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Malta: Home Affairs Ministry misconstrued Amnesty International's report on refugees, asylum-seekers and migrants in Libya and Malta

Amnesty International rebuts assertions of the Maltese Ministry for Justice and Home Affairs on 15 December¹ alleging that the organization published inaccurate and partial information in its report *Seeking safety, finding fear: refugees, asylum-seekers and migrants in Libya and Malta* (REG 01/004/2010), published on 14 December.

The report highlights the plight of those attempting to reach the EU through Libya and the Mediterranean Sea, many in search of refuge and protection.

The Ministry for Justice and Home Affairs was reported in different major national newspapers describing the report as “peppered with inaccuracies and inconsistencies, which are testimony to AI [Amnesty International]’s customary selective, subjective and warped evaluation of the challenges that Malta faces with illegal immigration”.

Amnesty International, having greatly appreciated the collaborative approach offered by Maltese authorities in previous months, regrets that the Ministry’s statement has misconstrued Amnesty International’s report and reiterates its findings and recommendations addressing EU, Maltese and Libyan authorities.

A delegation of Amnesty International visited Malta in September 2010 and had the opportunity to meet national authorities, representatives of international organizations, local NGOs, lawyers, asylum-seekers and irregular migrants. The delegation met with various government representatives, including from the Ministry of Justice and Home Affairs and the Armed Forces of Malta, discussed the rights of refugees, asylum-seekers and migrants trying to reach European shores, and took detailed account of the government’s position on those issues. This collaborative dialogue has been preceded and followed by an exchange of letters, where concerns and arguments were explained in detail.

While waiting for a reply to its last letter addressed to the Ministry for Justice and Home Affairs, dated 8 December 2010, Amnesty International would like to clarify its position regarding the main points raised publicly by the same Ministry.

Contrary to the statement of the Ministry, the Maltese mandatory detention regime for asylum-seekers and irregular migrants is inconsistent with international law; moreover, those subjected to mandatory detention are not provided with a genuine recourse to a court of law. This position is shared by the UN Working Group on Arbitrary Detention.² While it is true that administrative detention of irregular migrants with a view to deportation is not per se unlawful

¹ “Amnesty’s report ‘peppered with inaccuracies’ – ministry”, Times of Malta, 15 December 2010, at www.timesofmalta.com/articles/view/20101215/local/amnestys-report-peppered-with-inaccuracies-ministry

² Report to the UN Human Rights Council A/HRC/13/30/Add.2, 18 January 2010, para.76

– and Amnesty International has not argued it were – the Ministry seems to have overlooked that the necessity and proportionality of detention must be assessed on a case-by-case basis, that alternatives to detention must be available and that those detained must have an effective remedy by which to contest the lawfulness and length of their detention. None of these safeguards are provided in Malta, as stated by the European Court of Human Rights in the case of *Louled Massoud v Malta*. While the decision in this case regards an individual complaint, in order to reach its conclusions the Court has assessed the domestic legal framework and held that "the Maltese legal system did not provide for a procedure capable of avoiding the risk of arbitrary detention pending deportation." The judgement of the Court has become final on 27 October 2010 and Malta is now bound to respect it and to implement reforms to guarantee that similar violations are not repeated in the future.

Amnesty International cannot agree with the Ministry's consideration that the procedure at the Immigration Appeals Board (IAB) is comparable to court hearings. In particular, the organization is concerned that members of the IAB are nominated by the President on the advice of the Minister responsible for immigration; that there is no requirement that they be lawyers and/or have a legal background; and that they do not enjoy security of tenure. As a result, the IAB does not appear to be endowed with the requirements necessary for a truly judicial body. Moreover, the IAB's power to order release from custody is limited and not applicable in certain cases.

Concerns also rise in relation to appeal procedures to challenge decisions by the Office of the Refugee Commissioner rejecting claims for international protection, with regard to expertise in human rights and refugee law, independence of the Refugee Appeals Board and asylum-seekers' access to a full and fair appeals procedure. Those flaws cannot be justified by the high number of asylum-seekers being granted international protection at first instance.

Amnesty International has already expressed to Maltese authorities its appreciation for their efforts to provide for the basic needs of those who recently entered the country. However, the organization considers the living conditions in many open centres inadequate and not in line with regional standards. While understanding that resettlement remains an important option in a small country with high population density, Amnesty International believes that, pending resettlement, persons affected need to be offered the means to live in dignity and access to economic and social rights should be ensured for those who cannot be resettled.

As to the incident of 17 July, Amnesty International cannot agree with the Ministry's claim that "persons rescued at sea are not subjected to Maltese jurisdiction, but have knowingly chosen to be rescued by the Maltese authorities rather than remain in a dangerous distress situation". Under international law, states that have effective control, authority or power over third-country nationals rescued or intercepted at sea have obligations that extend outside their territories, including on the high seas. At a minimum, they must ensure access to a full, fair and satisfactory asylum determination procedure to assess individuals' eligibility for international protection, and not return any individuals, either directly or indirectly, to a country or territory where they would face a real risk of persecution or serious harm.

Amnesty International takes note of the Ministry's reassurances that "all asylum-seekers who were at any point on Maltese territory or under Malta's effective control were given the opportunity to seek asylum, and were provided with all the information and assistance required to do so." However, the organization remains profoundly concerned that Maltese personnel's actions and/or omissions during the 17 July rescue operation resulted in 27 Somalis being returned to Libya, where their prospects of getting international protection were and remain next to nil, an where they are at risk of torture and other serious human rights abuses. During their visit to Malta, Amnesty International's delegation was greatly concerned to hear representatives of the Armed Forces of Malta, in charge of rescue operations, adamantly declining any responsibility for the way this group ended up on the Libyan ship and the fate they encountered.

Amnesty International acknowledges the efforts of the AFM in rescue operations. However, the organization is concerned that the Maltese government, by seeking Libya's cooperation in order to stem the flow of people arriving in the EU from Africa, is turning a blind eye to continuing human rights violations in Libya.

Addressing the issue of uneven allocation of persons in need of international protection across receiving countries, Amnesty International has consistently called on governments to engage in more equitable responsibility sharing, both at the EU and the global level, with regard to resettlement of individuals from developing countries, which host 80 per cent of the world's refugees.

Amnesty International publications:

Seeking safety, finding fear: refugees, asylum-seekers and migrants in Libya and Malta 14 December 2010, AI-Index: REG 01/004/2010

Press Release, Libya and Malta: failing refugees, asylum-seekers and migrants, 14 December 2010, AI Index: PRE01/415/2010