
ANNEX TO THE PRESS RELEASE ON THE VISIT OF THE UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION TO MALTA

The following provides additional details to the Working Group's press release of 23 January. As it only constitutes initial findings of the Working Group on its visit it should not be considered as exhaustive. The Working Group reserves the right to withdraw or add elements to its final report which may not be covered here.

The Working Group positively notes the well-established institutional and legal safeguards against arbitrary detention prevailing in Malta. It also welcomes the readiness of the Government of Malta to continuously develop its laws and institutions wherever it is deemed necessary. The Group highlights two examples: Following a change of criminal law, time spent by the accused in pre-trial detention is automatically deducted from the prison term. The current reform of the Mental Health Act, aiming at bringing Maltese law further in line with recommendations of the Council of Europe, envisages the strengthening of patients' rights who are compulsorily admitted to a psychiatric institution.

The Working Group noted the concentration of powers of the Minister of Justice and Home Affairs, under whose portfolio, amongst others, the Malta Police Force, the Correctional Services, the Detention Service, and the Commissioner for Refugees falls. Such accumulation of powers may lead to a perception of lack of transparency of and control within the system of administration of justice. The Minister further receives reports of the various monitoring and investigative bodies such as the Commission on the Administration of Justice, the Permanent Commission against Corruption, the Board of Visitors of the Prisons or the Board of Visitors for Detained Persons. These reports remain confidential unless and until the Minister of Justice and Home Affairs decides to publish them.

As regards the criminal justice system, the Working Group is concerned that persons arrested on suspicion of having committed a criminal offence do not enjoy the right to access to lawyers for up to 48 hours while they are in Police custody, during the crucial initial stage of the criminal investigation. The presence of a Magistrate, when evidence is being obtained by the Police, the requirement of a search warrant and of the Magistrate's authorisation every six hours to maintain custody of the suspect, cannot be considered as an equivalent substitute for a defence lawyer acting solely in the interest of the suspect. Given the size of the country the maximum period of 48 hours before the arrested suspect has to be brought before a Magistrate might in itself be deemed unnecessarily long.

On a positive note, criminal procedure law stipulates that a suspect must be charged or released no later than 48 hours after an arrest has been carried out, although the Working Group has noted during its visit that this period is at times exceeded. A Magistrate is obliged to decide about detention on remand

within 24 hours failing which the Magistrate would be criminally liable. *Habeas corpus* is available at any time to the accused to challenge the legality of detention, providing for a strong safeguard against arbitrary detention.

The Working Group would criticise the inexistence of early release on parole. Criminal convicts in Malta receive a short and a long court sentence, whereby the long sentence reflects the maximum prison term to be served and the short sentence fixes the earliest possible release date. Whenever a Disciplinary Board deems the conduct of a prisoner to be in violation of prison rules a certain period of time is added to the short sentence. Such decisions can only be challenged before a body outside the judicial system and the Working Group found during its visit of Corradino Correctional Facility that inmates were largely unaware of the procedure. Furthermore, although prisoners enjoy the right to be assisted by a lawyer, this right is in practice not always implemented and convicts have to rely on the assistance of an official of the Correctional Services pursuing their interests.

As regards minors in conflict with the law, the Working Group notes the extremely low age of criminal liability of juveniles, which is set at the age of nine years. Although mischievous discretion must have been established between the age bracket of 9 and 14, and despite the fact that, in practice, minors are rarely taken into detention or sentenced to prison terms, the Working Group invites the Government of Malta to reconsider the applicable laws.

The Working Group also invites the Government of Malta to strengthen the status, powers and functions of the Board of Visitors of the Prisons and the Board of Visitors for Detained Persons, which do not enjoy executive powers and are not entitled to make their reports public. This would provide for more effective monitoring bodies for all places of detention, also in view of the letter and spirit of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Malta is a State party, under which these Boards function as National Preventive Mechanisms.

Turning to detention outside the criminal law context, of grave concern to the Working Group is the administrative detention regime applied to immigrants in an irregular situation. The Group acknowledges the fact that Malta has had, in recent years, to cope with a significant increase of influx of immigrants and asylum seekers mainly from African countries, who arrive by boat risking their lives and are often trafficked. It is also recognised that Malta is a small and highly populated country with limited financial and human resources at its disposal. This, however, does not detract from the international human rights obligations the Republic of Malta has undertaken.

The Working Group expressly notes the progress the Government of Malta has made in an attempt to bring the immigration detention regime into conformity with international human rights standards, for example by decriminalising illegal entry into the country and by reducing the time required for the processing of asylum applications.

However, regarding the legal basis for detention the Working Group is concerned that detention is automatic and mandatory for all foreigners, including asylum seekers, caught on Maltese territory without the right of entry, transit or residence until removal is carried out. Their maximum length of detention is not defined by law and its duration does not appear to be related to the individual case at hand. It is only Government practice that sets a maximum period of one year of detention for asylum seekers whose application is still pending. Rejected asylum seekers and all immigrants in an irregular situation are generally released only after 18 months of detention if the return to their home countries or to third countries has not been carried out. Again, this maximum period is not stipulated by law and the Working Group has been informed that it is at times exceeded in contravention of official Government policy.

Despite the laudable efforts of the Commissioner for Refugees, with whom the Working Group met, to accelerate the processing of asylum applications the procedure still takes too long. The Working Group interviewed asylum seekers who, after half a year, were still waiting for an interview on their application, let alone a decision.

Decisions regarding asylum applications and detention can only be challenged, and only since 1 February 2005, before an Immigration Appeals Board, which does not form part of the judiciary. It may only control the “reasonableness” of the duration of detention, not the legality of detention as such, and is prevented by the terms of the Immigration Act from granting release in a number of enumerated cases, for example, where the applicant has destroyed his travel or identification document. In addition to its limited powers, this body is not deemed to be very effective according to credible information the Working Group has received. The Board only meets once a week for half a day and has to take all immigration related decisions, not just those concerning detention.

The Working Group has been informed that it is legally possible to challenge the lawfulness of detention before courts of law in Malta, including the civil courts in their constitutional jurisdiction and ultimately before the Constitutional Court. At any rate, in practice, such procedures do not provide for an effective remedy. The Working Group is not aware of a single case in which such a challenge was successful.

The Working Group considers that the detention regime immigrants in an irregular situation are subjected to, falls far short of international human rights law, which requires that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” (Article 9, paragraph 4, of the International Covenant on Civil and Political Rights, to which Malta is a State party).

The Working Group found the conditions of detention at Safi and Lyster Barracks, where the majority of immigrants in an irregular situation and asylum seekers are being detained, to be appalling to the extent that the health, including the mental health, of the detainees is affected. This situation, in turn, affects their ability to properly understand their rights and to follow the legal proceedings related to them.

The sub-standard closed centres of Safi and Lyster Barracks are overcrowded. At Lyster Barracks, families are not separated from men, women, including pregnant and nursing mothers, and children, including unaccompanied minors. Although the Government applies a fast track procedure for the release of vulnerable groups in administrative detention, the procedures may take several months and be in vain for those who are considered a health risk. Many dwell in tents and the Working Group notes with serious concern that 59 inmates do not even find a place to sleep in these tents at present.

These conditions are in stark contrast to the cells at Corradino Correctional Facility, at the Police Headquarters at Floriana, or to the recently refurbished cells at Valletta police station.

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