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**Responses of the Maltese Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to Malta**

from 18 to 22 January 2004

The Maltese Government has requested the publication of these responses. The report of the CPT on its January 2004 visit to Malta is set out in document CPT/Inf (2005) 15.

Strasbourg, 25 August 2005

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CONTENTS

| | |
|-------------------------------------------------------------------------|-----------|
| RESPONSE OF THE MALTESE GOVERNMENT | 7 |
| Introduction..... | 8 |
| Reactions to CPT comments | 10 |
| A. Preliminary Remarks..... | 10 |
| B. Ill-treatment..... | 12 |
| C. Fundamental Safeguards | 13 |
| D. Conditions of Detention | 16 |
| E. Medical Care | 17 |
| F. Staff Issues | 19 |
| G. Discipline | 19 |
| H. Means of Restraint | 20 |
| I. Contact with the Outside World..... | 20 |
| | |
| FOLLOW-UP REPORT OF THE MALTESE GOVERNMENT | 21 |
| Introduction..... | 22 |
| Outline of various measures taken by the Maltese government..... | 24 |

Ministry for Justice and Home Affairs

MALTA

Valletta, 7th December 2004

**RESPONSE OF THE MALTESE GOVERNMENT
TO THE REPORT ON THE VISIT TO MALTA CARRIED OUT BY THE
EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)**

FROM 18 TO 22 JANUARY 2004

INTRODUCTION

Following its visit to Malta in January 2004, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) presented to the Maltese Government its formal report [CPT (2004) 11], published on the 16th July 2004, on the local situation, that included a number of recommendations, comments and requests for information.

It is of satisfaction to the Maltese authorities that, by way of introduction, the CPT's report makes reference to the fact that *'the degree of cooperation received by the CPT's delegation from the authorities was on the whole very good'* and that *'the delegation was granted prompt access to each of the establishments visited and was provided with the facilities it required in order to carry out its task'*. This clearly underlines the local authorities' very high priority invariably given to such visits. After all Malta is actively committed to ensure that "no one is subjected to torture or to inhuman or degrading treatment or punishment" (in line with the CPT's mandate arising out of Article 3 of the European Convention on Human Rights).

This report addresses these recommendations and comments and includes as attachments the available information requested by the CPT. By way of general comment, the Maltese authorities are fully aware of the sensitivity with which the issue of asylum and irregular migration is to be treated since it concerns persons in distress, very often exploited by unscrupulous traffickers of human beings. At the same time, Malta is equally aware of the gravity of the situation it is faced with, in virtue of the distinctive manner in which the problem of irregular migration in the Mediterranean context is degenerating, often with tragic consequences. Suffice to state that the Mediterranean has recently been described as 'the largest mass grave in the world'. There is a growing security concern, particularly due to the large numbers of undocumented asylum seekers and because the whole system of refugee status determination and subsidiary protection is often assaulted by an increasing number of abusive claims. There is no doubt that Malta's vulnerability due to the vast territorial waters under its control, and its geographic position close to the 'flash point', necessitates the balancing of concern with adequate security measures.

It is tremendously difficult for a country the size of Malta, exacerbated by a very high population density, to be equipped well enough to deal with certain problems having roots beyond its shores, and which countries much larger in size are themselves finding really difficult to tackle within the existent binding international obligations and commitments. In this unfolding scenario, Malta is often left to struggle alone and, at the same time, expected to uphold international obligations to the letter, with overstretched resources and carrying an unfair share of the burden. Malta surely cannot be expected to face, practically single-handedly, this human tragedy.

Malta is doing its very utmost to address this extremely complicated and multifaceted problem in the best possible manner. Suffice to state that, at considerable cost in terms of both financial as well as human resources, Malta has managed to implement all its commitments in this area – including the enactment of a new Refugee Act, in line with EU standards and directives, granting various rights and entitlements, including social benefits, to recognised refugees. Moreover, as a consequence, new administrative structures for the processing of requests for asylum, including the Refugee Commissioner’s Office and the Refugee Appeals Board, have been duly set up. Malta’s commitment to assist genuine asylum seekers who are entitled to protection is evidenced by the relatively high number of persons given refugee/temporary protection status, estimated at around 52% of applications for asylum, the highest figure for any European country. Indeed, new open centers are in the process of being set up to offer better accommodation facilities to such persons.

The Ministry for Justice and Home Affairs, whilst appreciating the positive comments related to improvements registered since the last CPT visit to Malta, has given careful consideration to the various remarks related to the treatment and living conditions of immigration detainees because Malta is committed to improve these conditions according to the means at its disposal. Indeed, as explained in more detail in the following pages, a number of CPT proposals/recommendations are being taken on board.

REACTIONS TO CPT COMMENTS

A. Preliminary Remarks

(para 9) The requested copies of the Legal Notices N° 76/1999 (Annex 1) and N° 152/2002 (Annex 2) which refer to the Places of Detention Designation Order are being annexed to this report. The locations for the holding of foreign nationals are declared in these legal instruments and include Lyster and Safi Barracks respectively, both being complexes managed by the Armed Forces (that assist the Malta Police Force in view of the illegal immigration emergency situation prevailing).

(para 10) The lawsuit in the Constitutional Court initiated on behalf of certain Eritrean and Ethiopian nationals contesting the legality of detention imposed by the Immigration Act has not been decided to date. This case is still pending in Court. Furthermore, this should serve as a reply to the remark made in paragraph 13 of the CPT report ‘...its (i.e. deprivation of liberty) lawfulness should be open to challenge before a judicial authority’.

(para 12) In view of its particular circumstances, Malta simply cannot afford to let (particularly undocumented) illegal immigrants free just because they have sought asylum.

The Immigration Act 1970 has always provided for detention of any person unlawfully entering Malta. This provision has been in existence for the past thirty years and has never been criticized by any CPT delegation since the first visit way back in 1990.

The Maltese Government respectfully submits that it is neither within the CPT remit to question the detention of persons under the Immigration Act so long as such detention is authorized under domestic law. It is on the other hand entirely within the powers of the CPT to criticize, examine and monitor the conditions relating to detention in its widest aspect.

Detention for illegal immigrants is necessary for the following reasons (a) any unlawful entry should not be treated lightly particularly by a country which is the smallest state in Europe and the one most densely populated. Indeed an arrival of a boat carrying thirty irregular immigrants is tantamount to the arrival of 3,000 persons on the Sicilian shores (b) detention is necessary to determine the identity of these migrants- releasing them immediately would create unnecessary chaos, problems of accommodation; Malta does not have the means to establish residences for asylum seekers who have entered Malta illegally and (c) finally the labour market does not admit the absorption of such immigrants in the modest sized economy of the island. If the effect of such detention is a deterring one, this is merely incidental to the main three reasons justifying the current legal situation.

It is also to be pointed out that such immigrants are not detained because they have applied for asylum, but because they have entered Malta illegally. In fact any asylum seeker who has entered Malta through the proper channels is not served with a removal order and consequently is not detained until his application is determined.

In order to protect law and public order, for which this Ministry is also responsible, the Government has decided to pursue its detention policy – a policy that is supported also by the Opposition. Malta’s particular circumstances cannot be ignored, suffice to state that 2002 arrivals amounted to approximately 50% of the local average annual birth-rate! This notwithstanding, recent amendments to the Refugees Act, that are expected to be brought into force by the end of this year,

give detained persons the facility to lodge a request for provisional release with the Immigration Appeals Board if detention is deemed unreasonable. The Maltese authorities would therefore like to assure the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment that detention is not being imposed solely for the purpose of deterrence particularly as the persons detained relate to the circumstances described in paragraph 13, namely to verify the identity of asylum seekers, to determine the elements of their asylum claim and to deal with cases where illegal immigrants have destroyed their travel and/or identity documents or have used fraudulent documents or given false information in order to mislead the authorities.

One must also finally point out that statistically most genuine asylum seekers who are granted some kind of legal protection are released after approximately five months, which is the normal time for a decision to be taken at first instance by the Refugee Commissioner.

(para 14) The Maltese Government reiterates its view that the recommendations contained in this paragraph regarding alternative measures to detention are outside the remit of the CPT. One must however remark that by way of policy, minors and accompanying parents, or mentally or physically disabled persons are not kept in detention. As already stated in our May submission, all women with children have been released, whilst all juveniles are issued with a care order once their alleged age is confirmed (far from easy in certain cases). Indeed as far as possible all unaccompanied minors are offered placement in residential homes and/or foster care. A new residence for single mothers, administered by an NGO, has been recently set up.

(para 15) The revised UNHCR guidelines of 1999 on the applicable Criteria and Standards relating to the Detention of Asylum seekers and other applicable Council of Europe Recommendations all make reference to the right for States to detain migrants entering their country illegally especially when these are as yet unidentified. No time limit is mentioned. (NB: Immigrants who were in custody for eighteen months were released on the expiration of this period in the past months).

Moreover, it must be stated that for a country the size of Malta, the serious concern about the potential public security risks that may arise is heightened (as well as the very sensitive and perhaps dangerous situations personnel actively involved in the asylum determination procedure might end up facing) in the light of certain cases of rejected asylum seekers who continue to resist from cooperating towards their removal from Malta knowing that, in the end, they would get freedom in Malta just the same, even though their real identity and/or nationality remain perhaps unknown to the Maltese authorities. This is a risk that the law enforcement authorities are not prepared to take.

The Maltese authorities would like to reiterate a point already made in the submissions dated May 2004 in response to the preliminary statement made by Mr Mauro Palma, Head of the CPT Delegation, at the end of the January 2004 visit to Malta. Contrary to what is stated in the CPT report, the detention of foreign nationals in violation of the Immigration Act is **ALWAYS** subject to judicial review and any illegal immigrant can institute legal action against the Principal Immigration Officer if he feels that his detention is illegal. Moreover, as already stated, a new mode of redress to the Immigration Appeals Board, is expected to be introduced very shortly.

(para 17) The Maltese Government is in disagreement with the mistaken assertion namely that the Immigration Appeals Board is merely an administrative body. It is not. In actual fact it is a judicial body, not forming part of the Court structure but an independent and impartial adjudicating authority within the meaning of article 6 of the European Convention on Human Rights. There is a plethora of tribunals in Malta – as in other European countries- deciding particular issues reacting to income tax, rent regulation, planning issues, fiscal questions, partition of inheritance, small claims

etc. These tribunals are however subject not only to the provisions of the Constitution (art 39) and the Convention (art 6) but also to the rules of judicial review of administrative action which are contained in article 469A of the Code of Organization and Civil Procedure allowing for the review of decisions on any grounds such as unreasonableness, substantial or procedural *ultra vires*, error on the face of the record non- observance of the rules of natural justice etc.

(para 18) The judicial review always entails an oral hearing with legal assistance and interpretation.

B. Ill-treatment

(para 19) The Maltese authorities strongly take exception to these allegations of deliberate physical ill-treatment of foreign nationals by members of the police and/or Armed Forces. As already categorically stated in our May 2004 submission, deliberate physical ill treatment has never been used against third country nationals neither by the Police nor the Armed Forces. However, on very rare and exceptional occasions, physical force had to be used to overwhelm individuals who had assaulted members of the security force and therefore needed to be restrained. The principle of use of minimum force was always and invariably observed on these occasions. Indeed, restraint was resorted to even in those instances when the immigrants threw urine or other types of dirty liquids towards the Police officers or spitted and passed censorious remarks at the Police officers on duty.

We would like to reiterate that this statement is corroborated by the Ombudsman's Office; in fact this institution carried out a review and, though critical in certain respects, at no point was there reference to such deliberate physical ill-treatment.

(para 20/21) Following a formal request by the CPT, copy of the report on an internal inquiry (no P.3145/02 of 23 October 2002) carried out in terms of Section 116 of the Malta Police Act, Chapter 164 of the Laws of Malta, was submitted on 30 January 2004. However, since this was not considered by the CPT as falling within the criterion of an 'independent investigation', the Minister for Justice and Home Affairs requested the independent Police Board, chaired by a former Judge, to investigate the 4th September 2002 incidents at the Ta' Kandja Police Complex. This report is in the process of being finalized and shall be referred to CPT as soon as available.

(para 22) The need to adopt regulations regarding the use of means of restraint during operations for the removal of foreign nationals by air has not as yet been felt. Each case is dealt with on its own merits and in most cases persons being removed are not restrained but only escorted.

(para 23) The *proces-verbal* regarding the case of an Algerian national who committed suicide, by hanging, on 2 November 2003 at the Police Lock-Up at Floriana by Magistrate Dr. Miriam Hayman, is still not concluded.

(para 24) Inquiry report regarding the incident which occurred on 28th December 2003 at Ta' Kandja Police Complex, following a quarrel between two foreign nationals, is being finalised. Ministry is informed that one of the recommendations is that disciplinary action be taken against a Police officer.

(para 25) Staff/detainee relations have made a significant improvement and it is reported that the number of incidents at the accommodation centres has decreased dramatically.

At the same time, it is definitely unfair to attribute responsibility for such incidents exclusively on the police and/or army personnel, who are often working under great stress. Indeed, as already stated, it is not the first time that illegal immigrants threw urine or other types of dirty liquids towards the security officers. Moreover security officers on duty often have to endure other provocative behaviour.

(para 26) Notwithstanding the above provocations, the authorities have repeatedly emphasised that zero tolerance applies in cases of any form of ill-treatment to detainees. Indeed all security personnel have been warned that severe disciplinary action would be taken if they were ever caught abusing verbally or using offensive language. Moreover, as highlighted in our May submission, racism and incitement is a crime (Criminal Code – Chapter 9 of the Laws of Malta) and thus it appears rather strange that no such action was ever brought to the Courts by the various volunteers who regularly visit these accommodation centres. As already informed, emphasis is made on the fact that all possible measures are being taken at the highest levels to curb both verbal as well as physical abuse, whilst force may only and exclusively be used by the custodial staff as a very last resort.

(para 27) Detainees are sometimes addressed by their Tag Number mostly due to practical reasons, and definitely not to humiliate them in any way, as stated in the CPT Report. ‘Hands on’ experience shows that it is extremely problematic to identify all detainees by name especially during the initial stages of their custody. Most detainees have three or four names that are strange to our tongue and in a large number of cases are quite difficult to pronounce. Worse still, many of them change these names after arrival at the centre; indeed cases where individuals have given different names to the health authorities, to the Refugee Commissioner and to the Police/Armed Forces are not uncommon. However, the Ministry is informed that detainees are never addressed by their nationality.

In the circumstances, instructions are being given by the Armed Forces and the Police authorities so that, as far as possible, detainees are referred to by their names. At the same time the official tag number is required for official and internal use to check identity, and this is indispensable given the numbers of migrants.

C. Fundamental Safeguards

(para 29) Although the migrants are being informed of their fundamental safeguards as soon as they enter accommodation centres, no official translated document has as yet been prepared. It is however ascertained, also through interpreters who arrive with specific groups and who are conversant with the English or French language, that the message is clearly delivered. Moreover, it is felt that, since such fundamental safeguards are already being provided (free telephone cards are given to illegal immigrants on arrival at centres so as to inform a person of their choice of their situation whilst free medical services are readily available), in the circumstances there is yet no need to adopt such legal provisions.

(para 30) The Maltese authorities are very careful to ensure that persons, who even though not found to merit any form of protection, are **not** repatriated in cases involving substantial grounds to believe that they run a real risk of being subjected to torture or ill-treatment. Suffice to state that, as already stated, more than 50% of asylum seekers are given some form of protection by the Maltese authorities. Moreover, in line with the CPT recommendation, the decision to issue a Removal Order made by the Principal Immigration Officer can be appealed and the appeal has a suspense effect.

(para 31) The presence of the security official during any interview held by the Refugee Commissioner constitutes a very rare exception and is definitely not the rule. The Commissioner for Refugees can confirm that there were only a handful of such instances; indeed, gradually this Office has managed to establish a system wherein police/soldiers accompanying the asylum seekers keep waiting in an adjacent room. At the same time, this does not exclude the possibility that, for security reasons, there may be **sporadic and very rare** cases where the Refugee Commissioner himself would ask the police/soldier to remain at the back of the room during the interview.

The Refugee Commissioner's Office spares no effort to ensure that all asylum seekers benefit from "a real opportunity to present their case". REFCOM would obviously find no objection to have all applicants interviewed only at its office. The fact is that interviews are also held at the accommodation centres ONLY because this helps to ensure better productivity and efficiency thus reducing the duration of the determination process.

REFCOM is doing its utmost to ensure confidentiality; indeed by way of policy its staff do not even confirm or deny whether a particular person had applied for refugee status. REFCOM does not even reply to unfounded allegations, half-truths, or misleading information on specific cases carried by certain sectors of the media. Information is only provided by REFCOM in court if, and when, it is ordered by the judicial authorities to do so.

Moreover, REFCOM endorses the CPT statement that "free, qualified and impartial interpretation should be made available, on request, during the whole procedure and the use of fellow detainees as interpreters should, in principle, be avoided." Ideally it should have a sufficient list of qualified and impartial interpreters to choose from, who are not "fellow detainees", recognised refugees or persons granted humanitarian protection. However, in reality considering the serious shortage of interpreters available in Malta, especially as regards certain uncommon languages, if REFCOM renounces to the practice of using "fellow detainees" or recognised refugees or persons enjoying humanitarian protection, the processing of applications would practically come to a standstill to the detriment of the asylum seekers themselves! Obviously interpretation services provided to REFCOM are paid for out of public funds.

The CPT draft report recommends that, "female asylum seekers should, as far as possible, be interviewed by female interviewers (assisted, if necessary, by female interpreters." Indeed, REFCOM has now engaged qualified female case-workers who deal with such cases, whenever possible.

(para 32) Report (available in Maltese only) of an official enquiry carried out by a member of the judiciary regarding the deportation of the 220 Eritreans is hereby attached (Annex 3) as requested. In a nutshell, this report concluded that in the circumstances the correct procedures had been followed by the Maltese authorities in this particular case.

(para 33) An appeal before the Immigration Appeals Board has a suspensive effect.

The Refugee Appeals Board finds exception to certain statements made by the CPT regarding its operations.

Indeed, whilst first instance decisions are always reasoned out in some detail, at the appellate stage these are upheld as the Board's own when, as in the vast majority of cases, these are manifestly unfounded according to law. As for foreign nationals being called to be heard in person, the Board

acts according to law, (i.e the Refugee Act) which clearly states that, according to its discretion, lengthier open hearings should be called if, and when, new evidence is made available or if the Board has reason to doubt or to dispute any of the evidence or interrogations undertaken in first instance.

The Board has only had recourse to such a measure if it felt that there was reason for it, according to law; in some instances it has modified decisions in the first instance, while in the case of some Cameroon appellants, it has reversed them altogether. The CPT delegation is not entirely correct in presuming what it does, i.e. that foreign nationals should be heard in person by the Board without there being any justification for that, according to the Board's discretion after fully examining and discussing each and every appeal.'

The recent magisterial inquiry, referred to above, regarding the deportation of the Eritreans' incident has further interpreted this provision of the law, which fully clears the Board's practice even though it recommended that were possible such oral hearing should take place.

(para 34) The CPT recommendation is already being followed. Indeed, each and every decision issued by REFCOM is invariably reasoned according to law. Of course, the reasoning varies according to the nature of the case in question. Thus, it is not clear why the CPT draft report came to the apparently mistaken conclusion that "first instance decisions were not reasoned." Moreover, with reference to Appeals Board decisions, in those cases where the reasons for confirmation of a rejection would be identical to those already made known to the applicant/appellant at the first instance decision, more elaborate replies are not considered necessary – as may be seen from the attached copy of a standard reply (Annex 4). It is definitely not deemed necessary to simply repeat the same reasons in each case, the more so when although appeals are manifestly unfounded, a fast track procedure, for which the law provides, has not even been resorted to. As for every foreign national having the right to appear in person before the Board, with all due respect this is an opinion which does not conform to our law, nor indeed is it a standard necessarily upheld - as in civil rights cases – by European and British jurisprudence. Apart from which, it would further delay proceedings, and unnecessarily so.

(para 35) It is exaggerated and generalized to say that legal aid is "very rarely granted in practice". This is more correct with regard to state legal aid, as indicated in the law, but much less so with regard to legal assistance in the submission of appeals, and (if and when necessary), in appearing for the appellant, by other lawyers operating on behalf of NGOs or in a private capacity. Several appellants have been assisted by such lawyers at the appellate stage; a few so far have also benefited from the state's legal aid pool as such. This situation has now been remedied through the appointment of a private lawyer to provide free state legal aid. On its part, the Board is waiving the legal prescription for an appeal within a fortnight when a would-be appellant requests the state's legal aid, to which s/he is entitled at law.

(para 36) Technically speaking, the "one week" requirement for an applicant to be interviewed after applying is being observed. This in the sense that the first form the prospective applicant fills is a "Preliminary Questionnaire" and not the formal application. When an application is filled, in most cases it is immediately followed by an interview. In those cases where delays are registered, this is due mainly to the fact that asylum seekers fail to produce the required documentation.

The CPT delegation's allegation that asylum seekers have to await decisions by the Appeals Board "for more than a year" is grossly exaggerated. Right now, in spite of various constraints and the number of arrivals, the Board is completing the 2003 cases and it has already heard and decided various 2004 cases.

Moreover staff, at both the Refugees Commissioner's Office as well as the Appeals Board, have the necessary competence and qualifications and practically all have undertaken a period of training, even within the framework of an EU pre-accession twinning project, in their respective area. Despite the Administration's efforts to contain employment within the Public Service, two additional case-workers have recently been appointed at the Refugees Commissioner's Office.

(para 37) As established by the Immigration Act, removal orders are issued to each and every migrant in detention. These are temporarily suspended once migrant applies for asylum status.

D. Conditions of Detention

(para 38) There are various differences in the conditions of illegal immigrants in detention as against persons kept in prisons. For one, following recent amendments to the Refugees Act, illegal immigrants shall shortly be given the facility to lodge an application for release from detention – obviously in the case of a prison environment this is definitely not possible. The two scenarios are completely different.

Regarding conditions at accommodation centres, it is maintained that the primary responsibility of cleaning and maintaining premises in the best possible condition lies with the TCN's themselves. In fact they are regularly issued with cleaning materials for such purpose but unfortunately in most cases they are very rarely used with the consequence that conditions deteriorate rapidly. It has to be registered that, due to the violent behaviour of a very small minority of illegal immigrants, several regular repair works (practically on an ongoing basis) are required especially on the sanitary facilities.

(para 39) As already stated in our May submission, a number of heaters have been issued to TCN's both by the Maltese authorities as well as through donations by NGO's (here we would like to register Government's appreciation of the invaluable support and assistance given by various NGO's in Malta). Many of these heaters have been broken through misuse voluntary damage. Lack of heating in the rooms is often also due to the number of window panes repeatedly broken by certain detainees – again an added pressure on the centres' staff's limited resources.

(para 40) Re-use of the Ta' Kandja Police Complex, despite Government's decision to close down this accommodation centre some months ago, became necessary as a last resort in view of the emergency situation brought about by the relatively very high number of illegal immigrants arriving in Malta during the year.

(para 41/42) The number of detainees at the HFRC is kept to the minimum number possible except in urgent emergency situations. Measures are constantly being taken to minimize the number kept in each and every centre; however this is obviously dependent on the number of arrivals.

(para 44/45) As stated above, the Police and Armed Forces make every possible effort to undertake improvements and repairs as necessary, obviously within available resources, in all accommodation centres. However, voluntary damage caused by detainees who 'vent their frustration on furniture and equipment', render this even more problematic.

Regarding the quality and lack of variety of the food offered to detainees, it has to be emphasized that complaints in this regard are made by a very small number of detainees. This notwithstanding,

efforts are being undertaken to adopting cooking methods which are, as far as possible, preferred by illegal immigrants who are accustomed to different dietary cultures and habits.

(para 47) Newspapers are distributed daily to the migrants at the detention centres manned by both the Police and Army. Magazines are also often made available, particularly through the help of NGO's. Outdoor exercise is possible for almost all of the daylight hours and generally detainees are allowed more than one hour of outdoor activity.

E. Medical Care

(para 48) The airport facilities in question are still in use albeit very infrequently. Indeed, with very rare exceptions, the CPT recommendation (that the Maltese authorities fully endorse) is already being followed and persons are only being detained at these premises for less than 24 hours. The design of the room is compatible with the security requirements of an international airport – this obviously being a highly sensitive environment.

(para49) The Maltese authorities fully agree that ideally the Police Lock Up should not be used for such purposes and indeed a decision in this sense was taken by this Ministry a few months ago. However, it had to be re-used in view of the crisis situation prevailing with all other accommodation facilities, including those of the Armed Forces, being presently fully occupied.

(para 50) The mass influx of illegal immigrants has caused a critical lack of accommodation facilities, and constrained authorities to, against their wishes and intentions, resort to the use of the Nissen Hut in question. Every attempt is made to make the accommodation available as hospitable as possible. It is hoped that following Government's recent decision to transform a former school into an open center, the use of such premises will be eventually discontinued.

(para 52) Arrangements have recently been finalized with the Health authorities whereby medical care has now started being provided on a regular basis also at the accommodation centres themselves. In addition full medical care shall continue to be provided at the health centres, with access to a completely free comprehensive health care system, for urgent medical problems experienced by immigrants during the hours when no doctors are present at the centres.

Moreover discussions with the Malta Red Cross Society are ongoing to set up a clinic headed by a medical doctor or a nurse within Safi (Closed Centre) Barracks.

(para 53) Before admission to the detention centres, all migrants are seen to by a medical team consisting of doctors and nurses, and immediate medical treatment is given if so required. Due to acute nursing staff limitations being experienced by the Maltese health authorities, it is simply not yet possible to have also a nurse available for the purposes mentioned in the report. However, free nursing services are also provided at the health centres if, and when, required.

(para 54) The Maltese authorities fully endorse the CPT's recommendation that medical confidentiality be observed in the same way as in the outside community and this policy is rigorously followed. Indeed, medical examinations in the present of custodial staff are, as a rule, avoided unless there is a specific request by the medical staff. Moreover, in certain very rare and exceptional cases, due to obvious potential health risks, it is believed that it would be inappropriate for the custodial officers not to be informed of the migrants' particular medical condition. After all, they are responsible for the migrants' well being.

The medical files concerning detainees cared for in the public health care system are only available to medical and professional health care staff. In such cases, files are kept in the public health care service and not referred to detention centres. Medical confidentiality is respected at all times. Regarding medical files kept at detention centres, although confidentiality of files is not possible at the moment it is to be underlined that such files are kept in the custody of the officer-in-charge with very restricted access.

(para 55) The service of qualified interpreters is undoubtedly essential for proper diagnostic and therapeutic interviews. Although the CPT recommendation is ideal in principle, experience has shown that it is virtually impossible, particularly considering the available resources locally, to have a qualified interpreter on all occasions. Whenever qualified interpreters are not available, there is no option but to use what is available. In the interests of expediency, when responding to urgent medical care requirements, the principle of independent interpretation takes secondary importance. There have been several instances where detainees themselves have elected to utilize fellow detainees as interpreters.

(para 56) The overall policy in managing hunger strikes is primarily to keep the situation under control primarily by not over-reacting. Detainees are calmly reminded that they are only harming themselves but also that hospital services will not allow them to die. Therefore should the hunger strike persist and life becomes endangered, the hospital will intervene with life-saving measures including naso-gastric feeding, intravenous nutrition and closer monitoring of metabolism, fluids and electrolyte balance.

This Ministry is informed that there have never been any lasting hunger strikes by detainees treated in public health care institutions. It is not the authorities' policy to admit persons on hunger strike to Mount Carmel Hospital or indeed any other hospital. The medical authorities' experience on hunger strikes by persons already in hospital for other reasons is that these are usually abortive threats of hunger strike, which are invariably abandoned within hours.

(para 57) The Maltese authorities definitely agree with the CPT's statement that detention should definitely not be 'of an indefinite and prolonged nature'. Indeed besides strengthening the administrative capacity of the Refugee Commissioner's Office, and the appointment of a lawyer to provide free legal aid at the Appeals stage, thus reducing as far as possible the status determination process, it has to be emphasized that Malta has one of the highest asylum/temporary protection acceptance rates in Europe. This definitely is bound to alleviate the physical and psychological state of health of detainees since persons granted such status are immediately released. Moreover, as already stated above, reference is made to the facility whereby persons in detention will very shortly be given the facility to submit an application to the Immigration Appeals Board for release.

(para 58) The report refers to the atmosphere within Male Acute Ward at Mount Carmel Hospital. This was in part due to general overcrowding, in part secondary to interracial tensions, and in part due the large number of detainees posing a threat to the territoriality of Maltese patients in the same ward.

There is reference to the disturbance which took place on the Male Acute Ward (MW1) shortly after the visit by the CPT delegation. The requested detailed account of the incident follows below:

Tension had been high and the escorting police and hospital management were very concerned due to the fact that the situation appeared to be getting out of hand. The Police Commissioner and

Assistant Police Commissioner were being kept informed of the situation. Around 1.00pm, Hospital Management was informed that one of the detainees had tried to hang himself in the ablution area. He was stopped by one of the nurses and a police officer. As part of standard procedure, the medical officer on duty was called over to examine the said patient. At this point the detainees would not let the patient to be examined by the doctor. They started protesting violently and eventually took control of the ward. The nursing staff on duty continued to nurse all the Maltese patients and three illegal immigrants who did not take part in this riot. For security reasons, once all staff and patients were out of the ward, the door leading to the section in MW1 where the riot was taking place had to be closed. Police authorities called immediately at the hospital in order to establish law and order in the occupied ward. When the situation was eventually brought under control at around 5pm the ward was no longer fit to accommodate patients. It was found that the detainees had caused about Lm2,000 worth of damages. Hospital management took immediate action to allocate to another secure area where detainees could be effectively segregated from each other. This was done, until the situation returned to normal, for their own safety and to stop them from conniving with each other and provoking or being provoked by other patients. Pending refurbishment of MW1, interim alternative quarters were also found for the Maltese patients who previously were accommodated in the riot area. Within two days all the damages were repaired, the ward was whitewashed again and the patients relocated to their previous quarters.

(para 59) Corrective measures have been taken to provide for this requirement. Policy changes and structural organization in the acute male psychiatric facility are now in place. A detainee who requires secure facilities can be given one hour of outdoor exercises if his condition allows this. When there are multiple detainees in the ward, these can be nursed in a newly refurbished section in the acute ward, which has direct access to a courtyard, which is constantly available for outdoor exercise.

F. Staff Issues

(para 61) Whilst appreciating the need to provide adequate training to Police and Armed Forces personnel performing custodial duties, as stated by CPT, and indeed it is envisaged that this shall be provided within the context of an EU co-financed Transition Facility Project, one has to keep one's feet on the ground. Indeed the considerable human resources constraints faced by both entities, who between them are assigning a substantial number of staff to deal with illegal immigration issues, are a reality that cannot be ignored. Certainly, the experience being acquired by our custodial staff in this particular area is proving a very important learning tool as evidenced by the fact that, as already stated, staff – illegal immigrants' relations has improved considerably.

(para 62) The Maltese authorities endorse the CPT recommendation and action is being taken to disseminate a clear set of rules for custodial staff.

G. Discipline

(para 63) Obviously disciplinary action taken depends on the entity and circumstances of the offence committed, and should be seen on a case-by-case basis. Indeed, as far as this Ministry is aware, no complaints have been ever received by illegal immigrants regarding unfair or discriminatory treatment in so far as disciplinary action is concerned. This is not saying that the disciplinary system and procedures cannot be improved upon and indeed the Police and Armed

Forces authorities are being informed accordingly. Moreover, by way of information, the practice of keeping the migrants at the CID lock-up following a disciplinary offence has been discontinued.

(para 64) Disciplinary regulations presently in force need to be formalized as recommended by the CPT. However, we would like to re-iterate that no complaints regarding discrimination as regards adoption of disciplinary proceedings have ever been registered by TCN's.

(para 65) A basic framework of regulations on the running of the detention centres is already available.

H. Means of Restraint

(para 66/67) The decision to use handcuffs is taken by the custodial officer performing the escort duty; each case being seen on its own merit and circumstances. It should be noted that a number of immigrants who were in custody have managed to escape and obviously this makes custody officers more cautious in the performance of their duties. The fact that medical services are now being provided at the accommodation centre itself is bound to ease this problem since the need to proceed to health centers is expected to decrease substantially. Moreover it has been confirmed by the Refugees Commissioner that as a rule (with very rare exceptions) asylum seekers are not handcuffed during the interview.

I. Contact with the Outside World

(para 68) This Ministry is informed that correspondence and visits at the centres manned by the Police are allowed in the same manner as in those manned by the Armed Forces. Moreover, as a rule, no requests for visits of close family members are refused.

(para 69) Telephone cards are supplied as frequently as possible, obviously within available budgets, and NGO's also supply such cards when necessary. Immigrants are also allowed to buy their own cards. The CPT suggestion to provide detainees without resources (how one establishes this is a moot point) with a phone card on a regular basis has been actively considered by the Maltese authorities. However, whilst agreeing in theory to such initiative, due to budgetary constraints it is found not feasible in practice.

(para 70) This Ministry is informed that by way of established procedures **all** valuable possessions are collected by the authorities, against due registration and receipt, for safekeeping. These are given back to TCN's on their release from detention. Moreover, as already stated, the Maltese authorities definitely have no intention of hindering access to the telephone facilities as evidenced by the periodical provision of free phone cards to TCN's in detention. The very fact that we have had instances when immediately upon arrival in Malta a TCN informed the local authorities that his wife was being detained at a particular accommodation center (in a particular case a TCN even gave the police officer on duty his wife's internal registration number) is ample proof that TCN's are being granted adequate telephone access.

Ministry for Justice and Home Affairs

MALTA

Valletta, 12th August 2005

**FOLLOW-UP REPORT OF THE MALTESE GOVERNMENT
TO THE REPORT ON THE VISIT TO MALTA CARRIED OUT BY THE
EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)**

FROM 18 TO 22 JANUARY 2004

INTRODUCTION

Following its visit to Malta in January 2004, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) presented to the Maltese Government its formal report [CPT (2004) 11], published on the 16th July 2004, on the local situation, that included a number of recommendations, comments and requests for information. For the record, it also included positive comments related to various improvements registered since the last CPT visit to Malta.

The Ministry for Justice and Home Affairs submitted its formal reaction to the CPT report on the 6th December 2004. Basically, this feedback report addressed the CPT recommendations and comments and included as attachments all available information requested by the CPT. As stated therein, careful consideration was given by the Ministry for Justice and Home Affairs to the various remarks related to the treatment and living conditions of immigration detainees because Malta is actively committed to improve these conditions according to the means at its disposal. **It is this report's main objective to outline the measures taken by the Maltese authorities ever since to improve, obviously within the constraints of available resources, both financial as well as human, the conditions of detention, as well as the treatment, of irregular immigrants arriving in Malta.** There is obviously always room for improvement, and it is acknowledged that a number of problems still have to be overcome. However, in the most objective manner, it is considered that Malta has come a long way in so far as asylum seekers are treated nowadays - this is amply evidenced by the information attached. Suffice to state that the status determination process, and hence the duration of detention, has been reduced considerably, the acceptance rate is one of the highest in Europe, whilst persons granted humanitarian protection are practically entitled to the same rights and entitlements as recognized refugees. This proves that Malta remains actively committed to treat asylum seekers in the best possible manner, offering its protection to all those who really merit it. Notwithstanding the fact that according to the 2004 UNHCR Global report, Malta registered an impressive increase of 116% of asylum applications during 2004. Indeed, Malta is one of the most badly hit countries in the world on a per capita basis.

At the same time, it has to be reiterated that the smallest EU Member State, possessing very limited resources, and, to complicate matters, having one of the highest population densities in the world, cannot be expected to adequately address this complex and multifaceted problem having roots beyond its shores by itself. It is a fact that bigger and richer countries are finding it extremely difficult to adequately tackle the problems brought about by irregular immigration within the existent binding international obligations and commitments. The reality that our labour market can only absorb a small number of people on a yearly basis and accommodation and open centres built specifically for persons granted protection are under considerable strain to cater for the ever increasing numbers of people cannot be ignored.

Thus, Malta simply cannot be left to struggle alone and, at the same time, expected to uphold international obligations to the letter, with its resources stretched to the limit and carrying a more than proportional share of this human tragedy. Hence, Malta's determined insistence for the implementation of concrete burden-sharing initiatives both within the European Union as well as other international organizations actively involved in the area of irregular immigration. One concrete example of burden-sharing is the possibility of resettlement within other countries particularly those requiring migrant labour. Joint repatriation flights could be another concrete possibility of assistance. Indeed the recent seemingly never-ending influx of illegal immigrants on our shores has further exacerbated this complex problem, particularly in so far as accommodation facilities are concerned. Thus, Malta will continue to insist that the European Union and its Member States need to show solidarity with the Border States that are bearing the blunt of this problem; at the same time, the countries of origin and the countries of transit must also shoulder their responsibilities.

In this regard, Malta welcomes the declaration made by the Vice President of the European Commission Franco Frattini, Commissioner responsible for Freedom, Security and Justice during a recent visit to Malta. The European Commission, **aware of the considerable burden being borne by Malta with regards to the heavy influx of irregular immigrants**, is committed in assisting the Government of Malta in addressing this situation.

Finally, by way of information, please note that the requested Report of the independent Police Board, chaired by a former Judge, regarding incidents at Ta' Kandja Police Complex of the 4th September 2002, is presently being finalized and will be referred to CPT as soon as available. The *process-verbal* by Magistrate Hayman regarding the Algerian national who committed suicide at the Police Lock-Up on 2 November 2003, has in the meantime been finalized and is being sent as hard copy by normal mail.

**OUTLINE OF VARIOUS MEASURES TAKEN BY THE MALTESE GOVERNMENT
IN THE FIELD OF IRREGULAR IMMIGRATION SINCE CPT VISIT TO MALTA
(Jan 2004)**

- Following the publication of Government's policy in the area of irregular immigration, a National Conference was held on the 7/8th February 2005. Various speakers from Government agencies, NGO's, trade unions, and Members of Parliament including the Leader of the Opposition and the Prime Minister addressed the conference. All interventions were eventually published.
- One of the Conference's conclusions was to set up a Task Force with the remit of drawing up a National Policy on Irregular Immigration that has a wide consensus as possible. The Task Force, made up of Government and Opposition, as well as NGO's representatives together with the Principal Immigration Officer, is presently meeting on a regular basis.
- A Cabinet Sub-Committee, chaired by the Deputy Prime Minister and Minister for Justice and Home Affairs, and including all major stakeholders, was appointed to monitor overall issues related to irregular immigration and to ensure ongoing operational coordination. This Committee convenes on a regular basis and has been responsible for the introduction of various initiatives such as the setting up of the new Detention Service as well as the drawing up of a Contingency Plan.
- Structures involved in the refugee determination process were duly strengthened. This basically includes the appointment of an Assistant Refugee Commissioner as well as additional duly qualified Case Workers at the Refugees Commissioner's Office. Moreover, a second Chamber of the Refugees Appeals Board was set up. These capacity building measures are expected to ensure a faster status determination process and thus a reduced duration of detention. Moreover, action is being taken to further increase the number of Case Workers whilst recent legislative amendments regarding the composition of Appeals Board Chambers are meant to ensure a faster Appeals procedure.
- The period of detention in respect of asylum seekers, ie those whose application for asylum is still pending, has been reduced to 12 months in line with the EU Directive on minimum standards of reception conditions. The permit to work has been extended from those having a refugee status to include also those given a temporary humanitarian status. In line with the above directive, those who after 12 months have not had their application processed, and hence released from detention, will also be given a work permit. The Ministry for the Family and Social Solidarity and the Employment and Training Corporation are drawing up a special employment register for such category of persons.
- Two private lawyers have been appointed as Government legal aid officers specifically to deal with appeals cases. In view of the considerable increase in their workload, a selection process is underway to recruit additional lawyers. Moreover, a project for the provision of legal aid has been submitted by a local NGO in respect of ERF II funding.
- By way of policy, all vulnerable persons, mothers with children and unaccompanied minors are released once their identification and health screen is completed.
- Third country nationals in detention have been given the facility to submit an application for release to the Immigration Appeals Board on the basis of unjustified duration of detention.

- A new permanent accommodation block at Safi barracks, accommodating around 170 persons has been recently opened whilst another structure, with an estimated capacity of about 225 third country nationals, is in the process of being finalised. Estimated costs for both projects, excluding labour expenses, is over 400,000 euros. Moreover, a former trade school at Marsa has been recently converted into an open centre, accommodating circa 250 persons.

Other potential sites are being considered to serve as a contingency holding site in case of further mass influxes.

- An Information Pack, outlining the rights and duties of third country nationals, is in the process of being drawn in the main foreign languages used by tcn's. This will include information on the asylum application and related issues and will be given to irregular immigrants on their arrival in Malta.
- Ongoing training is provided to staff engaged in the asylum/immigration management and control areas. An EU Twinning Light project with Greece, to enhance the asylum system in Malta, was initiated in June 2005. This programme is spread over 8 modules of one week each addressing various aspects in this particular area. The modules are as follows:
 1. To acquaint the participants with the latest legal developments in EU immigration, asylum and integration policies.
 2. To provide a substantial introduction to the notion of international protection.
 3. To introduce the participants to practical and theoretical aspects of immigration and asylum.
 4. The participants will be acquainted with the special treatment and circumstances for asylum seekers, refugees and immigrants.
 5. To acquaint the participants with the practical aspects of establishing and running an accommodation centre.
 6. To provide the participants with a detailed knowledge of international refugee law, European legislation and national as well as international jurisprudence.
 7. To acquaint the participants with the basic rights of immigrants, refugees and asylum seekers
 8. To provide the participants with practical tools in the recruiting and training of interpreters.

Moreover, Dutch experts are coming to Malta in the beginning of September to provide their advice re irregular immigration issues and to conduct training sessions for employees working in such areas.

- The Ministry for the Family & Social Solidarity is responsible for the social welfare of all irregular immigrants. Closer cooperation with NGO's working in the field is being achieved through the NGO Forum and public conferences. It aims to promote the necessary skills to integrate the irregular immigrants in mainstream society. Such measures, including the use of information campaigns, also help in curbing the rise of racism and xenophobia.
- Maltese citizenship is being awarded to those having a refugee status (not temporary protection) and having resided in Malta for more than 10 years.