

NGO POSITION PAPER ON INQUIRY REPORT **EXECUTIVE SUMMARY**

Introduction

This document summarises the position paper, prepared by Emigrants Commission and Jesuit Refugee Service, on the report of the inquiry into the incidents at Safi Barracks on January 13, 2005. The position paper highlights our most pressing concerns and makes recommendations for action, in view of the government's commitment to study the report and take any action necessary.

1. Conclusions regarding the incident on January 13, 2005

The report presents a detailed account of what happened on January 13, 2005, which clearly shows that the army resorted to the use of force when they did not have the resources necessary to do so and that the force used was excessive.

In addition the report highlights several shortcomings in the system, which fuelled the tension and frustration that led to the violent incidents. These include:

- Lack of resources, including trained personnel, to administer centres effectively;
- Difficult conditions for detainees and AFM personnel caring for immigrants;
- Lack of communication between detainees and authorities taking decisions about their future;
- Lack of clear rules and standards for maintenance of discipline within centres.

With specific reference to January 13, in the light of the evidence in the report, we call upon the authorities to:

- **Scrutinise the decisions and actions of *all* AFM personnel (not only those who are easily identifiable) ;**
- **decide on and implement a clear course of action, even if the report makes no specific recommendations about this.**

Since the government has decided to maintain a policy of mandatory, long-term detention, we urge it to ensure that the newly established Detention Service is provided with sufficient resources to ensure that the conditions of both immigrants and staff are significantly improved and human rights are respected.

As a matter of urgency, positive action should be taken to ensure that detainees are no longer deprived of access to information and left without adequate channels of communication, as this fuels frustration and create unnecessary hardship. Moreover, clear rules and standards for the maintenance of discipline within detention centres should be established as a matter of priority.

2. Scope of report

In addition to the events on January 13, the report discusses various issues, such as government policy on detention, repatriation procedures and irregular employment of immigrants. In so doing, we believe that the Board went beyond its mandate, as none of these matters can be considered 'ancillary' or secondary to the January incident.

Moreover, the Board recommends retention of current government policy on detention without so much as a mention of Malta's human rights obligations or the serious concerns raised by national and international organisations.

We therefore call upon the authorities concerned to ensure that the numerous recommendations made by the CPT, the UNHCR and the Council of Europe Human Rights Commissioner, are implemented and that Malta's policies and practices on detention are brought in line with its human rights obligations.

3. Portrayal of immigrants

We are concerned that the report presents immigrants in a very negative light. It repeatedly describes the protest as an escape and states that none of the immigrants were in need of protection. It should be noted that:

- Although the immigrants were outside the detention centre they did not leave the confines of Safi Barracks. They were unarmed and did provoke the violence by attacking the soldiers.
- At the time of the protest all the immigrants involved were asylum seekers. Subsequently 9 were granted Humanitarian Protection, because they cannot return home safely. The final status of several of the protesters is still undecided
- Malta is obliged to grant protection not only to those who qualify as refugees in terms of law, but also to people who would face torture or other serious violations of their human rights if they were to be returned home.
- Rejected asylum seekers may not need protection but they are still entitled to be treated with respect and dignity.

We therefore call upon all concerned to recognise the humanity and inherent dignity of each person, irrespective of factors such as race or immigration status.

We affirm that the human person has to be at the centre of any discussion on immigration policy, and that the ultimate aim of any policy has to be to ensure that the rights of every individual are safeguarded.

4. Role of NGOs, journalists and UNHCR

All detainees, without exception, whether or not they are refugees at law, believe that their prolonged detention is fundamentally unjust and unnecessary.

While NGOs and international organisations working with detainees should never fuel discontent or make false promises, it is their duty to make them aware of their rights and to work to ensure that these rights are safeguarded. They have a duty to go beyond charity to advocating for greater respect for human rights.

The media too have an important role to play, allowing for accountability and public scrutiny of state policy and actions.

We encourage the authorities to move beyond a culture of charity to one of true respect for the rights of all.

We also urge the authorities to ensure that the important role of civil society in safeguarding fundamental human rights and freedoms, is respected and that such organisations are allowed to continue to work unhindered.

In addition we call upon the authorities to create a climate of open and constructive dialogue with civil society and international institutions, particularly UNHCR, in the area of immigration and asylum law and policy.