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Malta: Treatment of asylum seekers

The US Department of State Country Report on Human Rights Practices states under the heading 'Prison and Detention Center Conditions':

"While prison conditions generally met international standards, there continued to be reports that conditions in government-run detention centers for irregular migrants were in poor condition. Irregular migrants, in this case, were persons seeking to emigrate from Africa to the European Union (EU) who were intercepted and brought to the country by the Armed Forces of Malta.

Several European and international organizations, including the CPT, the UNHCR, and the EU, criticized the conditions in which irregular migrants were held. Problems reported included overcrowded and unsanitary prison space, guards insensitive to the lack of separation of men and women in confined spaces, the absence of meaningful vocational or recreational activity within the centers, and the lack of access to legal counsel. The UNHCR and the CPT made recommendations to rectify these problems, and the government took some action. It completed renovating two of the four warehouses at Safi Barracks, where approximately 1,000 of the irregular migrant detainees were being held as of August, and it provided all detainees with their own mattresses. UNHCR representatives regularly met with government officials concerning detention conditions and formed a working group to address the situation, although the group had not met as of year's end.

There was no reported follow-up on the assertion in the CPT's 2007 report that individuals who had sought and been denied asylum were detained for up to 40 days in the basement of Luqa International Airport in a room that should not have been used for periods of detention longer than 24 hours.

The government generally permitted visits to detention centers by independent human rights observers, although no visits were reported during the year. Press and foreign government officials were granted access to the Safi Barracks." (US Department of State (25 February 2009) *2008 Country Report on Human Rights Practices - Malta*)

This report also states under the heading 'Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons':

"The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government generally cooperated with the UNHCR and other humanitarian organizations in providing protection and

assistance to refugees, asylum seekers, stateless persons and other persons of concern.

The constitution prohibits forced exile, and the government did not employ it.

The law provides for granting asylum or refugee status to persons in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. The government provided a second-tier status, granting some asylum seekers humanitarian protection but not family reunification, a path to citizenship, or other benefits of refugee status under the 1951 Convention.

The government generally excluded asylum requests by nationals of countries of origin it considered safe. Such applicants may apply to the refugee commissioner for reconsideration within seven days of notification by authorities. In such cases, the Office of the Refugee Commissioner calls applicants for a full interview and examination of their claims before ruling on their application.

In practice, the government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be potentially threatened.

The government also provided temporary humanitarian protection to individuals who may not qualify as refugees under the 1951 convention or the 1967 protocol; temporary humanitarian protection was granted to 1,257 persons from January through October.

Authorities detained irregular migrants for up to 12 months after they arrived in the country. Such migrants had two months to file asylum claims and were detained while their cases were processed. Authorities could detain irregular migrants who had not applied for asylum and those whose asylum applications and appeals had been rejected, only during the first 18 months following their arrival in the country; after 18 months they were released, whether or not police had arranged to repatriate them.

Individuals awaiting decisions on their cases occasionally protested their detention or attempted to escape from detention centers. In February a group of irregular migrants staged a protest at the Ta'Kandja detention center. They were protesting the country's lengthy detention practices. There were no reported injuries and police made no arrests.

Authorities usually moved children, pregnant women, elderly persons, and parents with infants to "open centers" where they were free to move about shortly after their arrival in the country. The armed forces are responsible for the management of the closed detention centers and report directly to the Ministry for Justice and Home Affairs, while the Organization for the Integration and Welfare of Asylum Seekers (OIWAS), a part of the Ministry for Social Policy, has responsibility for the welfare and accommodation of persons transferred from detention centers to the open centers." (Ibid)

Amnesty International state in their annual report:

“Migrants and asylum-seekers continued to be detained on arrival, in contravention of international laws and standards. The policies of the Maltese authorities were of concern to the European Commission against Racism and Intolerance (ECRI), which linked detention procedures towards migrants with the rise of racism and intolerance in the country.

A report by ECRI, published in April, highlighted the lack of legal aid and information available to asylum-seekers upon arrival in Malta; asylum-seekers were denied access to free legal aid for their initial asylum claim, and were only entitled to legal representation if they paid the costs themselves.

ECRI also pointed out that irregular migrants, asylum-seekers, people under humanitarian protection and refugees faced racial discrimination in accessing various services and exploitation in the labour market.

The authorities implemented a policy of systematically detaining all irregular migrants and asylum-seekers.

At the end of the year, around 2,050 migrants were detained in closed detention centres. A further 2,100 were accommodated in open centres, where they were free to come and go. Vulnerable groups such as families with minors, unaccompanied minors, pregnant women, people with disabilities and the elderly were among those detained for several weeks or months in closed detention centres while waiting for the identification process to be completed. Only then were they transferred to open centres. Asylum-seekers were kept in closed detention centres and transferred to open centres only after filing their asylum applications, which often took several weeks.

No automatic judicial review of detention was provided, in contravention of Article 5(4) of the European Convention on Human Rights.

Some conditions of detention were very poor. In a study commissioned by the European Parliament Committee on Civil Liberties, Justice and Home Affairs and published in January, detention centres were described as overcrowded, and characterized by poor hygiene and inadequate health care.

In Hal Far Open Centre, more than 1,000 people were accommodated in tents and mobile containers and exposed to the cold and the rain. The government had not earmarked funds to improve living conditions in the Centre by the end of the year.

ECRI expressed concern at Malta's practice of detaining migrants, saying it affected their rights and noting that the policies put in place by the authorities to respond to the challenges of irregular immigration were ‘seriously reinforcing perceptions of immigrants as criminals and increasing the levels of racism and xenophobia among the general population.’” (Amnesty International (28 May 2009) *Annual Report 2009 - Malta*)

Freedom House state in their annual report:

“In September 2008, the government welcomed the EU's adoption of the European Pact on Immigration and Asylum. Malta had long advocated a common EU immigration policy to help share the responsibility of integrating the influx of migrants it receives each year. While Malta had been criticized in

previous years for refusing to rescue stranded boats carrying immigrants off its shores, no similar incidents occurred during 2008.” (Freedom House (16 July 2009) *Freedom in the World 2009 – Malta*)

This report also states:

“Prison conditions generally meet international standards, although the Council of Europe’s Commission for Human Rights has objected to detention conditions for irregular migrants and asylum seekers. An independent report on the military’s violent 2005 suppression of a protest by detained immigrants raised concerns about the use of excessive force, recommending an internal military inquiry and better training for soldiers. In January 2008, a report was released by the European Parliament that the Hal Far detention center did not meet acceptable standards due to overcrowding and prolonged detention. However, the report also claimed that basic treatment of detainees was adequate.

According to the 2007 Migrant Integration Policy Index, migrants in Malta are explicitly discriminated against, and the government provides very little protection for those who file complaints. An Equality Agency is being established to offer legal advice to migrants.” (Ibid)

The US Committee for Refugees and Immigrants World Refugee Survey states:

“Out of about 67,000 people crossing to Europe by sea, some 35,000 arrived in Italy and 2,800 in Malta, mostly via Libya... Nearly all who arrived irregularly by sea in Malta applied for asylum and Malta found some 60 percent to be in need of international protection.” (*United States Committee for Refugees and Immigrants (17 June 2009) World Refugee Survey 2009 – Europe*)

Under the heading ‘Detention/Access to Courts’ this report states:

“In Malta, detention of asylum seekers is mandatory, can last up to 18 months, and is under substandard conditions.” (Ibid)

The UN Human Rights Council states in a document under the heading ‘Administration of justice and the rule of law’:

“The 2007 UNHCR report noted, on the basis of regular visits to detention centres in Malta, the general lack of procedural safeguards in the detention of asylum-seekers. Access to legal counsel is generally limited to visiting non-governmental organizations offering a voluntary service, and there is limited private access to information, friends and relatives. There is no automatic and regular judicial review of detention, and existing procedures under Maltese law are either not effectively accessible or ineffective due to delays and administrative obstacles.” (UN Human Rights Council (12 March 2009) *Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Malta, A/HRC/WG.6/5/MLT/*, section 26)

Under the heading ‘Migrants, refugees and asylum-seekers’ this report states:

“A 2006 UNHCR report noted that there has been an increase in the number of boatloads of illegal immigrants landing on Malta, and stated that it is of grave concern that many lives are lost at sea in these hazardous voyages. UNHCR has assisted Malta in coping with the large number of arrivals of illegal immigrants.⁸⁰ The report stated that, in 2006, the number of asylum claims increased by 20 per cent in Malta.

The Working Group on Arbitrary Detention, while noting the safeguards against arbitrary detention in Malta, expressed concern about the detention of immigrants in an irregular situation, adding that the detention regime applied to them is not in line with international human rights law.

A 2007 UNHCR report noted that Malta’s policy on detention of asylum-seekers is at times applied to vulnerable persons, namely children, pregnant and lactating women, elderly persons, persons with disabilities and victims of torture/trauma. The procedure for their fasttrack release often suffers from administrative hindrances, resulting in unnecessarily long detention and related negative consequences, a problem also noted by the Working Group on arbitrary detention. Whilst in detention, minors do not generally receive education and are permitted minimal time for leisure activities in the open air. Females, males and minors are accommodated in the same premises, with joint use of showers and toilets. The UNHCR report stated that medical services are not sufficient to meet all the needs, often urgent, of detained asylum-seekers, and that health risks are present. It stated that the Detention Service makes extensive use of inappropriate cells as a means of punishment, and the use of violence and offensive language, including threats is common. The report noted that UNHCR is not aware of any analysis by the Government to explore alternatives to the detention of asylum-seekers.

In 2005, the Special Rapporteur on the human rights of migrants transmitted allegations to the Government concerning mandatory detention for foreigners without visas. It was alleged that all such foreigners, including vulnerable persons, such as unaccompanied children and the elderly, are detained, including in camps, military barracks, or tents. There are reports of persons kept in detention for prolonged periods; overcrowding, inadequate sanitary conditions and difficulties in accessing medical care; and that armed forces and police personnel running the facilities have inadequate training. Detainees have complained about severe delays in asylum applications procedures; lack of transparency in the appeals process; failures to keep them informed of their rights and progress in their applications; and inadequate access to legal counsel. The Working Group on Arbitrary Detention also raised concerns about automatic and mandatory detention of all foreigners, and the lack of a legally binding maximum term.

The Special Rapporteur referred to reports regarding the violent repression by members of the armed forces of a demonstration by detainees, related to the issues above, on 13 January 2005 at Safi army barracks.⁸⁹ Similarly, UNHCR stated in 2005 that it was deeply concerned about the apparent use of excessive force by Maltese soldiers when breaking up the peaceful demonstration by asylum-seekers and irregular immigrants on a football pitch inside Safi. The inmates refused to re-enter the centre at the end of an exercise period. Soldiers, armed with batons and shields charged the protestors, resulting in numerous injuries. The military intervention reportedly led to some 26 asylum-seekers and migrants being hospitalized. While lamenting what appears to have been an unnecessary use of force, UNHCR

appreciated the speed with which the Government announced an inquiry into the events.

In response to the communication from the Special Rapporteur, the Government stated that the allegation that all persons without a valid visa are placed in mandatory detention was incorrect, and that the reports transmitted referred mainly to boat people arriving in a clandestine manner. The Government also addressed concerns about, inter alia, conditions of detention and asylum procedures. The Special Rapporteur thanked the Government for its prompt and detailed reply.

The 2007 UNHCR report stated that the stipulated maximum detention duration of twelve months for asylum-seekers is excessive and unjustifiable and that the great majority of asylum-seekers arriving in Malta do not choose to breach immigration legislation, but are rescued at sea by the Maritime Squadron and brought to Malta, where they are detained for entering in an irregular manner. UNHCR also observed that a very large percentage of such persons are in fact recognized as being in need of international protection. The Working Group on Arbitrary Detention added that those who do not apply for asylum or whose claim is rejected may end up in custody for 18 months under appalling conditions, generally at the closed centres of Safi and Lyster Barracks. It noted that the Immigration Appeals Board, where asylum and detention decisions can be challenged, is not deemed to be very effective and has limited powers.

While noting legal provisions to care for unaccompanied minors and that the residential set-up 'Dar is Sliem' offers shelter and services to unaccompanied asylum-seekers under 18, CRC was concerned at the practice of automatic detention of all persons entering Malta in an irregular manner. Despite the policy that children should not be detained, the Committee was concerned that - in practice - some children and unaccompanied minors, including from countries affected by armed conflict, are detained pending finalization of the process for their release. It recommended, inter alia, that Malta identify at the earliest possible stage refugee, asylum-seeking and migrant children who may have been involved in armed conflicts; carefully examine their situation, prohibit their detention in any case and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and social reintegration in accordance with CRC OP-AC. CRC recommended enacting legislation on asylum procedures and family reunification of refugees; continuing undertaking effective measures to provide refugee children with access to education, health services and housing; and establishing measures to assist refugee children who are victims of neglect, exploitation or abuses.

CERD sought information on the criteria for granting temporary refugee status, specifically regarding European and non-European asylum-seekers. It asked about the implementation of legislation regarding refugees and asylum-seekers and the effect of the withdrawal by Malta of the geographical limitation clause relating to non-European refugees. (Ibid, sections 41-49)

The UN Human Rights Council states in a Summary:

"ICJ stated that the Immigration Law allows for administrative detainees to apply for judicial review of the removal, deportation or detention order to the

Immigration Appeals Board. The Board's decision is final, unless the same Board decides to grant an appeal on points of law to the ordinary Court of Appeal. The Board may grant release on grounds of unreasonableness of the order concerning duration of detention and lack of real prospect of deportation. But in a considerable number of cases, including many cases where the identity of the detainee cannot be ascertained, it cannot release the person even when the detention is unreasonable. Serious doubts arise as to the independence and impartiality of the Immigration Appeals Board, in particular since its members are appointed by the President on advice of a Minister and serve for three-year terms, renewable. Moreover, the legislation provides for cases when the Executive authorities can re-apply administrative detention on the "prohibited immigrant", notwithstanding the order of the Board.

In addition to review by the Immigration Appeals Board, the Constitution (article 46) and the European Convention Act (article 4) provide for a remedy of amparo before the courts for violation of Constitutional and European Convention rights. There is no legislative provision for a regular periodic review of the justification and proportionality of the detention. The ICJ called on the Working Group to recommend that Malta: provide by way of legislation for alternatives to administrative detention, the application of which must be decided discretionally on a case-by case basis; provide in legislation that administrative detention shall be resorted to only where it is necessary and that in no case should it be automatic, and that it should be subject to a clear maximum duration; provide for regular periodic judicial review; provide for free legal assistance to those subject to administrative detention and/or alternative measures, regardless of their status of asylum-seeker and of the appeal or review proceedings; give competence and jurisdiction to courts - or alternatively to other effective, independent and impartial bodies authorised by law to exercise judicial power – to review on the merits, promptly and without delay, the grounds and the procedure of administrative detention, to ensure observance of domestic and international law; and become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

In this connection, the CPT/CoE stated that it had also indicated that appeal proceedings brought against detention measures imposed on foreign nationals must always include a hearing of the person concerned, who must also be given legal aid and, if necessary, the free services of an interpreter. Moreover, detained foreign nationals must be expressly informed of the existence of this appeal procedure.

In his follow-up report on Malta (2003-2005) on the assessment of the progress made in implementing the recommendations of the Commissioner,¹⁶ he concluded that while detention is no longer unlimited as it was in 2003, but the current periods of maximum detention of asylum seekers and aliens in an irregular situation still appear excessive and inappropriate. The Commissioner further welcomed the special arrangements applied to vulnerable groups but stressed the need for the Maltese authorities to apply them transparently to all persons requiring specific attention. He further noted that no legislation on the subject had been passed. The Commissioner called on the Maltese authorities to stop using military methods of conducting searches – use of handcuffs, early-morning searches, etc. – and to respect detainees' human dignity. He further noted that a special body has been given competence to rule on the length of aliens'

detention and to release them in appropriate cases and that the application of this Act in practice will have to be carefully monitored, particularly with regard to the protection of the rights of aliens, who are sometimes detained for over a year. The Commissioner pointed out that detention of asylum seekers should be warranted only in special circumstances and last as short as possible. The Commissioner further noted that detention conditions, in particular sanitary conditions, had scarcely improved, and in some cases had even deteriorated.” (UN Human Rights Council (20 February 2009) *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Malta, A/HRC/WG.6/5/MLT/3*, sections 9-12)

The UN Human Rights Council states in a National Report under the heading ‘Migrants, refugees and asylum-seekers’:

“The International Commission of Jurists (ICJ) reported that Malta is facing a massive arrival of migrants on its shores, mainly due to its geographical position at the centre of the Mediterranean Sea and because it constitutes an entry door to the European Union.

The ICJ recalled that States must respect the obligation of non-refoulement as provided in international human rights law, as well as in international refugee law. Under international human rights law, the obligation of non-refoulement applies where there are substantial grounds for believing that an individual faces a real risk, following removal, of torture and cruel, inhuman or degrading treatment or punishment or other violations of the most fundamental human rights, including arbitrary detention and flagrant denial of the right to a fair trial. The right to non-refoulement cannot be overridden by considerations of national security or on grounds of the offences committed by the concerned person. People subject to removal and deportation orders have the right to contest such measures, in light of this principle, before an independent and effective judicial mechanism.

ICJ also indicated that Malta provides for the grant of refugee status, in accordance with the 1951 Geneva Convention qualifications requirements, and, if this is denied, for ‘subsidiary protection status’ for people at risk of the death penalty, torture, inhuman or/and degrading treatment or punishment, or threats to the person caused by indiscriminate violence in international and internal armed conflicts. Nevertheless, according to ICJ, some categories of people are automatically excluded from this subsidiary protection: those who committed, instigated or participated in crimes against peace, war crimes or crimes against humanity, a serious crime, acts contrary to the purposes and principles of the United Nations, or that constitute a danger to the community or to the security of Malta. In addition, such protection can be excluded by executive authorities on grounds of having committed one or more crimes which would be punished with imprisonment if they were committed in Malta and if the applicant left his country of origin solely in order to avoid sanctions resulting from these crimes, or of national security and public order.

Of particular concern are, as indicated by ICJ, the policies and legislation on administrative detention and the expulsion of “prohibited immigrants” and asylum-seekers, some aspects of which are at risk of breaching Malta’s international human rights obligations. Under immigration legislation, executive authorities have the power to order their deportation and removal

and to arrest and detain them. The ICJ is concerned at Malta's automatic resort to administrative detention of immigrants, and at the apparently excessive and disproportionate length of such detention. ICJ also indicated that in Maltese law, the term 'prohibited immigrants' refers to migrants entering the territory irregularly. Since most asylum-seekers enter the country as 'prohibited immigrants', they are often subject to the same measures, in particular administrative detention. ICJ's concerns on the rights of judicial review were also referred to above.

The CoE also stated that one of the main problems noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the CoE (CPT/CoE) during its visit in 2004 was the Maltese authorities' policy to systematically detain all irregular immigrants.

The CPT/CoE reported that at the beginning of 2005, the Maltese Government had published its policy on irregular immigrants, refugees and their integration and it had decided, among other things, that a task force should be set up to prepare a 'national policy on irregular immigration.' It also noted that the CPT/CoE had been informed that a Cabinet Sub-Committee, chaired by the Minister of Justice and Interior, had been set up to follow questions relating to irregular immigration and provide ongoing operational coordination, and among other things, this Sub-Committee reportedly drew up an 'emergency plan' and set up a new 'Detention Service'. The CPT asked for more detailed information on this matter.

In the same report of its visit in 2004, the CPT/CoE further stated that it had taken note of the Maltese authorities' decision to provide a new remedy before the Immigration Appeals Board, allowing any detained foreign national to contest the "reasonable" character of the period of detention being imposed on him/her. While noting that this is certainly a step in the right direction, the CPT/CoE pointed out that it does not entirely satisfy its earlier recommendation on this subject. In fact, significant restrictions were from the outset imposed on the Board's powers. In particular, the CPT/CoE indicated that it should be noted that, although these restrictions are indeed exceptions of the kind referred to in the revised Guidelines on the detention of asylum-seekers, issued by the Office of the United Nations High Commissioner for Refugees in February 1999, detention of asylum-seekers should be the exception, and not the rule. In other words, the exceptions provided for by the HCR are being used 'against the grain'. The CPT recommended that the Maltese authorities amend the Immigration Act in light of the above comments. The CPT/CoE also referred to the appeal proceedings, as reflected above.

On asylum procedures, in his follow-up report on Malta (2003-2005), the Commissioner welcomed the increase in the Refugee Commissioner's staff and the positive impact which this has had on processing time for asylum requests. However the Commissioner expressed reservations about the changes to the Refugees Act, notably as regards the risks created by the new admissibility criterion for asylum requests. The Commissioner indicated that the Refugee Commissioner and the appeal body will have to apply that criterion in accordance with the principles governing individual treatment of asylum requests and with the rights guaranteed by the Geneva Convention on Refugees and the European Convention on Human Rights. Lastly, if asylum seekers have their applications rejected, the Commissioner asks the Maltese authorities, in actual practice, to keep them on national territory until

the decision of the Refugee Appeals Board. The Commissioner also welcomed the introduction of an effective arrangement that provides free legal aid to asylum seekers challenging an adverse decision of the Refugee Commissioner and the improvement regarding statements of reasons for the Board's decisions. However, he regretted that free legal aid is not available to asylum seekers before the Refugee Commissioner." (UN Human Rights Council (13 February 2009) *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 - Malta, A/HRC/WG.6/5/MLT/1*, sections 19-25)

UN News Service reports:

"A group of independent United Nations human rights experts today voiced concern about the length of time immigrants rescued off the coast of Malta spend in custody, saying it is not "in line with international human rights law."

The human rights experts noted that illegal immigrants arriving in Malta after enduring risky voyages from North African shores are subject to long periods of automatic detention without genuine legal recourse.

"We consider that the detention regime applied to them is not in line with international human rights law," said Chairperson of the Working on Arbitrary Detention Manuela Carmena Castrillo.

"We have met an 8-year-old boy, who should not be detained at all, and a Somali man, suffering from HIV and chicken pox, vegetating in a cell in complete isolation, who should rather be in hospital," added Ms. Carmena Castrillo.

The Maltese Government releases asylum-seekers after 12 months of detention, at the latest, if their asylum claim is still pending. Those who do not apply or whose applications are rejected can end up in custody for 18 months under appalling conditions, the Working Group said at the conclusion of its five-day fact-finding mission to the country." (UN News Service (26 January 2009) *UN experts express concern at length of custody for illegal migrants in Malta*)

Human Rights Watch report:

"Malta continued to be criticized for its failure to rescue migrants in distress at sea and unwillingness to allow ships carrying migrants rescued at sea to enter its ports. More than a thousand migrants reached Malta in 2008. In August, 71 migrants drowned in the Mediterranean Sea when their dinghy capsized; eight survivors were rescued by a fishing vessel. The Maltese government has been calling for "burden sharing" among EU states on irregular migration.

Migrants, including children, who come to Malta are held in closed detention centers for up to 18 months while their claims are processed. Detention facilities for migrants in Malta were criticized in a PACE report in May. An investigation ordered by the Maltese government into allegations of ill-treatment against detainees involved in a disturbance in the Safi detention center in March concluded that there had been excessive use of force by

staff, but failed to identify those responsible.” (Human Rights Watch (14 January 2009) *World Report 2009 - Malta*)

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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