

**Follow-up 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 13 to 18 May 2001

The Maltese Government has requested the publication of this follow-up response. The CPT's report and the interim response of the Maltese Government have already been published; they are set out respectively in documents CPT/Inf (2002) 16 and CPT/Inf (2002) 17.

Strasbourg, 17 July 2003

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PREFACE

Following its third visit to Malta in May, 2001, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) presented to the Maltese Government its report (CPT (2001) 57) on the local situation that included a number of recommendations, comments and requests for information.

Even though the interim reply that was sent to the CPT by way of response in June, 2002, and published the following August, addressed practically all these issues, the Maltese Government still committed itself to submit a more extensive follow-up report to the CPT.

This follow-up report does not only provide an update of all related developments in the areas under scrutiny, namely police establishments, correctional facilities and other places of detention, but also addresses the recent CPT's comments/feedback to Malta's interim report. In this regard, the Maltese authorities are fully aware that only through strict adherence to the standards highlighted by the CPT in its most recent General Reports in respect of police custody and imprisonment can *'its laudable policy'* be actively implemented. Issues such as the questioning of criminal suspects, the conditions of detention in police cells and the inspection of police establishments by an independent authority will continue to be given all the importance they deserve. In this regard every effort will be undertaken to try to strike a fine balance between the two apparently conflicting values of transparency and security. *'The prevention of cases of ill-treatment as well as the provision of safe and humane places of detention, with all due respect to the human rights and dignity of all detainees irrespective of nationality, colour, race or creed'* can only be attained through a constant and unconditional upholding of these standards.

PART A
POLICE ESTABLISHMENTS

1. POLICE ESTABLISHMENTS

a. Ill-treatment

CPT's recommendation has been implemented and the two cells at the Sliema Police Station have been equipped with an alarm bell linked to the telephone orderly (para. 14). This despite the fact that plans are being drawn up for the extensive reconstruction of a number of stations, including the one at Sliema. It is planned that, as far as possible, this will ensure that these Stations' cells are provided with a bed, toilet facilities and fresh air. Moreover, the Paola, Fgura, Zabbar, Xghajra, Safi, Zurrieq, San Gwann, Birkirkara, Mdina, and Mtarfa Police Stations have already been refurbished (para. 18).

b. Conditions of Detention

(i) Hal Far Illegal Immigrants Reception Centre –

As already stated in our interim reply, the Hal Far Reception Centre (para. 20) is now fully-functional. In view of the unusual and exceptional situation encountered during this year (1,608 illegal immigrants landed in Malta from 1st January to 16th December 2002) the Maltese Government is considering expanding the new Hal Far Immigration Reception Centre (that is obviously presently full-up) by taking over an area close to the existing building.

(ii) Ta' Kandja Detention Centre -

In view of the emergency situation referred to above, there was no alternative but to utilise, albeit on a temporarily basis, the Ta' Kandja Detention Centre (para. 20). This would be closed down as soon as possible. This notwithstanding various works, including the re-installation of electricity, drainage and other plumbing works, that were aimed at improving the living conditions at these premises, were recently carried out. This enabled the provision of additional showers and washing facilities. Structural alterations as well as the installation of new doors further ameliorated the general environment ensuring that the premises are better lit through the utilisation of natural light. Regarding the utilisation of leisure time of detainees, new television sets have been purchased whilst action has been taken to ensure that indoor games are also made available to persons in custody at this complex. It should be however emphasised that this Centre is only being utilised in view of the present emergency situation.

Reference is also made to the Ombudsman report on illegal immigrants in Malta presented to Parliament in May 2002. The Ombudsman published this report after having inspected all reception/detention centres and interviewed NGO representatives, officials and detainees. It was described by the media as 'a largely favourable report', commenting positively on various related issues such as the food and attire given to detainees as well as on the cleanliness and personal hygiene facilities. Regarding the Ta' Kandja detention centre it stated that this did not meet established international standards for the detention of illegal immigrants and only an emergency, such as the one created by this year's dramatic rise of illegal immigrants in Malta, could justify its continued use.

Obviously such marked increase of illegal landings necessitated a more co-ordinated approach to the issue of detaining illegal immigrants and providing them with temporary accommodation and basic requirements. For this end, in August 2002, the Ministry for Home Affairs and Environment took up the initiative to set up two Monitoring Committees to co-ordinate efforts by the various Government departments, agencies (such as Police, Civil Protection, Armed Forces, Social Policy, Finance, Health, Education and the Prison Visitors Board) and non governmental organisations (namely the Emigrants Commission, the Malta Red Cross Society, the Jesuit Refugee Service and the Foundation for Educational Services) that are all somehow involved in this particular area. The first committee is chaired by the Minister for Home Affairs and Environment whilst the other one, referred to as the Illegal Immigrants Steering Committee, is chaired by the Permanent Secretary within the same Ministry.

One of the main issues discussed during the meetings of the latter committee refers to living conditions (including sanitary provisions) at the different detention centres. Since it has been observed that such conditions differ considerably from one centre to another, the committee is considering the establishment of minimum standards for all detention centres. The appointment of a suitable Public Officer to take charge of the co-ordination of the distribution of supplies to all detention centres in order to ensure the most even distribution possible is likewise under consideration.

c. Safeguards against the ill-treatment of detained persons

The amendments to the Criminal Code, Act No. III of 2002, enacted in April 2002, make reference to the 'Rights of Persons Detained' (Sub-title IX that is being reproduced as the Appendix). This section makes provision for the right of detainees:

- 1) 'to inform a relative or friend of the fact of his arrest and of his whereabouts' (355AS (1));
- 2) 'to consult a medical adviser of his choice' (355AS (5));and,
- 3) 'to consult privately with a lawyer or legal procurator, in person or by telephone, for a period not exceeding one hour' (355AT (1)).

Moreover, reference is also made to the Malta Police Ordinance (Amendment) Act, 2002, copy of which has already been referred to the CPT, that includes a 'Code of Practice for Interrogation of Arrested Persons' (Article 66 and Schedule 4 thereof). It is explicitly stated in the Act itself that 'this Code of Practice is to be accessible for consultation in all Police Stations, and in all places where interviews are normally carried out so that all members of the Police Force, arrested persons, or members of the public may read it'. It is envisaged that Article this will be brought into effect as from 1 January 2003.

The CPT's suggestion to appoint Police Board members for periods of longer than one year at a time (para 33) has been accepted as can be seen in the new Police Act (Article 48 (2)) that has already been forwarded to the CPT.

PART B
CORRADINO CORRECTIONAL FACILITIES

2. CORRADINO CORRECTIONAL FACILITIES

a. Material Conditions of Detention

The new administration and remand block (para 42) has now reached its final stage of completion. It is expected that all structural works, both internal and external, be completed by the end of this year. The 144 cells comprising this new block will be divided into three sections: Low Risk, Medium Risk and High Risk. These structural changes will result in the segregation of sentenced prisoners from those awaiting trial.

With reference to the CPT's recommendation to improve access to natural light in the cells at the women's section (para 44), works are in hand for the removal of the iron grids fixed on the outside of the female section.

Although vocational training programmes are offered at the prisons, prisoners who completed them had slim prospects for finding employment in those fields upon their release, due to requirements to have a clean police record in order to obtain certain professional licences (para 50). In this regard, the Ministry for Home Affairs and the Environment have taken up the matter with the Education authorities, who are responsible for the issue of electrician's licence in Malta. The requirement of having a clean conduct certificate to sit for such examination has now been removed thus making it easier for inmates to find adequate employment upon release. Where similar action is required in the case of professional licences in other areas, Government is ready to proceed on the same lines.

b. Medical Services

In its report, the CPT underlined the importance of proper psychiatric/psychological care (para 53). In this regard, it should be stated that the contract with APPOGG, a government service provider agency, is now on stream. A Clinical and a Counselling Psychologist utilise both the individual and group therapeutic modalities to provide the service, consisting of 10 hours of psychological work per week. According to the feedback received so far, following the introduction of this service in January 2002, most of the inmates who have been referred to APPOGG appear to be very satisfied with the psychological service that is being provided at the Corradino Correctional Facilities. It is envisaged that the bi-monthly reports relating to these visits will be regularly discussed within the Rehabilitation Committee.

As recommended by the CPT (para 56), the prison authorities have translated the health and drug awareness information booklet in the Arabic language.

c. Other issues related to the CPT's Mandate

The Department of Correctional Services is in the process of recruiting additional Correctional Officers in order to run the new administration and remand block. The recruitment procedure is still in its initial stages, however, it is expected that the new officers would be recruited in early 2003. In view of the above, a training programme for these new recruits is being drawn up. As regards the present staff, fire fighting and contingency training programmes have been organised for all correctional officers during the last months.

The Maltese authorities have noted the CPT's disappointment at the *'continuing reluctance of the Maltese authorities to consolidate a single team of custodial staff at the Corradino Correctional Facilities'* (para 63). This Ministry would like to emphasise Malta's unique characteristic in that, in view of its size, there is only one prison on the Island. This does not afford a flexible system of rotating prison staff, as adopted in other countries. Moreover, as already stated in the interim report *'all police officers 'seconded' as prison officers, thereby widening the cadre of personnel who can perform guard duties, are, during this period, under the sole and direct supervision of the Director Correctional Facilities and not the Commissioner of Police'*.

Amendments to the 1995 Prison Regulations concerning disciplinary proceedings against prison inmates (para 66) are being prepared within the context of disciplinary proceedings on the lines recommended by the CPT. Thus, Regulation 76 (1) will be amended so that prisoners will be informed in writing of the charges against them whilst the provision of sufficient time to prepare their defence is already covered by Regulation 76 (2). Normally an inmate's case is not heard before one week from notice of charge has elapsed. Moreover, Regulation 78 will be amended so that when an appeal is lodged, the Appeals Tribunal may examine any witnesses as requested by the inmate. The inclusion of the Ombudsman in the list of authorities who can be petitioned under confidential cover, under Regulation 18 (3) will give prisoners a wider possibility to appeal to a higher authority against any sanctions imposed.

Regarding the right to assistance to the initial disciplinary hearing (para 68) it should be stated that a member of the Prison Board of Visitors, an independent entity, is available to assist prisoners during the initial disciplinary hearing. In view of such assistance, at the present moment in time, it is not considered expedient to allow prisoners to request a legal representative of their choice to assist them during disciplinary hearings.

Regarding the issue of 'home leave' (para 76), preparations are already in hand to designate part of the Corradino Correctional Facility for private family visits. It is envisaged that the Directives will be amended to cater for this new form of visit popularly known as 'home visits' amongst the inmates. The authorities are targeting the Christmas period as the start date.

d. Substance Abuse treatment Unit (Satu), Mtaħleb

At present, prison inmates that are serving a prison sentence and are within the last two years of imprisonment are eligible to apply to undergo a drug rehabilitation programme (para 85) at one of the rehab centres in Malta, namely the Substance Abuse Therapy Unit (SATU), Sedqa (Agency against Drug and Alcohol Abuse) and Caritas. It is also the intention of the Prison authorities that once the classification of prisoners system is introduced they will study the possibility of setting up an internal drug rehabilitation programme would be established for those inmates who are not eligible to follow a treatment programme outside the facility.

With reference to the comparative study, also referred to at para 85, an evaluation of the drug rehabilitation services in Malta was commissioned by the Ministry for Social Policy. The relative report, which has not yet been published, is being discussed internally between the Ministry for Social Policy and the service providers that took part in the evaluation.

PART C

FORENSIC WARDS AT

MOUNT CARMEL HOSPITAL

3. FORENSIC WARDS AT MOUNT CARMEL HOSPITAL

General Situation:

Officials from the Health Division and from the Ministry for Home Affairs and the Environment have held several meetings to discuss the construction of the new Forensic Ward.

As a result of these meetings, the Tender Specifications have been drawn up and subsequently the tender documents were referred to the Contracts Department for publication. Thus, it is expected that a call for tenders be issued soon and, following adjudication and selection, the tender be awarded to the successful bidder by the beginning of next year.

The construction of the new Forensic Ward is estimated at Lm180,000 (430,000 Euros) and funding sources within the Health Division have already been identified.

Regarding legislative developments, the draft of a Mental Health Act has been finalised by the National Commission for Mental Health.

APPENDIX

Rights of Persons Detained

Sub-title IX

RIGHTS OF PERSONS DETAINED

*Right to inform
friends and to
medical assistance.*

355AS. (1) It shall be the duty of the Police to inform without undue delay the person arrested or detained of his right to request that a relative or friend be informed of the fact of his arrest and of his whereabouts unless such relative or friend is reasonably suspected of being involved in the offence being investigated. If the person arrested avails himself of such right the relative or friend shall without undue delay be informed accordingly and a record as provided in sub-articles (2) and (3) shall be kept of the way the Police discharged their duty under this sub-article.

(2) In all cases the following information shall be entered in the detention record of the person detained:

- (a) the day and time in which the detained person was informed of his right under this article;
- (b) whether the detained person chose to avail himself of that right or not;
- (c) if the detained person chose to avail himself of that right, the details of the relative or friend informed of the detained person's arrest and whereabouts together with the day and time in which the information was given; if such relative or friend was not so informed the reasons for this.

(3) The arrested or detained person shall be requested to sign the record referred to in sub-article (2) and should he refuse to do so an entry shall be entered in the record to this effect.

(4) Notwithstanding the provisions of sub-article (1) above, the investigating officer may by application to a Magistrate request that he be authorised to delay informing a relative or friend of the detained person if there are reasonable grounds for suspecting that the giving of such information may be prejudicial to the investigation or to the recovery of things, or that it may alert other persons who are connected with the offence and are still not in Police custody. Such a delay shall not be later than six hours from the time when the arrest was effected.

(5) An arrested person shall, at his request, be allowed to consult a medical adviser of his choice provided that such medical adviser is readily available.

(6) The application referred to in sub-article (4) may be communicated to the Magistrate by facsimile:

Provided that, as soon as practicable, the original application shall be delivered for record purposes.

Right to legal advice.

355AT. (1) Subject to the provisions of sub-article (3), a person arrested and held in police custody at a police station or other authorised place of detention shall, if he so requests, be allowed as soon as practicable to consult privately with a lawyer or legal procurator, in person or by telephone, for a period not exceeding one hour. As early as practical before being questioned the person in custody shall be informed by the Police of his rights under this sub-article.

(2) A request made under sub-article (1) shall be recorded in the custody record together with the time that it was made unless the request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.

(3) Subject to the provisions of sub-article (7), compliance with a request under sub-article (1) may be delayed if the person making the request is in police detention for a crime and if an officer not below the rank of superintendent authorises such delay.

(4) An authorisation under sub-article (3) may be given orally or in writing but if it is given orally it shall be confirmed in writing as soon as it is practicable.

(5) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by sub-article (1) at the time when the person detained desires to exercise it -

(a) will lead to interference with or harm to evidence connected with the offence being investigated or interference with or physical injury to other persons; or

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence; or

(d) in the case of a person detained for an offence of drug trafficking, bribery, or money laundering, will hinder the recovery of the value of that person's proceeds from the offence.

(6) Where delay has been authorised as provided in sub-article (5) the Police may immediately proceed to question the detained person.

(7) The delay mentioned in sub-article (3) shall in no case exceed thirty-six hours from the time of the arrest.

(8) Any police officer who tries to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (ammenda) and this without prejudice to any disciplinary proceedings that may be taken against him.

(9) Where the person detained chooses not to seek legal assistance the investigating officer shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately.

*Inferences from failure
to mention facts.*

355AU. (1) Where in any proceedings against a person for an offence, evidence is given that the accused -

(a) at any time before he was charged with the offence, on being questioned by the police trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, sub-article (2) shall apply if it is shown that the accused had received legal advice before being questioned, charged or informed as aforesaid.

(2) Where this sub-article applies -

(a) a Court of Magistrates as court of criminal inquiry in making a decision under sub-article (2) of article 401;

(b) the court or jury, in determining whether the person charged or accused is guilty of the offence charged, may draw such inferences from the failure as appear proper, which inferences may not by themselves be considered as evidence of guilt but may be considered as amounting to corroboration of any evidence of guilt of the person charged or accused.

(3) In criminal proceedings against any person for an offence the prosecution shall not, without the permission of the court for reasons which it considers just, comment on the fact that that person did not request the assistance of a lawyer or a legal procurator in the course of police investigations before those proceedings.

