



CPT/Inf (2007) 38

**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 15 to 21 June 2005**

The Maltese Government has requested the publication of these responses. The report of the CPT on its June 2005 visit to Malta is set out in document CPT/Inf (2007) 37.

Strasbourg, 10 September 2007



# **Ministry for Justice and Home Affairs**

## **MALTA**

- **Reply to the CPT's recommendations, comments and requests for information**
- **Booklet on irregular immigrants (entitlements, responsibilities and obligations while in detention)**

## **I. INTRODUCTION**

The Maltese Government notes with satisfaction the CPT's acknowledgement of the ongoing exchange of dialogue between both parties and the cooperation extended to the delegation by the various Maltese authorities concerned during its *ad hoc* visit of June 2005.

Indeed the issue of irregular immigration and asylum is a major area of concern and activity for the Ministry for Justice and Home Affairs. In this regard reference is made to our Final Report dated 12 August 2005, in response to the CPT's visit of June 2004, wherein fourteen new measures in the area of asylum were identified.

In pursuit of the CPT's interim report dated 6 July 2005 and the exhaustive reply by the Maltese Authorities communicated on 17 November 2005, the Maltese Government has decided to acquire the services of private contractors to augment the medical/nursing services provided at the closed centres by the Health authorities.

The Maltese government cannot over-emphasise that, whilst fully committed to adhere to its international obligations particularly regarding the upholding of human rights and protection of human lives, it also advocates for international responsibility and solidarity to address this phenomenon of irregular immigration. If the issue has become a matter of concern for most European countries, it is all the more of concern for a small insular island state such as Malta that surely cannot be expected to address such a complex and multifaceted problem on its own.

Measures indicated in the CPT's report have been taken into consideration and will be addressed in the light of available resources and particular circumstances of Malta.

## **II. FACTS FOUND DURING VISIT AND ACTION PROPOSED**

### **Preliminary remarks**

The Maltese government notes with satisfaction that the report acknowledges the need of financial resources beyond that which the country possesses in order to properly manage these mass influxes of irregular immigrants and welcomes the CPT's insistence on "*the crucial importance of a concerted effort by the international community – and particularly the European Union to give Malta the help it needs to tackle the problem it faces today.*"

Its needs to be clarified at this point that financial assistance is only part of the solution. The annual arrival of so many irregular immigrants in such a densely populated and small country is unsustainable and that is why Malta has called on the European Union Member States for practical burden sharing initiatives. In this respect the Netherlands was the first EU Member State to respond to this appeal by offering resettlement opportunity to 33 protected persons. Other Member States have also offered similar opportunities. Although these numbers are small in comparison with the remaining population of persons granted some form of protection status in Malta, the solidarity behind this initiative is greatly appreciated by the Maltese Government.

**(para 10)** The Task Force on Irregular Immigration is chaired by the Minister for Justice and Home Affairs and is composed of the Shadow Minister for Home Affairs, the Minister for Family and Social Solidarity, the Principal Immigration Officer and two representatives on behalf of the four main NGOs working in this field. During the year the Committee met regularly to review government's practice and policies on irregular immigration and asylum. A report is being drafted to reflect as far as possible common agreements reached by all the stakeholders. The final document will be made available to the public.

The initiative to set-up a Detention Service is the result of a proposal put forward during the National Conference held in February 2005 wherein general consensus indicated that the present role of the Army and Police Corps is not ideal for the day-to-day management of close reception centres. Thus Government decided to replace these service personnel with suitably trained civilians. The former entities would eventually retain responsibility for securing the outside perimeter and should the need arise, they will also provide assistance in case of riot situations. The Commander to the new entity was appointed in late August 2005 and the first call for recruitment was issued in November 2005 with a second call being issued in the coming weeks. This will be a gradual process of transformation in roles and responsibility and at the same time ensuring that the selected candidates have the right disposition for such work.

Another issue that has been addressed is the formulation of a Contingency Plan in cases of mass influx which is taken to mean the arrival of more than 250 persons in successive waves within a short period of time. The document serves as a manual for all stake holders involved in this area to be fully aware of their role, the procedures and responsibilities. In such circumstances it is important to have prompt and coordinated efforts by all those involved.

**(para 11)** It is to be noted that by means of Legal Notice 383/2005 dated 22 November 2005, Council Directive 2003/9/EC which establishes the minimum standards for asylum seekers has been transposed into local legislation and brought into force.

**(para 12)** The question of vulnerable persons is a subjective matter as not all vulnerable cases are immediately evident. This particular cohort of irregular immigrants has always been given due attention and included in Government's published policy document. Notwithstanding this commitment by Government, due to the subjectivity of the matter, better detection and assessment of these cases may be warranted and in this regard the Ministry for Family and Social Solidarity is drafting guidelines on the subject. The individuals classified as vulnerable persons are primarily, though not exclusively, pregnant women, individuals or family members having a mental/physical disability, elderly persons (over 61), families with children and unaccompanied minors. Every subgroup will be brought to the attention of the appropriate government agency for evaluation and recommendations. A request will also be made to have their asylum application expedited as much as possible.

Unaccompanied minors are placed under a guardian appointed through a Care Order, which places the minor on the same level as that of a Maltese child awarded custodian care. In cases where the age verification is in dispute the Assessment Panel of the Ministry for Family and Social Solidarity will refer the minor to the Health Authorities for medical age verification. Any doubts on the results of these investigations will be construed in favour of the irregular immigrant.

**(para 13)** The Maltese Government's position on its detention policy, consensus is shared between Government and the Opposition in this regard, has been extensively discussed with the Committee and present circumstances surely do not warrant a change in policy. Moreover, it is to be noted that a significant percentage of those reaching our shores are economic migrants seeking better pastures, often after spending a number of years working in Libya. Due to Malta's particular circumstances, Government cannot afford to allow often undocumented and unscreened irregular immigrants roaming about freely on the streets. Thus national interest obliges the authorities to tread cautiously and the present detention regime, which by way of policy is a maximum 12 months for asylum seekers and 18 months for rejected asylum seekers cooperating with the authorities, is considered the best approach at this point in time. All those held in detention have a right to appeal from such detention before the Immigration Appeals Board. The independent Board considers each case on its own merits within the remit given to it by law

**(para14 and 16)** When asylum seekers receive a negative reply to their application for refugee status, they are informed in writing that:

- (a) they have the right to enter an appeal against the recommendation;
- (b) their right to consult the UNHCR and to have legal assistance subsists throughout the appeal procedure; and
- c) at the appeal stage they have the right to legal aid.

The Ministry has produced an information pack explaining the entitlements, responsibilities and obligations of asylum seekers whilst in detention. This will be available in English, Arabic and French. Ongoing information is communicated by the competent authorities as part of the asylum procedures, by officials responsible for the centres, government agencies from the welfare sector and other NGOs working in this field. Updating of case progress is carried out within the constraints of limited resources dealing with hundreds of individuals.

A copy of the new information pack is being attached.

**(para 17)** According to law, and in line with ECHR jurisprudence, open hearings are only held when the board does not consider a case to be manifestly unfounded, either because the adjudicators doubt the judgment reached in the first instance or because there is new evidence which merits consideration, or if any one of the Board's members entertains a doubt as to the decision taken by the Office of the Refugee Commissioner after a thorough - and generous - investigation. Hearings are normally held in camera but it is at the discretion of the Board to summon open hearings if and when it deems fit - as it has on various occasions done. A Constitutional Court judgment and a magisterial inquiry have confirmed that there is nothing irregular about these proceedings which are intended to constitute a fair process without undue delays so common to the courts of law. To have open hearings in every case even when appeals after due and meticulous examination are unanimously held to be manifestly unfounded according to law might perhaps add a transparency but it would greatly delay the whole process.

**(para 18 & 19)** The principle of suspensive effect of an appeal has not been removed. The amendment which has now been passed through Parliament applies to those irregular immigrants who abuse the asylum procedures. Thus **only** those whose application has been found to be manifestly unfounded as declared by the Refugee Commissioner will be removed. The Refugee Commissioner will continue to examine each application judiciously and on its own merit.

The amendments provide for safeguards under Article 46 of the Constitution and under Article 4 of the European Convention Act. Moreover if the Board of Appeals finds in favour of the appellant, he will be entitled to return to Malta without the need of a visa.

**(para 23 and 25)** The magisterial enquiry (referred to as the Depasquale Report) was published on 12 December 2005 and the salient conclusions sent to the CPT under cover of letter dated 18 December 2005. Therein the Commission was also informed that an unofficial English version will be prepared and this is being attached to this report. The Report should answer the questions raised in letter dated 3 Feb 2005 by the President of the CPT. With regard to regulatory legislation, regulations and/or instructions for the use of force by the Armed Forces in peacetimes and particularly in crowd control situations the Army is drawing up regulations which are being vetted through the legal office with a view of promulgating them within the Force.

**(para 26)** The enquiries on the incidents of 4/9/02 and 28/12/03 involving allegations of mistreatment by police officers have not been concluded.

**(para 28)** Regarding comments on the distribution of meals in large plastic tub, it is reported that the initiative taken by the Armed Forces' canteen personnel, to issue individual meals packed in appropriate aluminium containers were met with violent protests and the former system had to be resorted to.

The groups of detainees within the Nissan Huts and tents have since been transferred to the converted warehouses. Undoubtedly these premises offer a marked improvement as far as accommodation facilities are concerned. The conversion has provided for all basic needs and sanitation facilities including hot and cold water that can easily suffice the demand of those accommodated.

A new purposely build complex is to be opened within the coming weeks. These three new units undoubtedly demonstrate government's commitment to treat asylum seekers and irregular immigrants with dignity and respect within the context of the country's limited resources.

**(para 29)** The conditions of B Block have somewhat improved and measures have been taken to make them more comfortable including installations of additional heaters. It is envisaged that unless unforeseen circumstances arise, the Block will be given a major refurbishment in the near future.

**(para 30)** Since CPT's last visit, Lyster Barracks has been used as a close centre to accommodate over 500 immigrants as a result of the continuous influx of irregular immigrants. To accommodate such numbers a new tent compound consisting of 13 large heavy duty tents was set up. Unlike the tent area at Safi this area was furnished with all the necessary infrastructural works. This consisted of concrete platform as a base of these tents and the installation of electricity and heating power supply to all tents. The complex also includes a large dining hall as well as an ablution building with all necessary facilities including hot and cold water. Other improvements include a recreational area thus providing better opportunities of outdoor exercise.

**(para 31 & 32)** The comments made are not being contested, but circumstance left the authorities with little choice of action. Access time to outdoor exercise has been extended.

**(para 33)** The case of this Chinese national who was detained for so many days within the airport's transit room was an unfortunate episode. The individual had initially been flown to Tripoli but was subsequently returned by the Libyan authorities. By way of policy those persons who cannot be put on a flight within 24 hours are taken to Police Head Quarters. Subject to any security risk, those kept at the airport are also allowed to exercise themselves.

**(para 34)** The management of closed centres has been primarily focused on upgrading the basic accommodation facilities; moreover Government is committed to ensure that the processing of the asylum application is as short as possible. In this regard various improvements in facilities, information and special treatment to vulnerable persons and minors have been addressed with a fair degree of success. Government's decision to set up the Detention Services which will eventually replace the day to day role of the service personnel is another positive development. It is envisaged that in due course occupational issues will be addressed in conjunction with other government entities and NGOs.

**(para 35)** It is to be noted that extensive records of irregular immigrants and removal orders are held by the Immigration Police as the authority ultimately responsible for such matters. In principal there is no objection that a personal file of each individual including a copy of the detention order is kept on site. Given the number of persons currently housed in these centres, this policy will be initially addressed to new arrivals and gradually extending to all detainees.

**(para 36)** Although during the CPT visit the management of closed centres was delegated to the Army and Police, government was at the same time evaluating the recommendations of the Scicluna Report on the need of having one trained unit responsible for the day to day management of these centres. On this premise the first Commander of the Detention Service was appointed in August 2005. His responsibilities include:

- a) Day-to-day command and responsibility for all closed Detention Centres;
- b) Day-to-day security and administration of all closed detention centres, including welfare, medical and documentation responsibilities;
- c) Allocation and deployment of irregular immigrants to closed Detention Centres as circumstances require;
- d) Transfer of irregular immigrants from closed detention centres to open centres in liaison with the Manager Open on a case by case basis;



A call for personnel was issued in September and a second call will be issued in the coming weeks to gradually build the required capacity. However, the army and police personnel formerly assigned to these centres have initially been seconded with the Detention Services and are operating under the instructions of its new Head Detention Services

**(para 37)** The Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe on 4 May 2005 are being examined by the Immigration Authorities for necessary action. It is to be observed that lately most of these returns concerned Egyptian Nationals who were cooperative and eager to return, and thus inference to the term *forced return* may raise images of aggressive manhandling of these persons which is not the case.

**(para 38)** The right to appeal from a removal order is stated in the same removal order which is available in a language understood by the immigrant concerned and is even communicated verbally when necessary. Once the person informs any police officer, even verbally, that he wants to appeal, the removal order is suspended and access to a lawyer provided. This is a standard and on going procedures. It is not understood how any Police Officer could have stated his lack of knowledge in this regard and regrettably some misunderstanding must have taken place somewhere along the line.

**(para 41 to 43)** Issues regarding medical services have already been taken up in previous correspondence (ref. MHASD 52/92/2 dated 17/11/05) and repetition is not warranted. The CPT may rest assured that the Maltese authorities are fully conscious of the need to provide adequate medical/nursing facilities; indeed, as already stated above, at not insignificant cost, a service contract is being drawn up for the provision of medical care, meant to supplement that already provided by the Health authorities, by private medical practitioners. This short-term contract is expected to serve as a pilot project on which future decisions in this area can be based.

### **Final Comments**

The CPT has been informed by our letter dated 18 December 2006 that the Magisterial Inquiry on the incidents of 13 January 2005 has now been submitted to Government and an English version of this quite voluminous document is being finalised. It is to be emphasized this is an unofficial translation with restricted circulation, intended for the sole purposes of on going dialogue and cooperation with CPT and will be forwarded as soon as available. In cases where conflict arises between the English and Maltese version, the latter shall invariably prevail.

Moreover, the Maltese authorities are always ready to provide any additional information/clarifications deemed necessary by the CPT.



MINISTERU TAL-ĠUSTIZZJA U L-INTERN  
*Ministry for Justice and Home Affairs*

## **YOUR ENTITLEMENTS, RESPONSIBILITIES AND OBLIGATIONS WHILE IN DETENTION**

### **1. Introduction**

As an irregular immigrant to Malta you have certain entitlements, responsibilities and obligations while you are in detention. This booklet explains what your entitlements and responsibilities are and the procedures to be followed.

### **2. The Dublin Regulation**

You do not have the right to decide which country will investigate and consider your application for asylum. The European Union Member States, along with Norway and Iceland, are covered by the Dublin Regulation. The Regulation governs which EU country will be responsible for your asylum application. Only one of these countries can examine your application.

### **3. Which country will consider your application for asylum?**

Even if you have applied for asylum in Malta and wish to have your application considered here, it is not ascertained that this can be done. Another EU country covered by the Dublin Regulation may be responsible for considering your application. As a result you may have to go to that country.

### **4. The following are some circumstances under which another country may consider your application:**

- If you were granted a visa or a residence permit by another country covered by the Dublin Regulation;
- If you had already entered another EU member country prior to your entry into Malta;
- If you have already applied for asylum in another country covered by the Dublin Regulation;
- If members of your family have already received residence permits in another EU Member State.

**5. Fingerprints checked against the database**

If you are 14 or older, we will take your fingerprints. We will then send your fingerprints to be checked against the Eurodac database (that is, an electronic database containing all the fingerprints of irregular immigrants in the EU except Denmark, but including Norway and Iceland). That way we can find out if your fingerprints have been taken by another country linked to Eurodac.

**6. If another country is to consider your application for asylum**

If it turns out that another EU Member State is responsible for considering your application, the Principal Immigration Officer generally makes a decision to send you there. If you do not cooperate in leaving Malta, the Principal Immigration Officer has the right to take coercive measures.

**7. Appealing against the decision**

If you do not accept that another country should consider your application for asylum, you are entitled to appeal against the Principal Immigration Officer's decision. Keep in mind that the country in which your application is to be considered - not your grounds for asylum - will be reviewed during the appeal process. You must leave Malta during the appeal process.

**8. The following countries are covered by the Dublin Regulation**

The EU Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. A special agreement also extends the Dublin Regulation to Norway and Iceland.

**9. The following countries are linked to Eurodac**

All the EU Member States, with the exception of Denmark, are linked to the Eurodac electronic database. A special agreement extends Eurodac to Norway and Iceland as well.

**10. Procedure for applying for Refugee Status**

An irregular immigrant who comes to Malta to seek asylum must – subject to the terms of paragraph 3 – apply to the Commissioner for Refugees to consider his application. He must ask the person in charge of the closed accommodation Centre where he is staying for the necessary Registration Form in the form of the Preliminary Questionnaire. This must be filled in as accurately as possible. Maltese Law lays down that asylum seekers must apply for refugee recognition **within two months of the applicant's arrival in Malta**. Unless the request for refugee recognition is made within that time, it may **NOT** be considered valid.

## YOUR ENTITLEMENT

### 11. Application for Asylum

As an irregular immigrant to Malta you are entitled to apply for recognition of refugee status. While your application is being processed you will be placed in detention for a period up to 18 months, this period could be extended if your application has been rejected by a final decision and you deliberately refuse to co-operate with the immigration authorities for your repatriation although this could be less if your case is determined earlier. If your application for asylum has not been decided within that time you will be given access to the labour market after 12 months from the date of your application. You will also have the right to obtain a document from the Refugee Commissioner certifying that your case is still being examined by the Refugee Commissioner/Refugee Appeals Board. You are entitled to consult the United Nations High Commissioner for Refugees (UNHCR), who has a representative in Malta. You are entitled to legal assistance during all the stages of the application for asylum in Malta. Please note that free legal aid will only be provided at the Appeal Stage (see paragraph 26). You are entitled to remain in Malta until a final decision about your application has been made, unless your application is considered to be manifestly unfounded by the Refugee Commissioner.

### 12. Immigration Appeals Board

Any person detained under the Immigration Act may apply to the Immigration Appeals Board for his release if he feels that his detention is no longer reasonable.

### 13. Closed Accommodation

You are entitled to adequate accommodation and living conditions. Living accommodation will not exceed the laid down occupation level except under exceptional circumstances.

### 14. Physical Exercise

You are entitled to regular physical exercise and open air recreation subject to the exigencies of security.

### 15. Admission/Discharge

You are entitled to a safe and well-managed admission and discharge process at the closed accommodation centre, which will treat you with respect and regard for your immediate well-being and will record essential information about you.

**16. Case Progress**

You are entitled to seek information from the appropriate manager of the closed accommodation centre regarding the outcome of your case, who will refer it to the Refugee Commissioner or Refugee Appeals Board for a reply. Where appropriate, information may also be sought from the Principal Immigration Officer or the Immigration Appeals Board.

**17. Catering**

You are entitled to varied and nutritious food, taking account, in-so-far as local food availability allows, of religious, cultural and medical needs, while also complying with relevant food, health and safety legislation.

**18. Clothing**

You are entitled to retain a sufficient stock of personal clothing and footwear and to wear this providing it is suitable, clean, tidy and does not carry logos or markings which could cause offence to others.

**19. Correspondence and Communications**

You are entitled to maintain reasonable contact, through telephone and/or by written correspondence, with family, friends or others without hindrance, other than that necessary on grounds of security and safety.

**20. Complaints**

If you have a complaint to make, you are entitled to have it heard in a timely, thorough and fair manner by the appropriate manager in your closed accommodation centre or by the Commander Detention Service.

**21. Access to Newspapers and Television**

You are entitled to be provided with local newspapers (subject to availability) and access to television.

**22. Female Detainees**

As a female detainee, you are entitled to be provided with a safe and secure environment which meets the needs of women.

**23. Unaccompanied Minors**

As an unaccompanied minor, you are entitled, after all the necessary checks have been carried out to verify your age, to be issued with a Care Order by the relevant authorities and that you are provided with suitable accommodation and placed in the care of a guardian.

**24. Hygiene**

You are entitled to living conditions that are hygienic and are provided with basic toiletry requirements. You are entitled to regular bath or shower facilities.

**25. Health Care**

You are entitled to the same range of medical services as the Maltese citizens receive from the Public Health Service. You are entitled to have access to qualified medical and nursing personnel. You are entitled to expect that matters relating to your health care will be treated in confidence and in a sensitive manner.

**26. Access to Legal Services**

You are entitled to legal representation and also to have access to such representation. You must, however, specify what kind of legal assistance you seek (private or legal aid lawyer or non-governmental organisation lawyer). You cannot ask for one type of legal aid and then seek to alter your request later. Free legal aid will only be provided at the Appeal stage of your application for refugee protection upon request if you decide to appeal against the Refugee Commissioner's decision. If you first ask for legal aid and then refuse it, explicably or implicitly the final determination of your case will proceed just the same.

**27. Access to Non Governmental Organisations**

You are entitled to meet voluntary, non-governmental organisations working in the field of irregular immigration and to any assistance which they may be able to offer.

## **YOUR RESPONSIBILITIES AND OBLIGATIONS**

### **28. Truthful and Complete Information**

You have the obligation to assist the Commissioner for Refugees and the Board of Appeal in making a correct determination of your status by providing truthful and complete information.

### **29. Change of Address**

You are responsible for ensuring that the authorities are aware at all times of your address or any change of address once you have moved out of your closed accommodation centre. If you do not send your change of address as required, the determination of status proceedings in your case could cease or proceed without your involveness. You are to ensure that you formally acknowledge any notification of judgement, summons, or other communication.

### **30. Presentation of your case**

You are responsible for ensuring you present your case to the Commissioner for Refugees or – should that be the case - the Board of Appeal as fully as possible, and that you support it with available testimonies and/or documents. You are obliged to give adequate and truthful explanations for all the reasons submitted in your application. Refusal on your part, without valid reason, to furnish any information requested by the Commissioner for Refugees or to fully cooperate with the authorities may lead to the suspension, termination or determination of the asylum and appeals procedures regarding your application and, where applicable, to that of any dependent member of your family.

### **31. Discipline and Behaviour**

You are obliged at all times to behave in a well-mannered, cooperative, orderly and disciplined manner.

### **32. Personal Hygiene, Cleanliness and Care of Closed Accommodation Centre**

You are obliged at all times to have proper regard for personal hygiene in your own interests and that of others. You are to ensure that you keep your accommodation clean and tidy and in a proper condition and to avoid committing any damage to it. You are obliged to contribute your part in the up-keep, tidiness and cleanliness of the closed accommodation centre.

**33. Medical Self-Care**

You are obliged to follow the advice and take any treatment recommended to you by the medical staff who assist you if you are unwell, and to ensure that you do not indulge in any self-harm or do anything that may require unnecessary medical attention.

**34. Security and Safety**

You are obliged to abide by the security arrangements of the closed accommodation centre. You are obliged to ensure that you do not behave in any way which might endanger the health, security or personal safety of others.



## GENERAL PROCEDURES

### 35. Cash and property

You will be entitled to retain all your personal property, other than cash, for your own use at the detention centre. Property is recorded on arrival and you will have the opportunity to check those records and to sign them to this effect. The Commander Detention Service will retain items of high value against an official receipt. However, you are advised that if you decide to keep items of high value in your possession you will do so at your own risk. You will not be permitted to retain possession of items which are considered to be a threat to security, or harmful to others, or any items which are prohibited for reasons of safety or security by the appropriate manager of the closed accommodation centre.

### 36. Security

Security at your closed accommodation centre will be maintained by the Detention Service. These security arrangements will entail no more restriction than is required for your safe custody and of those held in the closed accommodation centre. Measures will be in place to ensure that you and other irregular immigrants are accounted for and properly supervised in a well-ordered community.

### 37. Security while Under Escort

Arrangements for irregular immigrants under escort (e.g. while being escorted to a medical clinic or while in hospital) will be based on the need for your safety and security and may entail hand-cuffing while in transit.

### 38. Search Procedures

Search procedures will take place to detect and deter threats to the security of the closed accommodation centre. All searches will be carried out in as consistent and sensitive a manner as possible, taking into account gender, religious and cultural beliefs, age and other relevant factors. Strip searching will only be conducted by members of the same sex and out of sight of other irregular immigrants. Only female staff will search other females.

### 39. Temporary Confinement

Temporary confinement of violent or undisciplined irregular immigrants in accommodation specifically identified for this purpose may be resorted to by the Commander Detention Service after consultation with the Commander AFM or the Commissioner of Police as to the appropriate place of confinement. This will achieve the correct balance between the requirements to maintain order and discipline, while having due regard to the individual and, in particular the need to prevent self-harm.



# **Ministry for Justice and Home Affairs**

## **MALTA**

**- Final Report**

## Final Report

Following its ad hoc visit to Malta between 15-21 June 2005, the CPT presented a formal report [CPT (2005) 78] of 30 November 2005 to the Maltese Government indicating a number of recommendations and comments resulting from the observations made by its delegation during its visit focusing on the situation of illegal immigrants detained within close centres.

The Maltese Government responded to this report on 9 March 2006, noting with satisfaction CPT's acknowledgement of the ongoing dialogue, cooperation and openness between the two parties. In its report, Malta confirmed its commitment towards its international obligation and to address CPT's recommendation in the light of available resources.

In its preliminary remarks the CPT recognized that the Maltese resources were over stretched in dealing with this influx of irregular immigrants. It also reports on "*the crucial importance of a concentrated effort by the international community and particularly the European Union, to give Malta the help it needs to tackle the problem it faces today [sic.2005].*"

Although financial resources are an important element in providing adequate standards of accommodation, the impact of annual influxes on such a small and densely populated country cannot be addressed through financial instruments alone. It is for this reason that Malta has long been advocating in the European and International fora for assistance through burden sharing and resettlement schemes. Unfortunately recent incidents occurring outside Malta's search and rescue zone have shown how quickly the press, international organisations, and countries are quick to come out and criticise the legitimate stance taken by Malta. Besides the fact that such criticism was based on factual inaccuracies and on incidents in which Malta had no legal obligation, these same sources are completely silent when it comes to offering practical solutions.

The previous Maltese responses of 17 November 2005 and 9 March 2006 to the CPT report indicate a number of initiatives that were already being addressed. This included the bringing into force of the Minimum Standards Directive by Legal Notice 383/2005. These regulations meant that besides government's obligation to maintain basic standards of reception it was also bound to give asylum seekers access to the labour market if the examination of an asylum application was not finalized within one year. In practice this means that asylum seekers are now being released within 12 months if their application has not been determined within this time frame. Indeed to avoid undue detention to genuine asylum seekers the Office of the Refugee Commissioner has carried out several recruitment exercises to build up its capacity. Other improvements were registered in the provision of legal aid during the appeals stage to those not granted refugee status.

Moreover national legislation dealing with Care Order, guarantees protection for of all unaccompanied minors. Together with various players the management of closed centres ensures that minors and other vulnerable groups are assessed as speedily as possible to ensure their early release within a few weeks of arrival.

A further development was the setting up of a new management structure, known as the Detention Services which would gradually take over the running of the Closed Centres and replace the present service personnel.

Other initiatives which have occurred since the CPT visit:

It is to be noted that in its latest report, the CPT has been most critical on the medical service being rendered within the Closed Centres. Notwithstanding the overstretched public health service, Government was providing regular visits by two medical office three times a week. Such visits would cater for some 120 patients, requiring on site attention, whilst more serious cases would be referred to medical centres. Whilst this was a step in the right direction, Government did not stop there. Following a number of attempts to bring in private medical providers, with effect from 23 April 2007 the medical services provided at Safi and Lyster have been outsourced at a cost of circa euro 84,000 per annum. The service provides for 2 doctors and 2 nurses to cover Safi and Lyster Compounds five days a week. This new arrangement has made it possible for up to 400 patients to be examined every week in these two Centres alone. Clinics at each of the compounds within Safi and Lyster Detention centres have been refurbished and equipped with basic medical equipment including otoscopes, stethoscopes, haemoglucotest machines and sphygmomanometers. A major improvement by all accounts. In addition to this the service provided under the National Health Scheme at Ta' Kandja and Hal Far centres has been retained. Thus we are please to report that the level of medical service in the detention has been increased exponentially.

In March 2006 a new reception centre known as Block C was opened at a cost of some euro 326,000. The new compound was designed to accommodate 224 immigrants in three separate divisions. Action was taken towards the end of 2006 to relocate all irregular immigrants held at Police GHQ to Hal Far Closed Centre as the latter provided better accommodation facilities. During the past 3 years since the CPT's visit ongoing maintenance has been carried out as a result of the overcrowding and unruly behaviour by refractory and aggressive irregular immigrants. The latest refurbishment work to be completed was on Block B which has been completely refurbished with new toilets and showers, aluminium fixtures, tiling and plastering and new beddings at a cost of circa euro 61,000. The centre is accommodating 200 immigrants arriving this summer. Other refurbishing works totalling circa euro 626,000 are being carried out at Hal - Far and at Ta' Kandia through EU funds.

Another issue on which CPT report has been critical is the quality of food and dietary customs of the various nationalities. Whilst one appreciates that it is practically impossible to provide individually tailored meals to hundreds if not thousands of persons three times a day every effort has been made to improve this service. Indeed the supply of meals is now being supplemented through the provision of a service contract issued to a private caterer. Menus are planned in advance and differ from day to day. The management of the centres holds periodic consultation meetings between the caterer and representative of various nationals of immigrants to formulate menu options of their choice within the limit of local produce available on the market throughout the year. Specific meals are prepared for specific dietary conditions as well as particular periods of the year associated with religious observances.

An important milestone in our effort to increase public awareness and having an informed press was the invitation to the media for an organised visit to the Closed Centres at Safi and Hal Far on 23rd March 2006. The media was also introduced to the new purpose-built accommodation centre (C Block) which had been built at Safi to replace the former Nissan Huts and tents. Through presentations by senior officials the government's policy of detention and future plans for dealing with immigration were explained. The occasion served to address any misconception that Government had something to hide. This is obviously not the case as a number of NGOs are given access to such centres and are free to report any irregularities. Government however still maintains its policy not to allow uncontrolled access to media within Closed Centres in the interest of those people seeking international protection. A policy which is applied by most democratic countries of the world.

The capacity building process of the Detention Service has continued over these years. To date some 100 persons have been engaged by the Detention Service as Casual Detention Officers. Such recruits are given an intensive two week induction course before being deployed for duty. Officials attend to training offered by international organisations, NGOs and institutions. Subjects covered welfare needs of these persons, medical aspects, laws and conventions governing rights and obligation in the field of immigration and asylum as well as aspects of human trafficking. To reinforce the standards of the Casual Detention Officers the *Detention Centre Rules and Standing Instructions* has been drawn up and now forms part of the induction training given. This provides guidelines on the regulation and management of detention centres. Action is currently being taken to reinforce the Detention Services with a core management structure as part of its evolution to replace service personnel.

The Ministry has finalised another equally important document entitled - *Your Entitlements, Responsibilities and Obligation while in detention*. This is printed in three languages, - English, French and Arabic. This publication is given to all those held in the centre to facilitate communication on the standard of behaviour that is expected as well as the obligation that the authorities have towards them. It also explains why they are being detained and what the process of applying for asylum entails. Such written documentation is supplemented by the role of Government's welfare officers working in these centres as well as the role of NGOs. In this regard plans are at hand for the appropriate government agencies together with interested NGOs and international organisations to draw up a framework for the provision of activities within the Closed Centres aimed at providing occupational activities such as craft classes and organised sports activities, awareness of Maltese culture, basic personal skills and educational programmes. Such measures are aimed to ease the boredom within these centres and to facilitate life for these persons once released in to Maltese society or possibly finding resettlement in another country offering such opportunities.

As can be seen Government has spared no effort to abide to its international obligations and to treat the matter not only as far as its legal obligations are concerned but also in as a humane way as possible to the extent that its resources allow. Once more Government reiterates that the number of irregular immigrants arriving in Malta is unsustainable and that the European Union, which is the real pull factor to those fleeing Africa, needs to provide durable solutions. To date the most tangible demonstration of assistance has been in the provision of EU funding instruments. Whilst noting that there has been particular understanding on the part of the Commission to provide funds aimed at the specific situation of the southern borders the solidarity of MS has not been so forthcoming. Resettlement initiatives have only come from a limited number of countries, namely the Netherlands, Germany, Ireland, Lithuania and USA. More is needed and it is indeed a pleasure to note that the USA has offered to take up another 200 persons enjoying some form of protection status. Malta's request for assistance is not to be construed as an abdication of its international obligations but as a genuine need for assistance as a short term measure. Such assistance is not seen as a solution in itself, as this is only to be found in a long term approach addressing the cause factors within Africa. Various declarations have now been agreed to such as the EU's *Global Approach to Migration* (2005), the *Rabat Conference* (July 2006) the *UN High Level Dialogue on International Migration and Development – New York* (Sept 2006) and the *Tripoli Conference* (Nov 2006). It is now time to translate these declarations into practice. Indeed this migration northwards is not only affecting European countries but is equally damaging on African countries which are facing a drain of their human resource; the only resource that together with international assistance can bring them out of their economic and political doldrums.