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Malta: Collective expulsions, push-backs and violating the *non-refoulement* principle are never an option

Amnesty International is concerned that the prime minister of Malta made a number of statements between 4 and 9 July 2013 indicating that Malta could resort to push-backs of boats of foreign nationals and collective expulsions of individuals already within Maltese jurisdiction. On 9 July 2013 the government of Malta stated that it was “considering all options” to deal with the large number of foreign nationals who had recently arrived on the island. That morning, 102 Somali nationals (UNHCR data), including women and small children, had been brought ashore after having been rescued by the Armed Forces of Malta. The arrival on 4 July of another group of 291 people, of whom 282 Eritreans (UNHCR data), had prompted the government of Malta to state that they were also considering push-backs of boats - that is, intercepting them before they had landed on Maltese shores and returning their occupants to the place of embarkation. Somalis from Central and Southern Somalia and Eritreans are generally entitled to international protection as refugees or to other complementary forms of protection.

UNHCR Malta representatives had access to about half of the foreign nationals who had arrived on 9 July shortly after their arrival. However, by the afternoon of 9 July, UNHCR Malta had still not been granted access to the rest of the group, which was still held at police detention facilities. Consistent with Malta’s obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, an agreement between the government and UNHCR as well as provisions in Maltese refugee and immigration legislation state that UNHCR personnel must be given unimpeded access to refugees and any person of concern to UNHCR.

Amnesty International is concerned that the government’s statement that it was “considering all options” implied that it was considering carrying out collective expulsions in violation of Article 4 of Protocol No. 4 to the European Convention on Human Rights by which Malta is bound. Further, carrying out such removals would have also violated the principle of *non-refoulement*. Reports that the government had arranged for two Air Malta planes to be ready for returning some (according to media reports, 45) of the Somalis arrived on 9 July back to Libya overnight reinforced concerns and prompted lawyers to seek an interim measure from the European Court of Human Rights (ECtHR) to stop the expulsions.

In the afternoon of 9 July, the ECtHR granted the interim measure ordering Malta to refrain from returning them to Libya before their case could be adequately assessed. Following notification of the interim measure, the government stated that it would respect it and that it would abide by its international obligations, but defended its decision to have let it be known that all options were under consideration to draw the attention of EU institutions to “the burden” Malta is shouldering without sufficient international support.

Amnesty International notes the decision of the government to comply with its international obligations and acknowledges the significant challenges Malta faces due to its geographical position. Nevertheless, Amnesty International remains concerned that the government may have considered the option of unlawful summary expulsions of foreign nationals particularly towards a country which lacks a national asylum system and where there is a well-documented risk that they would be subjected to grave human rights violations and abuses. Foreign nationals in Libya, particularly from sub-Saharan remain at constant risk of exploitation,

arbitrary arrests and indefinite detention in deplorable conditions without access to a lawyer or ever being brought before a judge, torture or other ill-treatment, and deportations on the grounds of health status. Amnesty International has documented such violations and abuses of the human rights of refugees, asylum-seekers and migrants in Libya for many years and most recently in the report published in June 2013 *Scapegoats of fears, Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 10/007/2013).

Amnesty International is also concerned that the individuals concerned were not allowed immediate and unimpeded access to UNHCR personnel and were kept in a situation of uncertainty about their fate.

Amnesty International urges the government of Malta to:

- Ensure that any foreign nationals who have arrived on the island in recent days be given immediate access to UNHCR personnel and lawyers, as well as to a fair and effective asylum determination procedure
- Make an unequivocal statement, including at its next Universal Periodic Review by the UN Human Rights Council that Malta will never resort to push-backs or collective expulsions and will take all necessary measure to ensure that any foreign national within its jurisdiction will have access to a fair and effective asylum determination procedure
- Take the necessary steps to ensure that search and rescue operations comply with international human rights and refugee law and EU law, in particular as regards access to asylum and protection against removal to a country where there is a real risk of persecution or other serious human rights abuses
- Ensure that all decisions concerning eligibility for international protection comply with international human rights and refugee law as well as Malta's obligations under the EU asylum law
- Make the necessary legislative amendments to ensure that all foreign nationals arriving in Malta are protected by the guarantees provided by the EU Return Directive, regardless of their status and of the modalities of their entry into Maltese jurisdiction and
- End the practice of mandatory detention of asylum-seekers and "irregular migrants", and ensure effective remedies to challenge detention and removal in line with international human rights and refugee law, as well as EU standards.