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Malta: Investigation of incidents at Hal-Safi Detention Centre finds excessive use of force and ill-treatment of detainees by armed forces

Amnesty International is deeply concerned about the ill-treatment and excessive use of force by Maltese authorities against individuals held at the Hal-Safi barracks detention centre on 13 January 2005 as described in the report (published 12 December 2005) of the results of the investigation of the Board of Inquiry appointed by the Maltese government to investigate the incident. The Board of Inquiry found, among other things, the army officers assigned to control the Hal-Safi detention centre did not have sufficient training for this type of work. It found certain members of the armed forces did not understand their role in supporting the principal action to coerce the protesters back into the detention centre. It also found there was an overall lack of coordination between soldiers in the execution of their plan to subdue the protesters. The inquiry found that each of these factors led to several members of the armed forces applying excessive force "exaggerated and out of proportion in the circumstances" in their attempts to force the protesters back into the detention centre. In particular, the report singles out at least one soldier's use of excessive force where he hit a detainee with a truncheon after he was already on the ground under the control of other soldiers. The use of ill-treatment is in clear violation of international treaties and standards ratified by Malta, as well as Maltese domestic law.

Amnesty International is also troubled by the report's criticism of the detainees' protest. The report alleged that the detainees' refusal to re-enter the barracks was unlawful, and that their actions toward the army officers were not peaceful. However, reports received by Amnesty International from eyewitnesses and photos taken of the incident tell a different story: after protestors refused an order to re-enter the barracks, members of the armed forces dressed in full riot gear and armed with batons and shields charged the peaceful protestors and subjected them to violence, with more than 26 people suffering injuries and one person gravely wounded.

While Amnesty International welcomes the conclusion of the inquiry and publication of its results, it is gravely concerned at the findings in the report and at the length of time the investigation has taken. The Board of Inquiry, appointed by Malta's Prime Minister Lawrence Gonzi, was led by and its findings solely determined by one man -- Justice Franco Depasquale, a retired judge who also serves as the Chairman of the Police Board for the Ministry of Justice and Home Affairs. Justice Franco Depasquale was asked to (1) examine the circumstances leading the armed forces to use force on the detainees held at the Hal-Safi detention centre, (2) establish whether the use of force was justified in the circumstances, and (3) whether the degree force used by the armed forces was excessive. Justice Franco Depasquale was also asked to make recommendations he deemed "appropriate" based on the result of his findings.

Amnesty International deplores the recommendation in the report by Justice Franco Depasquale that the policy of detaining migrants who have had their refugee status refused is correct and should continue. International law and standards protect the liberty and security of the person, and provide for the detention

of failed asylum-seekers only under strictly limited circumstances. The European Court of Human Rights has held in *Chahal v. United Kingdom* that any deprivation of liberty of failed asylum-seekers pending deportation is “justified only for as long as deportation proceedings are in progress.” Both the European Court of Human Rights and the Council of Europe’s 20 Guidelines on Forced Return provide that the State must conduct a “careful examination of the necessity of deprivation of liberty in each individual case...”

Amnesty International is also concerned at Justice Franco Depasquale’s recommendations which suggest that newly-arrived asylum-seekers and irregular migrants be immediately transferred to other European countries, and that journalists should continue to be barred from entering the detention centres and interviewing detainees. These recommendations concern policy decisions that have far-reaching human rights consequences for the people held at the detention centres and for those seeking asylum in Malta, and as such should be publicly, thoroughly and thoughtfully assessed for their lawfulness, necessity and proportionality by the Maltese government and relevant judicial authorities.

Amnesty International calls on the Maltese government to ensure that the current practices of detaining asylum-seekers and irregular migrants is in compliance with all relevant international human rights laws and standards, including the UNHCR revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers. Amnesty International further calls on the Maltese government to ensure that all persons whose detention cannot be justified under international human rights law and refugee standards are immediately released, and that all persons whose continued detention may be found to be justified under international human rights law have access to prompt, independent judicial review and that their detention is continued for the minimal period.

Amnesty International continues to be concerned about severe delays in the decision-making process regarding asylum applications; lack of transparency in the appeals process; failure to keep asylum-seekers properly informed of their rights and the progress of their applications; lack of access to appropriate legal advice; conditions of detention which fall below international standards, and lack of adequate and appropriate training for members of the armed forces and police in charge of the daily running of detention facilities for aliens. Amnesty International urges the Maltese government and authorities to bring its policies concerning asylum-seekers and irregular migrants into compliance with international human rights laws and standards.

Amnesty International urges the Maltese government to bring the perpetrators to justice in proceedings that meet international fair trial standards and to give the victims an effective remedy, including compensation. Amnesty International welcomes the comments by Parliamentary Secretary Tony Abela assuring that disciplinary action will be taken against anyone in the armed forces involved in the incident who are found guilty of wrongdoing, and urges the government to continue its investigation into the allegations of ill-treatment and excessive use of force.

Background

On the morning of 13 January 2005, more than 90 persons held in the detention facility at Hal-Safi conducted a peaceful protest, refusing to re-enter the centre at the end of an exercise period. The detainees, some of whom had apparently been detained for over 18 months, were protesting about the length of their detention; lack of information about the progress of their applications for refugee status or humanitarian protection and, in the case of those whose applications for asylum had already been rejected, lack of information concerning their future.

Amnesty International called for a prompt, effective, independent and impartial investigation into the incident, and has repeatedly expressed concern about the situation of asylum-seekers and irregular migrants in Malta and the government’s policy of mandatory detention for all asylum-seekers entering the country. (AI Index: EUR 33/001/2005) <http://web.amnesty.org/library/index/engeur330012005>

