport Eritrean asylum-seekers to Eritrea while there were well-grounded fears that they could be detained or tortured. We pointed out that Amnesty International believes that refugees are the responsibility of the whole international community and that it is important for all countries to work to end and prevent the human rights violations which lead to flows of asylum-seekers in different parts of the world. We also suggested that the government could assist in this context by supporting international efforts to secure better protection for human rights in Eritrea. Amnesty International has received no response to that letter to date.

Amnesty International’s primary concern at this time is that all possible steps should be taken to help those people whom it believes to be still in detention in Eritrea following their return by Malta, and currently suffering and at constant risk of serious human rights violations, including torture, death and indefinite detention without charge or trial, and to ensure that Malta does not again return people in need of international protection to a country where they risk such treatment.

We welcomed, therefore, news of the opening of the current inquiry into the deportation of Eritrean citizens from Malta to Eritrea in 2002 and would appreciate your cooperation in providing us with details of its precise remit. Amnesty International trusts that the inquiry will be thorough and impartial and, to that end, recommends in particular that:

- the inquiry be conducted by an expert in domestic and international refugee law;
- the inquiry's scope, methods and findings be made public;
- the inquiry examine whether the deported Eritreans had access to a fair and satisfactory asylum determination process, in line with the requirements of relevant international standards – including free and timely access to legal advice. (Amnesty International’s understanding of the minimum requirements of a fair and satisfactory asylum determination process are set out in Appendix A);

- the inquiry examine the deportations in the light, not only of Malta's obligations with regard to the principle of non-refoulement contained in Article 33 of the 1951 Geneva Convention relating to the Status of Refugees but also Malta's obligations under other relevant international instruments. Article 33 of the 1951 Convention imposes the obligation on Contracting States not to "expel or return ('refouler') a refugee, in any matter whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Article 3.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that no one, including those convicted of crimes, should be sent back to a country where they would be at risk of torture: there are no exceptions to this provision. In addition, Article 3 of the European Convention on Human Rights and Fundamental Freedoms requires States Parties to ensure that no one be subjected to torture, or inhuman or degrading treatment or punishment: the European Court of Human Rights has declared that this article provides protection from refoulement to people who would face a real risk of being subjected to such treatment;
- the inquiry be empowered to summons and take evidence from state officers performing custodial or escort duties with regard to the deportees; those administering the refugee determination system at initial and appeal levels, and representatives of non-governmental organizations in contact with the deportees before they were returned to Eritrea, and to subpoena relevant evidence and records;
- the inquiry have jurisdiction to take evidence from ex-Malta Eritrean deportees now in a place of safety and from Eritreans still in Malta who were detained with those deported in 2002 and to guarantee full confidentiality to, and protection against harassment and intimidation of such witnesses;
- the inquiry examine whether UNHCR was informed that the Eritreans being deported included individuals who had applied for asylum in Malta but been rejected, as well as those who had not applied for asylum in Malta but expressed the wish to travel on to Italy.

Amnesty International would also welcome your cooperation in informing the organization of the steps the Maltese Government has itself taken to clarify the treatment which the Eritreans deported from Malta in 2002 received on return. We noted that in the letter which you addressed to Amnesty International on 14 October 2002 you stated only that: "As regards the treatment afforded to the Eritrean citizens on their repatriation to Eritrea, [the] Government is not in possession of any evidence that any ill-treatment was afforded to them. This is confirmed by the Eritrean Director of Refugees Daniel Zeratzion who was reported to have rejected any allegations or reports of ill-treatment". Your letter did not indicate any active steps taken by the Maltese Government to establish the treatment of the returnees.

We urge the Maltese Government, if it has not already done so, to request the Eritrean authorities to provide it and the deportees' relatives with information as to the whereabouts of the deported Eritreans, and to allow an international monitoring agency to be given access to Eritrea to visit them.

We also draw your attention to the recommendations, aimed at achieving protection of human rights and the rule of law in Eritrea, in accordance with international and regional standards, which Amnesty International addressed to the international community in its May 2004 report entitled *Eritrea: "You have no right to ask" – Government resists scrutiny on human rights*.

This letter and its attachments are also being submitted to Magistrate Dr Abigail Lofaro.

Yours sincerely,

For Irene Khan, Secretary General

APPENDIX A

Fair and satisfactory asylum procedures

Amnesty International believes that the minimum requirements for a fair and satisfactory asylum procedure as outlined below should be universally applied. An asylum hearing is only fair and satisfactory when the following requirements are fulfilled:

Independent and specialized decision-making body.

The body responsible for deciding asylum claims must be independent and specialized, with sole and exclusive responsibility for dealing with such claims. Its composition must ensure decision-making that is independent, based on human rights and refugee law, and not influenced by other considerations such as national immigration and foreign policy. The assessment of an asylum claim can involve complex questions of refugee law and human rights law, and often requires detailed information about the situation in the claimant's country of origin. Officials should be provided with objective and independent information on the human rights situation in countries of origin or any countries to which asylum-seekers might be sent. Decision-makers should not rely on information about the claimant's country of origin or case that is not disclosed to the claimant, such as secret reports.

Qualified decision-maker.

Every asylum claim, whether submitted on arrival or after entry into the country, should be examined in the first instance by an official of the responsible decision-making body, who should interview the applicant personally. This official should have expertise in international human rights law and refugee law, and should also have knowledge of the human rights situation in the asylum-seeker's country of origin. The status and tenure of the decision-makers should afford the strongest possible guarantees of their competence, impartiality and independence.

The decision-maker should take into account that asylum-seekers who have been persecuted by the authorities in their own country may feel apprehensive towards all officials and may be afraid to speak freely about their case. The decision-maker should gain the confidence of the asylum-seeker to help the applicant explain the grounds for seeking asylum. So, for example, women asylum-seekers should be offered the opportunity of being heard by a woman. A woman who was raped by a soldier should not be expected to talk about her experiences to another man.

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 UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status.

Qualified interpreter

Competent, qualified and impartial interpreters should be available throughout all stages of the asylum process. The asylum-seeker must be able to trust the interpreter and the interpreter should faithfully state what the claimant says, rather than generalize or summarize.

Individual and thorough examination

Every asylum claim should be dealt with individually by a thorough examination of the circumstances of the case. The complexity of the refugee definition and the need to make judgments about future risks make every case different.

Legal assistance

Asylum-seekers are vulnerable and cannot be expected to know how to exercise their rights in the asylum procedure. It is essential that asylum-seekers are able to obtain effective legal assistance and

are advised of this right. They should be granted access to UNHCR at all stages of the process and to appropriate non-governmental organizations.

Reasonable time

Asylum-seekers should be given a reasonable time to prepare their case and to seek legal and other advice. There is a tendency in many European and North American countries to speed up the procedures, sometimes allowing only two or three days to prepare a case or to launch an appeal. At the same time there is also a tendency to require asylum-seekers to provide more and more proof of persecution, such as arrest warrants, military call-up orders or medical reports.

Benefit of the doubt

Most people who have fled from their home country arrive with the barest necessities and frequently without personal documents. It is not always possible for asylum-seekers to "prove" every part of their case and it is often necessary to give the applicant the benefit of the doubt. (See UNHCR Handbook, paragraph 203)

Right to appeal

The right to appeal is essential. The appeal process should include the following:

Reasons for rejection explained

Any rejection of an asylum request should be given to the asylum-seeker in writing. It should clearly state the reasons for the rejection, including an assessment of the evidence, the documentary evidence relied upon and the relevant laws and facts. The asylum-seeker should also receive clear instructions on how to appeal. Asylum-seekers can only appeal effectively against an incorrect decision if they know what considerations have led to the decision.

Independent appeal body

An appeal against an initial decision to deny asylum should be to a different body. It should be a judicial authority, such as a court, or at least a higher administrative authority. Given the evidence of inconsistent decision-making in similar cases at the first instance, it is important that the appeal body examines the merits of the individual case and all relevant facts.

Right to stay during the appeal procedure

The asylum-seeker should be allowed to remain in the country where they have sought asylum until the outcome of the appeal has been finally decided. To deport an asylum-seeker to the country of origin before a final decision on appeal renders the right of appeal meaningless. This "suspensive effect" on expulsions should be applied in all cases.

ATTACHMENTS

ATTACHMENT ONE:

Eritrea: “You have no right to ask” – Government resists scrutiny on human rights (AI Index: AFR 64/003/2004)

<http://web.amnesty.org/library/Index/ENGAFR640032004?open&of=ENG-ERI>

ATTACHMENT TWO:

Amnesty International Concerns in Europe and Central Asia: July - December 2002, MALTA (AI Index: 01/002/2003)

This country entry has been extracted from a forthcoming Amnesty International report, *CONCERNS IN EUROPE AND CENTRAL ASIA: July - December 2002* (AI Index: EUR 01/002/2003). Anyone wishing further information on other Amnesty International concerns in Europe and Central Asia should consult the full document.

The detention and deportation of asylum-seekers

September letter to the government

On 27 September AI wrote to the Maltese Minister for Home Affairs and the Environment, expressing concern about issues surrounding the reception and treatment of hundreds of recently arrived asylum-seekers in Malta, many of them Eritrean, and fears that, unless their claims for protection were adequately examined, many could be at risk of serious human rights violations and 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, AI urged the Maltese government to refrain from returning any of these asylum-seekers to their countries of origin until their claims for refugee status had been examined in a full, fair and satisfactory asylum procedure.

AI noted that a legal procedure had commenced in the Maltese Constitutional Court wherein over 50 claimants (the vast majority Eritreans) were 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. The claimants were apparently also arguing 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. The deportation orders were suspended pending the Constitutional Court's ruling.

AI warned of the disturbing human rights situation in Eritrea, and drew attention to a report it had published on some of its concerns in Eritrea on 18 September (See AI Index: AFR 64/008/2002). The organization said that in the current human rights crisis in Eritrea, anyone deported there who was suspected of opposition to the government or having evaded military service or deserted from the army would be arrested and possibly subjected to torture or ill-treatment. They could be detained for an indefinite period without charge or trial, without any protection against unlawful detention. If tried, they would face lengthy imprisonment or possibly the death penalty. Their relatives could also be detained on suspicion of assisting them to escape. At the same time AI appealed to the Eritrean President for assurances that the returnees from Malta would not be ill-treated or arbitrarily detained as a result of conscientious objection to military service.

AI also stressed the limited nature of the declaration of cessation of refugee status for Eritrean refugees which was made by the United Nations High Commissioner for Refugees (UNHCR) in May 2002, taking effect from 31 December 2002. It is applicable to only two specific categories of Eritrean refugees and people in both categories still have the right to have any individual claim for further protection examined in a full and fair procedure.

AI also raised concerns about the conditions of detention for asylum-seekers of all nationalities in Malta, including many children, and expressed particular concern that the Ta' Kandja Police Complex at Siggiewi was again being used as a detention centre for aliens held under the provisions of the Immigration Act.

AI pointed out that in August 2002, the Council of Europe's Committee for the Prevention of Torture (CPT) issued a report on the findings of a visit to various places of detention in Malta in May 2001, including the Ta' Kandja Police Complex. The report 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 "a miserable situation scarcely different from the one observed in 1995 ... 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. In its interim reply, also published in 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 in 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."

AI drew attention to reports it had received that, following the landing of a further group of some 251 asylum-seekers in July 2002, over 50 people were being detained in Ta' Kandja by September and that the number might have increased following the reported landing of over 140 asylum-seekers in the days immediately preceding the organization's letter.

AI also recalled correspondence it had exchanged with the Maltese government in 1999, when it had expressed concern about a recurrent overcrowding situation in Ta' Kandja, appalling conditions of detention, the inappropriate use of police officers from a special intervention group to supervise inmates and use of excessive force by some such officers.

In its September letter AI said that its concern about the conditions in Ta' Kandja was 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 international standards. AI also noted that the Council of Europe's Commission against Racism and Intolerance (ECRI), in its Second report on Malta, made public in July 2002, also expressed concern about the conditions of detention in Ta' Kandja and the "lack of specialized staff with appropriate training."

AI asked to be informed of the steps being taken to ensure that asylum-seekers were not detained in conditions violating international standards and sought the Minister's assurances that the conditions of detention of all asylum-seekers held in detention facilities were subject to regular review to ensure their compliance with relevant international standards. Furthermore, AI called on Malta not to impose penalties on asylum-seekers solely for their illegal entry or presence and to ensure that any decision to detain an asylum-seeker be taken on an individual

basis, be necessary and proportional and subject to regular and automatic review before a court of law. It also pointed out that relevant international standards emphasize that the detention of children should only take place as a measure of last resort and for the shortest possible time. AI also sought assurances that any asylum-seeker or refugee held in circumstances not fulfilling the criteria drawn from international standards would be released immediately.

Following its letter, AI received reports that some 220 Eritreans were forcibly deported between 30 September and 3 October 2002. They were said to have been immediately arrested on arrival in Asmara and taken to a military camp and placed in incommunicado detention.

October letter to the government

On 10 October, in view of the above reports and fears of further deportations, AI wrote to the Minister and issued a public appeal (see AI Index: EUR 33/001/2002) reiterating the concerns raised in its September letter and pointing out that, at that time, the Eritrean authorities had neither acknowledged the detention of the deportees nor revealed their whereabouts to their families or the public. It called on the government to suspend deportations of Eritreans back to Eritrea until a thorough, independent investigation had been made as to their fate and an assessment made as to whether Eritreans could be forcibly returned in safety and in dignity, with full respect for their human rights.

Following AI's letter, a statement attributed to the Eritrean Director of Refugees claimed that the deportees were not detained and were well treated, but requests for access by journalists and diplomats were refused and families remained without information or access. AI received reports that the deportees were held initially at Adi Abeito military detention centre near Asmara, although this was not officially acknowledged. According to unofficial sources, most of them were army deserters and many were said to have been later moved to other unknown military centres for punishment and return to military duties. There were unconfirmed reports that some tried to escape and were fired at by guards.

The deportees were among over 400 Eritreans who had arrived in Malta from March 2002 onwards and were detained on arrival. About half had applied for asylum in Malta but had their claims rejected. Although some 50 Eritreans had submitted an appeal to the Maltese Constitutional Court (see above), others did not apply for asylum, reportedly hoping to be able to proceed to another country. AI received claims that, when faced with deportation, many reportedly wanted to apply for asylum but were ignored by the authorities.

In view of unconfirmed reports of alleged use of excessive force during at least one of the forcible deportation operations, AI's October letter also urged the government to ensure that police officers have clear instructions that no more force should be used in deporting a person than is reasonably necessary, in line with international standards on the use of force by law enforcement officials. It also urged a review of police restraint techniques and of relevant guidelines and training for police and other personnel involved in deportation operations in order to ensure that such operations are carried out in accordance with relevant Council of Europe recommendations.

Government response

The Minister replied to AI's correspondence by two separate letters dated 4 and 14 October, both received on 21 October.

In the first letter the Minister gave information regarding Maltese refugee law and stated that the Refugee Act 2000 provided a fair and satisfactory asylum procedure and that, since its enactment, no asylum seeker could be deported as long as his/her refugee application was pending, including during appeal proceedings. As the European Convention on Human Rights is incorporated into the country's domestic legislation, a deportation order could also be suspended by court order, pending the outcome of human rights proceedings, in spite of the exhaustion of ordinary remedies under the Refugee Act. The Minister gave assurances that no deportation had taken place in violation of these provisions.

The Minister said that the observations which AI had made about the human rights situation in Eritrea in its September letter had been noted and that each case presented by an asylum-seeker, including Eritrean asylum-seekers, was carefully examined on its own merit.

He stated that the arrival of "more than 800 irregular immigrants in the short space of 6 months" during 2002 had put an "unbearable strain" on Malta's limited resources and had created "an emergency as regards accommodation." He said that because of the unprecedented number of arrivals "all persons arriving in Malta in breach of the Immigration Act 1970 were accommodated at the new Hal Far Centre (which can accommodate 100 persons) at the Armed Forces of Malta Barracks at Hal-Safi and Hal-Far, and unfortunately, as an emergency measure again at Ta' Kandja." He said that "Following the recent repatriation of 220 Eritrean nationals, and a slight easing of the situation by the repatriation of other immigrants," Ta' Kandja Detention centre" had been closed and would be refurbished to meet CPT requirements.

He stated that the authorities were obliged by law to keep in detention any person who was the subject of a removal order issued by a court but that the situation of children was being examined. He had been informed that they were "being temporarily released to attend school" and that "Further developments may occur in this regard as regards families with children."

He also pointed out that under an amendment to the Immigration Act 1970, then under consideration by parliament but in force since December, the mere act of entering Malta illegally would cease to be a criminal offence.

The second letter from the Ministry for Home Affairs, in reply to AI's October letter, stated that the government was "not in possession of any evidence that any ill-treatment was afforded to the Eritreans repatriated from Malta" and that the Eritrean Director of Refugees "was reported to have rejected any allegations of ill-treatment." The letter confirmed that the majority of Eritreans still in Malta had not applied for refugee status but stated that, in view of AI's recommendations, "the Maltese Refugee Commissioner and authorities intend to examine any asylum application which may be filed even at this late stage."

The letter said that the findings of an investigation "emphatically refuted" the alleged use of excessive force during forcible deportation operations: "Only a very few, around 8-10, offered resistance, and the minimum of force was used to control the use of violence by a very few of the detainees. No tear gas or other riot gear or equipment was used." No details were provided as to whether the investigation was carried out by an independent body and as to the precise steps taken to establish the facts.

The Maltese government subsequently reported that "1,686 irregular immigrants" arrived in Malta during 2002, compared to 57 in 2001 and 24 in 2000.

Local non-governmental organizations continued to express concern about the asylum process, calling for improved mechanisms to ensure asylum-seekers can exercise their rights,

especially the right to legal aid; greater transparency in the appeals process and better quality information to be provided to asylum seekers about their rights, in a language understood by them. Further concerns were expressed about the detention of unaccompanied minors, conditions within the detention facilities with reports of severe overcrowding with 18 people sleeping in a room designed for six, lack of access to the open air for even one hour a day in some instances and, in others, people sleeping in tents in cold temperatures and rain. There were calls for professional social workers to start visiting the detention facilities and for improved training for immigration officers, police and members of the armed forces in contact with asylum-seekers.

ATTACHMENT THREE:

Amnesty International Concerns in Europe and Central Asia: July - December 2003, MALTA (AI Index: EUR 01/001/2004)

This country entry has been extracted from a forthcoming Amnesty International report, *CONCERNS IN EUROPE AND CENTRAL ASIA: July - December 2003* (AI Index: EUR 01/01/2004) issued in April 2004. Anyone wishing further information on other Amnesty International concerns in Europe and Central Asia should consult the full document.

Asylum and immigration

Refoulement of Eritreans (Update to AI Index: EUR 01/002/2003)

In October AI wrote to the Minister for Justice and Home Affairs concerning new information received by the organization about the fate of a group of some 220 Eritreans deported to Eritrea over September and October 2002. In correspondence exchanged with the Minister in 2002, AI had expressed grave concern about their deportation and treatment following return.

In its October letter AI reiterated that, according to its information, the deportees were detained on arrival at the airport in Asmara, Eritrea, and that foreign embassies and journalists had not access to them since. AI explained, however, that several Eritreans who had recently arrived in Sudan and made contact with AI and representatives of the UN High Commissioner for Refugees (UNHCR) said that they had been amongst the deportees and had only recently escaped from detention in Eritrea. They stated that all those deported from Malta had been detained on arrival at the airport, apparently away from the view of the Air Malta pilots who had flown them back to Eritrea and the Maltese police officers who had escorted them on board the planes. According to the escapees, the deportees were not greeted by any relatives on arrival and none of those remaining in detention had been allowed any contact with their families since their return. After the Air Malta flights left on their homeward journeys, all the deportees were taken to Adi Abeto military detention centre, near Asmara. After some days the women, children and persons over 40 (and thus over military conscription age), were taken away. In its letter, AI pointed out that it was possible that they had been released but that it had received no confirmation of this. The escapees said that the remaining detainees, some 180 people, were kept in detention and tortured over a period of some two and a half months. Some tried to escape but were recaptured: three were shot, one man dying from his wounds. In December 2002 all remaining detainees were transferred to a secret detention centre on the main Dahlak Island in the Red Sea, where they performed forced labour. Some were moved to secret mainland prisons in July 2003, from which several later escaped across the Sudan border.

At the end of December 2003, all others deported from Malta in 2002 reportedly continued to be held in indefinite, incommunicado detention, without charge or trial or any opportunity for legal redress, in harsh conditions and at risk of torture.

In its letter, noting that scores of Eritreans were then being held in Maltese detention centres for asylum-seekers and migrants, many of them apparently at risk of deportation, AI stated that, in its view, if they were to be returned to Eritrea, their treatment would be similar to that experienced by those deported in 2002.

AI urged the government to ensure, as a matter of highest importance, that no asylum-seeker be forcibly returned to a country of origin, directly or indirectly, where they would be at risk of serious human rights abuses. The organization called on the Maltese Government to look more closely at the human rights situation in Eritrea and not to deport Eritrean asylum-seekers to Eritrea while there were well-grounded fears that they could be detained or tortured. The organization also suggested that the government support international efforts to secure better protection for human rights in Eritrea. No response had been received by the end of December, nor were any reports received of Eritreans being deported from Malta.

Detention of asylum-seekers and unsatisfactory asylum proceedings (Update to AI Index: EUR 01/016/2003)

Hundreds of asylum-seekers and unauthorized migrants, including pregnant women, nursing mothers and children, were held in detention centres for aliens on grounds beyond those allowed by international standards, often for periods ranging between one and two years. Asylum-seekers and migrants arriving irregularly are automatically detained until the conclusion of refugee determination procedures and/or return to the country of origin. AI noted that in June UNHCR had stated that, in order to comply fully with international standards, Malta's asylum legislation needed improvements in several areas and strongly recommended that the automatic detention of asylum-seekers, "in particular women and children asylum-seekers as well as other vulnerable cases", be discontinued. AI has called on Malta to ensure that, in line with relevant international standards, asylum-seekers are detained only when a legitimate reason for doing so has been demonstrated in the individual case, only when other measures short of detention will not suffice, and only for a minimal period.

Over 500 people were detained in the centres during the period under review and there was concern that some did not have access to a fair and satisfactory asylum determination procedure. Severe delays in the processing of asylum applications continued and appeared in large part due to acute understaffing in the Refugee Commissioner's office, the first instance decision-making body. There were also claims that detainees in the detention centres were frequently unable to exercise their rights as they were not fully and regularly informed of asylum determination proceedings, and the progress of such proceedings, or lacked access to timely legal advice. The Refugee Appeals Board systematically confirmed first instance decisions rejecting asylum applications, without re-interviewing the asylum-seekers about the merits of their claims and usually without motivating their decisions. This resulted in continuing calls for greater transparency and diligence in the appeals process.

Detention conditions (Update to AI Index: EUR 01/016/2003)

Living conditions in the detention centres continued to fall short of relevant international standards, giving rise to ongoing tensions and protests within the centres, including frequent hunger-strikes. Many people were held in facilities not originally designed as detention centres, with reports of people in some centres suffering severe overcrowding and highly inadequate sanitary arrangements. Some inmates, including children, had little or no regular access to exercise in the open air, spending most of the day inside the detention centre, with no recreational facilities. School-age children detained with their relatives faced lengthy delays in gaining permission to leave the detention centres during the day to attend local schools, with the result that a number of children were deprived of education for six months or more. The overall treatment of detained children appeared to fall short of the requirements of the UN Convention on the Rights of the Child.

Local non-governmental organizations providing basic social and medical services, often on a voluntary basis, continued to report deterioration in the mental health of some of the inmates as the time they had spent detained in poor conditions lengthened, without any apparent indication of progress in the processing of their asylum claims or a time limit on their detention. It was reported that the police and military personnel running the centres often made considerable efforts to cope with the problems arising but were not provided with appropriate training.

There was still a lack of appropriate housing available in the community for recognized refugees once released and there were reports of unsatisfactory living conditions in Hal Far open centre to which some detainees were transferred after gaining refugee status or temporary humanitarian protection, or as an exceptional measure. At the end of the year the centre was said to be overcrowded, with inadequate lighting, heating and bedding, and inappropriate food provided for the babies and young children amongst the residents.

Visit by the Council of Europe's Commissioner for Human Rights

In October, in public statements made at the close of a visit to Malta, including visits to some detention centres for aliens, the Council of Europe's Commissioner for Human Rights said that living conditions in the centres were particularly "shocking" when compared to those in the local prison, that asylum-seekers were detained for unacceptable periods of time, and that the office of the Commissioner for Refugees was seriously understaffed. He underlined that urgent action was needed to address the situation. The Commissioner's official report on his visit was due to be published in early 2004.

Government reaction to concerns

In November the Minister for Justice and Home Affairs stated publicly that the detention of asylum-seekers and migrants "should not exceed a reasonable period" and that the government planned to guarantee this via several reforms. He indicated that "these included accelerating the procedures for processing asylum applications, increasing relevant human resources and drafting an internal policy of not detaining irregular immigrants beyond a reasonable period of time". He said that a reduction in the number of detainees would lead to improved conditions in the detention centres.

Over 500 people were held in the detention centres during the period under review but the number had been substantially reduced by the end of the year. In December, over 65 Eritrean and Ethiopian asylum-seekers were transferred to Hal Far open centre, apparently as a humanitarian gesture. They constituted the majority of detained Eritrean and Ethiopian nationals and had been held for periods ranging between some 17 and 22 months. None of them had been granted refugee status or, apparently, temporary humanitarian protection. Many of those remaining in detention had been held for over a year.

ATTACHMENT FOUR:

Amnesty International's letter to the Minister of 27 September 2002

AI Index: EUR 33/002/2002

Ref.: TG EUR 33/02.01

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 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.

¹ CPT/Inf (2002) 17

² Our Ref: EUR 33/99.02

³ CPT/Inf (96) 25

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.

"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

⁴ Special Assignment Group - SAG (Malta Police Force)

⁵ Paragraph 116, CPT/Inf (96) 25

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

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 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,

¹¹ Your Ref: MHA/239/99

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

For Irene Khan, Secretary General

ATTACHMENT FIVE:

Eritrea - Arbitrary detention of government critics and journalists (AI Index: AFR 64/008/2002), issued 18 September 2002

<http://web.amnesty.org/library/Index/ENGAFR640082002?open&of=ENG-ERI>

ATTACHMENT SIX:

Amnesty International's letter to the Minister of 9 October 2002

AI Index EUR 33/003/2002

Ref.: EUR 33/02.03

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

9 October 2002

Dear Minister,

Amnesty International wishes to reiterate the concerns expressed in the letter which it addressed to you on 27 September 2002 (Reference TG EUR 33/02.01) concerning the reception and treatment of asylum-seekers in Malta and awaits your response to the questions raised therein.

We understand that 223 Eritreans were forcibly returned to Eritrea between 30 September and 3 October 2002. The Eritreans are reported to have been immediately arrested on arrival in Asmara, taken to a military prison at Ade Abeto village, about 10 kilometres from Asmara on the road northwest to Keren, and detained incommunicado. The Eritrean authorities have neither acknowledged the detentions nor revealed the whereabouts of the detainees to their families or the public.

In light of this information, Amnesty International urges the Maltese government to suspend all forcible return of Eritreans until a thorough, independent investigation has been made as to their legal status and treatment on return and an assessment has been made as to whether Eritreans found not to be in need of protection can be forcibly returned in safety and in dignity, with full respect for their human rights. We also urge you to ensure that all Eritreans in Malta wishing to apply for asylum have an opportunity to have their individual claims for protection examined in a fair procedure.

Furthermore, in view of unconfirmed reports of alleged use of excessive force during recent forcible deportation operations, we urge the Maltese government to ensure that police officers have clear instructions that no more force should be used deporting a person than is reasonably necessary, in line with international standards on the use of force by law enforcement officials. We also urge a review of police restraint techniques and relevant guidelines and training for police and other personnel involved in deportation operations in order to ensure that such operations are carried out in accordance with relevant recommendations issued by the Council of Europe's Commissioner for Human Rights in September 2001, by the Parliamentary Assembly of the Council of Europe in January 2002 and by the Council of Europe's Committee for the Prevention of Torture (CPT) in March 2002. Copies of the relevant recommendations are attached.

A copy of this letter is being sent, for information, to the UNHCR branch office in Italy and to Raymond Hall, Director of the Bureau for Europe, UNHCR Geneva.

Yours sincerely,
For Irene Khan, Secretary General

ATTACHMENT SEVEN:
Amnesty International's letter to the Minister of 17 October 2003

AI Index: EUR 33/002/2003
Ref.: TG EUR 33/03.05
The Hon. Tonio Borg
Minister for Justice and Home Affairs
Ministry for Justice and Home Affairs
'Casa Leoni'
476 St. Joseph High Road
Santa Venera
Malta CMR 02

17 October 2003

Dear Minister,

Amnesty International is concerned about reports that the Government of Malta may be intending to deport Eritrean asylum-seekers back to Eritrea.

We followed closely the hunger-and-thirst strike carried out between 26 September and 7 October 2003 by over 50 Eritrean asylum-seekers in the detention centre located at Safi barracks in Malta. We understand the strikers requested a meeting with you and were complaining about their long and indefinite detention, in some cases since 2002, and their conditions of detention. Some of the group are said to be appellants in the Constitutional Court case, currently adjourned to mid-October 2003; others are rejected asylum-seekers whose appeals have not yet been heard; some are reportedly still waiting for a decision on their asylum applications. We note that a court order prohibits the deportation of some 46 while their appeal against rejection of asylum is before the Constitutional Court, while the Refugees Act prohibits the deportation of those whose cases are not yet determined or are being appealed.

Our concern is heightened by new information we have received about the 220 Eritreans deported by Malta to Eritrea over September and October 2002, about whom we have previously corresponded. According to this information, some of the deportees who were detained on arrival in Eritrea recently escaped and have arrived in Sudan and are in contact with UNHCR in Khartoum. Embassies and foreign journalists have had no access to the detained deportees, and the government has made no further response to the international concern about the deportees. You may already be aware of Amnesty International's most recent statement of its human rights concerns in Eritrea - *Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups*, 18 September 2003, AI Index: AFR 64/004/2003. A copy is attached.

According to the new information which we have received from some of the deportees who escaped from detention in Eritrea and who have asked Amnesty International not to disclose their identities because of their fears for their safety, all the deportees were detained on arrival in Asmara – contrary to a statement from the Eritrean Director for Refugees, and apparently away from the view of the Air Malta pilots who flew the deportees back to Eritrea and the escorting Maltese police officers. According to statements made by the deportees, there were no relatives of the deportees at the airport in Asmara, and none who remain in detention have been allowed any contact with their families since their return. No UNHCR officials were present on the arrival of the deportees at the airport and UNHCR has reportedly been unable to trace or have contact with any of those who were deported.

After the Air Malta flights left on their homeward journey, the deportees were all taken to Adi Abeto military detention centre near Asmara. After some days, the women, children and older persons were taken away and may have been released, although we have been unable to confirm this. The remainder (some 180) were kept in detention and tortured over the following two and a half months. Some tried to escape and were re-captured, with three of them shot and one dying from his wounds. They were all transferred in December 2002 to a secret detention centre on the main Dahlak island,

where they were made to do forced labour. Some were later moved to mainland prisons in July 2003, from where several later escaped across the Sudan border, as mentioned above. The majority are still apparently detained incommunicado and indefinitely, without charge or trial or any opportunity for legal redress.

In Amnesty International's view, if the Eritrean asylum-seekers currently detained in Malta were returned to Eritrea, their treatment would be similar to that experienced by those earlier deported back to Eritrea. Their situation would probably be exacerbated as a consequence of the recent hunger-strike, given the unfavourable publicity which that has generated for the Eritrean government. Amnesty International believes they would be arrested on arrival, detained indefinitely without charge or trial or any legal redress, and tortured.

Amnesty International requests the Government of Malta to look more closely at the human rights situation in Eritrea and reconsider its position as regards the possibility of deporting Eritrean asylum-seekers to Eritrea. Amnesty International urges the government to ensure, as a matter of the highest importance, that no asylum-seeker is forcibly returned to their country of origin, directly or indirectly, where they would be at risk of serious human rights abuses. In particular at this time, we urge the Government of Malta not to deport Eritrean asylum-seekers to Eritrea while there are well-grounded fears that they could be detained or tortured.

Amnesty International believes that refugees are the responsibility of the whole international community and that it is important for all countries to work to end and prevent the human rights violations which lead to flows of asylum-seekers in different parts of the world. We suggest that the Government of Malta could assist in this regard in relation to supporting international efforts to secure better protection for human rights in Eritrea.

Considering the urgency of the human rights issues involved in these cases, I am sending a copy of my letter to the Council of Europe's Commissioner for Human Rights for his information in view of his imminent visit to Malta, as well as to the Office of the United Nations High Commissioner for Refugees in Rome, the Maltese Commissioner for Refugees and the Maltese Emigrants' Commission.

Yours sincerely,

For Irene Khan
Secretary General