

**Jacques Barrot**  
**Vice-President of the European Commission**  
**Responsible for Justice, Freedom, and Security**

Brussels, 28 January 2009  
Our ref: B 846

Dear Mr. Barrot,

**Re: Situation of asylum seekers and migrants in Lampedusa**

Amnesty International is extremely worried about recent developments with regard to the treatment of asylum seekers and migrants on the Italian island of Lampedusa. According to the most recent reports, over 1400 migrants and asylum seekers are at this moment trapped on the island and are lacking the most basic reception conditions. Due to a recent change in policy adopted by the Italian government, asylum seekers and migrants arriving in Lampedusa must remain there pending a final decision on their need for international protection or right to remain on Italian territory for other humanitarian reasons. As a result, the Lampedusa model, providing for temporary accommodation on the island before transferring asylum seekers and migrants to the Italian mainland – and cited by UNHCR as a good example of how to address relatively large scale arrivals overseas - has been suspended for the time being.

In a letter addressed to Minister Maroni, Amnesty International, together with a number of Italian refugee organizations has requested that the new arrangement is immediately suspended as the situation in the centre has become unbearable due to overcrowding. In particular for vulnerable groups such as unaccompanied children and single women, current conditions in Lampedusa are inadequate to meet their special needs and may even add to their vulnerability. For many asylum seekers and migrants arriving in Lampedusa, crossing the Mediterranean sea itself was already a traumatic experience not at least because they have witnessed how other travellers, sometimes family members, have not survived the dangerous journey.

Moreover, the new arrangement risks violating the asylum seekers' and migrants' right to an effective legal remedy, as laid down in Article 47 of the Charter of Fundamental Rights, Article 39 of Council Directive 2005/85 EC and Article 13 of the European Convention of Human Rights and Fundamental Freedoms (ECHR). As a result of the new arrangement, asylum seekers and migrants have their claims examined by "Territorial Commission for the recognition of international protection" of Trapani, which is now operating in Lampedusa.

This in itself is already problematic as the "*Centro di primo soccorso e accoglienza*" (CSPA) of Lampedusa functions as a transit centre for very short stays of asylum seekers and migrants and is not properly equipped for conducting interviews to assess individuals' protection needs. According to Italian legislation, access to services for social and legal assistance to asylum seekers should be guaranteed either in Reception Centres for Asylum Seekers (CARA) or in Identification and Expulsion Centres (CIE), whereas this is not provided with regard to transit centres such as the CSPA in Lampedusa. As a result, the latter is ill-suited to ensure a serene and qualitative interview to those who apply for asylum. In addition, access to an effective legal

remedy in case of a negative decision by the Trapani Territorial Commission is at present totally lacking. According to Italian legislation (Article 35 of Legislative Decree 25/2008 as amended by Legislative Decree 159/08), appeals against a negative decision of the territorial commission must be lodged within 15 (or in specific cases 30) days with the competent tribunal. The competent tribunal for decisions taken by the Trapani Territorial Commission is the Tribunal of Palermo. In practice, asylum seekers have no possibility to lodge an appeal from Lampedusa to the tribunal in Palermo, while there is no legal assistance available in Lampedusa to ensure that appeals are introduced within the short time limits laid down in Italian legislation.

In Amnesty International's view the current practice is not in compliance with Article 39 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status that imposes an obligation on Member States to ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against decisions taken on applications for asylum. As a result of the practical implications of the new arrangement, asylum seekers and migrants risk being expelled from Lampedusa without a proper examination of their protection needs as they are de facto denied access to an effective legal remedy.

Moreover, it is also questionable whether the obligation for Member States to allow asylum seekers the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counselor on matters relating to their asylum applications as laid down in Article 15(1) of the Directive is complied with in practice in Lampedusa today. As there are no legal advisers competent to lodge appeals on behalf of asylum seekers present in Lampedusa, even those asylum seekers who have the financial means to consult a legal adviser, are de facto unable to do so. This is also at odds with Article 47 of the Charter of Fundamental Rights according to which the right to an effective remedy includes the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law" and the possibility for everyone "of being advised, defended and represented" while "legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary".

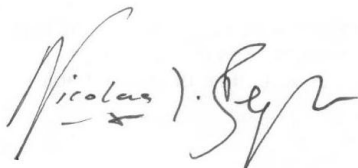
The European Court of Human Rights has on numerous occasions reaffirmed the importance it attaches to the effectiveness of a remedy, in particular in cases where the principle of *non refoulement* may be at stake. According to the Court's jurisprudence with regard to Article 13 ECHR the notion of an effective remedy requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and to the possibility of suspending the implementation of the measure impugned (See *Jabari v. Turkey*, judgment of 11 July 2000, § 50 and *Conka v. Belgium*, judgment of 5 February 2002, § 79). In a recent case concerning an asylum seeker who was refused entry to the territory and was held in the transit zone of an airport the Court explicitly reaffirmed the right to a remedy with suspensive effect (see *Gebremedhine v. France*, judgment of 26 April 2007, § 68). Although according to Article 35 of the Italian Legislative Decree 25/2008 as amended by legislative decree 159/08 the suspensive effect of the appeal can be requested by the asylum seekers concerned, there is no such possibility in practice for those who are kept in Lampedusa to ask for suspension of the removal order for the reasons explained above. Considering the inability of the persons kept in Lampedusa of either lodging an appeal themselves with the competent tribunal in Palermo or through the services of a lawyer or legal adviser, at this moment asylum seekers at the island of Lampedusa no longer have access to an effective legal remedy as interpreted by the European Court of Human Rights and as laid down in Article 39 (1) of Directive 2005/85/EC.

Amnesty International believes that the new arrangements introduced by the Italian government are violating in practice fundamental rights of asylum seekers and migrants under international human rights law as well as Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, in particular the right to an effective remedy. Therefore we urge you to examine as soon as possible the compatibility of the new arrangements with the minimum standards as laid down in the EU asylum acquis and to start the dialogue with the Italian government in order to collect the necessary information.

Finally, Amnesty International welcomes your intention to visit the island of Lampedusa on the occasion of the meeting of the G8 Ministers of Interior Affairs that will be organized in May. However, in light of the deteriorating situation on the Island and the emergency situation that exists today, we ask you to consider the possibility of such a visit in the coming weeks in order to encourage the Italian government to find a solution to unblock the current dramatic situation for asylum seekers and migrants who find themselves stranded in Lampedusa today.

Amnesty International remains at your disposal to discuss this matter in greater depth.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nicolas J. Berger". The signature is written in a cursive style with a small star-like mark below the first name.

Dr. Nicolas Berger  
Director  
Amnesty International-European Union Office